



NAACP ad was refused. In fact, the City does not appear to have any written policies, procedures, or standards regarding advertising at PHL, making the City's approval system ad hoc and unconstitutional. And, to the extent that the City has clear standards regarding advertising at PHL, it has allowed Clear Channel to ignore those standards, resulting, again, in an ad hoc and standardless administration of such policies.

4. Plaintiff NAACP therefore requests that this Court: (1) declare that the Defendants' airport advertising practices in general, and their denial of the NAACP's request to purchase advertising space in particular, violate the First and Fourteenth Amendments to the U.S. Constitution; (2) issue an injunction requiring the Defendants to accept and display the NAACP's proposed advertisement about excessive incarceration, prohibiting the Defendants from refusing any other advertisements for PHL in the absence of narrow, objective, definite, and constitutional standards regarding the acceptance or refusal of such advertisements, and from refusing advertisements for PHL on the basis of the content or viewpoint of those advertisements; and (3) award damages to Plaintiff for violation of its rights and interference with its public education efforts.

#### **JURISDICTION**

5. This action seeks to vindicate rights protected by the First and Fourteenth Amendments to the United States Constitution, and is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over this civil rights action pursuant to 28 U.S.C. §§ 1331 and 1343. This Court also 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.

## VENUE

6. Plaintiff's claim arises in Philadelphia, Pennsylvania, and, therefore, venue properly lies within the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1391(b)(2).

## PARTIES

7. Plaintiff NAACP is the nation's oldest, largest, and most widely recognized grassroots-based civil rights organization. The NAACP's principal objective is to ensure the political, educational, social, and economic equality of all persons and to eliminate racial hatred and racial discrimination. The organization has more than a half-million members and supporters throughout the United States and the world, and is widely considered the nation's premier advocate for civil rights.

8. Defendant City of Philadelphia is a municipality of the Commonwealth of Pennsylvania and manages, directs, and controls the Philadelphia International Airport (PHL) through its Division of Aviation.

9. Defendant Clear Channel is a Delaware Corporation doing business in Pennsylvania, with its principal place of business in San Antonio, Texas. Clear Channel manages the advertising space at PHL under a contract with the City of Philadelphia.

## FACTS

10. On April 7, 2011, the NAACP released Misplaced Priorities, a report that explores how much money America overspends on incarceration at the expense of education, and outlines specific reforms that states can enact to reverse this trend. The NAACP planned a broad public awareness and education campaign to accompany and highlight the release of this report.

11. As part of that public awareness and education campaign, the NAACP prepared a series of short advertisements designed for display in airports around the country. The purpose of these advertisements is to bring America's disproportionate reliance on incarceration to the attention of international visitors, as well as to the American public and to local and national politicians.

12. The NAACP chose the Philadelphia International Airport (PHL) as one of its advertising sites, both because Philadelphia is one of the cities highlighted in the Misplaced Priorities report (see <http://www.naacp.org/pages/philadelphia>) and because of the significant number of international and domestic visitors who use that airport.

13. In January 2011, the NAACP directed its advertising vendor to place an advertisement about excessive incarceration at PHL. That vendor submitted the advertising proposal to Clear Channel.

14. Clear Channel serves as the advertising agent for PHL. Pursuant to the terms of its contract with the City, every proposed airport advertisement must be submitted to the Division of Aviation for approval or disapproval, and Clear Channel can neither accept nor reject advertisements for PHL on its own.

15. The NAACP submitted an ad that read:

Welcome to America, home to  
5% of the world's people &  
25% of the world's prisoners.

Let's build a better America together. [NAACP.org/smartandsafe](http://NAACP.org/smartandsafe)

A true and correct copy of this advertisement is attached to this Complaint.

16. On January 19, 2011, Clear Channel forwarded the advertisement to James Tyrrell, Marshall Evans, and Deirdre McDermott-O'Neill of the City's Division of Aviation for review.

Mr. Tyrrell is the Deputy Director of Aviation, Property Management/Business Development and is responsible for “all real estate related functions,” including oversight of “Airport advertising contracts.” Mr. Evans is the Airport Properties Manager, Division of Aviation. Ms. McDermott-O’Neill is an Airport Properties Specialist. Upon information and belief, Mr. Tyrrell, Mr. Evans, and Ms. McDermott-O’Neill make all decisions on behalf of the City’s Division of Aviation regarding which advertisements will or will not be accepted for display in PHL.

