

accurate tours. They are also committed to protecting their right to speak freely and are unwilling to submit to a program under which the government has the authority to determine who may speak and who may not.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. § 1983.

3. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

THE PARTIES

4. Plaintiffs Tonia Edwards and Bill Main earn their living as tour guides. Doing business as “Segs in the City,” a d/b/a of their wholly owned Maryland corporation, Boats, Bikes & Bicycles, LLC, they regularly give tours of Washington, D.C. Plaintiffs both run the business and regularly conduct in-person tours.

5. Plaintiff Edwards is a United States citizen and a resident of Maryland.

6. Plaintiff Main is a lawful permanent resident of the United States and a resident of Maryland.

7. Defendant District of Columbia is a municipal entity organized under the Constitution and laws of the United States.

D.C.’s Tour-Guide Licensing Law

8. Washington, D.C. official code section 47-2836 makes it unlawful for anyone to “guide or escort any person through or about the District of Columbia, or any part thereof, unless he shall have first secured a license so to do.”

9. In 2010, Defendant promulgated new regulations under section 47-2836 making clear exactly what this restriction means.

10. These new regulations became effective on or about July 16, 2010.
11. As of the effective date of these regulations, Defendant began enforcing and intends to continue to enforce the regulations as written.
12. Specifically, Defendant's regulations make clear that a "sightseeing tour guide" means anyone "who, in connection with any sightseeing trip or tour, describes, explains, or lectures concerning any place or point of interest in the District to any person." Anyone who acts as a sightseeing tour guide without a license is in violation of the law. 19 D.C.M.R. § 1200.1.
13. The new regulations also define a "sightseeing tour company" as any business that employs a sightseeing tour guide. 19 D.C.M.R. § 1200.2. Sightseeing tour companies also must be licensed. 19 D.C.M.R. § 1202.
14. No person or entity may conduct a tour (for a fee) without obtaining a license. 19 D.C.M.R. §§ 1201.3-1201.4.
15. Under the new regulations, it is illegal for any person to engage in any of the activities of a "sightseeing tour guide" without first obtaining a license issued by Defendant's Department of Consumer and Regulatory Affairs. 19 D.C.M.R. § 1201.1.
16. The prohibition applies to everywhere "on the roads, sidewalks, public spaces, or waterways of the District of Columbia." 19 D.C.M.R. § 1201.1.
17. The regulations also prohibit anyone (other than a licensed sightseeing tour guide or licensed sightseeing tour company) from advertising their services using the words "sightseeing," "tour," or "guide" in any combination. 19 D.C.M.R. § 1201.5.

18. The new regulations also specifically single out tours where customers operate “self-balancing personal transport vehicles” (among other specific conveyances) as requiring a license. 19 D.C.M.R. § 1201.3.

19. Obtaining a sightseeing-guide license requires, among other things, an individual to pass a written examination, testing their knowledge of Washington, D.C.’s general history and geography, and pay a variety of fees totaling approximately \$200.

20. As currently constituted, the licensing examination consists of questions covering a range of 14 different topics, based on information drawn from nine separate publications. A minimum score of 70% is required to pass.

21. Individuals who violate these regulations—by, for example, describing the Washington Monument to a tour group without a license—may be fined up to \$300 or imprisoned for up to 90 days.

22. Upon information and belief, Defendant possesses no evidence that these regulations have or will have the effect of protecting the public health or safety.

23. Under the regulations, for example, anyone who (for a fee) drives a person or group of people around the District of Columbia while discussing passing points of interest must first obtain a license.

24. Someone who (for a fee) drives a person or group of people around the District of Columbia *without* discussing passing points of interest—such as someone who only makes conversation about the New York Yankees—would not require a license under the above-cited laws and regulations.

Plaintiff's Tours

25. Plaintiffs own and operate Segs in the City, which, as noted above, is a d/b/a of Maryland corporation Boats, Bikes & Bicycles, LLC. In this capacity, they both lead tours and run the business, which includes hiring and training other individuals to work as guides.

26. Segs in the City operates Segway tours of Washington, D.C.

27. A Segway is a self-balancing personal-transport vehicle. The use of Segways is generally legal in Washington, D.C., and Plaintiffs comply with (and do not challenge in this action) any and all relevant state and federal safety regulations regarding the operation of Segways generally.

28. A Segs in the City tour consists of a group of (generally no more than 10) customers and a single guide, all riding on individual Segways.

29. Upon information and belief, only three businesses (including Segs in the City) offer tours of Washington, D.C., involving Segways or similar self-balancing personal-transport vehicles.

30. For the vast majority of customers, the primary attraction of a Segs in the City tour is the opportunity to ride and operate a Segway.

31. Segs in the City tours are, however, led by guides who direct the tour group and describe relevant sights and buildings.

32. Some tours are "monument tours," in which guides describe monuments and important buildings around the National Mall.

33. Other tours are “embassy tours,” in which guides describe some of the prominent foreign embassies near and around Dupont Circle in Northwest Washington, D.C.

34. Segs in the City also offers tours of the area surrounding the Capitol and Lafayette Square.

35. During the summer months—the business’s busiest—the business conducts approximately five tours a day, seven days a week.

36. Plaintiffs personally conduct approximately half of Segs in the City’s tours in the summer. During non-summer months, they personally conduct a larger proportion of the tours.

37. During these months, the remaining tours are conducted by individuals specifically retained and trained by Plaintiffs.

