

CAUSE NO. 2007-31651

DEPUTY BY

DAPHNE SCARBROUGH,  
Plaintiff

vs.

THE METROPOLITAN TRANSIT  
AUTHORITY OF HARRIS COUNTY,  
Defendant.

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2008 JUN -4 AM 8:57  
IN THE DISTRICT COURT  
HARRIS COUNTY, TEXAS  
DISTRICT CLERK  
THERESA CHANG  
FILED

HARRIS COUNTY, TEXAS

215th JUDICIAL DISTRICT

Friend of the Court Brief

June 4, 2008

To the Honorable Judge of the 215<sup>th</sup> Judicial District Court:

I am submitting this Friend of the Court Brief because I cannot recall any instance in which a greater injustice was about to be inflicted on my constituents than in this case. Metro is attempting to violate federal laws they helped write, and to break their word of honor to their voters and to me by building rail on Richmond where it was not approved and was never intended. In my twenty years of representing the people of west Houston, I have rarely been more motivated or determined to protect my constituents, and I will not rest until I am certain Richmond is safe.

To ensure that the 2003 rail referendum would fully and completely disclose the specific location and length of Metro's proposed rail lines, and to ensure that the ballot would be an ironclad agreement on where and what Metro would build for how much, I passed a federal law in the summer of 2003 that required Metro to use an honest, accurate ballot. (See the final language of the Transportation Reauthorization Bill attached as Exhibit 1 and Section 163 of the Transportation Appropriations Bill quoted in Metro's letter to the FTA attached as Exhibit 3)

Metro and I agreed that the purpose of the law was to require Metro to honor the wishes of the voters and build exactly what was promised where it was promised. I personally wrote this federal statute with Metro's guidance to ensure that the routes identified on the ballot would be built on those exact routes, and no where else, and that no federal law could be interpreted to override or alter the specific routes approved by the voters.

My September 17, 2003 letter to Metro Chairman Art Schechter, (attached as Exhibit 2), congratulated and thanked Metro for complying with my Section 163 amendment to the Transportation Appropriations Bill "to specifically identify the rail segments which would be built with the \$640 million bond issue...Clearly, a segment has a beginning, middle and an end [and] Metro [can only] move the final segment within the identified corridor due to unforeseen circumstances."

It is irrefutable that Metro wrote their ballot language to comply with the plain language of Section 163 and to comply with my intent that they honor their word. I have also attached a copy of Metro's letter of September 15, 2003 to the General Counsel of the FTA, Will Sears, in which they affirm that they wrote the ballot to comply with Section 163. (Exhibit 3) Section 163 is quoted in full in Exhibit 2. Also see my letter to Will Sears attached as Exhibit 4.

Section 163 was later removed in the Conference Committee at the end of the year after the election because it had served its purpose and Metro had complied with it. It was no longer necessary because the voters had spoken and everyone, including Metro and me, agreed to honor the will of the voters.

As I was writing the permanent federal statute in the Transportation Reauthorization Act and paralleling its intent with Section 163 in the Transportation Appropriations Bill, I suggested by phone to then Metro Chairman Art Schechter that he demonstrate Metro's honesty and commitment to build what was promised where it was promised by writing into their Board resolution that the ballot was a "contract between Metro and the voters that could not be altered or amended without a new election." He did so, and this language is in their August 2003 Board Resolution (2003-77). (Exhibit 5). It is unambiguous.

I reinforced this clear, simple and fair understanding with a permanent federal statute that governs today which makes the will of the voters of Houston supreme as expressed in the ballot's specific description of location and length of Metro's proposed rail lines. I further reinforced the supremacy of the will of the voters with the support of the entire House Appropriations Committee, the full House, and the agreement of Metro when I included similar language in Section 163 of the FY2004 Transportation Appropriations Bill.

