Exhibit 4
July 11, 2006

BY FEDERAL EXPRESS

Callista M. Freedman
General Counsel
Maryland Transit Administration
6 St. Paul St., 12th Floor
Baltimore, MD 21202

Re: MTA’s Regulation of Free Speech Activities

Dear Ms. Freedman:

The Association of Community Organizations for Reform Now (“ACORN”) contacted the American Civil Liberties Union Foundation of Maryland (“ACLU”) regarding difficulties that it has been encountering in attempting to conduct voter registration in the Baltimore area pursuant to its First Amendment rights to free speech, and the ACLU has engaged our firm to assist in addressing the matter. We write now to put MTA on notice that Maryland’s Free Speech Activities on Mass Transit Administration Premises Regulation, COMAR 11.06.01 (“Regulation”), is unconstitutional and invalid both on its face and as applied to ACORN, and to demand that the Mass Transit Administration (“MTA”) and the State thus refrain from enforcing it.

As you may know, ACORN is the nation’s largest community organization of low and moderate income families. Based on years of experience, ACORN knows that in order to effectuate its goal of registering low and moderate income voters, it must conduct registration campaigns in places with reasonably high pedestrian traffic meeting certain demographics. There are only a limited number of such places, public transit points such as MTA’s clearly being among them. ACORN thus seeks to register voters in the Baltimore area at several MTA bus, light rail and metro stations.

MTA’s Regulation, however, serves as a significant, and indeed improper, impediment to ACORN’s efforts in this regard.
The Regulation Is facially Unconstitutional

First, the Regulation is facially invalid; it is an impermissibly overbroad and vague prior restraint on free speech in public fora. As you are aware, the Regulation requires that a “person desiring to exercise constitutional freedoms . . . in, about, or within the MTA stations and premises shall first obtain a written permit . . . from the Administrator.” COMAR 11.06.01.06. The Regulation broadly defines free speech activity for which a permit is required as “any manner of exercising constitutionally guaranteed freedoms of religion, speech, and press” without any limitation whatsoever. COMAR 11.06.01.03(B)(9).

Whatever interests in regulating the use of MTA property for free speech activities the State might legitimately have, “it may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.” Ward v. Rock Against Racism, 491 U.S. 781,799 (1989). But that is, on its face, exactly what the regulation does. It restricts many incidents of free expression that pose little or no threat to MTA’s articulated goals of protecting patrons and ensuring the safe, free and orderly transit of patron traffic. Indeed, it is not hard to imagine all sorts of clearly non-intrusive, non-threatening expressive conduct that falls within the exceedingly broad language of the Regulation. For example, among other things, by its terms, the Regulation applies to individual expression such as wearing a t-shirt or button with some political or religious message; it also covers routine political or religious discourse between two individuals. Requiring a permit as a prerequisite to such expression is so obviously unreasonable that it renders the conclusion that the Regulation is overbroad inevitable. Its potential chilling effect is unsustainable. In short, the Regulation simply sweeps in far too much protected speech and thus is not “narrowly tailored” to further the government’s legitimate interests as required for such restrictions.

Moreover, the Regulation leaves no alternative channels for communication on MTA premises, as is also required of such restrictions. By entirely precluding an individual’s ability to engage in “any manner of exercising constitutionally guaranteed freedoms of religion, speech, and press” without first obtaining a permit, the Regulation impermissibly eliminates any possible alternative forum or manner on MTA premises in which to engage in such protected expression.

The Regulation suffers from other infirmities as well. For example, the Regulation requires that free speech activities be conducted “[o]nly in a conversational tone.” Such a requirement is so indefinite and vague that it does not give any notice, and permits too much discretion in enforcement, which could lead to impermissible content-based decisions.

The Regulation – on its face – therefore is an unreasonable and unconstitutional time, place or manner restriction on free speech, and it cannot survive constitutional scrutiny. Indeed, courts routinely strike down these sorts of permitting regulations on facial challenges. In fact, the Regulation is strikingly similar to – indeed, somewhat broader than – the regulation at issue in Community for Creative Non-Violence v. Turner, 893 F.2d 1387, 1391 (D.C. Cir. 1990). In that case, the United States Court of Appeals for the D.C. Circuit found the Washington Metropolitan Area Transit Authority regulation at issue requiring permits for organized free
speech unconstitutional, concluding that it “swe[pt] too widely, burdening substantially more speech than is necessary to guarantee WMATA’s safe and efficient operation.” *Id.* at 1393.¹

**The Regulation Is Unconstitutional As Applied to ACORN**

In addition to the problems the Regulation suffers from on its face, MTA’s application and enforcement of the Regulation as to ACORN is also clearly unconstitutional. As you may know, MTA has recently expressed its intent that “no additional Free Speech Permits are to be issued to [ACORN]” apparently due to an incident during which an ACORN representative allegedly exceeded the scope of his permit by attempting to register voters at a location different than the one specified in his permit. (April 20, 2006 Letter from Litsinger, MTA, to Leto, ACORN, copy attached). Using a single alleged violation of MTA’s Free Speech Regulation of this nature to entirely and indefinitely foreclose ACORN from engaging in the protected expression of voter registration is – particularly in the absence of any articulation by MTA of a valid purpose for such a drastic measure – without question an unreasonable and impermissible suppression of free speech. Indeed, it is entirely unclear how MTA’s stated interests are substantially advanced by precluding ACORN from engaging in peaceful voter registration drives.

