

BPW will obey judge's order on fees

The Maryland **Board of Public Works** on Wednesday reversed course and decided to obey a federal judge's order to pay \$200,000 in attorneys' fees stemming from a challenge to a state policy that limited First Amendment-protected activities, including voter registration, at transit stops.

The amount is more than triple what it would have been in 2009, when the court first ordered the state to pay \$60,000 in fees. The state's refusal sparked an appeal to the **4th U.S. Circuit Court of Appeals** and two more trips to the **U.S. District Court**, all of which added to the bill.

Andrew D. Freeman, an attorney at **Brown, Goldstein Levy LLP** in Baltimore and one of the plaintiffs' attorneys, said in an interview Wednesday that the board realized that, whether or not it agreed with what the court ordered, it had to obey the order.

He also said the award of fees represented a broader constitutional victory.

"We as a nation want our Constitution to be followed, and one of the ways we do this is that if a state or other government violates the Constitution, the court awards reasonable attorneys' fees so that people who want to challenge unconstitutional actions can be adequately represented," he said.

Deborah Jeon, legal director for the **ACLU of Maryland**, said in a statement Wednesday that it was "extremely unfortunate that Maryland taxpayers are being forced to pay the price of political gamesmanship by state officials."

"We can't put a price tag on respect for the Constitution, but what we know here is that the price of compliance was more than three times higher than it needed to be — because the Board of

Public Works refused to approve a reasonable compromise negotiated and recommended by the state's lawyers, prompting a showdown with the federal courts," Jeon said.

At the board's Dec. 19 meeting, Comptroller Peter Franchot and Gov. Martin O'Malley declined to approve the fee measure introduced by Assistant Attorney General Matthew J. Fader. They out-voted the third member of the board, Treasurer Nancy Kopp.

Freeman said the plaintiffs' attorneys had made it clear they would take any steps necessary, including garnishing the money directly from the state or from certain state officials named in the suit, in order to recover the amount due.

That threat weighed into Comptroller Peter Franchot's decision to change his vote, a spokesman said.

Franchot has been vocal in his disagreement with the courts' determinations, said Andrew Friedson, the spokesman.

"At the end of the day, though, he was unwilling to act in a manner that put current and former state employees at personal risk," Friedson said.

David Paulson, a spokesman for Attorney General Douglas F. Gansler, said Wednesday that the approval was "an important step for the Board of Public Works to take to resolve this matter."

The attorneys' fee order stems from the settlement of a 5-year-old civil rights lawsuit over a **Maryland Transit Administration** regulation that prevented voter registration at bus and train stations.

In voting against the fee payment last month, O'Malley noted that he changed the regulation "as soon as I



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Maryland taxpayers are being 'forced to pay the price of political gamesmanship by state officials,' the ACLU's Deborah Jeon says.

was elected."

The case, filed in January 2007, was placed on the inactive docket in March 2007 pending settlement negotiations. As a part of the negotiations, the MTA agreed to suspend enforcement of the challenged provisions and to work with the plaintiffs to come up with different regulations.

However, the plaintiffs found the newly drafted regulations unacceptable and had the case reopened. In August 2008, the court granted summary judgment in favor of the plaintiffs.

The parties then tried to negotiate a settlement regarding attorneys' fees. In October 2008, both sides agreed to a \$60,000 payment, but the Board of Public Works declined to approve it in March 2009.

Judge Richard D. Bennett ordered payment of \$192,855 in fees and \$6,642 in expenses on Sept. 28.