All that could be done was done with Metro's full understanding and agreement to ensure that the will of the voters would prevail and Metro would honor this very specific contract with the voters and build what was promised where it was promised. No asterisk or open ended escape clause on some document other than the ballot can change the voter approved route from "Westpark" to Richmond.

I do not know what else I could have done to try to ensure that Metro would be honest and keep their word.

If Metro is permitted to build rail on Richmond and ignore the federal law they helped me write, and the ballot that they and the voters approved which specified Westpark, the Court may as well permit them to build this line on Westheimer, or Alabama, or Bissonnet or University Blvd or any other street in Houston. This would be an obvious and egregious violation of the will of the voters and the federal laws which I wrote to ensure that Metro kept their word.

The Board resolution, the ballot language, and the official map that Metro prepared for the board to further identify where and what would be built all support my understanding of what took place. As the Court can see, the ballot specifies "Westpark" for the segment in question, and their own maps, which the Court can review and take judicial notice of (said maps are linked to my Congressional website, located at [www.culberson.house.gov](http://www.culberson.house.gov)), clearly show the route on Westpark from the Hillcroft Transit Center along the south side of US59 until it connects to the Main Street line. It is unambiguous.

The Westpark route was specifically approved by the voters and the only route that Metro is authorized to build is the route specified on the ballot and in their map. The one reasonable change they could make is to build it alongside or over the trench of the Southwest Freeway to minimize the taking of or interference with private property. I have spoken on several occasions to the Texas Department of Transportation's Houston District Engineer, Gary Trietsch, an honorable and capable man with years of experience, and he assures me that this design can be built, although it would be more expensive than a ground level design.

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I have kept my word to support the will of the voters and have helped obtain the maximum possible level of federal funding for each rail line that the voters approved. I have worked closely with our Houston Congressional delegation to fund the lines in their districts, as they will help me honor the will of the voters with lines that are in District 7.

The Court should also apply common sense to this matter. We all know how heavy traffic is today on Richmond, and on the major cross streets – Shepherd, Greenbriar, Kirby, and Buffalo Speedway in particular. Now imagine a grade level train creating total gridlock on each one of these busy streets every three minutes. Imagine how enraged our constituents will be when they are stuck waiting for the train to pass. If this happens, I will be sure to educate them on who is at fault.

Where do our constituents turn for justice or fairness in this matter? Obviously the unelected, unaccountable Metro Board will not protect them or see that justice is done here. The oldest tradition in our English law heritage is the principle of equity – the recourse to fundamental principles of decency and fairness and justice when the statutes or judge made law does not fully address an issue. (See Black's Law Dictionary, "equity.")

In our nation, the will of the majority is supreme, and the people of Houston have spoken. That is the end of the matter. If you look further, 96% of the people who live, work or own property on Richmond want no part of it – here is the link to the map on my website

(<http://culberson.house.gov/media/pdfs/richmondvoters.pdf>). Remember also that most of the precincts along Westpark and along Richmond voted for rail on Westpark.

The rail line approved by the voters on Westpark can be built, and I will help ensure that the voters' wishes are fulfilled while minimizing property damage or loss along US 59. I earnestly hope that you will join me in honoring the will of the voters and protecting the people on Richmond.

Sincerely,



John Culberson  
Member of Congress

Certificate of Service

I hereby that a true and correct copy of the above document was served via Hand Delivery on the following counsel of record on the 4<sup>th</sup> day of June, 2008.

---

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1 GENERAL PROVISIONS--FEDERAL TRANSIT

2 ADMINISTRATION

3 SEC. 160. The limitations on obligations for the pro-  
 4 grams of the Federal Transit Administration shall not  
 5 apply to any authority under 49 U.S.C. 5338, previously  
 6 made available for obligation, or to any other authority  
 7 previously made available for obligation.

