

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PITTSBURGH LEAGUE OF YOUNG )  
VOTERS, and AMERICAN CIVIL LIBERTIES )  
FOUNDATION OF PENNSYLVANIA, )  
 ) 2006-CV-\_\_\_\_\_  
Plaintiffs, )  
 )  
V. )  
 )  
PORT AUTHORITY of ALLEGHENY )  
COUNTY; and ANTHONY J. HICKTON, )  
Director of Sales, )  
 )  
Defendants. )  
\_\_\_\_\_ )

**VERIFIED COMPLAINT**

**A. INTRODUCTION**

1. Two non-profit organizations in this First Amendment lawsuit challenge the refusal by the Port Authority of Allegheny County (“PAT”) to accept their non-partisan, non-profane and purely educational bus advertisements instructing ex-offenders about one of democracy’s most cherished rights, namely, the right to vote. Port Authority steadfastly maintains that its written policy allows only commercial ads. But the policy is belied by the agency’s practice, which has been to run many non-commercial ads, including several that are similar to the voting-rights ad, proffered by plaintiffs, that simply advise people of their rights and give encouragement to exercise those rights. The agency’s history and practice of running non-commercial ads transforms the bus-advertising space into a designated public forum, thereby making PAT’s discrimination against the ex-offender-voting-rights ad impermissible content-based discrimination. Even if the history does not

transform the bus-advertising space into a public forum, the agency's rejection of the ex-offender-voting-rights ad is unreasonable and amounts to viewpoint discrimination that runs afoul of the First Amendment. Plaintiffs seek preliminary injunctive relief and damages.

### **B. JURISDICTION**

2. This action seeks to vindicate rights protected by the First and Fourteenth Amendments to the United States Constitution and is brought under 42 U.S.C. §1983. The Court has jurisdiction over this civil rights action pursuant to 28 U.S.C. §1331(a) and §1343(a)(3) and (4). This Court has jurisdiction pursuant to 28 U.S.C. §§2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.
3. Venue is proper in this Court since all parties reside in Allegheny County.

### **C. PARTIES**

4. Plaintiff Pittsburgh League of Young Voters ("League") is the local branch of a national organization, the League of Young Voters. Both are registered non-profit organizations under the Internal Revenue Service Code and share the same mission. The League's mission is to support and empower young people to solve problems in their own communities. One of the League's current projects focuses on raising awareness about ex-offender voting rights and encouraging ex-offenders to register to vote before the November 2006 elections. The League has an office located in the East Liberty section of Pittsburgh.

5. The American Civil Liberties Foundation of Pennsylvania (“ACLU of PA”) is a state affiliate of the national American Civil Liberties Union/Foundation, both of which are non-profit, public-interest organizations dedicated to defending and protecting civil rights and civil liberties. The ACLU of PA relies on litigation, lobbying and public-education efforts to promote civil rights and civil liberties. Voting rights is one of the issues on which the ACLU of PA focuses. Indeed, the organization recently received restricted, ear-marked donations to promote its voting-rights work, primarily relating to public-education efforts, including those at issue in this case. The ACLU of PA has an office in the Oakland section of Pittsburgh.
6. Defendant Port Authority of Allegheny County (“PAT”) is a state-government agency established by, and operating under, the laws of Pennsylvania. *See* 55 P.S. § 553. PAT owns and operates the public-mass-transit system in Allegheny County, which includes buses and a light-rail system. As a government agency, PAT and its officers and employees must comply with the U. S. Constitution.
7. Defendant Anthony J. Hickton is PAT’s Director of Sales. His responsibilities include making decisions about which advertisements will run on PAT buses. As a government official, Mr. Hickton is obliged to comply with the United States Constitution. At all relevant times, Mr. Hickton has acted under color of state law. He is sued in his individual capacity.

#### **D. FACTS**

8. In October 2005, the League and the ACLU of PA joined with a diverse group of

community organizations in a project designed to educate ex-offenders about their voting rights, register ex-offenders to vote and increase ex-offenders' involvement in the political systems that shape their lives. Plaintiffs refer to the project as the ex-offender-voting-rights project.

