

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**VAUGHN BENNETT,** :  
2520 – 10<sup>th</sup> Street, N.E. :  
Apartment Number 39 :  
Washington, D.C. 20018, :

**ANDRIA SWANSON,** :  
1832 Providence Street, N.E. :  
Washington, D.C. 20002, :

**JEANETTE CARTER** :  
1851 Kendall Street, N.E. :  
Washington, D.C. 20002. :

Plaintiffs, :

vs. : Civil Action No. \_\_\_\_\_

**UNION STATION REDEVELOPMENT** :  
**CORPORATION** :  
Ten “G” Street, N.E. - Suite 504 :  
Washington, D.C. 20002, :

and :

**VINCENT C. GRAY, MAYOR,** :

Defendants. :

**Serve: Irvin B. Nathan** :  
**D.C. Attorney General** :  
441 – 4<sup>th</sup> Street, N.W. :  
Washington, D.C. 20001 :

\_\_\_\_\_ :

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

Plaintiffs bring this action against Defendants Union Station Redevelopment Corporation and Vincent C. Gray, Mayor of the District of Columbia, (collectively “Defendants”). Plaintiffs seek Declaratory and Injunctive Relief, compelling Defendants to cease in the execution of Mayor’s Order 2012-14, an Order upon which a License has been granted to Defendant Union Station Redevelopment Corporation and to stop construction of a proposed bus depot, planned pursuant to

that Order and License Agreement. The allegations herein are based on Plaintiffs' knowledge as to themselves, and on information and belief.

## INTRODUCTION

Ivy City is a distinct neighborhood in the District of Columbia that has many problems. But, it also has much promise. The promise of Ivy City lies in its people, resilient yet fragile. The fragility of the people appears to relate to the environment, especially the air quality. According to an anecdotal survey, more than a quarter of its residents, adults and children, suffer from respiratory ailments, some severe. As a consequence, the people of Ivy City seem to die, at ages much younger than people anywhere else in Washington, D.C. . People die young in Ivy City. Many of these premature deaths seem attributable, at least in part, to respiratory disorders. According to the *Washington City Paper*, Ivy City's infant mortality rate was 38.3 deaths per 1000, more than twice the District's average of 18.2 per 1000. The infant mortality rate for Ward 3 is 5.9. According to an Article in the *Lehigh University: Medicine and Society*, Ivy City has only 50 percent employment, and has an average family income of \$38, 000. Although there is great variation among the socioeconomic status and social factors of these neighborhoods, this ward (Ward 5, in which Ivy City is located) has the highest mortality rate in the city. It has twice the rate of death from cerebrovascular disease as DC as a whole. Furthermore, deaths from heart disease and hypertension are the most prevalent, according to the Article.

For years, Ivy City has been used as a "Dumping Ground," a repository for transportation related vehicle parking and storage not only by the Government of the District of Columbia but by private entities as well, a repository for facilities that would not be welcome in any other neighborhood. Nonetheless, many long-time residents have remained, some have returned and others, new to Ivy City, have come. All have been drawn in by a web of promises for a better Ivy City, an Ivy City with green space, recreation, jobs, training, opportunity, hope, a place to fulfill dreams.

Those dreams were recently shattered when the Defendants suddenly, abruptly and apparently precipitously, on May 12<sup>th</sup> 2012, entered into a License Agreement to construct still another vehicle parking and storage facility, on public land, in the heart of Ivy City, to house at least 65 buses daily, 1) without notice to the community or to the Advisory Neighborhood Commission (hereafter "ANC"), as required by law; 2) without giving due consideration to the views of the community or "Great Weight" to the opinion of the ANC, as required by law; 3) without undertaking an Environmental Impact Study (hereafter "EIS"), as required by law; 4) without undertaking an Environmental Assessment (hereafter "EA") as required by law, due to the designation of the subject property as "Historic"; and 5) in breach of implicit and explicit promises made, contrary to law.