8 SEC. 161. Notwithstanding any other provision of  
 9 law, and except for fixed guideway modernization projects,  
 10 funds made available by this Act under "Federal Transit  
 11 Administration, Capital investment grants" for projects  
 12 specified in this Act or identified in reports accompanying  
 13 this Act not obligated by September 30, 2006, and other  
 14 recoveries, shall be made available for other projects under  
 15 49 U.S.C. 5309.

16 SEC. 162. Notwithstanding any other provision of  
 17 law, any funds appropriated before October 1, 2003, under  
 18 any section of chapter 53 of title 49, United States Code,  
 19 that remain available for expenditure may be transferred  
 20 to and administered under the most recent appropriation  
 21 heading for any such section.

→ 22 SEC. 163. None of the funds in this Act shall be made  
 23 available for the design, construction, or maintenance of  
 24 any segment of a light rail system in Houston that has  
 25 not been specifically approved by a majority of the partici-

108TH CONGRESS }  
 1st Session } HOUSE OF REPRESENTATIVES { REPORT  
 108-243

DEPARTMENTS OF TRANSPORTATION AND TREASURY  
 AND INDEPENDENT AGENCIES APPROPRIATIONS BILL,  
 2004

JULY 30, 2003.—Committed to the Committee of the Whole House on the State of  
 the Union and ordered to be printed

Mr. ISTOOK, from the Committee on Appropriations,  
 submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 2989]

The Committee on Appropriations submits the following report in  
 explanation of the accompanying bill making appropriations for the  
 Departments of Transportation and Treasury and independent  
 agencies for the fiscal year ending September 30, 2004.

INDEX TO BILL AND REPORT

	Page number	
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Summary and major recommendations of the bill .....		3
The effect of guaranteed spending .....		3
Committee hearings .....		4
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Project	Recommended in the bill
Memphis, TN Medical Center Rail Extension .....	9,247,588
Minneapolis, MN, Hiawatha Corridor Light Rail Transit (LRT) .....	74,980,000
New Orleans, LA Canal Street Streetcar Project .....	23,921,373
New York, Second Avenue Subway .....	3,000,000
Newark, NJ Rail Link (NERL) MOS1 .....	22,566,022
Northern, NJ Hudson-Bergen Light Rail (MOS2) .....	100,000,000
Phoenix, AZ Central Phoenix/East Valley Light Rail Transit Project .....	13,000,000
Pittsburgh, PA, Stage II Light Rail Transit Reconstruction .....	32,243,422
Portland, OR, Interstate MAX Light Rail Extension .....	77,500,000
Raleigh, NC, Triangle Transit Authority Regional Rail Project .....	3,000,000
Salt Lake City, Medical Center LRT Extension .....	30,663,361
San Diego, CA, Mission Valley East Light Rail Transit Extension .....	65,000,000
San Diego, CA, Oceanside-Escondido Rail Project .....	48,000,000
San Francisco, CA Muni Third Street Light Rail Project .....	10,000,000
San Juan, PR Tren Urbano Rapid Transit System .....	43,540,000
Seattle, WA Sound Transit Central Link Initial Segment .....	15,000,000
Washington, DC/MD, Largo Extension .....	65,000,000
Washington, DC/VA Dulles Corridor Rapid Transit Project .....	25,000,000
Hawaii and Alaska Ferry Boats .....	10,296,000
Oversight set-aside .....	12,144,000

*San Francisco, CA Muni Third Street Light Rail Transit Project.*—The Committee has provided \$10,000,000 for the San Francisco Muni's Third Street Light Rail Transit Project and has included a provision that requires the Secretary of Transportation to include all non-new starts contributions made towards phase 1 of the two-phase project for engineering, final design and construction. The Committee understands that the project received a "not recommended" rating from the Federal Transit Administration in this year's 3j report due, in part, to the submission of incomplete transportation system user benefit data. The project sponsor is expected to submit complete transportation system user benefit data to the Federal Transit Administration, which FTA shall review, taking into account non-section 5309 funds committed to on phase 1 of the project, and issue expeditiously a rating for fiscal year 2004. The funds provided in this Act shall not be made available for the project if the Federal Transit Administration assigns a rating of "not recommended" for fiscal year 2004.