17. Neither the City nor its Division of Aviation has any written policies, procedures, standards, or guidelines regarding advertising at PHL. Instead, upon information and belief, the decisions of the three aforementioned individuals – Mr. Tyrrell, Mr. Evans, and Ms. McDermott-O’Neill – embody the policy of the City with respect to advertising at PHL.

18. Upon information and belief, these individuals are the final decision makers for the City regarding which advertisements will or will not be accepted for display in PHL.

19. Clear Channel’s January 19, 2011 email to Mr. Tyrrell, Mr. Evans, and Ms. McDermott-O’Neill accompanying the proposed advertisement stated: “The NAACP has asked that I submit the attached creative for approval. A lot of airports do not take issue advertising. These ads have been denied by SFO. Let me know your thoughts.”

20. The City responded by rejecting the advertisement, informing Clear Channel that it would not accept the NAACP advertisement at PHL.

21. Clear Channel subsequently told the NAACP’s advertising vendor that the proposed advertisement had been rejected by the City, but did not give any reason for the City’s refusal.

Later, the City claimed that the ad had been rejected because the City does not accept “issue” or “advocacy” advertisements at the airport.

22. As a result of the fact that the City does not have any written policies or standards regarding which advertisements will or will not be accepted for display in PHL, it is the policy and practice of the City that proposed advertisements be approved or disapproved on an ad hoc basis by Division of Aviation officials Tyrrell, Evans, and/or McDermott-O’Neill.

23. Upon information and belief, the NAACP’s advertisement was rejected by the City because of the advertisement’s content and/or viewpoint.

24. The City’s refusal to accept the NAACP’s proposed advertisement is in stark contrast to the City’s and Clear Channel’s acceptance of other issue-oriented, educational, and advocacy advertisements for display at PHL. The Defendants have long accepted a wide variety of advertising, including advertisements that address issues of public concern and that may be considered controversial. For example, advertisements on display at PHL shortly after the NAACP ad was refused include the following:

- an advertisement for the World Wildlife Federation (“WWF”), captioned “Protecting the Future of Nature,” and stating that the WWF “works around the world developing responsible fishing practices”;
- a similar WWF advertisement with a picture of two overheated polar bears, stating how “WWF is developing global solutions to reduce carbon emissions and helping vulnerable communities, species and habitats adapt to a changing climate”;
- another WWF advertisement discussing the organization’s efforts to preserve habitats for panda bears in China and the need for doing so;

- an advertisement by the Foundation For A Better Life with a picture of Bishop Desmond Tutu, stating, “His moral compass points to equality. PEACE. Pass It On.”;
- a similar advertisement about racial equality from the Foundation For A Better Life, stating “Here’s to you, Mr. Robinson,” featuring a picture of Jackie Robinson, who broke the color barrier in Major League Baseball;
- an advertisement by the National PTA, captioned, “The School’s Janitor Knows Where Your Kid’s Desk Is. Do You?” and advocating for parents to “know about your kid’s school” and to “know about your kid”;
- an advertisement by the National Center for Missing & Exploited Children focusing on places where sexual predators can be found, and discussing the dangers posed by the Internet for children; and
- an advertisement by the USO saying “Support \*Our\* Troops.”

25. The Defendants’ previous acceptance of these other issue-oriented, educational, and advocacy advertisements demonstrates that the Defendants have no legitimate justification for rejecting the NAACP’s proposed advertisement and that acceptance of the advertisement would not have led to any significant harm to PHL. Nor would it have created any legal issues for the City, as the City has previously allowed issue-oriented, educational, and advocacy advertisements at PHL.

26. None of the previous issue-oriented, educational, and advocacy advertisements have harmed PHL or its passengers.

27. There is nothing about the advertisement that the City rejected here that would justify treating this advertisement differently from other issue-oriented, educational, and advocacy advertisements previously accepted at PHL and other airports without adverse effects. For example, there are no graphic pictures or photographs, and there is no profanity or sexually explicit language in this advertisement that might be considered by some to be inappropriate for display in an airport.

