



or social issues.” In full, Sections II.A.9(b)(iv)(a) and II.A.9(b)(iv)(b) of SEPTA’s advertising standards (the “Challenged Provisions”) provide:

Prohibited Advertising Content. Advertising is prohibited on transit facilities, products and vehicles if it or its content falls into one or more of the following categories –

(a) Advertisements promoting or opposing a political party, or promoting or opposing the election of any candidate or group of candidates for federal, state, judicial or local government offices are prohibited. In addition, advertisements that are political in nature or contain political messages, including advertisements involving political or judicial figures and/or advertisements involving an issue that is political in nature in that it directly or indirectly implicates the action, inaction, prospective action or policies of a government entity.

(b) Advertisements expressing or advocating an opinion, position or viewpoint on matters of public debate about economic, political, religious, historical or social issues.

Second Amendment to the Agreement by and Between SEPTA and Titan Outdoor LLC (the “2015 Advertising Standards”), attached hereto as Exhibit A. These two provisions are followed by twenty other categories of prohibited advertising content. *See id.*

3. SEPTA’s denial of CIR’s proposed advertising violates CIR’s rights under the United States Constitution. SEPTA’s broad prohibitions on advertising content that it concludes is “political[,]” “directly or indirectly implicates the action . . . of a government entity[,]” or involves “matters of public debate” violate the First Amendment.

4. CIR still wishes to promote its news reporting on racial disparities in conventional home mortgage markets in SEPTA advertising spaces. In addition, CIR anticipates that in the future it will want to place other ads on SEPTA’s advertising spaces, and that, because of CIR’s focus on investigative journalism, those ads are likely to be deemed by SEPTA to be “political” and to touch on matters of “public debate.”

5. CIR is suffering irreparable injury during the time its ads are not permitted on SEPTA advertising spaces.

6. Therefore, CIR brings this action for declaratory and injunctive relief under 42 U.S.C. § 1983 to vindicate its rights under the First and Fourteenth Amendments to the United States Constitution.

### **THE PARTIES**

7. Plaintiff CIR is a 501(c)(3) non-profit corporation whose mission is to engage and empower the public through investigative journalism and groundbreaking storytelling which results in action, improves lives, and protects our democracy.

8. Defendant SEPTA is a state-created regional public transportation authority which, as one of the nation's major transit systems, serves nearly 4 million people in and around Philadelphia.

### **JURISDICTION AND VENUE**

9. 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.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, in that the events which form the basis for this action took place in this District, SEPTA legally resides in this District, and SEPTA's conduct is causing ongoing harm to CIR in this District.

## FACTS

### CIR and Its Reporting

11. CIR produces journalism for its news site, Reveal (<https://www.revealnews.org>), the Reveal national public radio show and podcast, and video and live events, often in collaboration with other newsrooms across the country.

12. As a news organization, CIR has a strong ethics policy that bars all employees from advocacy or activism, in line with the standards outlined by the Society of Professional Journalists. *See* CIR, Ethics Guide, <https://www.revealnews.org/ethics-guide>.

13. CIR's reporting has been recognized for its excellence, groundbreaking creativity, and impact. Recent awards include: Emmy awards, a George Foster Peabody Award, a Webby award, a Military Reporters and Editors Award, a Barlett & Steele Gold Award for investigative business journalism, Alfred I. DuPont-Columbia University awards, a George Polk Award, IRE Awards for multiplatform journalism, and an Edward R. Murrow Award for investigative reporting. CIR was a finalist for the Pulitzer Prize in 2012, 2013, and 2018 and a recipient of the 2012 MacArthur Award for Creative and Effective Institutions. This past year, CIR's documentary short, "Heroin(e)," was nominated for an Oscar.

14. To reach a broad and diverse audience worldwide, CIR uses a varied and innovative distribution model to deliver its journalism to its audience, including newsletters, art installations, online presentations, language translations, social media campaigns, and partnerships with other news organizations.