*Harris County Metropolitan Transit Authority.*—The Committee understands the referendum referred to in section 163 to be considered by the voters in the Harris County Metropolitan Transit Authority (Houston, TX Metro) service area will be a referendum on bonding authority for a comprehensive transit system plan.

The final placement or location of each rail segment may be adjusted within each corridor in the future as required by unforeseen or unavoidable factors such as right of way requirements or environmental impact studies. The Committee does not intend to convey or require that Houston Metro submit separate ballot propositions within the same referendum election for each segment of the light rail system.

Further, the Committee does not intend for this section to operate as a restriction or prohibition on the use of funds appropriated for Houston Metro in this Act for any transit purpose other than light rail in the event a majority of Houston voters do not approve of the light rail system submitted to them in such a referendum.

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEE ON  
TRANSPORTATION AND TREASURY

SUBCOMMITTEE ON  
LEGISLATIVE BRANCH

SUBCOMMITTEE ON  
THE DISTRICT OF COLUMBIA

ASSISTANT MAJORITY whip



JOHN CULBERSON  
7TH DISTRICT, TEXAS

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September 17, 2003

The Honorable Arthur Schechter  
Chairman  
Metropolitan Transit Authority  
P.O. Box 61429  
Houston, Texas 77048-1429

Dear Ambassador Schechter:


Thank you for your positive response to my request that Metro amend its ballot language to specifically identify the rail segments which would be built with the \$640 million bond issue. Identifying the rail segments on the ballot will ensure that those segments will be eligible for federal funding under Section 163 of the 2004 Transportation Appropriations Bill, HR 2989, provided a majority of the participating voters approve the referendum. It will also help ensure that the voters are fully informed of the effect of their vote.

An example of proper ballot language can be found on page two of my September 4, 2003 letter to FTA Chief Counsel Will Sears. All that is required is for Metro to specifically identify each segment of rail that you are asking voters to approve which would be built with the \$640 million. Clearly, a segment has a beginning, middle and an end, so I would recommend you be as specific as possible about the route of each segment that would be built. Remember that the committee report language gives Metro flexibility to move the final segment within the identified corridor due to unforeseen circumstances.

I also want to reiterate what I have said publicly on many occasions - I will honor the will of the voters when this election is over. If the voters approve the segments identified on the ballot, I will work to help Metro secure federal funding for those approved segments.

Thank you for your prompt attention to this important matter.

Sincerely,

  
John Culberson

Legal Department

Metropolitan Transit Authority  
of  
Harris County, Texas  
1201 Louisiana 16th floor  
Houston, Texas 77002  
713-739-4000  
Writer's direct dial number 713-739-4639  
713-739-4699 fax

P.O. Box 6142  
Houston, Texas 77

September 15, 2003

Mr. William P. Sears  
General Counsel  
Federal Transit Administration  
400 7<sup>th</sup> Street, SW  
Washington, D.C. 20590

Dear Mr. Sears:

Clarification is respectfully requested of your September 10, 2003 letter to Congressman John Culberson regarding the interpretation of Section 163 of the House of Representatives' bill providing appropriations to the Department of Transportation and Treasury and Independent Agencies for Fiscal Year 2004 (HR 2989).

Section 163 provides as follows:

*None of the funds in this Act shall be made available for the design, construction, or maintenance of any segment of a light rail system in Houston that has not been specifically approved by a majority of the participating voters in the Houston Metropolitan Transit Authority service area in a referendum.*

In your letter, you stated that certain ballot language suggested by Congressman Culberson meet the requirements of Section 163. The ballot language approved by METRO's Board of Directors is not the same, in all respects, as the language which he recommended. METRO believes that its language is also in compliance with Section 163 and fully informs the voters of the subject of the referendum.

