

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(NORTHERN DIVISION)**

WHITE COAT WASTE PROJECT
7288 Hanover Green Dr.,
Mechanicsville, Virginia 23111,

Plaintiff,

v.

Case No. _____

MARYLAND DEPARTMENT OF TRANSPORTATION
s/o Pete K. Rahn, Secretary
7201 Corporate Center Drive,
Hanover, Maryland 21076,

and

MARYLAND TRANSPORTATION ADMINISTRATION
s/o Kevin B. Quinn, Jr., Administrator
6 St. Paul Street,
Baltimore, Maryland 21202,

and

REGIONAL TRANSPORTATION AGENCY OF CENTRAL
MARYLAND
s/o Cristin Tolen, General Manager
8510 Corridor Road, Suite 110,
Savage, Maryland 20763,

and

CENTRAL MARYLAND TRANSPORTATION & MOBILITY
COMMISSION
s/o Clive Graham, Executive Secretary
3430 Court House Drive
Ellicott City, Maryland 21043,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. Defendants Maryland Department of Transportation (MDOT), the Maryland Transit Administration (MTA), the Regional Transportation Agency of Central Maryland (RTA), and the Central Maryland Transportation & Mobility Commission (CMTMC) are providers of public transportation services in the central Maryland region. These agencies provide advertising space on their trains and buses that allow the great majority of advertisers to publish advertisements but, in unclear and shifting articulations, purport to prohibit “objectionable,” “controversial,” and “violent” advertisements.

2. Plaintiff White Coat Waste Project (WCW) would like to buy advertising space on Defendants’ trains and buses for its advertisements. Defendants rejected WCW’s proposed advertisement based, variously, on alleged prohibitions against “objectionable,” “controversial,” and “violent” advertisements, or at least Defendants’ interpretation and implementation of those prohibitions.

3. Defendants do not have a legitimate, let alone a compelling government interest, in rejecting WCW’s advertisement. Defendants’ alleged prohibitions against “objectionable,” “controversial,” and “violent” advertisements, or their interpretation and implementation of those prohibitions, either do not exist or allow Defendants to discriminate against advertisers based on the advertiser’s identity, the advertiser’s known or presumed viewpoints, the content of the advertisement’s message, or the advertiser’s line of business. In fact, Defendants refused to accept WCW’s advertisement despite the advertisement not violating any of Defendants’ actual advertising guidelines.

4. By rejecting WCW's advertisement, Defendants violated WCW's First and Fourteenth Amendment rights.

Jurisdiction and Venue

5. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 as this is an action to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States. WCW seeks remedies under 42 U.S.C. §§ 1983 and 1988 (protection of constitutional rights), Fed. R. Civ. P. 65 (injunctive relief), and 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57 (declaratory relief).

6. Venue is proper under 28 U.S.C. § 1391 because Defendants' acts in violation of the United States Constitution have arisen and continue to arise in the District of Maryland.

Parties

7. Plaintiff White Coat Waste Project, Inc. is a bipartisan taxpayer watchdog organization pursuant to Section 501(c)(3) of the Internal Revenue Code, with its headquarters located at 7288 Hanover Green Dr., Mechanicsville, VA 23111. WCW's mission is to unite animal-lovers and liberty-lovers to expose and end wasteful taxpayer-funded animal experiments.

8. Defendant Maryland Department of Transportation is a government entity operated by the State of Maryland. At all times relevant to this Complaint, MDOT operated under color of state law.

9. Defendant Maryland Transit Administration is the state-owned mass public transportation administration and is part of the MDOT. MTA is a government entity. At all times relevant to this Complaint, MTA operated under color of state law.

10. Defendant Regional Transportation Agency of Central Maryland is a regional public transportation provider in Central Maryland. RTA provides public bus service to Anne Arundel County, Howard County, City of Laurel, and Northern Prince George's County. RTA is a government entity. At all times relevant to this Complaint, RTA operated under color of state law.

11. Defendant Central Maryland Transportation & Mobility Commission is composed of representatives from Anne Arundel County, Howard County, City of Laurel, and Prince George's County. It is involved in setting policies for RTA. At all times relevant to this Complaint, CMTMC operated under color of state law.

