

Little et al., v. Washington Metro Area Transit Authority et al.
Class Action Lawsuit Challenging WMATA's Unfair Criminal Background Check Policy

Frequently Asked Questions

What is this lawsuit about?

This lawsuit, filed by the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), the Washington Lawyers’ Committee for Civil Rights and Urban Affairs (“Washington Lawyers’ Committee”), and the law firm Arnold & Porter LLP, seeks equal opportunity for all who have been wrongly denied employment because of Washington Metro Area Transit Authority’s overbroad and unnecessarily punitive background screening policy.

This lawsuit against the Washington Metro Area Transit Authority (“WMATA” or “Metro”) and three of its contractors challenges their use of an overly broad and unnecessarily punitive criminal background screening policy that goes far beyond any legitimate public safety concerns, to permanently stigmatize and bar from employment well-qualified individuals, a disproportionate number of whom are African Americans.

Are there examples of individuals who have been affected by WMATA’s current policy?

Yes. Both Erick Little and Marcello Virgil are plaintiffs in this lawsuit and they exemplify why WMATA’s policy is both unfair and unjust.

Erick Little, who was employed as a bus driver by Ride-On in Montgomery County, lost out on a job offer as a WMATA bus operator based on a 26-year-old conviction for drug possession committed when he was 19 years old (for which he served six months in a work release center and 12 months of probation).

Marcello Virgil was fired from his job as a custodian with a WMATA contractor and denied an equivalent position with WMATA (which came with better pay and benefits) based on a drug-related conviction that was 15 years old, even though he disclosed the conviction before he started work for the contractor, and his supervisor suggested he apply for the position at WMATA based on his good work record.

How is WMATA’s current policy unlawful?

WMATA’s policy violates federal and local antidiscrimination laws, including Title VII of the Civil Rights Act of 1964, because it has resulted in the firing of many employees and disqualification of many qualified job applicants with a wide range of criminal convictions, with insufficient consideration whether the convictions occurred many years in the past or have any relationship to the job position at issue.

Under WMATA's policy, for example, a vast number of criminal convictions—including many non-violent drug convictions—result in lifetime disqualification.

Isn't WMATA's policy similar to those used by similar employers and enforced by many cities and counties?

No. WMATA's policy is overly broad and rigid, and out of step with other jurisdictions and industry standards.

Several local jurisdictions, including the District of Columbia, have more flexible screening policies that give hiring officials latitude to use their judgment in deciding whether past criminal convictions should disqualify an applicant. Moreover, more than 50 jurisdictions across the country have adopted "ban-the-box" provisions that are designed to help people with criminal records who are seeking employment.

The American Public Transportation Association issued guidance for transit authorities to adopt federal standards that are less onerous than WMATA's and establish an appeals process that considers mitigating circumstances that allow people to demonstrate good character and reform. And many area public transit agencies (including Montgomery County's Ride On) have adopted policies that are far more flexible.

The DC City Council recently introduced a resolution urging WMATA to adopt a revised screening policy that gives hiring officials the ability to assess applicants individually and to hire more, not fewer, returning citizens.

Isn't the safety of WMATA customers paramount?

We are all entitled to be safe when we use public transportation. However, experience and research shows that WMATA can ensure the safety of its riders without trampling on the rights of workers, who are also entitled to have their civil rights protected.

No one disputes that WMATA has the right to use criminal background checks. WMATA personnel have access to the general public and are often required to work with vulnerable populations. But WMATA's current policy simply goes too far. WMATA—like many similar entities—can adopt a background screening policy that is fair and nondiscriminatory and that does not compromise public safety.

For more than 30 years, WMATA hired and promoted qualified employees, including some employees who had prior criminal convictions. The fact that WMATA's revised policy requires it and its contractors to fire current employees with excellent work records demonstrates that this is not about public safety.

How does WMATA's policy burden African-American employees and applicants?

WMATA's policy unfairly and disproportionately limits opportunities for qualified African American employees and applicants, who have been the most severely affected by the recent economic downturn.

Due to racial profiling and other discriminatory policies and practices in our criminal justice system, African Americans in the DC metro area are much more likely to be affected by WMATA's policy.

Here are some statistics:

- African Americans are more than twice as likely to be unemployed as whites.
- 53% of African Americans have incomes that are too low to achieve a basic standard of living, compared to 29.8% of the overall population.
- The median income of African-American households is 67% of the overall population's.
- Even though African American and white residents use marijuana at roughly similar rates and D.C. is only 51% African American, in 2010, African Americans accounted for 91 percent of all marijuana arrests in the District. The District of Columbia currently has the highest per capita marijuana arrest rates in the U.S.
- In Washington, D.C., an estimated 1 in 10 residents has a criminal record, and a recent study by Washington Lawyers Committee demonstrates that African-American residents accounted for a disproportionately high percentage of all drug arrests, despite similar rates of usage (http://www.washlaw.org/pdf/wlc_report_racial_disparities.pdf)

How, specifically, do WMATA's policies violate civil rights laws?

WMATA's policy violates civil rights law because the policy disqualifies many job applicants and employees with certain convictions, regardless of how old the conviction is and whether it has any relationship to the position at issue, and without consideration of the candidate's efforts to move on from a past conviction.

The Equal Employment Opportunity Commission ("EEOC") issued guidelines in April 2012 recommending that employers consider three factors when developing criminal records policies:

- the nature and gravity of the prior criminal conduct,
- the time that has elapsed since the prior criminal conduct, and
- the nature of the job held or sought.

If employers consider these three factors when developing criminal records policies, their policies are less likely to be overly broad and to violate civil rights laws. In its Guidance, the EEOC cautioned employers from adopting policies that are needlessly restrictive. It specifically

highlighted criminal records policies that require “automatic, across-the-board exclusion from all employment opportunities because of any criminal conduct” as especially problematic.

Is WMATA negatively impacted by its own policies?

Yes. WMATA’s policies mean that the organization is losing qualified, exemplary workers, at a time when it is planning to fill many job vacancies. Employees of WMATA and its contractors—who have been performing their jobs successfully and without incident—have been fired or had job offers rescinded as a result of WMATA’s policy. This ultimately undermines WMATA’s most important function: providing safe, reliable transportation for the D.C. metropolitan area.