9. An impetus for the ex-offender-voting-rights project was evidence indicating that the most significant barrier to ex-offenders voting and becoming engaged in the political process was ignorance of their voting rights. In Pennsylvania, ex-felons can vote as soon as they leave prison, even if they are still on probation or parole. But because relevant Pennsylvania laws have been amended twice in the past decade, many ex-offenders are under the mistaken impression that they cannot vote. In addition to the general confusion surrounding ex-offender's voting rights, many stories have emerged about prison, jail, probation and other criminal-justice officials incorrectly advising ex-offenders that they are ineligible to vote, thereby compounding the problem and increasing the need for good public-education efforts.
10. The project's public-education effort is focused largely on providing accurate information to ex-offenders in Allegheny County about their voting rights. The Coalition has identified bus advertisements, placed on routes serving areas inhabited by large numbers of ex-offenders, as an effective means for advancing voter-education.
11. Local foundations have embraced the ex-offender-voting-rights project enthusiastically. The ACLU applied for, and in the past few months has received, grants from several Pittsburgh-area foundations, including the Maurice Falk Fund, to print placards and to purchase advertising space on buses. The League has received other grants to promote

voter registration.

12. Plaintiffs had a reasonable belief that they could purchase advertising space to run voter-education messages on PAT buses because in late 2005 they had personally observed many non-commercial advertisements on buses and at bus stops, including ones related to a Pittsburgh anti-littering campaign, a free Methodist Church Christmas concert, the Salvation Army's Kettle Campaign, a Rosa Parks historical public-service announcement, and a breast-cancer-prevention ad.
13. In light of the many non-commercial advertisements they had seen, plaintiffs were surprised when in late November 2005 PAT Director of Sales, Defendant Anthony Hickton, Jr., told a representative of the League that the Project could not run its ads because PAT runs only "commercial ads." The only information made known to PAT was that the sponsoring groups were the ACLU and the League, and that the ad would provide accurate information about ex-offenders' voting rights.
14. Since then, by letters dated January 25, February 24 and June 27, 2006, the ACLU, the League and the undersigned attorneys attempted to convince PAT to accept advertisements that "educate citizens with regard to their right to vote in Allegheny County." *See* ACLU's February 24, 2006, letter (Exhibit 1). PAT has steadfastly refused.
15. PAT's March 24, 2006, response (Exhibit 2) refers to the agency's advertising policy and reiterates that the agency accepts only "commercial advertising."
16. PAT's "advertising policy" reads as follows:

It shall be the policy of the Port Authority of Allegheny County to accept

commercial advertising for posting in and on Port Authority vehicles and other property owned or controlled by Port Authority, of its sole choosing, with the objective of maximizing revenue while maintaining standards of decency and good taste without infringing on First Amendment rights of Prospective Advertisers. Accordingly, Port Authority will not accept advertisements that are obscene, unlawful, misleading, libelous or fraudulent. Further, Port Authority will not accept advertisements that are non-commercial; that appeal to prurient interests, that are or may be offensive to riders; that glamorize or otherwise promote violence, sexual conduct, alcohol or tobacco use; that are political in nature or contain political messages; or that are reasonably determined not to be in good taste. This policy is intended to be an objective and enforceable standard for advertising that is consistently applied. It is also Port Authority's declared intent not to allow any of its Transit Vehicles or Property to become a public forum for dissemination, debate or discussion of public issues.

Port Authority of Allegheny County Advertising Policy (1998) (hereinafter "The Policy") (Exhibit 3).

17. The incongruity between the policy, which purports to limit advertisements to commercial messages, and the non-commercial advertisements routinely observed on PAT buses led counsel to request, under Pennsylvania's Right to Know Act, copies of the agency's advertising contracts over the past three years. Counsel reviewed PAT's files in June 2006.
18. Despite its written policy, PAT's practice has been to accept and run numerous non-commercial, public-service and issue advertisements.
19. Among recent advertisements found on Port Authority buses have been the following:
  - a. An advertisement sponsored by "Just Harvest Education Fund," a local non-profit organization that educates and organizes people around finding long-term solutions to hunger and poverty, informing low-income citizens of their rights to

particular income-tax credits.