Facts

12. Defendants sell advertising opportunities in and on their buses and trains, earning significant advertising revenue per year.

13. Defendants use the services of an out-of-home media company, Vector Media, to manage their advertising sales and placement. Prospective MDOT, MTA, or RTA/ CMTMC advertisers submit proposed advertisements to Vector Media, but Defendants, not Vector Media, make the decisions about whether a proposed advertisement complies with Defendants' alleged advertising policies and, ultimately, whether the advertisement is accepted or rejected.

14. As part of its efforts expose and end wasteful taxpayer-funded animal experiments, WCW is engaged in an active campaign to expose and end taxpayer funding for kitten experiments at a U.S. Department of Agriculture laboratory in Beltsville, Maryland.

15. Using documents obtained through the Freedom of Information Act, WCW showed that the USDA Agricultural Research Service laboratory breeds up to 100 kittens a year, feeds the 2-month-old kittens Toxoplasma-infected raw meat, collects their feces for 2-3 weeks

to harvest the parasite for use in other experiments, and then kills and incinerates the kittens. *See, e.g., Jennifer Wishon, USDA Kills Hundreds of Kittens After Feeding Them Bad Meat,*

CHRISTIAN BROADCASTING NETWORK NEWS, May 7, 2018, available at:

<http://www1.cbn.com/cbnnews/politics/2018/may/usda-kills-hundreds-of-kittens-after-feeding-them-bad-meat>.

16. In response to WCW's exposé, Representative Mike Bishop (R-Mich.) and Representative Jimmy Panetta (D-Calif.) introduced the Kittens in Traumatic Testing Ends Now (KITTEN) Act (H.R. 5780), aimed at ending USDA testing that causes pain to cats or kittens.

//

//

//

//

//

//

//

//

//

//

//

//

//

//

17. As part of WCW's ongoing campaign against the Beltsville lab's kitten experiments, WCW seeks to the run the following advertisement with Defendants on buses and trains that serve the greater Beltsville area:



18. On May 9, 2018, WCW wrote to Vector Media seeking advertising rates for buses and trains. Mark Sheely of Vector Media provided the requested advertising rates to WCW that same day.

19. On June 5, 2018, Sheely and WCW corresponded regarding various placements that Vector Media had available on Defendants' buses and trains which service the greater Beltsville area. After WCW identified the types of advertising spaces it wished to purchase, Sheely wrote, "Before we go any further I need to submit your creative design to the Transit Authority for approval. They restrict political and issue oriented advertising." WCW responded asking for the "policy on political and issue ads so we can review and use as a guide[.]"

20. Two days later, having not received a response from Sheely from its request for the policy, WCW sent Sheely the mock-up of the advertisement and followed-up on the status of the MTA ad policy: "Just wanted to check in on the status of the MTA advertising policy, and also provide you with a mock up of the advertising art we would like to run."

21. Four days later, WCW followed up with Sheely again regarding the policy: "Just writing to follow-up on this. We'd love to get these running ASAP."

22. After another two days passed, on June 13, 2018, WCW followed up again. This time Sheely responded that he was "[s]orry for the delay" and that he was "still waiting to hear back from the MTA and RTA."

23. As documents WCW obtained through the Maryland Public Information Act revealed, Sheely emailed Veronica Battisti, the Director of Communications and Marketing at MDOT MTA, that same day stating, "Please see the attached creative. This client wanted to run 5 MARC posters and then some on the RTA buses as well. I think I know the answer, but wanted to get an official word from you. I'm not sure which advertising guideline this would fall under so you will have to let me know. They want to know specifically why they can't run it if that's the case. I also noticed that there wasn't anything specifically banning political and issue related

ads. Did I miss that somewhere? See attached portion of the contract related to Advertising Guidelines.”

24. Battisti responded: “This ad is not approved. It would be considered objectionable and/or controversial on its own accord. Plus, it depicts/describes violence.”

25. Sheely then wrote to WCW: “See the response below from the MTA. The RTA shared the same sentiments. ‘Mark –This ad is not approved. It would be considered objectionable and/or controversial on its own accord. Plus, it depicts/describes violence.’ Sorry, but we cannot run the copy you presented.”

