



128 DORRANCE STREET, SUITE 400  
PROVIDENCE, RI 02903  
401.831.7171 (t)  
401.831.7175 (f)  
[www.riaclu.org](http://www.riaclu.org) | [info@riaclu.org](mailto:info@riaclu.org)

**COMMENTS ON PROPOSED REGULATIONS – ADVERTISING STANDARDS FOR THE  
RHODE ISLAND AIRPORT CORPORATION  
April 30, 2018**

As an organization dedicated to promoting the exercise of free speech, the ACLU of Rhode Island offers the following comments in opposition to these proposed regulations, which would expand RIAC’s ability to censor the types of advertising permitted to be displayed in Rhode Island airports.

Among other things, the regulations would allow only “family advertising” to be displayed at airports, prohibit any advertising that “endorses political positions” or contains religious views, and even restrict ads that “contain[] references to the Transportation Security Administration.”

We recognize that two federal appeals court decisions from the First Circuit, addressing advertising standards adopted by the Massachusetts Bay Transportation Authority (MBTA),<sup>1</sup> have given agencies like RIAC relatively broad discretion in its advertising standards. We disagree with those decisions, as do a number of other federal courts outside the First Circuit.<sup>2</sup> But even in light of those court decisions, we find these regulations constitutionally problematic, and in any event, we believe they represent poor public policy.

---

<sup>1</sup> *American Freedom Defense Initiative v. MBTA*, 781 F.3d 571 (1st Cir. 2015); *Ridley v. MBTA*, 390 F.3d 65 (1st Cir. 2004).

<sup>2</sup> See, e.g., *AFDI v. MBTA* at 590 (Stahl, J., dissenting in part).

To constitutionally exclude certain types of advertising from a forum like an airport, we believe that the Corporation should be required to act according to neutral standards in such a way that there is not the appearance that the government is seeking to handicap expression of particular ideas. In that regard, over fifteen years ago, the ACLU filed a lawsuit against RIAC on behalf of the R.I. Brotherhood of Correctional Officers, which sought to run an ad critical of a proposed statewide “community corrections” program. The ad was ultimately allowed to run, and we felt then, as we do now, that RIAC’s promotion of commercial advertising over political advertising was wrong. This latest iteration of the standards to be used in assessing the propriety of airport advertising only intensifies our concerns.

For example, by barring advertisements that promote political positions or candidates, but allowing ones that are critical of such positions or candidates [Section 1.4(2)(m)], these proposed regulations engage in the type of viewpoint discrimination that is anathema to First Amendment principles. By barring certain types of religious symbols but not others [Section 1.4(2)(o)], the proposal engages in an inappropriate foray into religious discrimination, and by further leaving this prohibition undeniably vague and open-ended (by including an “etc.” to the end), this provision empowers the RIAC to regulate proposed speech beyond what we believe is constitutionally permissible.

Leaving aside the legal issues, the ACLU opposes, as a matter of *public policy*, RIAC’s attempt to further prohibit any political or public interest advertising. There is no compelling reason for RIAC to limit public discourse, through the advertisements it deems acceptable, to strictly commercial speech. The type of public awareness or debate that can be promoted by advertisements such as the one that had been prepared by the R.I. Brotherhood of Correctional Officers is healthy. Patrons to T.F. Green can surely handle such public advertising, as the patrons to many other

facilities -- bus, train and airport -- across the country do on a regular basis under broader “designated forum” advertising policies maintained by those facilities.

In any event, RIAC’s “commercial ads only” policy continues to miss the mark if its goal is to avoid controversy. A commercial advertisement “promoting” nuclear power or the fur coat industry can be just as controversial, if not more so, as an advertisement critical of a governmental policy like community corrections. In addition, a constraining advertising policy would appear to take RIAC off the hook from running any public interest advertising generally. This hardly seems the proper role for a quasi-government agency to take.

Ultimately, the current rule’s ban on advertising that implies an endorsement by RIAC is more than sufficient to protect the Corporation from any fears that “political” ads will be attributed to the state itself. In sum, an advertisement that makes travelers think should be as worthy of posting as one that makes them want to spend money.

For both these legal and policy reasons, we urge the Corporation to reconsider and reject this proposal. Adopting narrowly-tailored limitations in their place, such as those in use at other facilities across the country with more robust advertising policies, will both protect the Corporation’s interests and promote the goals of the First Amendment.

We appreciate your attention to our views, and trust that you will give them your careful consideration. If the suggestions we have made are not adopted, we request that, pursuant to R.I.G.L. §42-35-2.6, you provide us with a statement of the reasons for not accepting these arguments.

Submitted by:  
Steven Brown, Executive Director