

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WHITE COAT WASTE PROJECT
c/o HVJT
15405 John Marshall Hwy
Haymarket, VA 20169

Plaintiff,

v.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY,
600 5th Street, NW
Washington, DC 20001,

ANDY OOFF,
600 5th Street, NW
Washington, DC 20001,

DOES 1 THROUGH 10, inclusive,
Defendants.

Civ. No. 23-cv-1866

**Complaint for Declaratory and
Injunctive Relief**

1. The Washington Metropolitan Area Transit Authority, commonly referred to as WMATA, is the public transportation operator for Washington, D.C., and the surrounding metropolitan area. WMATA provides advertising space—in its stations, in its trains, and in and on its buses—that allow the great majority of advertisers to publish advertisements. But WMATA purports to prohibit advertising “intended to influence members of the public regarding an issue on which there are varying opinions” and that are “intended to influence public policy,” among other restrictions.

2. Plaintiff White Coat Waste Project would like to buy advertising space from WMATA for White Coat's advertisements. WMATA rejected White Coat's proposed advertisements.

3. WMATA does not have a legitimate, let alone a compelling government interest, in prohibiting all advertising designed to influence the public or in rejecting White Coat's advertising. WMATA's prohibitions against ads designed to influence the public or public policy are incapable of reasoned applications and allows WMATA to discriminate against advertisers based on WMATA's conception of the speaker.

4. By rejecting White Coat's proposed advertisements, WMATA violated White Coat's First and Fifth 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. White Coat seeks remedies directly under the United States Constitution, as well as under 42 U.S.C. §§ 1983 and 1988 (protection of constitutional rights), Federal Rule of Civil Procedure 65 (injunctive relief), and 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57 (declaratory relief).

6. This Court also has jurisdiction over this action pursuant to Section 81 of the Washington Metropolitan Area Transit Regulation Compact, which provides that the United States District Courts shall have original jurisdiction over all

actions brought by or against the Washington Metropolitan Area Transit Authority. D.C. Code § 9-1107.01(81); Md. Code Ann., Transp. § 10-204(81); Va. Code Ann. § 33.2-3100(81). In Section 80 of the Compact, the District of Columbia, the State of Maryland, and the Commonwealth of Virginia affirmatively waived the application of their Eleventh Amendment immunity to suits against WMATA regarding its proprietary functions. D.C. Code § 9-1107.01(80); Md. Code Ann., Transp. § 10-204(80); Va. Code Ann. § 33.2-3100(80).

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

Parties

8. Plaintiff White Coat Waste Project, Inc. is a bipartisan non-profit taxpayer watchdog organization pursuant to Section 501(c)(3) of the Internal Revenue Code, with its headquarters located at 15405 John Marshall Hwy, Haymarket, VA 20169. White Coat's mission is to unite animal-lovers and liberty-lovers to expose and end wasteful taxpayer-funded animal experiments.

9. Defendant Washington Metropolitan Area Transit Authority is a governmental entity created by an interstate compact between Maryland, Virginia, and the District of Columbia.

10. Defendant Andy Off is the Interim General Manager of WMATA. As the General Manager of WMATA, Off has final decisionmaking authority on all

aspects of WMATA's operations, including advertising in the system and WMATA's advertising policy. He is sued in his official capacity.

11. The true names, statuses, and capacities of the Defendants sued as Does 1 through 10 are unknown to Plaintiff who thus sues these Defendants by fictitious names. Each of the Doe Defendants are employees of WMATA and were involved in the promulgation of WMATA's advertising guidelines and/or the decision to prohibit White Coat's rejected advertisements under those guidelines. Each Doe Defendant is sued in their official capacity. White Coat will amend the Complaint to show the Doe Defendants' true names and capacities when they have been ascertained.

Facts

WMATA's Advertising

12. WMATA sells advertising opportunities in WMATA subway cars, in and on WMATA buses, and inside WMATA subway stations.

13. WMATA uses the services of an out-of-home media company, Outfront Media, to manage its advertising sales and placement. Prospective WMATA advertisers submit proposed advertisements to Outfront, but WMATA, not Outfront, decides whether a proposed advertisement is approved to run with WMATA.