15. On February 15, 2018, CIR published on its news site a story based on its year-long investigation analyzing 31 million public records made available through the Home Mortgage Disclosure Act. *See* Aaron Glantz and Emmanuel Martinez, *For People of Color*,

*Banks Are Shutting the Door to Homeownership*, Reveal, Feb. 15, 2018,

[https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-](https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/)

[homeownership/](https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/). Reveal’s data analysis—confirmed by the Associated Press and based on standard approaches used not just by journalists but also social scientists and government officials—showed that African Americans and Latinos continue to be routinely denied conventional mortgage loans at rates far higher than their white counterparts in 61 cities across America, including Philadelphia.

16. In connection with this publication, CIR created an informative comic series describing the public data that Reveal collected and analyzed. The comic describes Reveal’s reporting about disparities in the conventional home mortgage market, including in Philadelphia. Additionally, the comic features Reveal host Al Letson and offers readers a way to contact Reveal for more data:



## **A STACKED DECK**

*with Al Letson*



*Scroll down to read ↓*

*Today in America, people of color  
are regularly being*

**DENIED**

*the dream of  
home ownership*



Reveal from *The Center for Investigative Reporting* analyzed **31 MILLION** mortgage records and found **61** U.S. metro areas where people of color are far more likely to be turned down than whites when applying for a conventional home loan.



Want to find out if there are lending disparities in your neighborhood and get more updates? Text **"LOAN"** to Reveal and its partners at 202-873-8325.



In the 1930s, the federal government actually made housing discrimination a state-sponsored enterprise by drawing up maps that strangled investment in areas where immigrants and African Americans lived. This practice is called redlining.



The nation's capital is the **ONE METRO AREA** where Native Americans, African Americans, Latinos, and Asians are **ALL** more likely to be denied a conventional home loan.

===== **IN D.C.** =====

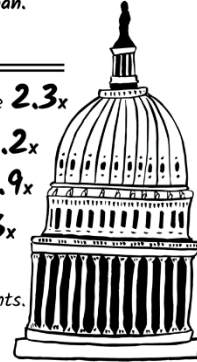
Native American applicants are **2.3x**

Black applicants are **2.2x**

Latino applicants are **1.9x**

Asian applicants are **1.6x**

as likely to be denied than comparable **WHITE** applicants.

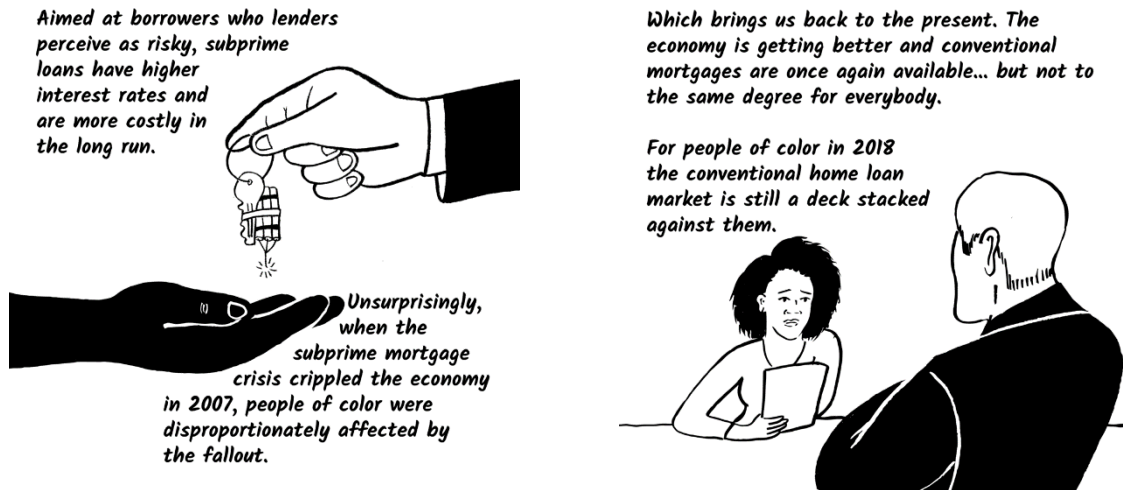


This is just the latest in the United States' **SORDID HISTORY** of unequal access to owning a home.



