

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

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**AMERICAN CIVIL LIBERTIES UNION**  
125 Broad Street, 18th Floor, New York, NY 10004,

**CHANGE THE CLIMATE, INC.**  
P.O. Box 1004, Greenfield, MA 01302,

**THE DRUG POLICY ALLIANCE**  
925 Fifteenth Street, N.W., Washington, DC 20005,

and

**MARIJUANA POLICY PROJECT**  
P.O. Box 77492, Washington, DC 20013,

Plaintiffs,

v.

C.A. No. \_\_\_\_\_

**THE HONORABLE NORMAN Y. MINETA**  
U.S. Secretary of Transportation  
U.S. Department of Transportation  
400 7th Street, S.W., Washington, DC 20590,

**THE UNITED STATES of AMERICA**  
c/o Roscoe C. Howard, Jr., Esquire  
United States Attorney for the District of Columbia  
Judiciary Center  
555 Fourth Street, N.W., Washington, D.C. 20530,

and

**WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY**  
600 Fifth Street, N.W., Washington, DC 20001,

Defendants.

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**COMPLAINT FOR VIOLATION OF FIRST AMENDMENT RIGHTS**

Plaintiffs American Civil Liberties Union; Change the Climate, Inc.; Drug Policy Alliance; and Marijuana Policy Project hereby complain of Defendants the Honorable Norman Y. Mineta, United States of America and Washington Metropolitan Area Transit Authority, as follows:

### **NATURE OF THE ACTION**

1. This is a challenge to the constitutionality of Section 177 of Division F of the Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, 118 Stat. 3 (“Section 177”), which operates and was intended to operate to restrain political speech. Section 177 (attached in relevant part as Exhibit A hereto), prohibits the distribution of funds “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.).”

2. Marijuana is a substance listed in schedule I of the Controlled Substances Act, and Section 177 was intended to prevent local transit agencies from accepting advertising that advocated amending the statutes making possession or medical use of marijuana illegal. The Conference Report accompanying the House emphasizes that intent:

*Transit agency advertising.* – The conferees are concerned that transit agencies accepting Federal grant funds may be providing their advertising space to organizations that encourage the public to break the law. For example, the conferees note with displeasure that public service advertising space in Washington, DC’s Metropolitan Area Transit Authority rail stations and buses has been used to advocate changing the nation’s laws regarding marijuana usage. WMATA has provided \$46,250 worth of space to these types of ads; therefore, as a warning to other transit agencies, the conferees have deleted funding totaling \$92,500 from projects and activities for WMATA in this bill.

While the conferees applaud the efforts of many transit agencies to

prevent ads that promote marijuana use, the conferees remain concerned that the opportunity exists nationwide for transit properties to run similar advertising. Therefore, the conference agreement includes a provision (Section 177) that prohibits Federal transit grantees from obligating or expending funds that would otherwise be available in the Act, if the grantee is involved directly or indirectly with any activity, including displaying or permitting to be displayed advertisements on its land, equipment, or in its facilities, that promote the legalization or medical use of substances listed in schedule I of section 202 of the Controlled Substance Act.

H.R. Rep. No. 108-401, at 986 (2003).

3. Section 177 has had its intended effect. Defendant WMATA now refuses to accept advertising that promotes the legalization or medical use of marijuana.

4. This action seeks a declaration that Section 177 is unconstitutional and an injunction barring Secretary of Transportation Mineta and the United States from enforcing Section 177 and barring WMATA from refusing to accept advertisements on the basis of Section 177. This action also seeks damages.

### **JURISDICTION**

5. This case arises under the Constitution and laws of the United States and presents a federal question within this Court's jurisdiction under 28 U.S.C. § 1331.

6. This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* WMATA's constitutional violations are actionable pursuant to 42 U.S.C. § 1983.

7. Venue is proper in this judicial District under 28 U.S.C. § 1391 (b) & (e).

### **THE PARTIES**

8. Plaintiff American Civil Liberties Union ("ACLU") is a nationwide, non-profit,

non-partisan organization with more than 400,000 members, including many in the Washington Metropolitan Area. The ACLU is devoted to protecting the constitutional rights and civil liberties of all Americans. In conjunction with this mission, the ACLU opposes draconian criminal penalties on drug possession and use, and supports the decriminalization and medical use of marijuana. The ACLU educates the public about its positions and activities through advertising, publications, and other forms of outreach.