The ballot language and proposition approved by the METRO Board are attached to a Notice of Election (Attachment A) which meets the criteria set forth by Congressman Culberson. The ballot language has been approved by the Texas Attorney General's Office. The Notice describes the complete 72 mile METRO Solutions Transit Systems Plan and includes depictions of proposed light rail and commuter line components, bus service expansions and new transit

**Exhibit 3**

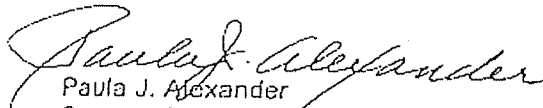
Mr. William P. Sears  
September 15, 2003  
Page 2

facilities. The Notice contains descriptions, with pictorial depictions, of the Phase II METRO Rail component to be constructed upon voter approval of the issuance of bonds, notes and other obligations. This Notice will be published in English, Spanish and Vietnamese in the Houston Chronicle which has the widest circulation of any other newspaper in the greater Houston area. The Notice will also be published in local community newspapers throughout the METRO service area and will be available on METRO's website. We intend wide distribution of the Notice at community meetings, at METRO facilities and at other public locations. The Notice of Election constitutes a "contract with the voters" which fully apprises the public of the elements of the METRO Solutions Transit Systems Plan, the light rail segments that comprise the Plan and METRO's obligations for appropriate implementation. Indeed, the Notice of Election provides far more information than required by Texas Law or the criteria set forth in Section 163.

It is noted that Section 163 does not specifically contain the word 'ballot' nor does the Committee analysis. Therefore, we believe that the requirements of Section 163 can be met in alternative ways. Please advise, in your legal opinion, whether the attached Notice of Election also complies with Section 163. Your opinion is respectfully requested for clarification of METRO's eligibility to receive federal funding if the referendum is passed by the voters.

Thank you for your prompt attention to this important question.

Sincerely,

  
Paula J. Alexander  
General Counsel

Attachment

cc: METRO Board of Directors  
Shirley A. DeLibero, President & CEO

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEE ON  
TRANSPORTATION AND TREASURYSUBCOMMITTEE ON  
THE LEGISLATIVE BRANCHSUBCOMMITTEE ON  
THE DISTRICT OF COLUMBIA

ASSISTANT MAJORITY WHIP



JOHN CULBERSON

7TH DISTRICT, TEXAS

September 4, 2003

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Mr. William Sears  
General Counsel  
Federal Transit Administration  
400 7<sup>th</sup> St., SW  
Washington, D.C. 20590

Dear William:

Would you please give me your written legal opinion on whether or not the ballot language proposed by the Harris County Metropolitan Transit Authority, (Metro, attached as Exhibit 1), complies with the requirements of H. R. 2989 and its accompanying committee report? (Attached as Exhibit 2). As you know, I authored this language, and included it in the final House Bill after Metro, through its representative Drew Maloney and its Chairman Art Schechter, reviewed it and agreed to it. My Capitol Office Legislative Director Tony Essalih then forwarded the language to your office for your review and unofficial confirmation that it would achieve its intended effect.

Note that my use of the word "specific" in the bill is reinforced by the committee report language on page 122 which states that "The Committee does not intend to convey or require that Houston Metro submit separate ballot propositions within the same referendum election for each segment of the light rail system." Obviously, the ballot proposition is the specific question presented on the ballot alongside which the voter will choose to vote 'yes' or 'no.'

Would you confirm, in your legal opinion only, that the relevant language in H. R. 2989 and its accompanying committee report would not permit funds to be "made available for the design, construction or maintenance of any segment of a light rail system in Houston that has not been specifically approved by a majority of the participating voters in the Houston Metropolitan Transit Authority service area," and that "specifically approved" means, as I intended, that the ballot proposition or question which the voter approves or disapproves must list, describe and identify the rail segments in question, and any segments not identified on the ballot proposition or question would be ineligible for funding under H. R. 2989?