The 1968 Fair Housing Act made redlining illegal, but discriminatory practices continued through predatory lending or "reverse redlining." Lenders flooded communities of color with inferior loan products AND limited access to conventional lines of credit.





See Gabriel Hongdsutit and Cristina Kim, *A Stacked Deck: A visual look at discriminatory lending in the U.S.*, Reveal, (Feb. 21, 2018), <https://www.revealnews.org/article/a-stacked-deck-a-visual-look-at-discriminatory-lending-in-the-u-s/>.

17. CIR sought to publicize its investigation and reporting on this issue with the aim of reaching members of the community likely to be interested in Reveal’s reporting. In many of the Philadelphia neighborhoods most affected by disparities in lending practices, public advertising opportunities are sparse. Advertising on SEPTA’s vehicles, which move through those neighborhoods, offered CIR a unique opportunity to reach potentially interested readers: those Philadelphians directly affected by the lending disparities its investigation had uncovered.

**SEPTA’s Advertising Spaces and Ad Review Process**

18. SEPTA operates the nation’s sixth largest transit system by ridership, with 325 million annual riders. SEPTA is one of only two United States transit agencies that operate all five major types of transit vehicles, including subway and elevated rail lines, commuter trains, light rail lines, electric trolleys, and buses.

19. According to its own website, SEPTA offers some of the most “extensive” advertising space in Southeastern Pennsylvania. SEPTA provides “many options for advertisers

to communicate with the approximately 1 million commuters that ride” SEPTA vehicles daily. It also allows advertisers to reach the much larger number of bystanders that view SEPTA vehicles and facilities.

20. Among other advertising opportunities, SEPTA accepts print ads on both the exterior and interior of the more than 2,500 vehicles and more than 200 stations and facilities it operates. SEPTA, Advertising Opportunities, <http://www.septa.org/sales/advertise.html> (last accessed April 26, 2018).

21. The primary purpose of SEPTA’s advertising space is to generate revenue for SEPTA.

22. SEPTA contracts with an advertising agent, Intersection (formerly Titan Outdoor LLC), to manage its advertising program. Intersection sells advertising space on behalf of SEPTA on static and digital displays on commuter rail trains, subways, trolleys, and buses (as well as on behalf of the City of Philadelphia for advertising space on bus shelters and newsstands).

23. The Agreement between SEPTA and Intersection states that if Intersection receives an advertising proposal for transit vehicles or stations that it believes may violate SEPTA’s advertising standards, it must alert SEPTA’s advertising department for review and approval. *See* Exhibit A, § II(A)(9)(a).

24. SEPTA retains the right to reject any advertising that is “determined by SEPTA, in its sole discretion, to be objectionable[.]” *See* Exhibit A, § II(A)(9)(a). Upon information and belief, SEPTA’s General Counsel makes the final determination of whether any proposed advertising comports with SEPTA’s advertising standards.



25. The advertising standards adopted in 2015, which are currently in effect, prohibit twenty-two categories of ads. *See* Exhibit A, § II.A.9(b)(iv). Those standards ban, among other things, ads that SEPTA deems misleading or deceptive; disparaging or disrespectful; objectionable; profane or vulgar; and aesthetically inappropriate.

26. As described above, the 2015 Advertising Standards also prohibit advertising that SEPTA, in its sole discretion, deems “political in nature,” or “expressing or advocating an opinion, position or viewpoint on matters of public debate about economic, political, religious, historical or social issues.” Exhibit A, § II.A.9(b)(iv)(a)-(b).