Further, even prior to this final step, MTA engaged in questionable application of the Regulation as to ACORN. For example, MTA has required ACORN to complete a separate permit application for each MTA location at which ACORN wishes to engage in voter registration notwithstanding the Regulation’s indication that the “station or stations” at which the free speech activity is planned should be specified in the application. The requirement for a separate permit application for each location, which also must specify the particular ACORN representatives for that location, poses an unjustifiable burden on groups like ACORN, particularly when coupled with the very limited 48-hour time duration of each permit. In addition, MTA has indicated that ACORN must “allow the required two weeks of lead time from the date of [its] application, to the requested date for [its] event.” Not only does the Regulation lack any such lead time, it dictates that MTA “shall immediately issue a permit to the applicant.” COMAR 11.06.01.08A(1). MTA’s imposition of these restrictions on ACORN unduly interferes with ACORN’s mission of engaging in voter-registration drives aimed at low-income voters without substantially furthering any legitimate government purpose.

¹ *See also Cox v. Charleston*, 416 F.3d 281 (4th Cir. 2005) (invalidating ordinance requiring permit for any gatherings on streets or sidewalks of city recognizing the chilling effect of permitting process); *Service Employees Int’l Union, Local 3 v. Mt. Lebanon*, 446 F.3d 419 (3d Cir. 2006) (invalidating statute requiring door-to-door canvassers to register with police) (citing *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150 (2002)).
MTA’s enforcement of the Regulation as to ACORN readily leads to conclusion that MTA is targeting ACORN based on the nature of its proposed expression despite the supposed content-neutrality of the Regulation. Clearly, the registering of voters that ACORN seeks to pursue on MTA premises is core First Amendment expression and should be afforded the highest level of protection. See Monterey County Democratic Central Committee v. United States Postal Service, 812 F.2d 1194, 1196 (9th Cir. 1987); Meyer v. Grant, 486 U.S. 414, 422 n.5 (1988). MTA’s use of the Regulation to interfere with that protected expression is impermissible.

We therefore expect that MTA and the State will voluntarily refrain from any future enforcement of the unconstitutional Regulation, particularly as to ACORN. In the event that such voluntary abstention is not forthcoming, however, we are prepared to take any additional steps that might be necessary to ensure that ACORN’s First Amendment rights are fully protected. We look forward to a prompt response regarding MTA’s future intentions.

Sincerely yours,

[Signature]

David M. Schnorrenberg

cc: Deborah A. Jeon
April 20, 2006

Ms. Sierra Leto
ACORN
16 W. 25th Street
Baltimore MD 21218

Dear Ms. Leto:

The Maryland Transit Administration (MTA) offers Free Speech Permits to allow the expression of Free Speech Activities on MTA property. All persons wanting to participate in these types of activities are required to fill out an application, and then sign a legally binding permit. A representative from the MTA also signs the completed permit and both the requestor and the MTA keep a completed copy. The permit stipulates the locations, dates, times, authorized individuals, and through the Code of Maryland Regulations (COMAR), specifics including the legal need to adhere to those stipulations.

Mr. Jon Pezold, representing the Association of Community Organizations for Reform Now (ACORN), signed a permit on Monday, April 10. As explained in person, in wording stipulated in the permit, in COMAR Regulations, and in the cover letter provided, the permit was restricted to the following times and locations:

Monday, April 10, 2006: 2:00 pm to 6:00 pm
Mondawmin Metro Subway Station

Tuesday, April 11, 2006
2:00 pm to 6:00 pm
Mondawmin Metro Subway Station

It was brought to our attention by an MTA police officer that your representative violated these COMAR Regulations by going to the Penn-North Metro Subway Station, out in the bus stop area, approaching customers about voter registration. When asked to stop, your representative refused several times, stating that the permit was “too restricting” and that he was “branching out.” It was only after the threat of arrest that this representative stopped the activity and left the property.
At this time we are making you aware that no additional Free Speech Permits are to be issued to the Association of Community Organizations for Reform Now (ACORN). The current applications for Mondawmin, Penn-north, Old Court and Owings Mills Metro Subway Stations for April 27, 28, 29 and May 1, 2, 3, 4, 5, 6, 2006 are denied.

It is unfortunate that we were not able to work together in this process. If you have any questions or concerns, please give me call at 410-767-8358.

Sincerely,

Gin M. Litsinger
Manager, Customer Service

cc: Ms. Crystal Patterson, Assistant Attorney General, MTA