28. The City's rejection of the NAACP's advertisement is also in contrast to its policy and practice concerning leafleting at PHL. The City's policy on leafleting at PHL makes clear that issue-oriented, advocacy leafleting is permitted at PHL, subject only to the ordinary time, place, and manner conditions. Thus, under the City's own leafleting policy, if the NAACP sought to hand out leaflets inside PHL containing the exact same language and images as in its proposed advertisements, the City would have permitted such leafleting to occur.

29. The NAACP placed the identical ad on a rolling billboard that was displayed throughout Philadelphia, without incident.

30. The NAACP also successfully placed the ad on a billboard operated by a private company along a street leaving the airport, without incident.

31. In these circumstances, the City has applied a standardless prior restraint system to refuse the NAACP's advertisement on the basis of its content and/or viewpoint.

## CLAIMS

### **Unconstitutional Infringement on Freedom of Speech – First and Fourteenth Amendments to the U.S. Constitution**

32. Plaintiff incorporates the allegations of the preceding paragraphs as if fully set forth herein.



33. Clear Channel has acted in concert with the City of Philadelphia in the creation and maintenance of unconstitutional restrictions on advertising at PHL.

34. The Defendants have long accepted issue-oriented, educational, and advocacy advertising at the Philadelphia International Airport.

35. The Defendants' operation of the PHL advertising program without any standards or guidelines regarding which advertisements will be accepted and which refused, vests unconstitutionally unbridled discretion in City officials and in Clear Channel to decide which advertisements and messages may be displayed at the airport in violation of the First and Fourteenth Amendments to the United States Constitution.

36. To the extent that the Defendants' refusal to run the NAACP's advertisement about excessive incarceration was based on an unstated policy of prohibiting issue-oriented, advocacy advertisements, that is a content-based policy that is not narrowly tailored to promote a compelling government interest, in violation of the First and Fourteenth Amendments to the United States Constitution.

37. The Defendants' refusal to run the NAACP's advertisement about excessive incarceration, while previously accepting similar issue-oriented, educational, and advocacy advertisements, amounts to viewpoint discrimination, in violation of the First and Fourteenth Amendments to the U. S. Constitution.

38. Through their refusal to accept the NAACP's advertisement, the Defendants have, under color of law, subjected Plaintiff NAACP to the deprivation of its rights under the First and Fourteenth Amendments to the U. S. Constitution.

39. Plaintiff NAACP has suffered and will continue to suffer irreparable harm and the deprivation of its rights and resulting damages because of the Defendants' unconstitutional policies and practices.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court grant the following relief:

A. Declare that the Defendants' refusal to accept and display the NAACP's advertisement about excessive incarceration violates the First and Fourteenth Amendments to the U. S. Constitution;

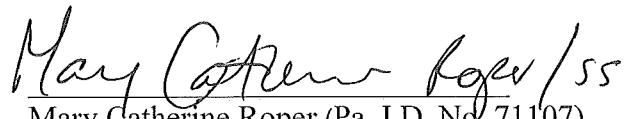
B. Declare that Defendants' lack of a policy or standards for approving advertisements at PHL is unconstitutional in violation of the First and Fourteenth Amendments to the U. S. Constitution or, to the extent that there is such a policy, that Defendants' policy is unconstitutional in violation of the First and Fourteenth Amendments to the U. S. Constitution;

C. Issue preliminary and permanent injunctive relief: (1) requiring the Defendants to accept and display the NAACP's advertisement about excessive incarceration on terms no less favorable than those given to other advertisers; (2) prohibiting the Defendants from refusing any other advertisements for Philadelphia International Airport in the absence of narrow, objective, definite, and constitutional standards regarding the acceptance or refusal of such advertisements; and (3) prohibiting the Defendants from refusing advertisements for Philadelphia International Airport on the basis of the content or viewpoint of those advertisements;

D. Award Plaintiff compensatory damages, costs, and attorneys' fees pursuant to 42 U.S.C. § 1988; and

E. Grant such other relief as the Court deems just and appropriate.

Dated: October 19, 2011

 Mary Catherine Roper / ss

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