9. Plaintiff Change the Climate, Inc. (“Change the Climate”) is a non-profit organization, founded by parents and business executives, that seeks to stimulate debate on marijuana issues. To that end, Change the Climate undertakes periodic advertising campaigns supporting its organizational mission; for example, it has run three advertising campaigns on the Washington Metropolitan Area Transit Authority since January 2001, including one in the fall of 2003. Change the Climate’s advertisements in the past have appeared on buses and bus shelters and in Metrorail stations in the Washington, D.C. metropolitan area. Change the Climate intends to run advertisements in other metropolitan areas as well.

10. Plaintiff Drug Policy Alliance is a non-profit membership organization that works to broaden the public debate on drug policy and to promote realistic alternatives to the war on drugs based on science, compassion, health and human rights. The guiding principle of the Drug Policy Alliance is harm reduction, an alternative approach to drug policy and treatment that focuses on minimizing the adverse effects of both drug use and drug prohibition. The Drug Policy Alliance and its affiliated organizations are deeply involved in educating Americans and others about alternatives to current drug policies on issues including legalizing marijuana for medical purposes and ending marijuana prohibition for adults.

11. Plaintiff Marijuana Policy Project (“MPP”) is a non-profit organization based in

the District of Columbia with approximately 14,000 members nationwide. MPP, the largest organization in the United States devoted solely to marijuana policy reform, advocates for policies designed to minimize the harm associated with marijuana – whether that harm is caused by marijuana itself or by laws intended to prohibit its use. MPP advocates the removal of criminal penalties for responsible marijuana use by adults, with a particular emphasis on making marijuana medically available to seriously ill people who have the approval of their doctors. To help effect its mission, MPP educates the public through paid advertising, speaking engagements, media relations, publications, and other forms of outreach.

12. Defendant the Honorable Norman Y. Mineta (“Mineta”) is the United States Secretary of Transportation. He is sued in his official capacity. The Department of Transportation is an agency of the United States responsible for administering transit-related grants in the Consolidated Appropriations Act of 2004. Such grants include, *inter alia*, capital investment grants of \$65 million for the Largo extension of WMATA’s Metrorail, and \$20 million for the Dulles Corridor Rapid Transit Project.

13. Defendant United States of America is the sovereign entity that enacted the Consolidated Appropriations Act of 2004 and is responsible for the Act’s enforcement.

14. Defendant Washington Metropolitan Area Transit Authority (“WMATA”) is an interstate compact agency created in 1967. WMATA is an instrumentality of three signatories: the State of Maryland, the Commonwealth of Virginia, and the District of Columbia. WMATA was created to plan, finance, construct, and operate a comprehensive public transportation system for the Washington, D.C. Metropolitan Area. WMATA, through an agent, sells advertising space on its buses and bus shelters, and in its buses, trains, and train stations. WMATA is a federal transit grantee under the Consolidated Appropriations Act of 2004.

## FACTUAL ALLEGATIONS

15. In the fall of 2003, WMATA ran several advertisements on behalf of Change the Climate. Those advertisements appeared on buses and bus shelters and in train stations. While each advertisement had a different heading, each had the subheading “Legalize and Tax Marijuana,” along with Change the Climate’s web address.

16. WMATA has also displayed anti-drug advertisements, such as those of the Office of National Drug Control Policy.

17. On information and belief, on or about November 10, 2003, Representative Ernest Istook of Oklahoma complained about the content of Change the Climate’s advertisements in a letter to WMATA Chairman of the Board Jim Graham.

18. In or about November 2003, Representative Istook proposed adding Section 177 to the bill that was enacted as Division F of the Consolidated Appropriations Act of 2004.

19. On or about January 23, 2004, the Consolidated Appropriations Act of 2004 was signed by President Bush and enacted into law.