38. Most of these individuals are area students interested in part-time work over the summer.

39. In a typical summer season, Plaintiffs hire around 15 part-time guides.

40. Because most individuals hired by Plaintiffs are area students, it is very rare for a part-time employee to return to Segs in the City for a second summer.

41. Upon information and belief, none or almost none of the individuals retained as Segs in the City guides have ever been licensed sightseeing tour guides.

42. Segs in the City also operates tours in Annapolis, MD, and Baltimore, MD. Like most other jurisdictions, neither of these cities requires a sightseeing license.

Upon information and belief, no injuries in either city have ever been caused by their allowing unlicensed tour guides.

43. At all times, Segs in the City's D.C. tours operate on sidewalks, roads, and other public spaces in Washington, D.C.

44. The sidewalks and public spaces in D.C. in which Segs in the City operates are quintessential public forums.

45. Plaintiffs regularly guide groups of people on tours through the District of Columbia in order to see sights.

46. In advertising their business, Plaintiffs refer to themselves as sightseeing tour guides, as well as using other combinations of those words, because that is the simplest and most accurate description of the service they offer.

47. In giving their tours, Plaintiffs do not exercise judgment on behalf of their clients.

48. In giving their tours, Plaintiffs do not make individualized decisions on behalf of any particular customer.

49. Plaintiffs' clients exercise their own judgment and form their own opinions on Washington, D.C., and the city's architecture and history.

50. In giving their tours, Plaintiffs do not enter into a fiduciary relationship with their clients.

51. While Plaintiffs' tours focus on seeing buildings and monuments in Washington, D.C., other tour companies offer a wide variety of different (non-Segway-

based) tours, including ghost tours, food tours, and even television-and-movie tours of the city.

INJURY TO PLAINTIFFS

52. Defendant's regulations threaten Plaintiffs with fines and imprisonment if they speak (on certain subjects) without a license.

53. Defendant's attempts to restrict the discussion of information about the city's places and points of interest is causing and will continue to cause ongoing and irreparable harm to Plaintiffs.

54. The licensing scheme imposed by Defendant's regulations imposes special burdens on Plaintiffs because of the content of their speech.

55. In order to obtain a license to describe places and points of interest in the city, Plaintiffs would be forced to pay a substantial amount of money in special licensing fees.

56. In order to obtain a license to describe places and points of interest in the city, Plaintiffs would also have to take and pass a written examination. This would require them to devote a significant amount of time reviewing the city's study materials for this examination—time that could be spent reviewing materials that are actually relevant to the conduct of their tours and business.

57. These requirements are burdens placed on Plaintiffs solely because of the content of their speech.

58. These requirements act as a prior restraint on Plaintiffs' speech—it is illegal to speak until a license has been obtained.

59. Without a license from Defendant, Plaintiffs will be unable to meaningfully share their opinions, thoughts, and knowledge about Washington, D.C., with their paying customers.

60. If Plaintiffs continue to operate their business but do not obtain sightseeing-tour-guide licenses, they face a threat of fines and even jail time.

61. Defendant's regulations also interfere with Plaintiffs' ability to retain additional guides during their busy season.

62. Most of the additional guides retained by Plaintiffs have been (and will be in the future) students interested in part-time work for only a few months. The burdens of the prior restraint imposed by the licensing requirements (including the time necessary to study for Defendant's test) are wildly disproportionate to the benefits of a job that lasts only three months.

63. If Plaintiffs complied with Defendant's regulations and hired only licensed sightseeing guides, they would be unable to hire any of the students they would otherwise like to hire as tour guides. Since the business ordinarily hires approximately 15 part-time guides in the summer months, the direct financial costs of licensing fees alone would be roughly \$3,000.

64. Moreover, none of these burdens imposed on Plaintiffs are necessary. Any government interests purportedly advanced by any or all of the tour-guide licensing requirements cited above could be advanced equally effectively by any number of less-restrictive alternatives—including a voluntary, rather than mandatory, tour-guide certification system.

65. Upon information and belief, Defendant possesses no evidence that any interests purportedly advanced by any or all of the tour-guide licensing requirements cited above could not be advanced equally well by a voluntary, rather than mandatory, tour-guide certification system.

CAUSE OF ACTION

66. All preceding allegations are incorporated here as if set forth in full.

67. The mandatory sightseeing-guide-licensing scheme described above violates Plaintiffs' rights to free speech as guaranteed by the First Amendment to the United States Constitution.

68. Unless Defendant is enjoined from enforcing Washington, D.C., official code section 47-2836 and the regulations promulgated thereunder, Plaintiffs will suffer continuing and irreparable harm.

REQUEST FOR RELIEF

Therefore, Plaintiffs respectfully request the following relief:

A. A declaratory judgment by the Court that, facially and as applied to Plaintiffs, Washington, D.C. official code section 47-2836 and the regulations promulgated thereunder violate the First Amendment to the United States Constitution;

B. A temporary injunction prohibiting Defendant or its agents from enforcing Washington, D.C. official code section 47-2836 and the regulations promulgated thereunder;

C. A permanent injunction prohibiting Defendant or its agents from enforcing Washington, D.C. official code section 47-2836 and the regulations promulgated thereunder;

- D. An award of attorneys' fees, costs, and expenses in this action; and
- E. Any other legal or equitable relief to which the Plaintiffs may show themselves to be justly entitled.

Dated: September 16, 2010.

Respectfully submitted,

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* application for admission *pro hac vice* filed concurrently with this document