27. For decades, SEPTA accepted ads addressing nearly every topic under the sun, including “political and public issue[s].” *Am. Freedom Def. Initiative v. SEPTA* (“*AFDI v. SEPTA*”), 92 F. Supp. 3d 314, 326 (E.D. Pa. 2015).

28. In 1998, the Third Circuit held that, by leasing advertising space to the public, SEPTA had created a “designated public forum,” subjecting its advertising regulations to strict scrutiny under the First and Fourteenth Amendments. *Christ’s Bride Ministries v. SEPTA*, 148 F.3d 242, 244 (3d Cir. 1998).

29. In the wake of *Christ’s Bride Ministries*, SEPTA amended its advertising policy, adding a number of categories of content deemed objectionable in an attempt to “close” the forum and avoid the burden of strict scrutiny.

30. In 2014, SEPTA lost another First Amendment challenge to its advertising policy, with the court again concluding that SEPTA’s advertising space was a designated public forum subject to strict scrutiny. *See AFDI v. SEPTA*.

31. In direct response to the decision in *AFDI v. SEPTA* and in a renewed effort to sanitize its advertising spaces of messages it deems objectionable, SEPTA adopted the 2015

Advertising Standards, adding provisions, including the Challenged Provisions, prohibiting certain content.

32. Under every version of its advertising policy, including the 2015 Advertising Standards, SEPTA has accepted both commercial and non-commercial ads, from both for-profit and nonprofit entities.

33. SEPTA regularly displays advertising on its vehicles and in other advertising space that could be viewed as political or touching on matters of public debate under the extraordinarily broad definitions of those terms in the 2015 Advertising Standards.

34. In addition, the same screens that show advertising on some SEPTA vehicles and in some SEPTA stations also show news headlines that frequently touch on politics and controversial matters of public debate. Recent headlines on these screens have included coverage of teachers striking in Kentucky for increased education funding, the testimony of Facebook CEO Mark Zuckerberg on privacy issues, President Trump's reconsideration of his decision to leave the Trans-Pacific Partnership, and the death of human rights activist Winnie Mandela.

#### **CIR's Attempt to Advertise on SEPTA**

35. On January 17, 2018, in anticipation of the release of its reporting on racial disparities in the conventional home mortgage market, CIR submitted to Intersection its proposal to purchase—at SEPTA's regular rates—advertising space on the interior of SEPTA buses, as well as on the City of Philadelphia's bus shelters and newsstands.

36. CIR included in its application the comic that it had created to promote the news investigation. The application explained that CIR would use elements of the comic to design its ad.

37. The same day, January 17, 2018, Intersection denied CIR's request on SEPTA's behalf, categorizing CIR's proposal as "issue based advertising" and referring to the 2015 Advertising Standards.

38. Even after CIR explained that it is a nonprofit journalism organization that is prohibited from engaging in advocacy and activism, SEPTA, through Intersection, maintained its denial.

39. On March 29, 2018, after an exchange of substantive letters between CIR's General Counsel and SEPTA's General Counsel, SEPTA reiterated its position that CIR's proposed advertisement is prohibited by the 2015 Advertising Standards on the ground that it "takes a position on issues that are matters of political, economic, and social debate" and "indirectly implicates the action, inaction, prospective action or policies of a government entity," contrary to Sections II.A.9(b)(iv)(a) and II.A.9(b)(iv)(b) of the 2015 Advertising Standards. SEPTA's letter communicating its final decision is attached hereto as Exhibit B.

40. Meanwhile, the City of Philadelphia, which controls advertising on bus shelters and newsstands, accepted CIR's proposal to place its ad in those locations.

41. CIR currently seeks to place its proposed advertisement on SEPTA buses in the fall of 2018. This is important timing to CIR because the publication of the advertisement would coincide with other projects CIR is coordinating in Philadelphia at that time. Together, the advertisement and other projects will maximize CIR's exposure to the public, consistent with SEPTA's own description of its advertising space as being some of the most "extensive" advertising space in Southeastern Pennsylvania.

