

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

ASSOCIATION OF COMMUNITY)
ORGANIZATIONS FOR REFORM NOW)
1024 Elysian Fields Avenue)
New Orleans, Louisiana 70117)

PROJECT VOTE/)
VOTING FOR AMERICA, INC.)
103 East 21st Street)
Little Rock, Arkansas 72206)

JONATHAN PEZOLD)
1226 River Ridge Road)
Augusta, Georgia)

SIERRA LETO)
16 West 25th Street)
Baltimore, Maryland 21218)

Plaintiffs,)

v.)

LISA L. DICKERSON, individually, and)
in her official capacity as Maryland)
Transit Administration Administrator)
and Chief Executive Officer)
Maryland Transit Administration)
6 St. Paul Street)
Baltimore, Maryland 22102-1614)

GLENN M. LITSINGER,)
Maryland Transit Administration)
6 St. Paul Street)
Baltimore, Maryland 22102-1614)

OFFICER MORTON (BADGE NO. 050),)
Maryland Transit Administration)
6 St. Paul Street)
Baltimore, Maryland 22102-1614)

Defendants.)

Civil Action No. _____

COMPLAINT

Plaintiffs the Association of Community Organizations for Reform Now (“ACORN”), Project Vote/Voting for America, Inc. (“Project Vote”), Jonathan Pezold (“Pezold”), and Sierra Leto (“Leto”) (collectively “Plaintiffs”), by and through the undersigned counsel, hereby file this Complaint against Lisa L. Dickerson (“Dickerson”), the General Manager of the Maryland Transit Administration (“MTA”) of the Department of Transportation, Glenn M. Litsinger (“Litsinger”), and Officer Morton (Badge No. 050) (“Officer Morton”) of the MTA police force, and allege and state as follows:

NATURE OF THE ACTION

1. This action challenges an MTA regulation that unconstitutionally interferes with and unlawfully restricts the Plaintiffs’ rights by preventing and seeking to continue to prevent the Plaintiffs from registering voters and conducting other outreach activities at MTA subway and bus stations in Baltimore, Maryland. The MTA regulation requires all individuals, including Plaintiffs, to seek and obtain a permit before engaging in any free speech activity on public property, by imposing various unjustifiable conditions and limitations upon the issuance of such permits, and by refusing to allow Plaintiffs to engage in any future free speech activities on MTA property. MTA’s regulations violate Plaintiffs’ rights under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Moreover, the permit regulations are overbroad and vague in violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Plaintiffs seek preliminary and permanent injunctive relief, declaratory relief, and other relief as set forth in detail below.

2. In implementing and enforcing these regulations, MTA restricts access to MTA property to conduct what it recognizes as “free speech activity,” which the regulations define as

“any manner of exercising constitutionally guaranteed freedoms of religion, speech, and press.” The areas subject to these restrictions, which the regulations refer to as “free areas,” include the portions of Metro stations and premises open to the general public during regular business hours (but not inside the turnstile or fare gates), the portions of the MARC and Light Rail stations and premises open to the general public during regular business hours (but not within 20 feet of the tracks), and other designated areas on the station floor plans. These areas are public property and constitute public forums under the First Amendment to the United States Constitution.

3. Plaintiffs’ free speech activities are protected by the First Amendment. By requiring all individuals, including the Plaintiffs, to seek and obtain a permit before engaging in any free speech activity on public property, by imposing various unjustifiable conditions and limitations upon the issuance of such permits, and by refusing to allow Plaintiffs to engage in any future free speech activities on MTA property, MTA’s regulations violate Plaintiffs’ rights under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Moreover, the permit regulations are overbroad and vague in violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

JURISDICTION AND VENUE

4. This action arises under the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983. Jurisdiction is conferred upon the Court by 28 U.S.C. §§ 1331 and 1343.