26. In a follow-up email that same day, WCW again (for the fourth time) asked Sheely for a copy of any advertising policy. WCW never received a response.

27. Having failed to receive any advertising policy through Vector Media, WCW sent a Maryland Public Information Act Request to MDOT seeking, “Copies of all policies governing the content of advertising allowed or prohibited by MTA.”

28. On June 25, 2018, MDOT, through its public information representative Angel Maes, issued a “no responsive documents” response to WCW’s request.

29. That same day, WCW submitted a follow-up Public Information Act request seeking all email and other communications related to advertisements that were rejected by MTA/MDOT.

30. After some negotiation between MDOT and WCW, the scope of the request was narrowed to the email account of Director of Communications and Marketing Veronica Battisti. According to the MDOT, advertising with the MDOT and MTA is under Ms. Battisti’s purview.

31. On July 25, MDOT produced documents responsive to the request, which included 113 pages of emails and attachments.

32. The responsive documents showed the only other advertisement MDOT/MTA rejected in 2018 was a public service advertisement that the Maryland Department of Health sought to place about the risks of the Zika virus that included the word “sex.” Battisti wrote Sheely about the public service advertisement: “This creative is not approved. I believe it would fall under construed as objectionable or questionable.”

33. The responsive documents also included pages from what appear to be the contract between MTA and Vector Media for Vector Media’s service in placing advertising with the MTA. The contract provides:

“The following advertising is strictly prohibited:

- a. Advertising for alcohol and tobacco related products.
- b. False, misleading, or deceptive advertising[.]
- c. Advertising that is sexually explicit or obscene.
- d. Advertising that can be construed as harmful to minors.
- e. Advertising that depicts violence, illegal activity, or anti-social behavior.
- f. Profanity[.]”

34. Despite MDOT/MTA and Vector Media’s various claims that MTA does not accept “political and issue oriented advertising” and that WCW’s advertisement was rejected because it “would be considered objectionable and/or controversial on it[]s own accord,” neither political advertising, issue orientated advertising, objectionable advertising, nor controversial advertising appear to be prohibited by the contract between MTA and Vector Media.

35. WCW also submitted a Maryland Public Information Act request to RTA on June 14, 2018 for “copies of all policies governing the content of advertising allowed or prohibited by RTA.” Despite the Maryland Public Information Act’s requirement that the custodian of records

acknowledge receipt of a request within 10 days and produce records within 30 days, Md. General Provisions Code Ann. § 4-203(b), WCW received neither.

36. On August 23, 2018, WCW followed up with RTA on the outstanding Public Information Act request. Having received no response, WCW followed up again on September 3, 2018, noting that the request had been pending for nearly three months. To date, RTA has not responded.

37. Defendants' policies or practices for rejecting advertisements are unreasonable because they provide Defendants with unbridled discretion.

38. Defendants' policies or practices for rejecting advertisements are unreasonable because they are not guided by objective, workable standards to govern Defendants' decision-making.

39. Defendants' policies or practices for rejecting advertisements are content-based because they draw distinctions based on the message a speaker conveys and define regulated speech by particular subject matter.

40. Defendants' policies or practices for rejecting advertisements, and Defendants' implementation of any policies, are viewpoint-discriminatory. Defendants' unguided discretion to determine whether or accept or reject advertisements authorizes and encourages discriminatory enforcement against controversial or unpopular viewpoints and has resulted in discriminatory enforcement against controversial or unpopular viewpoints.

41. The display of WCW's advertisement will cause no harm of any kind to Defendants, the jurisdictions in which they operate, the passengers who ride their buses and trains, or the public who view their advertising spaces.

42. WCW's advertisement does not "depict violence" in any way that a person of ordinary intelligence would understand that term. To the extent that Defendants rely on a prohibition against advertisements that "depict violence" to reject WCW's advertisement, the term is too vague to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited.

43. WCW still wishes to place the same advertisement, and similar advertisements, in Defendants' advertising spaces. WCW is suffering irreparable injury during the time its advertisements are not permitted to run on Defendants' advertising spaces. WCW has no adequate remedy at law.