14. At all times relevant to the matters set forth in this Complaint, WMATA had and currently has in place a written policy concerning the acceptance of advertising to run in or on WMATA property.

15. WMATA’s advertising policy includes a variety of advertising restrictions, but only three are relevant to this lawsuit.

16. The first is WMATA’s advertising restriction number 9: “Advertising intended to influence members of the public regarding an issue on which there are varying opinions are prohibited.”

17. The second is WMATA’s advertising restriction number 13: “Advertisements that support or oppose an industry position or industry goal without any direct commercial benefit to the advertiser are prohibited.”

18. And the third is WMATA’s advertising restriction number 14: “Advertisements that are intended to influence public policy are prohibited.”

White Coat’s Advertisements

19. White Coat seeks to inform the public about wasteful taxpayer funded experiments on animals and to advocate the end of such experiments.

20. Consistent with that mission, White Coat sought to run the following four advertisements:





21. On April 13, 2023, White Coat contacted Outfront Media seeking to run the four ads.

22. On April 28, 2023, Outfront informed White Coat that it rejected the first three ads, stating WMATA's

Panel has reviewed the attached ads and determined that with respect to the first three (filenames cokehounds, hamster, and logo) - they are prohibited by guidelines 9, 13, and 14 of WMATA's Commercial Advertising Guidelines.

With respect to the fourth (filename shopnow) - we are unable to review this ad because the QR code goes to a placeholder page. If they resubmit after updating the QR code link, we can review in advance of the next regularly scheduled meeting.

23. On May 22, 2023, White Coat submitted a revised version of the fourth advertisement with a QR code that linked to a webpage where users could purchase a t-shirt with the White Coat's "Stop Government Animal Experiments" logo.

24. On May 26, 2023, Outfront informed White Coat that WMATA approved the revised fourth advertisement.

25. White Coat's rejected advertisements were rejected under WMATA's advertising prohibitions 9, 13, and 14.

26. Each of these prohibitions is incapable of reasoned application and viewpoint discriminatory. And they result in discriminatory enforcement against controversial or unpopular viewpoints.

27. Prohibition 9 is incapable of reasoned application and viewpoint discriminatory. Its prohibition on "advertising intended to influence members of the public regarding an issue on which there are varying opinions" provides no workable standards as to what advertising may come in and what may stay out. Taken literally, the prohibition would prohibit all or most advertising, as every

product, service, or issue that is need of an advertisement naturally tries to influence a member of the public regarding an issue on which there are varying opinions. An advertisement for McDonald's tries to influence the public on an issue on which here are varying opinions (whether that "issue" is McDonald's versus other fast-food options, the consequences of fast food, or the ethical issue of selling animals for cheap food). And it leads to viewpoint discrimination: advertising for something like McDonald's can come in because they are viewed as noncontroversial; advertisements like White Coat's are kept out because they are seen as controversial or challenging the status quo.

28. Prohibition 13 is also incapable of reason application and viewpoint discriminatory. It allows support or criticism of "an industry position or industry goal" when the support or criticism has a "direct commercial benefit to the advertiser" but censors the same message if the speaker doesn't seek a direct commercial benefit. And it violates the First, Fifth, and Fourteenth Amendments as-applied to White Coat's rejected advertisements because White Coat rejected ads do not support or criticize an "industry;" they criticize government.

29. Prohibition 14 is similarly incapable of reasoned application and works the same viewpoint discriminatory through a different slant. Like prohibition 9, prohibition 14's censorship of advertising "intended to influence public policy" is incapable of reasoned application and provides no workable standards as to what advertising may come in and what may stay out. And like prohibition 9, in practice

prohibition 14 works to allow noncontroversial advertisements that broad support but censor advertisements seen as controversial or having an axe to grind.

30. Each of these prohibitions were applied to White Coat's rejected advertisements in a manner that violates the First Amendment, resulting in WMATA and the other Defendants censoring White Coat's proposed advertisements. Prohibition 13 was also applied to White Coat's rejected advertisements in a manner that violated the Fifth and Fourteenth Amendments, resulting in WMATA and the other Defendants censoring White Coat's proposed advertisements.