5. Venue is proper in this District, pursuant to 28 U.S.C. §§ 1391(b) and (c), because this claim arose in this District and the Defendant resides in this District.

THE PARTIES

6. ACORN is a non-profit organization incorporated in Louisiana with a principal place of business at 1024 Elysian Field Avenue, New Orleans, Louisiana 70117, and an office at 16 West 25th Street, Baltimore, Maryland 21218. ACORN is the nation's largest community organization of low- and moderate-income families, working together for social justice and stronger communities. Since 1970, ACORN has grown to more than 175,000 member families, organized in 850 member chapters in 75 cities across the United States and other countries.

7. Project Vote is a 501(c)(3) non-partisan, non-profit organization incorporated in Louisiana with its principal place of business at 103 East 21st Street, Little Rock, Arkansas 72206. Project Vote has funded voter registration drives in Maryland, most recently in 2006. Since its founding in 1982, Project Vote has helped register and turn out to vote millions of low-income and minority citizens nationwide, trained hundreds of low-income and minority organizers, and provided registrants with nonpartisan, follow-up voter education.

8. Project Vote provides funding, professional training, management, evaluation, and technical services for voter engagement and voter participation activities in low- and moderate-income communities throughout the country, including in Maryland. Project Vote believes that creating and sustaining increased levels of voter participation by low- and moderate-income, minority, and other disenfranchised communities requires a strategic and comprehensive approach.

9. Project Vote has a full-time staff person working in Maryland monitoring and providing technical assistance to ACORN's voter registration drive and overseeing an election administration program designed to ensure that all eligible voters who submit applications to an election office are added to the state's list of eligible voters and are able to vote a regular ballot

in upcoming elections. ACORN and Project Vote's registration drives have been extremely successful. During the 2004 election cycle, ACORN and Project Vote assisted over 1,000,000 people register to vote nationwide. In 2006, ACORN assisted over 30,000 people register in Maryland.

10. Pezold is a former employee at ACORN. He resides at 1226 River Ridge Road, Augusta, Georgia. Pezold was working under the contract between ACORN and Project Vote at all times relevant to this Complaint.

11. Leto is a Director at ACORN. Her business address is 16 West 25th Street, Baltimore, Maryland 21218.

12. Defendant Dickerson is the Administrator and CEO of MTA. Pursuant to Transportation Article, § 7-202, Annotated Code of Maryland, the Administrator is the head of the Administration of the MTA and is responsible for carrying out "the powers and duties vested by law in the Administration" and the "powers and duties vested in the Secretary [of Transportation] and delegated to the Administrator by the Secretary [of Transportation]." Dickerson is being sued in both her official and individual capacities.

13. Defendant Litsinger is the Manager of Customer Service for MTA. Litsinger is being sued individually and in his official capacity as MTA's Manager of Customer Service

14. Defendant Officer Morton is a MTA police officer. Officer Morton is being sued individually and in his official capacity as a MTA transit police officer.

15. Pursuant to Transportation Article, § 7-204, Annotated Code of Maryland, Defendant Dickerson is responsible for adopting rules and regulations to carry out the powers of the MTA, including the regulation at issue in this lawsuit.

16. MTA is an agency of the State of Maryland. MTA operates a regional transportation system, including rail and bus systems, in the Baltimore, Maryland area.

17. Pursuant to Transportation Article, § 7-207, MTA is authorized to establish and maintain a police force. At the time of the events alleged, officers of the MTA police force were acting on behalf of MTA as its employees and agents under the direction of Defendant Dickerson.

THE MTA REGULATION

18. The regulation entitled “Free Speech Activities on Mass Transit Administration Premises” (the “Regulation”) is at issue in this matter. A copy of the Regulation is attached hereto as Exhibit A.

