

# Rejected deal may be costly

## 4th Circuit orders Md. to pay ACLU's fees in voter registration case

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Maryland must pay attorneys' fees stemming from a challenge to restrictions on voter registration activities at Baltimore transit stations, the **4th U.S. Circuit Court of Appeals** has held.

The fees could well exceed \$200,000, said Andrew D. Freeman, who assisted the **American Civil Liberties Union of Maryland** in the case.

By a 2-1 vote, the state **Board of Public Works** last year refused to approve a settlement agreement under which the ACLU and lawyers for the ACLU, Project Vote and ACORN would have received \$60,000.

At the time, the ACLU estimated the attorneys' fees at more than \$150,000. The case has since been litigated before a federal judge and the appeals court.

Freeman said the board should have accepted the settlement.

"When the state violates its citizens' rights, it is obligated to pay the plaintiffs' attorneys' fees," said Freeman, of **Brown, Goldstein & Levy LLP** in Baltimore. "The attorney general's office negotiated a pretty good deal for the state, but because the Board of Public Works rejected that deal, the state will have to pay a much higher bill."

The board rejected the fees last year because the **Maryland Transit Administration** had quickly agreed to change its policy and because the plaintiffs had won only \$1 each in nominal damages.

The governor's office stated Tuesday that "this matter is with the courts for an appropriate determination of fees. The governor would review this matter based on the facts and the law only if it returned to the BPW."

The 4th Circuit, in an unpublished opinion released Monday, said attorneys' fees are warranted because the suit spurred a policy change and because nominal damages were the only kind the workers had sought.

"While the settlement and receipt of nominal damages did little for Plaintiffs personally, their victory undoubtedly signaled to the MTA the importance of ensuring that its regulations do not intrude upon our basic constitutional and democratic rights," the unsigned opinion said.

"Here, plaintiffs brought a meritorious civil rights claim to prevent the enforcement of an unconstitutional government regulation in the public interest; this is the very form of litigation Congress wished to encourage" under a section of the civil rights law, 42 U.S.C. Section 1988, that authorizes attorneys' fees.

The 4th Circuit remanded the case to the **U.S. District Court** in Baltimore to determine reasonable fees.

Steven M. Sullivan, civil-litigation chief at the **Office of the Attorney General**, declined to comment on the decision, the possibility of an appeal or the prospect of new settlement talks.

"We are reviewing the decision," Sullivan wrote in an email. "Nothing more to report at this time."

The lawsuit was filed in January 2007 after MTA police ordered workers from Project Vote and the now-defunct ACORN to stop voter registration efforts at the Mondawmin Mall subway station and the Penn North bus stop in Baltimore.

The MTA had required a permit to engage in such activities, which the plaintiffs called an illegal restraint on speech.

MTA stopped enforcing the regulation in March 2007. In August 2008, the 12 plaintiffs won \$12 in nominal damages. The ACLU of Maryland filed for attorneys' fees and reached the \$60,000 settlement with the state in May 2009, subject to approval by the Board of Public Works.

The settlement was scheduled for a vote on March 24, 2010. At the time, ACORN was in the midst of a scandal over videotapes showing employees in some locations giving tips to a couple posing as a pimp and a prostitute. The group would formally disband a week later.

The board voted 2-1 against the settlement. Gov. Martin O'Malley, voting no, said \$60,000 "just seems like a lot of money for something that was fixed with a phone call to the attorney general's office."

The fee issue then went before U.S. District Judge Richard D. Bennett in Baltimore, who rejected the claim.

The 4th Circuit reversed.

"[T]he district court should have 'credited' Plaintiffs for bringing the MTA into a settlement ... which afforded Plaintiffs most of the equitable relief sought in the complaint," the 4th Circuit stated.

Deborah A. Jeon, ACLU of Maryland's legal director, hailed the 4th Circuit's call for fees in a case where the goal was not to win a financial recovery but to protect constitutional rights.

"Litigation is an expensive process," Jeon said. "Without the civil rights attorney fee law, we couldn't continue to do this work."