31. WMATA and other Defendants regularly accept and display advertisements that are intended to influence riders and the rest of the public to buy, do, and believe things that are at odds with White Coat's viewpoint on taxpayer funded animal research and the products developed as a result of such research.

32. On information and belief, WMATA and the other Defendants accept and have accepted other advertisements related to social and political issues on which some portion of the public disagrees.

33. White Coat still wishes to place the rejected advertisements, and similar advertisements, in WMATA advertising spaces. White Coat is suffering irreparable injury during the time its advertisements are not permitted to run on WMATA advertising spaces.

34. Displaying White Coat's advertisements will cause no harm of any kind to WMATA, the passengers who ride WMATA's subway or buses, or the public who view WMATA's advertising space.

Causes of Action

First Cause of Action Infringement of Freedom of Speech First Amendment

35. White Coat incorporates the allegations contained in the preceding paragraphs as if set forth fully herein.

36. The challenged advertising guidelines/prohibitions, and/or WMATA and the other Defendants' interpretation and implementation of those guidelines/prohibitions, are not capable of reasoned application, in violation of the First Amendment to the United States Constitution.

37. The challenged advertising guidelines/prohibitions, and/or WMATA and the other Defendants' interpretation and implementation of those guidelines/prohibitions, give WMATA and the other Defendants unfettered discretion in enforcement, in violation of the First Amendment to the United States Constitution.

38. The challenged advertising guidelines/prohibitions, and/or WMATA and the other Defendants' interpretation and implementation of those guidelines/prohibitions, are either facially viewpoint-based or viewpoint-based as applied, and not narrowly tailored to promote a compelling government interest, in violation of the First Amendment to the United States Constitution.

39. WMATA and the other Defendants' refusal to run White Coat's proposed advertisements amounts to discrimination based on viewpoint as applied to White Coat, in violation of the First Amendment to the United States Constitution.

40. White Coat has suffered and will continue to suffer irreparable harm and deprivation of its rights because of WMATA's unconstitutional advertising guidelines/prohibitions and practices.

Second Cause of Action
Vagueness
Fifth & Fourteenth Amendments

41. White Coat incorporates the allegations contained in the preceding paragraphs as if set forth fully herein.

42. The challenged advertising guidelines/prohibitions are not clearly defined such that a person of ordinary intelligence can readily determine whether an advertisement is allowable or prohibited.

43. The criteria WMATA and the other Defendants used and are using to prohibit White Coat's advertisements are not clearly defined such that a person of ordinary intelligence can readily determine whether an advertisement is allowable or prohibited. Such vagueness also contributes to the unfettered discretion exercised by WMATA and the other Defendants.

44. The challenged advertising guidelines/prohibitions, and/or WMATA and the other Defendants' interpretation and implementation of those

guidelines/prohibitions, violate WCW's rights under the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

45. White Coat has suffered and will continue to suffer irreparable harm and the deprivation of its rights because of WMATA and the other Defendants' unconstitutional advertising guidelines/prohibitions and practices.

Request for Relief

White Coat requests that this Court:

- a. Declare that Defendant have violated and are violating White Coat's rights under the First and Fifth Amendment to the United States Constitution;
- b. Declare that Guidelines 9, 13, and 14 of WMATA's Guidelines Governing Commercial Advertising are facially unconstitutional under the First, Fifth, and Fourteenth Amendments to the United States Constitution;
- c. Declare that Guidelines 9, 13, and 14 of WMATA's Guidelines Governing Commercial Advertising are unconstitutional as applied under the First, Fifth, and Fourteenth Amendments to the United States Constitution;
- d. Grant White Coat preliminary and permanent injunctive relief ordering Defendants to accept and display White Coat's proposed advertisement on terms no less favorable than those given to other advertisers;
- e. Grant White Coat 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 Guidelines 9, 13, and 14 of WMATA's Guidelines Governing Commercial Advertising;

f. Grant such other and further relief as the Court deems appropriate.

Date: June 27, 2023

Respectfully submitted,

/s/ Matthew Strugar
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