42. To be ready to run its advertisement in the fall, CIR must spend significant time editing and finalizing the advertisement for buses' panels and completing other logistical and

administrative issues, and presumably, SEPTA also will need time to process CIR's advertisement and prepare it for publication on the buses.

43. Any denial of CIR's First Amendments rights constitutes irreparable harm. However, SEPTA's improper conduct must be enjoined promptly for the additional reason of preventing any delay of the publication of CIR's advertisement in the fall of 2018.

**COUNT I—42 U.S.C. § 1983  
VIOLATION OF FIRST AND FOURTEENTH AMENDMENTS**

44. Plaintiff incorporates each and every allegation in the preceding paragraphs of this Complaint as if set forth in full here.

45. By opening up advertising space on its property for the purpose of raising revenue and through its longstanding practice of accepting a wide range of commercial and non-commercial ads for placement, SEPTA has created a designated public forum.

46. The 2015 Advertising Standards constitute impermissible content-based restrictions on this designated public forum in violation of the Free Speech Clause of the First Amendment to the United States Constitution.

47. Further, even if SEPTA were to demonstrate that its advertising space is no longer a designated public forum, its prohibitions on content that touches on "political" issues or "matters of public debate" violate the Free Speech Clause of the First Amendment to the United States Constitution for at least three independent reasons.

48. First, the Challenged Provisions are unconstitutional on their face because they are so vague as to provide no basis for clear and consistent application, and accord unfettered discretion to SEPTA to censor a breathtakingly broad range of speech.

49. Second, the Challenged Provisions discriminate based on viewpoint because they are intended to, and effectively do, suppress speech that SEPTA deems offensive or controversial.


50. Third, the Challenged Provisions violate the First Amendment because they are not reasonable in light of the purpose of the advertising forum created by SEPTA.

51. The Challenged Provisions are not an attempt to preserve SEPTA's advertising space for the purpose for which it was created (revenue generation) and have no reasonable relationship to that purpose; rather, they are designed to exclude speech that SEPTA deems offensive or controversial.


**WHEREFORE**, Plaintiff asks that the Court enter judgment in its favor and against Defendant, and award relief, including, but not limited to:

- a. A declaration that SEPTA's rejection of CIR's ad violates the Free Speech Clause of the First Amendment to the United States Constitution and the Fourteenth Amendment to the United States Constitution;
- b. A preliminary and permanent injunction requiring SEPTA to accept the advertising proposal submitted by CIR and to permit CIR to purchase advertising for its reporting on racial disparities in mortgage lending in SEPTA advertising spaces;
- c. A preliminary and permanent injunction prohibiting SEPTA from enforcing Sections II.A.9(b)(iv)(a) and II.A.9(b)(iv)(b) of the 2015 Advertising Standards;
- d. An award of costs and attorneys' fees; and
- e. Any other relief that this Court deems just and proper.

HANGLEY ARONCHICK SEGAL PUDLIN  
& SCHILLER

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# **EXHIBIT A**



**SECOND AMENDMENT TO THE AGREEMENT  
BY AND BETWEEN  
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY  
AND  
TITAN OUTDOOR LLC**

On this 28<sup>th</sup> day of May 2015 ("Effective Date"), Southeastern Pennsylvania Transportation Authority ("SEPTA") and Titan Outdoor LLC ("Titan") enter into this second amendment ("Second Amendment") to the agreement dated May 14, 2014.

WHEREAS, SEPTA and Titan entered into a Transit and Railroad Advertising Contract ("Contract") on May 14, 2014; and

WHEREAS, SEPTA and Titan wish to amend the Contract to address: 1) SEPTA's intention that property allocated for advertising is a non-public forum; and 2) SEPTA will retain strict control over the nature of the advertisements accepted for posting.

NOW, THEREFORE, for full and valuable consideration, the receipt of which is hereby acknowledged, SEPTA and Titan intending to be legally bound, hereby agree as follows:

**I. Incorporation of Recitals.**

The recitals above are hereby incorporated herein as if set forth in full.

