

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**AMERICAN CIVIL LIBERTIES UNION,  
CHANGE THE CLIMATE, INC.,  
THE DRUG POLICY ALLIANCE,  
and MARIJUANA POLICY PROJECT,**

**Plaintiffs,**

**v.**

**THE HONORABLE NORMAN Y. MINETA,  
THE UNITED STATES OF AMERICA,  
and WASHINGTON METROPOLITAN  
AREA TRANSIT AUTHORITY,**

**Defendants.**

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Civil Action No. \_\_\_\_\_

**MOTION OF PLAINTIFFS FOR PRELIMINARY INJUNCTION**

Plaintiffs American Civil Liberties Union; Change the Climate, Inc.; Drug Policy Alliance; and Marijuana Policy Project (collectively “plaintiffs”) respectfully move for the entry of a preliminary injunction under Federal Rule of Civil Procedure 65 and Local Civil Rule 65.1. The preliminary relief sought is necessary because Section 177 of the recently enacted Transportation, Treasury, and Independent Agencies Appropriations Act of 2004 (“Section 177”)<sup>1</sup> violates plaintiffs’ constitutional rights under the First, Fifth and Fourteenth Amendments to the United States Constitution by imposing a viewpoint-based restraint on their political speech.

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<sup>1</sup> Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, Div. F. § 177, 118 Stat. 3, 309 (2004).

Section 177 (attached hereto as Ex. A), prohibits making any of the appropriated funds available “to any Federal transit grantee after February 1, 2004, involved directly or indirectly, in any activity that promotes the legalization or medical use of any substance listed in schedule I of section 202 of the Controlled Substances Act (21 U.S.C. 812 et seq.),” notably including marijuana. Plaintiffs had previously placed advertisements advocating changes in the laws relating to the use of marijuana in defendant Washington Metropolitan Area Transit Authority’s (“WMATA’s”) Metrobus and Metrorail systems. Following the enactment of Section 177, however, WMATA, an instrumentality of the State of Maryland, the Commonwealth of Virginia, and the District of Columbia, has declined to run such advertising, because doing so would jeopardize its receipt of some \$100 million in federal funding.

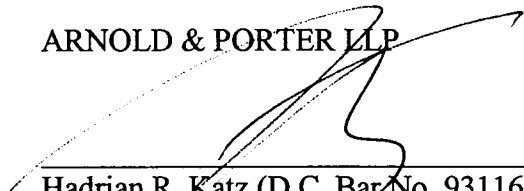
Section 177 violates plaintiffs’ constitutional rights in multiple independent ways: (1) It imposes impermissible content- and viewpoint-based restrictions on speech in a public forum in an effort to silence one side’s message in a serious political debate; (2) it imposes restrictions that are unconstitutionally vague and overbroad; and (3) it is an unlawful exercise of Congress’ spending power because it violates an independent constitutional prohibition on the conditional grant of federal funds.

Plaintiffs seek a preliminary injunction that (1) prohibits defendants Secretary of Transportation Mineta and the United States and from enforcing Section 177; (2) prohibits WMATA from rejecting submitted advertising on Section 177 grounds; and (3) orders WMATA to accept plaintiffs’ submitted advertisement (attached hereto as Ex. B) for the next available placement. A proposed order granting such preliminary relief is attached hereto as Exhibit C.

In support of their Motion, plaintiffs submit the accompanying memorandum. Plaintiffs respectfully request oral argument on this Motion, and request that it be held at the earliest time possible after defendants' opposition is filed.

Respectfully submitted,

ARNOLD & PORTER LLP



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Hadrian R. Katz (D.C. Bar No. 931162)  
Sidney A. Rosenzweig (D.C. Bar. No. 460778)  
Robyn M. Holtzman (D.C. Bar. No. 483317)  
555 Twelfth Street, N.W.  
Washington, DC 20004  
Phone: (202) 942-5000  
Fax: (202) 942-5999

*Counsel for Plaintiffs*

Of Counsel:

Arthur B. Spitzer  
American Civil Liberties Union  
of the National Capital Area  
1400 20th Street, N.W. #119  
Washington, D.C. 20036  
Phone: (202) 457-0800

Daniel N. Abrahamson  
Judith K. Appel  
Drug Policy Alliance  
717 Washington Street  
Oakland, CA 94607  
Phone (510) 208-7711

Graham Boyd  
ACLU Drug Litigation Project  
85 Willow Street  
New Haven, CT 06511  
Phone: (203) 787-4188

Dated: February 18, 2004

A

One Hundred Eighth Congress  
of the  
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,  
the seventh day of January, two thousand and three*

An Act

Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Consolidated Appropriations Act, 2004”.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. References.

**DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES PROGRAMS APPROPRIATIONS, 2004**

- Title I—Agricultural Programs
- Title II—Conservation Programs
- Title III—Rural Development Programs
- Title IV—Domestic Food Programs
- Title V—Foreign Assistance and Related Programs
- Title VI—Related Agencies and Food and Drug Administration
- Title VII—General Provisions

**DIVISION B—COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS, 2004**

- Title I—Department of Justice
- Title II—Department of Commerce and Related Agencies
- Title III—The Judiciary
- Title IV—Department of State and Related Agency
- Title V—Related Agencies
- Title VI—General Provisions
- Title VII—Rescissions
- Title VIII—Alaskan Fisheries

**DIVISION C—DISTRICT OF COLUMBIA APPROPRIATIONS, 2004**

- Title I—Federal Funds
- Title II—District of Columbia Funds
- Title III—DC School Choice Incentive Act of 2003
- Title IV—General Provisions

**DIVISION D—FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS, 2004**

- Title I—Export and Investment Assistance
- Title II—Bilateral Economic Assistance
- Title III—Military Assistance
- Title IV—Multilateral Economic Assistance

United States Code, may be used to lease land, equipment, or facilities used in public transportation from another governmental authority in the same geographic area: *Provided*, That the non-Federal share under section 5307 may include revenues from the sale of advertising and concessions: *Provided further*, That this provision shall remain in effect until September 30, 2004, or until the Federal interest in the land, equipment or facilities leased reaches 80 percent of its fair market value at disposition, whichever occurs first.

SEC. 173. Notwithstanding any other provision of law, funds designated to the Pennsylvania Cumberland/Dauphin County Corridor I project in committee reports accompanying this Act may be available to the recipient for any project activities authorized under sections 5307 and 5309 of title 49, United States Code.

SEC. 174. To the extent that funds provided by the Congress for the Memphis Medical Center light rail extension project through the section 5309 “new fixed guideway systems” program remain available upon the closeout of the project, Federal Transit Administration is directed to permit the Memphis Area Transit Authority to use all of those funds for planning, engineering, design, construction or acquisition projects pertaining to the Memphis Regional Rail Plan. Such funds shall remain available until expended.

SEC. 175. Section 30303(d)(3) of the Transportation Equity Act for the 21st Century (Public Law 105-178) is amended by inserting at the end:

“(D) Memphis-Shelby International Airport intermodal facility.”.

SEC. 176. For fiscal year 2004, section 3027 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5307 note; 112 Stat. 366), as amended, is amended by adding at the end the following:

“(3) SERVICES FOR ELDERLY AND PERSONS WITH DISABILITIES.—In addition to assistance made available under paragraph (1), the Secretary may provide assistance under section 5307 of title 49, United States Code, to a transit provider that operates 25 or fewer vehicles in an urbanized area with a population of at least 200,000 to finance the operating costs of equipment and facilities used by the transit provider in providing mass transportation services to elderly and persons with disabilities, provided that such assistance to all entities shall not exceed \$10,000,000 annually.”.

SEC. 177. None of the funds in this Act shall be available to any Federal transit grantee after February 1, 2004, involved directly or indirectly, in any activity that promotes the legalization or medical use of any substance listed in schedule I of section 202 of the Controlled Substances Act (21 U.S.C. 812 et seq.).

#### SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

The Saint Lawrence Seaway Development Corporation is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to the Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the Corporation's budget for the current fiscal year.

**B**



Charge the Climate

Our nation's political leaders have failed to address the climate crisis, and the consequences are dire. The climate crisis is not just an environmental issue, it is a public health crisis. The science is clear: global warming is causing sea level rise, more frequent and severe weather events, and a loss of biodiversity. The world's leading scientists have issued a stark warning: if we do not act now, the planet will become uninhabitable. The time has come to demand that our political leaders take bold action to address the climate crisis. We must pass comprehensive climate legislation, including a carbon price, to reduce greenhouse gas emissions and protect our planet for future generations. We must also invest in clean energy research and development, and create jobs in the clean energy sector. The climate crisis is a global emergency, and we must act now to prevent a catastrophic future.

DRUG POLICY ALLIANCE

Peace. Compassion. Justice.



AMERICAN CIVIL LIBERTIES UNION  
PEACE  
COMPASSION  
JUSTICE



C



officers, employees, representatives, and agents are enjoined from enforcing Section 177 of Division F of the Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, 118 Stat. 3; and it is further

ORDERED that, pending further order of the Court, defendant Washington Metropolitan Area Transit Authority and its officers, directors, employees, representatives, and agents are enjoined from rejecting submitted advertising on the basis of Section 177 of Division F of the Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, 118 Stat. 3; and it is further

ORDERED that, pending further order of the Court, defendant Washington Metropolitan Area Transit Authority and its officers, directors, employees, representatives, and agents are directed to accept the advertisement submitted by plaintiffs on or about February \_\_, 2004, for display at the soonest available time; and it is further

ORDERED, in accordance with Fed. R. Civ. P. 65 (c), that this injunction shall be effective upon plaintiffs' posting with the Clerk of Court \$10 in cash, or a surety bond in such amount.

Dated: \_\_\_\_\_, 2004

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UNITED STATES DISTRICT JUDGE

Attorneys to be notified of entry:

Hadrian R. Katz  
Sidney A. Rosenzweig  
Robyn M. Holtzman  
Arnold & Porter LLC  
555 Twelfth Street, N.W.  
Washington, D.C. 20004

Jeffrey A. Rosen  
General Counsel  
U.S. Department of Transportation  
400 7th Street, S.W.  
Washington, DC 20590

Roscoe C. Howard, Jr.  
United States Attorney for the District of Columbia  
Judiciary Center  
555 Fourth Street, N.W.  
Washington, D.C. 20530

Cheryl C. Burke  
General Counsel  
Washington Metropolitan Area Transit Authority  
600 Fifth Street, N.W.  
Washington, DC 20001