

Docket No. 19-1170

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

THE CENTER FOR INVESTIGATIVE REPORTING,

Appellant,

v.

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,

Appellee.

**On Appeal from the United States District Court for the Eastern District of
Pennsylvania**

No. 18-cv-1839

BRIEF OF AMICUS VOTE.ORG IN SUPPORT OF REVERSAL

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United States Court of Appeals for the Third Circuit

**Corporate Disclosure Statement and
Statement of Financial Interest**

No. 19-1170

THE CENTER FOR INVESTIGATIVE REPORTING,
Appellant

v.

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION
AUTHORITY

Appellee

Instructions

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure any nongovernmental corporate party to a proceeding before this Court must file a statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

Third Circuit LAR 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.

In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate shall provide a list identifying: 1) the debtor if not named in the caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or the bankruptcy estate is not a party to the proceedings before this Court, the appellant must file this list. LAR 26.1(c).

The purpose of collecting the information in the Corporate Disclosure and Financial Interest Statements is to provide the judges with information about any conflicts of interest which would prevent them from hearing the case.

The completed Corporate Disclosure Statement and Statement of Financial Interest Form must, if required, must be filed upon the filing of a motion, response, petition or answer in this Court, or upon the filing of the party's principal brief, whichever occurs first. A copy of the statement must also be included in the party's principal brief before the table of contents regardless of whether the statement has previously been filed. Rule 26.1(b) and (c), Federal Rules of Appellate Procedure.

If additional space is needed, please attach a new page.

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, VOTE.ORG
makes the following disclosure: (Name of Party)

1) For non-governmental corporate parties please list all parent corporations: NONE

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:
NONE

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:
NONE

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.

N/A



(Signature of Counsel or Party)

Dated: 5/14/19

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I. STATEMENT OF IDENTIFICATION

Amicus Vote.org (“Amicus”) is a 501(c)(3) nonprofit corporation that uses technology to simplify political engagement, increase voter turnout, and strengthen American democracy. As stated on its website:

We proactively reach out to low-propensity voters and encourage them to vote. We use a variety of tactics, including peer-to-peer SMS outreach, online advertising, digital radio (Pandora and Spotify), billboards and other outdoor media, direct mail, and on-campus advertising (think full page ads on the back of every college newspaper in America). We reach out to low-propensity voters for a simple reason: if you want to increase voter turnout, you need to start with voters who are unlikely to vote without additional encouragement.

See <https://www.vote.org/about/>.

When Amicus advertises on billboards and outdoor media, including transit ads, its non-partisan message is very short and simple: “**VOTE**” and the date of the election. Amicus does not promote any political candidates, parties, or positions. It merely encourages all citizens to register and vote.

With the consent of the parties, Amicus submits this brief to make a single point that the Court should consider in deciding this case: transit advertisement like those at issue are an important means for Amicus and others to communicate to citizens for the purpose of increasing voter registration and turnout. It is unclear whether Amicus’s non-partisan ads would be permitted under SEPTA’s advertising restrictions, either as drafted by SEPTA or as revised by the district court in this

case. At a Rule 30(b)(6) deposition, SEPTA was asked whether advertisements that said simply “Vote on Election Day” or “You Have a Right to Vote” would be barred by SEPTA’s restrictions on “political” ads and “matters of public debate” and SEPTA’s designee could not say whether such ads would be permissible.

A1111. At trial, the district judge asked SEPTA whether a nonpartisan ad encouraging people to register to vote would be acceptable, and SEPTA responded that SEPTA would “think about it,” but that it was hard to “answer those questions in a vacuum,” and noted that SEPTA was in fact considering a nonpartisan ad from Vote.org. A370.

II. ARGUMENT

Transit ads are like billboards in that they are relatively low cost and yet they are seen by many people, including a large number of low propensity voters. Low propensity voters are citizens who are eligible to vote but are considered less likely to vote than high and medium propensity voters. Political campaigns track voters by their propensity to vote and are much less likely to spend resources attempting to contact low propensity voters, who also tend to be young, low income, and from historically marginalized groups (all demographic groups that are already underrepresented in the electorate).

Amicus agrees with these statements published by the unrelated nonprofit organization known as Nonprofit Vote:

Catalist, a major vendor of voting data, uses a proprietary model to assign every registered voter in the country a “propensity score” between 0 and 100, with higher scores indicating greater propensity to vote in a given election. Scores are calculated based on individual voting history and demographics, using information from state voter files, the U.S. Census and commercial sources. Political campaigns use propensity scores to target their get-out-the-vote efforts, avoiding a wide range of lower-propensity voters on the assumption that their limited resources would be better spent on voters with higher (but not too high) scores.

.....

At the same time, we know that campaigns have limited resources and, therefore, tend not to target many of these [people less likely to register and vote], especially younger and lower-income people or newer citizens. In over 50 years of survey research, the American National Elections Study has found that the younger and lower-income people served by [nonprofit human service providers and community-based organizations] are the least likely to be personally contacted about registering to vote by a political party or campaign. In a poll conducted after the 2014 midterm, Pew Research Center reported just one in four voters under 30 were contacted by a political party, almost half the rate of those over 65.¹⁰ Newer citizens are also contacted at much lower rates. Election eve polls by Latino Decisions in 2014 showed only 41% of eligible Latino voters and 42% of AAPI voters received personal contact from any type of campaign or organization about registering or voting. Even if traditional campaigns were to make a greater effort, these populations are harder to contact, because they are less likely to have landlines or residences that are easy to door knock, a challenge largely avoided by the “reverse door-knocking” approach of service provider voter engagement efforts.