**II. Amendment to the Agreement.**

**A. The following shall replace Section 9 of the Contract as a new Section 9:**

**9. APPROVAL OF ADVERTISING MATERIAL AND LOCATIONS**

**a. Advertising**

All advertising displays at any time inserted or placed by the Licensee in any display devices in or upon any vehicle and/or location and/or any products shall be approved by and acceptable to SEPTA. No libelous, objectionable, slanderous, or obscene advertising may be accepted by the Licensee for display inside, outside or upon SEPTA transit and railroad vehicles, products and facilities. Licensee shall alert SEPTA to any advertising content that it believes may be prohibited under SEPTA's Advertising Standards. All such advertising shall be submitted to SEPTA for review and written approval prior to display. Any advertising not complying with SEPTA's Advertising Standards as set forth below or otherwise determined by SEPTA, in its sole discretion, to be objectionable within the meaning of this subsection must not be utilized on any SEPTA vehicle, product or facility. SEPTA shall have the right immediately to remove any advertising material which has already been applied, in the event that SEPTA deems material objectionable for any reason, at the expense of the Licensee. In the event the

Licensee does not remove such material after 24 hours of written notification from SEPTA to do so, SEPTA shall have the right to remove such objectionable material at the Licensee's sole cost and expense. SEPTA shall not be held responsible for any such removal or any damage or injuries resulting from the removal of any such material.

b. Advertising Standards/Prohibitions

- (i) Purpose. These Advertising Standards ("Advertising Standards") apply to the posting of all new advertisements on transit vehicles, products and facilities on or after the date these Standards are implemented by Resolution of the SEPTA Board authorizing execution of amendments to SEPTA's agreement with Titan Outdoor, LLC ("the effective date").
- (ii) Non-Public Forum Status. It is the express intention of these Advertising Standards to further confirm SEPTA's intention that property allocated for advertising be a non-public forum. SEPTA's acceptance of transit advertising will not provide or create a general or designated public forum for expressive activities. In keeping with its proprietary function as a provider of public transportation, SEPTA does not intend its acceptance of transit advertising to permit its transit facilities, products or vehicles to be used as open public forums for public discourse and debate. Rather, SEPTA's fundamental purpose and intent is to accept such forms of advertising as will enhance the generation of revenues to support its transit operations without adversely affecting the patronage of passengers. In furtherance of that discreet and limited objective, SEPTA will retain strict control over the nature of the advertisements accepted for posting on or in its transit facilities, products and vehicles and will maintain its advertising space strictly as a non-public forum.
- (iii) Application of Standards. These Advertising Standards apply to the posting of all new advertisements on transit facilities, products and vehicles on or after the effective date of these Standards. Any advertisements which would be prohibited under these Advertising Standards, but which were or will be posted pursuant to the terms of a fully executed advertising contract prior to the effective date of these Advertising Standards, will be allowed to be posted or to remain posted for the duration of that contract if permitted by the Advertising standards then in effect. SEPTA's transit facilities, products and vehicles are a non-public forum and, as such, SEPTA will accept only that advertising that falls within the categories of acceptable advertising specified in these viewpoint neutral standards and that satisfies all other access requirements and restrictions provided herein.
- (iv) Prohibited Advertising Content. Advertising is prohibited on transit facilities, products and vehicles if it or its content falls into one or more of the following categories –