20. On or about January 23, 2004, plaintiffs ACLU, Change the Climate, Drug Policy Alliance, and MPP sought to purchase advertising space on the WMATA system. The proposed advertisement (attached as Exhibit B hereto) bears the headline “Marijuana Laws Waste Billions of Taxpayer Dollars to Lock Up Non-Violent Americans” above an image of people in business attire behind bars. The text of the proposed advertisement reads:

One in three adult Americans have tried marijuana and federal marijuana laws can imprison every one of them just for simple possession. These laws are unfair and abuse our criminal justice system. Prosecuting and jailing these Americans wastes valuable resources better spent keeping violent criminals off our streets. As it is, hundreds of thousands of citizens have already been

imprisoned – many of them non-violent, otherwise law-abiding and many of them stripped of their right to vote, their property, their jobs and their college grants. Let's adopt common sense and fairness and enact more realistic marijuana laws. And let's save the jails for real criminals. Get involved today.

The advertisement also contains the logos of, and web addresses for, each of the plaintiffs.

21. On or about February 5, 2004, WMATA informed plaintiffs (through their respective advertising agencies) that it had rejected plaintiffs' advertisement.

22. On information and belief, WMATA's basis for rejecting plaintiffs' advertisement was that Section 177 precluded WMATA from accepting the advertisement without losing its 2004 funding under the Consolidated Appropriations Act.

23. Plaintiffs are suffering, and will continue to suffer, irreparable injury by reason of Defendants' actions complained of herein.

24. Plaintiffs have suffered damages, and will continue to suffer damages, as a result of WMATA's refusal to accept Plaintiffs' advertisement.

25. Unless restrained, Defendants United States and Mineta will continue to enforce Section 177 against Defendant WMATA and other transit authorities.

26. Unless restrained, Defendant WMATA will continue to reject plaintiffs' drug policy advertisements because of Section 177.

## **CAUSES OF ACTION**

### **COUNT I (against Defendants Mineta and United States)**

27. Section 177 facially violates the First and Fifth Amendments to the United States Constitution because it conditions access to funding on acceptance of content and viewpoint restrictions on otherwise available, constitutionally protected speech. The Act unconstitutionally

burdens the rights of plaintiffs and their members to communicate protected expression.

28. By conditioning funding to federal transit grantees on the refusal, *inter alia*, to accept advertising advocating a change in United States policy toward marijuana, Section 177 imposes conditions on federal transit grantees that exceed Congress' Article I spending power.

29. Enforcement of Section 177 would violate the constitutional rights of plaintiffs, their members, and members of the public, and would force federal transit grantees either to violate the rights of plaintiffs, their members, and members of the public or to forgo a substantial government benefit to which those federal transit grantees would otherwise be entitled.

30. Section 177 impermissibly imposes content- and viewpoint-based restrictions on speech in a public forum.

31. The conditions of Section 177 are not narrowly tailored to accomplish any compelling government purpose.

32. The conditions of Section 177 are not narrowly tailored to serve a significant government interest.

33. Section 177 is unconstitutionally vague and overbroad, in violation of the First and Fifth Amendments to the United States Constitution.

**COUNT II**  
**(against Defendant WMATA)**

34. WMATA's refusal to accept plaintiffs' advertisement for placement in WMATA's advertising spaces violates plaintiffs' rights under the First, Fifth and Fourteenth Amendments.

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiffs respectfully request that the Court:

- a. Declare that Section 177 of Division F of the Consolidated Appropriations Act of

2004 is unconstitutional;

b. Preliminarily and permanently enjoin defendants Mineta and the United States from enforcing Section 177;

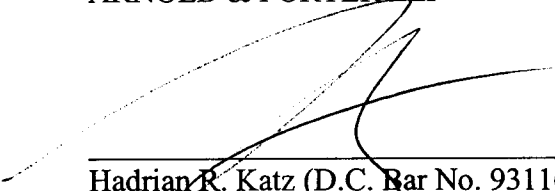
c. Preliminarily and permanently enjoin defendant WMATA from rejecting submitted advertising on the basis of Section 177;

d. Order WMATA to accept plaintiffs' submitted advertisement (Ex. B.) for the next available time;

e. Award plaintiffs such damages, costs and fees against WMATA as are allowed by law; and

f. Grant to plaintiffs such other, further, and different relief as may be just and proper.

ARNOLD & PORTER LLP



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