19. Among other things, the Regulation provides:

(a) that all persons wishing to engage in “free speech activities” must do so “strictly in conformity with the terms and conditions of these regulations and the permit issued by the Administrator or the Administrator’s designee” (§ 11.06.01.11(A)(2));

(b) that all persons wishing to engage in “free speech activities” must submit a “written request in the form prescribed by the Administrator” and designate: (1) the contact information of the person or persons sponsoring, promoting, or conducting the proposed activities; (2) who will have supervision of and responsibility for the proposed activities; (3) who will be engaged in the proposed activities; (4) the subject matter of the proposed distribution or communication; (5) the type of communication involved; (6) the dates, hours, and duration of the proposed activities; (7) the number of persons to be engaged in the proposed activities; (8) the specific free area and station(s) in which the desired activities are planned; and (9) whether any materials will be distributed (§ 11.06.01.07);

- (c) each permit only authorizes the permit holder to conduct activities described in their application and for a period not to exceed 48 hours (§ 11.06.01.08(D));
- (d) the permits are not transferable (§ 11.06.01.08(C));
- (e) permits may not be extended or renewed (§ 11.06.01.08(E));
- (f) that applications for permits shall be denied, and a permit cancelled, for a variety of reasons, including, among others, that the quota for all permits has been filled for the time and place requested, the number of persons originally designated to be engaged at any time in the free speech activities exceeds the published quota for the designated free speech area, the applicant does not sign the application, or the applicant violated the terms and conditions of a permit (§ 11.06.01.09(A)); and
- (g) that “free speech activities” may only be conducted in a conversational tone and during the regular business hours of the MTA stations and premises (§ 11.06.01.11(A)(1)).

IMPACT ON PLAINTIFFS

20. Plaintiffs have conducted or attempted to conduct free speech activities on MTA property, specifically attempting to register voters on MTA property without a permit, that have been interpreted by the Defendant to violate the Regulation, and one or more of the Plaintiffs wishes in the future to conduct free speech activities on MTA property that would violate, or might be interpreted to violate, certain aspects of the Regulation noted above.

21. Due to threats of arrest by MTA officials, Plaintiffs reasonably fear that they will be arrested and prosecuted if they choose to exercise their First Amendment rights on MTA property in ways that violate, or that might be interpreted to violate, the Regulation by attempting to register voters.

**MTA's Interference with ACORN's Right to Free Speech
at Mondawmin Mall on March 25, 2006**

22. For example, on March 25, 2006, Pezold and other ACORN employees were attempting to register voters on the sidewalk near the bus stop at the Mondawmin Mall subway station in Baltimore. Pezold was conversing with the people entering and leaving the subway station and bus terminal. On information and belief, the MTA claims that the area where Pezold was standing is a "free area" within the meaning of the MTA Regulation.

23. The area where Pezold was located is across the street from the upper end of the escalators that provide to MTA's subway system and adjoins the Baltimore sidewalk. The two areas – the purported MTA "free area" and the Baltimore sidewalk – are indistinguishable to the public.

24. Many people use or pass through the alleged "free area" of the Mondawmin Mall subway and bus stop every day. Pezold's attempts to register voters did not and would not interfere with the safe, free, and orderly flow of transit patron traffic.

25. On March 25, 2006, Pezold and his colleagues were not conducting their activities beyond or inside the turnstile or fare gates or within twenty feet of either side of the tracks in the subway station. Pezold and his colleagues were not interfering with the flow of pedestrian traffic.

26. Pezold and his colleagues were ordered to stop registering voters by Officer Morton. Pezold declined to stop registering voters, and Officer Morton proceeded to follow Pezold around the "free area." Officer Morton continued to try to stop Pezold from registering voters by placing his body between Pezold and transit patrons and by threatening to arrest Pezold.

27. Upon receiving a threat of arrest, Pezold stopped his attempts to register voters. Officer Morton informed Pezold that he needed to obtain a permit in order to register voters on MTA property.

28. ACORN had never obtained permits to register voters on MTA property before and had never been told that they needed to do so before March 25, 2006.