- (a) Advertisements promoting or opposing a political party, or promoting or opposing the election of any candidate or group of candidates for federal, state, judicial or local government offices are prohibited. In addition, advertisements that are political in nature or contain political messages, including advertisements involving political or judicial figures and/or advertisements involving an issue that is political in nature in that it directly or indirectly implicates the action, inaction, prospective action or policies of a government entity.
- (b) Advertisements expressing or advocating an opinion, position or viewpoint on matters of public debate about economic, political, religious, historical or social issues.
- (c) Any material that is or that the sponsor reasonably should have known is false, fraudulent, misleading, deceptive or would constitute a tort of defamation or invasion of privacy.
- (d) Advertising that is intended to be (or reasonably could be interpreted as being) disparaging, disreputable, or disrespectful to persons, groups, businesses or organizations, including advertising that portrays individuals as inferior, evil or contemptible.
- (e) Any material directed at a person or group that is so insulting, degrading or offensive as to be reasonably foreseeable that it will incite or produce lawless action in the form of retaliation, vandalism or other breach of public safety, peace and order. For purposes of determining whether an advertisement contains such material, SEPTA will determine whether a reasonably prudent person, knowledgeable of SEPTA's ridership and using prevailing community standards, would believe that the advertisement contains material that ridicules, mocks, is abusive or hostile to, places in a false light or debases the dignity, reputation, character or stature of any individual, group of individuals or entity.
- (f) Any material that is so objectionable under contemporary community standards as to be reasonably foreseeable that it will result in harm to, disruption of or interference with the transportation system.
- (g) Advertising that employs or commercially exploits, without adequate proof of express written authorization, the likeness, picture, image or name of any person.

- (h) Advertising that uses or embodies, without adequate proof of express, written authorization, the trade name, trademark, copyrighted matter or other intellectual property of a third person.
- (i) Advertising that suggests or otherwise tends to promote or encourage conduct on SEPTA property that would violate SEPTA's rules and regulations.
- (j) Advertising that, if permitted, would subject SEPTA to the risk of civil or criminal liability.
- (k) Advertising that advocates or presents in a favorable light violence, crime or anti-social behavior, or presents violence or criminal activity as erotic, entertaining, amusing, or appropriate.
- (l) Advertising that contains or tends to promote pornographic or sexually-oriented products or services or business that traffic in pornography, including advertising of X-rated movies.
- (m) Advertising that is itself obscene within the meaning of the laws of Pennsylvania (i.e. patently offensive sexual material lacking literary, social, artistic and/or political value, that appeals to the prurient interest of a person of average sensibilities).
- (n) Advertising that employs or implies profanity or vulgarity.
- (o) Advertising concerning products or services that involves illegal activity, including without limitation, prostitution, illegal gambling or illicit sale of controlled substances.
- (p) Advertising that is aesthetically inappropriate, whether by reason of inappropriate graphic design, color, size, or unprofessional looking presentation, and for that reason is not conducive to creating a pleasant, comfortable and safe environment for transit passengers.
- (q) Advertising that tends to disparage the quality of service provided by SEPTA.
- (r) Advertising that offers legal or other services related to SEPTA and not in SEPTA's best interest as determined by it.
- (s) Advertisements and images depicting, soliciting or promoting the sale or use of tobacco products including, but not limited to cigarettes, cigars, e-cigarettes or smokeless tobacco.

- (t) Advertisements and images that threaten or adversely portray or affect the public image of SEPTA or its ability to attract and maintain the patronage of passengers.
- (u) Advertisements that promote or solicit the sale, rental, distribution or availability of firearms or related products.
- (v) Advertising that directs viewers to internet addresses, telephone numbers or other media sources that contain materials, images or information that would violate these Advertising Standards if the materials, images or information were contained in advertising displayed or submitted for display or posting on SEPTA vehicles.

**B. The following shall be added to Section 15 of the Contract:**

SEPTA is not responsible for the protection of advertising material from damage, mischief or defacement, and Licensee shall include such disclaimer in all advertising contracts with advertisers.

**C. The following shall be added to Section 23 of the Contract:**

Indemnification (as employed in this Section 23, "Contractor" means "Licensee").

(e) Contractor shall include in all advertising contracts with advertisers an indemnification in favor of SEPTA for any amounts SEPTA is required to pay on account of its display of the advertiser's advertising content, including reasonable attorneys' fees resulting from SEPTA's defense of any lawsuit occasioned by such advertising.