## NATURE OF THE ACTION

1. At all times relevant to this action, Plaintiffs have been residents of Ivy City, in Northeast Washington, D.C.
2. Each Plaintiff remained in, returned or came to Ivy City because of things heard from by representations made in documents and material from the District of Columbia's Government which led them to believe that revitalization of Ivy City was a priority for the Government.
3. Those representations led them to believe that responsible, green growth and development to improve the Community would soon take place.
4. At the center of these plans has been the Crummell School, a publically owned building, once a neighborhood school, now designated as "Historic" that is closed but has been the subject of many proposals related to jobs, training, recreation and hope for the neighborhood.
5. Plaintiff Jeanette Carter was part of the last graduating class from Crummell School, before it closed in 1972, so the idea of reopening it was especially exciting and intriguing to her as well as each of the Plaintiffs and many in the community.
6. At one time, Crummell School had a playground where young people and all from the community could spend many hours enjoying the activities offered there, such as swings, basketball, baseball, track and neighborhood gatherings.
7. Crummell School was also a place where social activities were held, such as dances and many other activities that provided an outlet for young people.
8. The plan to reopen Crummell School and make it available, once again, as a place for recreation or some other appropriate use, was instrumental in the hearts and minds of Plaintiffs.
9. Recently, however, the improvements Plaintiffs had anticipated, expected and hoped for have been discouraged by two, apparently rushed and unforeseen decisions of the District of Columbia Government.
10. First, despite objections of Plaintiffs and the objections of the community, a decision was made to permit a Marijuana Cultivation Center to be placed in Ivy City, very near many homes, next to an Educational Center that teaches children and within close proximity of the Crummell School.
11. This Cultivation Center, combined with a Youth Detention Center on a Hill, overlooking Ivy City, causes an imminent and real threat to the families of Ivy City.
12. Indeed, Ivy City, instead of a place for hopes and dreams, has become a dumping ground for the District of Columbia Government and private entities.
13. This population dense area has become the sight of countless school buses parked on both sides of Kendall Street,

less than two blocks from the home of Plaintiff Jeanette Carter.

14. These buses, used year round, often idle, sending dangerous fumes into Ivy City homes through windows opened for ventilation.
15. There are also large private buses, owned by a local religious institution, that park at Gallaudet and Providence Streets, across from the Educational Center, adjacent to Crummell School and near many Ivy City homes.
16. All of these buses often travel through the neighborhood with difficulty cornering while navigating the narrow streets.
17. Just above those buses, on Fenwick Street, big two and a quarter ton trucks often congregate and park in a row.
18. Near those big trucks is a lot full of District of Columbia Government snow plows and salting trucks.
19. Around the corner, on Okie Street, is the huge LOVE Nightclub that attracts thousands of patrons and hundreds of cars and buses, on the week-end, many of which intrude upon Ivy City streets, parking throughout the residential area.
20. Now, Plaintiffs have learned that the District of Columbia Government, without notice to Plaintiffs and without allowing them an opportunity to state their views, has suddenly, abruptly and without warning, approved the construction of a bus depot at the historic Crummell School Site that will be a parking lot for at least 65 tour buses daily, bringing environmental deterioration, including noise, traffic and pollution into the center of the residential and population-dense community.
21. Plaintiffs, along with the other residents of Ivy City, unequivocally and vigorously oppose the construction of this bus depot as do most living in the community.
22. Plaintiffs' opposition is strengthened and is grounded in the fact that many residents already have serious respiratory problems.
23. Some of Ivy City residents, adults as well as children, are under the care of physicians for respiratory problems, on prescribed medication and some even require the use of mechanical machines to breathe, even without the bus depot.
24. Yet, disturbingly, Plaintiffs have learned that in allowing the construction of a bus depot, the District of Columbia Government has done so without any analysis whatsoever of the environmental impact of such construction.
25. Plaintiffs have learned that no study of the impact on traffic, noise and air has been done by anyone, including the District of Columbia Government.
26. Plaintiffs have learned that reasonable, alternative sites for the location of such a bus depot has not been considered by the District of Columbia Government.
27. Plaintiffs have learned that the historic designation of the Crummell School has been ignored by the District of Columbia Government and that no environmental assessment has been done in its blind action of allowing the bus

depot to go forward.