ACORN's Attempts to Obtain Free Speech Permits After March 25, 2006

29. After the incident on March 25, 2006, ACORN attempted to obtain permits to register voters on MTA property, pursuant to the Regulation. On April 4, 2006, Theresa D'Anna ("D'Anna"), an ACORN employee, attempted to apply for a permit at the MTA administrative office, located at 6 St. Paul Street, Baltimore, Maryland 22102. D'Anna was directed by numerous MTA officials to go to different areas of the building to obtain a permit application. Finally, after five hours, D'Anna still was not able to get a permit application, and she handwrote out the information required by the Regulation on a piece of paper and handed it to a MTA employee.

30. D'Anna handwrote out the information required by the Regulation at the direction of Brian Mellor ("Mellor"), Counsel for Project Vote. Mellor was on the phone with D'Anna throughout much of the events of the day. The MTA employee informed D'Anna that she did not accept permits.

31. On April 6, Pezold went to the MTA administrative office and inquired about an application for free speech activities. Pezold was told by a MTA employee that MTA no longer issued permits. After Pezold and others from ACORN placed numerous phone calls to MTA, a MTA employee finally produced a permit application for Pezold.

32. ACORN submitted a permit application to MTA on April 7, 2006. A copy of the permit application is attached as Exhibit B.

ACORN and Pezold's Free Speech Permit to Register Voters for April 10 and 11, 2006

33. After receiving a call from MTA that his permit was ready, Pezold returned to the MTA administration office on April 10, 2006, and picked up a letter from MTA attaching a permit for April 10 and 11, 2006. Pezold was listed on the permit as the "person to be engaged in activities while on MTA property," and Leto was listed as the person who "will supervise and be responsible for the proposed activities." A copy of the letter with the attached permit for April 10 and 11, 2006, is attached hereto as Exhibit C.

34. The letter accompanying the permit states that in the future, all free speech permit applications need to be submitted "at least two weeks in advance" of the date requested to engage in free speech activities. *See* Exhibit C.

MTA's Interference with ACORN and Pezold's Right to Free Speech at Penn North on April 11, 2006

35. Pezold registered voters at the Mondawmin Mall subway and bus stop on April 10 and 11, 2006. Near the end of his shift on April 11, Pezold took the subway to the Penn North station on his way home. While waiting for his bus at the Penn North station, Pezold attempted to register voters.

36. Many people use or pass through the "free area" of the Penn North subway and bus stop every day. Pezold's attempts to register voters did not and would not interfere with the safe, free, and orderly flow of transit patron traffic.

37. Pezold was not conducting his activities beyond or inside the turnstile or fare gates or within twenty feet of either side of the tracks in the subway station. Pezold was not interfering with the flow of pedestrian traffic.

38. While at the Penn North station on April 11, 2006, Pezold was approached by an MTA transit police officer. The officer told Pezold that he could not register voters at Penn North because his permit only applied to the Mondawmin Mall station. The officer never asked to see Pezold's permit. Further, the officer threatened to arrest Pezold if he attempted to register another voter. Officer Morton then arrived on the scene. Pezold stopped registering voters and boarded his bus to go home.

39. Officer Morton boarded the bus with Pezold, ordered Pezold not to register voters while on the bus, and commanded the bus driver to inform him of any attempts by Pezold to register voters while on the bus.

40. Enforcement of the Regulation is not necessary to protect MTA's interests in the safe, free, and orderly flow of transit patron traffic, nor may such enforcement reasonably be justified by those interests.

**ACORN's Attempts to Obtain Free Speech Permits and MTA's
Subsequent Denial of Those Permit Applications After April 11, 2006**

41. MTA has frequently allowed activities in violation of the Regulation to occur, and has not thereby experienced any interference in the safe, free, and orderly flow of transit patron traffic.