Finally, would you confirm, in your legal opinion only, that a ballot proposition or question which mirrored the following format would be in compliance with the requirements of H. R. 2989?

**Exhibit 4**

for

against

"Authorization for Metro to issue bonds, notes and other obligations payable, in whole or in part, from 75% of Metro's sales and use tax revenues in an aggregate principal amount not to exceed \$640,000,000 for Metro's transit authority system, including the Metro Contribution Transit System Plan, which includes construction of extensions of Metro's rail system known as "Metrorail," in the following segments:

- 1) Downtown to Northline Mall alongside I-45 - 5.4 miles;
- 2) on Dowling Street to Griggs Road - 5.6 miles;
- 3) on Dowling Street to Magnolia Transit Center - 3.0 miles;
- 4) on Wheeler Street and on Westpark Street to the Hillcroft Transit Center - 6.6 miles;
- 5) from Magnolia Transit Center on Smith Street to Guifgate Mall - 3 miles;

approval of such plan and construction and dedication of 25% of Metro's sales and use tax revenues through September 30, 2014, to street improvements and related projects."

It is my intent, Mr. Sears, as the author of the relevant language in H. R. 2989 and its accompanying committee report, that the ballot question or proposition specifically identifies the rail segments for voter approval. I have modified Metro's initial draft ballot language in the preceding paragraph in a way that would, in my opinion, comply with H.R. 2989, and I would ask if your legal opinion conforms to mine.

Thank you for your prompt attention to this important question.

Sincerely,



John Culberson  
Member of Congress

and for early voting. The presiding election judge for each voting precinct shall appoint a sufficient number of election clerks who are fluent in English, Spanish and Vietnamese to serve the needs of the Spanish-speaking and Vietnamese-speaking voters of each precinct in accordance with the requirements of the Election Code.

Section 14. METRO Agreements with the Voters. As authorized by Section 451.072 of the METRO Act and other applicable law, the Board hereby declares that, if a majority of the voters voting at the Election approve the Proposition, the following agreements will be binding on METRO and will constitute contracts with the voters in accordance with their terms and may not be repealed, altered or rescinded by any succeeding Board without voter approval at a subsequent election:

- (a) The aggregate principal amount of bonds, notes or other obligations of METRO that are payable, in whole or in part, from seventy-five percent (75%) of METRO's sales and use tax revenues and are issued pursuant to the authority granted at this Election will never exceed \$640,000,000;
- (b) Proceeds of the bonds, notes or other obligations authorized at the Election will be used to acquire, construct, repair, equip, improve or extend METRO's transit authority systems, including the METRO Solutions Plan, provided that the only portions of METRORail for which such proceeds may be used are new segments included in Phase II of METRORail, as more particularly described in Exhibit A-4;
- (c) Approval of the Proposition at the Election constitutes approval of the METRO Solutions Plan, including the extensions and segments of METRORail and the construction of the METRORail and Commuter Line Components thereof for purposes of the city charter of the City of Houston;
- (d) METRO will not undertake the construction of any new segment of Phase II of METRORail with proceeds of the bonds, notes or other obligations authorized at the Election without first obtaining approval of the segment for federal capital assistance under applicable federal law and regulations or the commitment of a substantial amount of private funds;
- (e) METRO's Street Improvement Dedication will be in force and effect through September 30, 2014, in accordance with the terms of such dedication, as described in Exhibit B;
- (f) Between November 1, 2009 and January 1, 2013, METRO will call an election seeking a local determination by voters regarding METRO's continuing support after September 30, 2014 for improvements of the types described in Section 451.065 of the METRO Act;
- (g) Prior to November 1, 2009, METRO will not call any other election seeking voter approval to authorize METRO to issue bonds, notes or other obligations to provide any rail facilities other than Commuter Line Component, as more particularly described in Exhibit A-8 and depicted in Exhibit A-9, which are hereby made a part of this Resolution; and