Engaging New Voters: The Impact of Nonprofit Voter Outreach on Client and Community Turnout, at 10, 13,

<https://www.nonprofitvote.org/documents/2015/12/engaging-new-voters.pdf/>.

The cited study, which was conducted in the lead up to the 2014 general election, addressed the effects of voter outreach carried out by nonprofit service providers and community-based organizations on their clients' and constituents' likelihood to vote. It found "that those who, with the assistance of nonprofit staff or volunteers, either registered to vote or signed a pledge to vote in the 2014 general election turned out to vote at higher rates than other registered voters in the states and counties where the study was conducted, across all demographic groupings." *See* Engaging New Voters: The Impact of Nonprofit Voter Outreach on Client and Community Turnout, Executive Summary,

<https://www.nonprofitvote.org/documents/2015/12/engaging-new-voters-executive-summary.pdf/>.

Like the nonprofit human service providers and community-based organizations that were the subject of the study, Amicus attempts to reach low propensity voters often overlooked by candidates' and partisans' campaigns. For example, as explained on the website, in November 2017, Amicus got:

heavily involved in the Alabama Special Election, with the goal of making the electorate as diverse as the Alabama population. This was our first attempt at marketing voting as a product. We recognized that partisan groups were

going to spends tens of millions marketing candidates to high propensity white voters, so we decided to market voting to low propensity black voters. We purchased hundreds of billboards in Alabama that simply said VOTE, TUESDAY DECEMBER 7th; we ran hundreds of radio ads on Pandora and Spotify; we worked with Voter Participation Center to send direct mail; and we used peer-to-peer SMS to proactively provide polling place information to low propensity voters. The results were a resounding success: turnout among black voters in the 2017 special election was on par with turnout in the 2016 general election, and the electorate accurately reflected the racial diversity of the population at large.

Id.

Amicus believes that, like the voter outreach efforts addressed in the study, transit and billboard ads encouraging voting have a similar effect on low propensity voters. In fact, transit and billboard ads work together with other voter outreach efforts to produce such result, based on the well accepted multi-touch approach to marketing or promotion of any idea. Simply stated, the effort to persuade a group of voters is much more likely to be successful if they receive the same message multiple times in multiple ways. So, to convince citizens to vote, a successful campaign could include text messages, ads on social media, radio ads, and billboards/transit ads.

Outdoor advertising media, like transit ads, are particularly effective in relation to their cost.

- In 2018, Amicus brought its “Vote November 6th” message to billboards and transit ads in 10 states and 17 metro areas. These ads were viewed an estimated 1 billion times by 33 million people.
- Billboard/transit ads are inexpensive. Amicus can blanket entire congressional districts for \$150,000. It can cover the entire State of Florida for \$2.2 million.
- They reach young people: They are particularly more effective than broadcast television, a medium young people decreasingly watch year-over-year. *See* <https://adage.com/article/media/half-young-consumers-watching-content-traditional-tv-study/310564>. And young people pay attention: corporate marketing studies have demonstrated that consumers notice outdoor advertising and that young people are especially likely to recall the messages they see on large-format media channels. Nielsen Poster Advertising Study 2017, <http://oaaa.org/Portals/0/pdf/research/Nielsen%20OAAA%20Poster%20Study%202017%20-%20FINAL.pdf>; The Arbitron National In-Car Study, 2009 Edition, <http://www.arbitron.com/downloads/InCarStudy2009.pdf>.

To the extent that the Court permits regulations banning Amicus or others from promoting voter registration and voting, it could have a significant effect on the efforts of Amicus. The negative effect would be greatest in urban areas, where more people use public transit and are less likely to see billboards, which are designed to be seen by people driving cars. SEPTA’s own website notes that it provides “unique marketing opportunities” including “various ways for advertisers to effectively communicate with the approximately 1 million commuters that ride SEPTA each day.” A631; *see also* A56. This is 1 million people each day that are

far more likely to see an ad on SEPTA than on a billboard, because they are using public transportation, not private cars, to commute to work.

III. CONCLUSION

In short, transit ads, like billboards, are an important form of advertising to reach voters, and in particular, low propensity voters. Limiting or barring the acceptance of non-partisan political transit ads that promote registering to vote and voting on SEPTA would significantly limit Amicus's ability to reach low propensity voters in southeastern Pennsylvania through SEPTA's 325,000 annual riders.

Respectfully submitted,

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Dated: May 14, 2019

CERTIFICATES OF COMPLIANCE

I, Stephen G. Harvey, attorney for Amicus Vote.org, hereby certify:

- I am an attorney in good standing and licensed in the Commonwealth of Pennsylvania. My license number is 58233.
- I am a member in good standing of bar of the United States Court of Appeals for the Third Circuit.
- This Brief complies with the type-volume limitation of F.R.A.P. 27(d) and 32(a)(7)(B) because, according to the word processing program used to prepare this Brief, it contains 1,519 words, excluding the parts of the brief exempted by F.R.A.P. 32(f).
- This Brief complies with the typeface requirements of F.R.A.P. 32(a)(5) and the type style requirements of F.R.A.P. 32(a)(6) because this it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.
- The text of the electronic PDF of this Brief is identical to the text in the hard copies of the Brief being filed with the Clerk.
- A virus check was performed on this electronic file using Trend Micro Security Agent, and no virus was detected.

/s/ Stephen G. Harvey
Stephen G. Harvey

CERTIFICATE OF SERVICE

I, Stephen G. Harvey, counsel for amicus Vote.org, hereby certify that on May 14, 2019, I caused a true and correct copy of the foregoing *Brief of Amicus Vote.org* to be served by the Court's electronic filing system upon all counsel of record, who are all electronic filing system users.

/s/ Stephen G. Harvey
Stephen G. Harvey