**III. Retention of Other Terms and Conditions.**

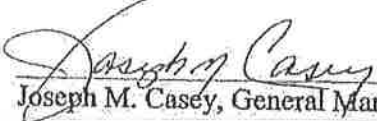
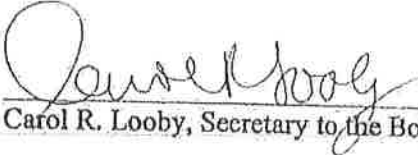
Except as set forth in the First and Second Amendment, all other terms and conditions of the Contract shall remain unchanged and in full force and effect.

**IV. Execution in Counterparts**



This Second Amendment to the Agreement may be executed in any number of counterparts (including by facsimile and electronic mail), each of which shall be considered an original and all of which taken together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto acting through their duly authorized representatives and intending to be legally bound have executed the Second Amendment to the Contract.

**Southeastern Pennsylvania Transportation Authority**

By:  Joseph M. Casey, General Manager      Attest:  (Seal)  
Carol R. Looby, Secretary to the Board

**Titan Outdoor, LLC**

By:  Scott E. Goldsmith, Esq.  
EVP & Chief Commercial Officer      Attest:  (Seal)

Approved as to form:

By:   
Gino J. Benedetti, General Counsel of SEPTA

# **EXHIBIT B**



(215) 580-7445  
gbenedetti@septa.org

March 29, 2018

**VIA E-MAIL (vbaranetsky@revealnews.org) AND REGULAR MAIL**

Victoria Baranetsky, Esquire  
General Counsel  
Center for Investigative Reporting  
1400 65<sup>th</sup>, Suite 200  
Emeryville, CA 94608

Dear Ms. Baranetsky:

Thank you for your letter of March 21. SEPTA's 2015 comprehensive revision of its advertising guidelines was the product of a careful and deliberate decision to ensure its advertising space is a nonpublic forum. SEPTA's right to make that decision is well-established. *See Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985). That determination is entitled to deference in the courts. *See Lamar Adver. of Penn., LLC v. Town of Orchard Park, New York*, 356 F.3d 365, 375-76 (2d Cir. 2004). Having made the decision to operate as a nonpublic forum, SEPTA is required to be consistent in the application of its criteria. For that reason, and for no other, SEPTA cannot accept the advertisement tendered by your organization.

The proposed advertisement is clearly proscribed by SEPTA's guidelines as it plainly takes a position on issues that are matters of political, economic and social debate. *See* § 9b(iv)(b). In your March 2, 2018 letter to Mr. Roche, you admitted that the advertisement concerns a political issue ("it is indisputable that CIR's animation including facts and statistics on a political issue..."). We appreciate that you have concluded that those facts and statistics cannot be debated but that is not the case in the public arena. The American Banking Association criticized CIR's reporting and disputed the underlying methodology. The subject of the proposed advertisement is disputed in class action litigation pending in the courts.

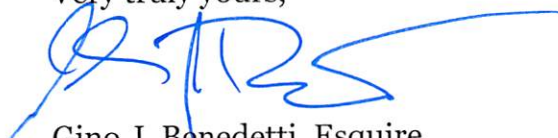
Further, the advertisement's topic is the subject of government regulation. The very purpose of the advertisement is to change regulation. And that is consistent with your organization's claim on its website that its "reporting ignites real world change." Thus, the proposed advertisement "... indirectly implicates the action, inaction, prospective action or policies of a government entity" within the meaning of the guidelines. *See* § 9b(iv)(a).



Ms. Victoria Baranetsky  
March 29, 2018  
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Therefore, SEPTA's position that the proposed advertisement expresses an opinion, position or viewpoint is surely fair. Accordingly, we respectfully hold our position that the proposed advertisement violates SEPTA's valid policy and its lawful status as a nonpublic forum.

Very truly yours,



Gino J. Benedetti, Esquire  
SEPTA – General Counsel

GJB/tc  
Enclosure