- b. An advertisement sponsored by the Women’s Law Project, a 501(c)(3) legal-advocacy organization that does not charge any of its clients, inviting people who believe their rights may have been violated to call for free legal advice; and
  - c. An advertisement co-sponsored by the Pittsburgh Human Relations Commission and the Fair Housing Partnership, a non-profit organization based in Pittsburgh that fights discrimination and promotes fair-housing practices, stating that, “Housing discrimination is illegal. We can help.”
20. Additionally, PAT has accepted advertisements sponsored by other non-profit organizations, some of which were non-commercial, such as the Mentoring Partnership of Southwestern Pennsylvania, Pittsburgh Job Corps, the Pittsburgh Hispanic Center, the Women’s Shelter of Greater Pittsburgh, the Pittsburgh Downtown Partnership (advising people not to give change to panhandlers), the Peace Corps, Big Brother/Big Sister, WYEP radio, WDUQ radio, Animal Friends, and the United Way.
21. PAT also apparently runs public-service-type advertisements that it sponsors, including ones extolling the accomplishments of Rosa Parks, an ad featuring text from Title VI of the Civil Rights Act of 1964 and denouncing discrimination, an anti-littering campaign, information sessions about the MAGLEV project and “public education campaigns,” a phrase PAT has not explained. *See* Exhibit 2 (PAT March 24 letter, ¶3). Photographs of some of the ads discussed above are collected in Exhibit 4.
22. PAT’s widespread practice of accepting and displaying non-commercial advertisements – including know-your-rights-type ads run by Just Harvest, the Women’s Law Project, the

Fair Housing Partnership, and ads educating people about Rosa Parks, prohibited discrimination under Title VI of the Civil Rights Act of 1964, and panhandling – belie PAT’s written policy of accepting only commercial messages.

23. Indeed, by history and practice PAT has created a designated public forum for advertisements on its busses.
24. Moreover, even if history and practice do not transform advertising space on PAT buses into designated public forums, PAT’s refusal to run plaintiffs’ ads educating people about their voting rights constitutes viewpoint discrimination because the agency has accepted similar ads promoting information about women’s right, income-tax credits, housing discrimination, Title VI of the Civil Rights Act of 1964, panhandling and Rosa Parks.
25. Plaintiffs’ goal is to promote voter registration before the November 2006 elections. Consequently, the Coalition needs to complete its education efforts before the registration deadline, which is October 10, 2006.
26. PAT’s ongoing refusal to accept and display plaintiffs’ advertisements is causing, and will continue to cause, irreparable harm to plaintiffs’ First Amendment free-speech rights, an injury for which there is no adequate remedy at law.

#### **E. CLAIMS**

27. PAT has by history and practice established a designated public forum on its buses’ advertising space. PAT’s refusal to run plaintiffs’ ex-offender-voter-education advertisements amounts to content-based discrimination. Content-based discrimination in a designated public forum triggers strict scrutiny, requiring the agency to prove that its



decision is narrowly tailored to promote a compelling government interest. Since PAT cannot meet this difficult burden, the agency's refusal to run plaintiffs' advertisements violates the First and Fourteenth Amendments to the U. S. Constitution, and 42 U.S.C. § 1983.

28. Alternatively, even if PAT's history and practice has not established a designated public forum on buses' advertising space, PAT's refusal to run plaintiffs' ex-offender-voter-education advertisements, while previously accepting similar non-commercial, know-your-rights ads amounts to viewpoint discrimination, which is a *per se* violation of the First and Fourteenth Amendments to the U. S. Constitution, and 42 U.S.C. § 1983.

#### **F. PRAYER FOR RELIEF**

WHEREFORE Plaintiffs respectfully request that this Court provide the following relief:

- (a) Declare that PAT's refusal to accept and display plaintiffs' voter-education advertisements violates the First and Fourteenth Amendments to the U. S. Constitution;
- (d) Enjoin, preliminarily and permanently thereafter, PAT from refusing to accept and display plaintiffs' voter-education advertisements on terms no less favorable than those given to any other advertisers, and directing defendants to run plaintiffs' advertisements forthwith;
- (f) Award damages in an amount to be proven at trial;
- (g) Award plaintiffs' costs and attorney's fees pursuant to 42 U.S.C. §1988; and
- (h) Grant such other relief as this Court deems just and appropriate.

Respectfully submitted,

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Attorneys for plaintiffs

Date: August 10, 2006

**VERIFICATION OF LISA KREBS**

I, Lisa Krebs, hereby affirm under the penalties of perjury as follows:

1. I am over the age of 18 and otherwise competent to testify.
2. I am a part-time employee of both the League of Young Voters and the ACLU of Pennsylvania.
3. The factual allegations in the foregoing Verified Complaint are, to the best of my knowledge and belief, true and accurate.

/s/ Lisa Krebs

August 10, 2006

date