44. Defendants have applied a system of prior restraint to refuse WCW's proposed advertisement on the bases of its content and/or viewpoint that does not include constitutionally adequate standards.

**First Claim for Relief
Infringement of Freedom of Speech
First and Fourteenth Amendments (42 U.S.C. § 1983)**

45. WCW incorporates the allegations contained in the preceding paragraphs as if set forth fully herein.

46. Defendants' policies or practices for rejecting advertisements, and/or Defendants' interpretation and implementation of those policies, are content- and viewpoint-based discrimination that are not narrowly tailored to promote a compelling government interest, in violation of the First and Fourteenth Amendments to the United States Constitution.

47. Defendants' policies or practices for rejecting advertisements, and/or Defendants' interpretation and implementation of those policies, are content- and viewpoint-based

discrimination that do not serve a substantial interest and are not narrowly drawn, in violation of the First and Fourteenth Amendments to the United States Constitution.

48. Defendants' policies or practices for rejecting advertisements, and/or Defendants' interpretation and implementation of those policies, are not reasonable when assessed in the light of the purpose of the forum and all the surrounding circumstances, in violation of the First and Fourteenth Amendments to the United States Constitution.

49. Defendants' policies or practices for rejecting advertisements, and/or Defendants' interpretation and implementation of those policies, give Defendants unfettered discretion in enforcement, in violation of the First and Fourteenth Amendments to the United States Constitution.

50. Defendants refusal to run WCW's advertisement amounts to discrimination on the basis of content and/or viewpoint in violation of the First and Fourteenth Amendments to the United State Constitution.

51. By rejecting WCW's advertisement, Defendants failed to follow their own policies.

52. WCW has suffered and will continue to suffer irreparable harm and the deprivation of its rights because of Defendants' unconstitutional policies and practices.

Second Claim for Relief
Vagueness
Fourteenth Amendment (42 U.S.C. § 1983)

53. WCW incorporates the allegations contained in the preceding paragraphs as if set forth fully herein.

54. Defendants' policies or practices for rejecting advertisements are not clearly defined such that a person of ordinary intelligence can readily determine whether an advertisement is allowable or prohibited.

55. The criteria Defendants used and are using to prohibit WCW's advertisement are not clearly defined such that a person of ordinary intelligence can readily determine whether an advertisement is allowable or prohibited.

56. Defendants' policies or practices for rejecting advertisements violate WCW's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

57. WCW has suffered and will continue to suffer irreparable harm and the deprivation of its rights because of Defendants' unconstitutional policies and practices.

Requested Relief

WCW requests that this Court:

1. Declare that Defendants have violated and are violating WCW's rights under the First and Fourteenth Amendment to the United States Constitution;
2. Declare that Defendants' advertising policies are facially unconstitutional under the First and Fourteenth Amendments to the United States Constitution;
3. Declare that Defendants' interpretation and implementation of their advertising policies is unconstitutional as applied under the First and Fourteenth Amendments to the United States Constitution;
4. Grant WCW preliminary and permanent injunctive relief ordering Defendants to accept and display WCW's proposed advertisement on terms no less favorable than those given to other advertisers;

5. Grant WCW preliminary and permanent injunctive relief enjoining Defendants, their employees, agents, successors, and assigns, and all persons acting in concert with them, from continuing to enforce Defendants' unconstitutional advertising policies;
6. Award WCW their costs and reasonable attorneys' fees in this action;
7. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted this 3rd day of October, 2018:

/s/
Curtis Cooper (Federal Bar No. 28060)
The Law Office of Curtis Cooper, LLC
401 Washington Avenue, Suite 200
Towson, MD 21204
Phone: (410) 825-4030
Fax: (410) 510-1831
curtis@curtiscooperlaw.com

Matthew Strugar (*pro hac vice* application submitted concurrently
with this Complaint)
Law Office of Matthew Strugar
3435 Wilshire Blvd., Suite 2910
Los Angeles, CA 90010
Phone: (323) 696-2299
matthew@matthewstrugar.com

Counsel for Plaintiff