42. ACORN has engaged in free speech activities by registering voters on MTA property countless times without a permit. ACORN's registering of voters did not interfere with the safe, free, and orderly flow of transit patron traffic. On information and belief, MTA authorities were contemporaneously aware of these activities since the transit police were often physically located at and were monitoring the MTA facilities contemporaneously with ACORN's efforts to register voters.

43. Following the incident between Pezold and the MTA transit police officers, including Officer Morton, on April 11, 2006, ACORN applied to MTA for numerous other “free speech” permits. In a letter dated April 20, 2006, and sent to Leto, MTA denied all of ACORN’s pending applications and informed ACORN that MTA would not issue ACORN any more “free speech” permits in the future. *See* letter, dated April 20, 2006 from Glenn M. Litsinger (MTA) to Sierra Leto (ACORN), attached hereto as Exhibit D.

44. Plaintiffs wish to exercise their free speech rights on MTA property, and wish to do so without being subject to the burdensome restrictions of the Regulation and to being arrested or intimidated, harassed, and threatened with arrest for engaging in free speech activities. Unless enjoined, however, Dickerson will continue to enforce the unconstitutional Regulation and direct the MTA police force to impede constitutionally protected free speech activities and to threaten and harass those who engage in such activities.

CLAIM FOR RELIEF

COUNT I: Violation of the First and Fourteenth Amendments to the United States Constitution

45. Plaintiffs re-allege and incorporate each of the allegations set forth in Paragraphs 1 through 44 of this Complaint as if fully stated herein.

46. Defendant’s Regulation itself, and enforcement of said Regulation, including, but not limited to, Sections 11.06.01.06, 11.06.01.07, 11.06.01.09, and 11.06.01.11 is an unlawful prior restraint on free speech. By enforcing the Regulation, Dickerson, acting under color of law, deprived Plaintiffs of their rights protected by the First and Fourteenth Amendments to the United States Constitution.

**COUNT II: Violation of the First and Fourteenth
Amendments to the United States Constitution**

47. Plaintiffs re-allege and incorporate each of the allegations set forth in Paragraphs 1 through 44 of this Complaint as if fully stated herein.

48. In enforcing the Regulation, which is overbroad and vague and prohibits all free speech without prior MTA approval and permit, Dickerson, acting under color of law, deprived Plaintiffs of their rights protected by the First and Fourteenth Amendments to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Association of Community Organizations for Reform Now, Project Vote/Voting for America, Inc., Jonathan Pezold, and Sierra Leto respectfully pray that this Court:

(a) Declare that the Regulation's permit process and requirements constitute a prior restraint not permitted by the First and Fourteenth Amendments of the United States Constitution;

(b) Declare that the Regulation is vague and overbroad in violation of the First and Fourteenth Amendments of the United States Constitution;

(c) Enjoin Defendant Dickerson and her successors from enforcing the Regulation;

(d) Award Plaintiffs one dollar each in damages in compensation for violation of their First Amendment rights against Defendants Lisa L. Dickerson, Glenn M. Litsinger, and Officer Morton (Badge No. 050), in their individual capacities only; and

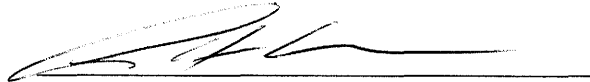
(e) Award Plaintiffs their attorneys fees and costs incurred in pursuing this action, pursuant to 42 U.S.C. § 1988; and

(f) Grant such other relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,

Deborah A. Jeon (# 06905)
David Rocah (# 27315)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF MARYLAND
3600 Clipper Mill Road
Suite 350
Baltimore, MD 21211
Telephone: (410) 889-8555
Facsimile: (410) 366-8669

January 11, 2007



Andrew H. Marks (# 02278)
David M. Schnorrenberg*
Todd J. Cochran*
Clyde E. Findley*
Amy W. Ray*
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 624-2500
Facsimile: (202) 628-5116

Attorneys for Plaintiffs

**pending pro hac vice admission*