28. And, Plaintiffs have learned that the Advisory Neighborhood Commission that represents Ivy City was not given notice of the proposed bus depot construction before it began and has been ignored, despite subsequently voting 8 to 0 against the construction of the bus depot.
29. If the construction of this bus depot goes forward, not only will the health of the adults and children who reside in Ivy City be seriously and dangerously threatened, the health of other nearby communities will be put at risk, and the value of the homes in Ivy City and nearby will be significantly and seriously harmed as well.

### **PARTIES**

30. Plaintiff Vaughn Bennett is an Advisory Neighborhood Commissioner and the Vice Chair of ANC 5B.
31. Plaintiff Andria Swanson is in the third generation of four generations from her family who have continuously lived, without interruption, in Ivy City since 1976.
32. Plaintiff Jeanette Carter was born and raised in Ivy City, lived there over many years and returned within the past two years to once again make Ivy City her home and the home of her family.
33. Defendant Union Station Development Corporation is a non-profit corporation, with headquarters in the District of Columbia.
34. Defendant Vincent C. Gray is the Mayor of the District of Columbia and at most of the time relevant to this action was responsible for the acts and omissions of employees and agents of the District of Columbia. For those times that he was not Mayor, under law, he inherits the acts and omissions of those employees and agents.

### **JURISDICTION AND VENUE**

35. This Court has jurisdiction over this action pursuant to the D.C. Code §§ 1-1-921.
36. This Court has personal jurisdiction over Defendant Union Station Development Corporation, pursuant to D.C. Code Ann. §§ 13-422 and 13-423, as it is either licensed to do business in the District of Columbia, does business in the District of Columbia (directly or through an agent), has an interest in property located in the District of Columbia, has responsibility for business done in the District of Columbia, or has caused tortious injury in the District of Columbia.
37. Defendant Vincent C. Gray has sufficient minimum contacts with the District of Columbia to be sued in this

jurisdiction and has intentionally availed himself of the markets and services of the District of Columbia by serving as an elected official.

38. Defendant Union Station Development Corporation also derives substantial revenue from services rendered in the District of Columbia. Defendant has sufficient minimum contacts with the District of Columbia to be sued in this jurisdiction and has intentionally availed itself of the markets and services of the District of Columbia by doing business in the District of Columbia or serving as an elected official.
39. Venue is appropriate in the District of Columbia given that the events and omissions giving rise to this action took place in the District of Columbia.

### **FACTUAL ALLEGATIONS**

40. The life expectancy for individuals residing in the Ivy City Neighborhood seems far less than the life expectancy of citizens residing in any other neighborhood in the District of Columbia. People die young in Ivy City.
41. Many of these premature deaths seem attributable, at least in part, to respiratory disorders.
42. Indeed, life is difficult in Ivy City, where low education, high unemployment, population density and poverty also rival all other parts of Washington, D.C.
43. These social ills have been exacerbated, over the years, by a local government that has made Ivy City a virtual Dumping Ground for many environmentally unsafe projects.
44. Nonetheless, through its Planning and Development functions, the District of Columbia Government has held out a promise of improvement; a promise of recreational facilities, jobs, training, opportunity, hope, a better quality of life.
45. As a consequence of this promise, manifested through countless documents prepared by and meetings held with District Government officials, many Ivy City residents have remained; many have returned; and others have come.
46. Yet, suddenly, abruptly, perhaps precipitously --- without 1) notice to the Advisory Neighborhood Commission, as required by law; 2) without giving “Great Weight” to the Advisory Neighborhood Commission, as required by law; 3) in breach of every promise made to the residents and others in recent years; and 4) without regard to the health and safety of the residents of Ivy City --- Defendant Mayor Vincent C. Gray issued Executive Order 2012-14, allowing the construction of a bus depot in the heart of Ivy City.
47. This proposed bus depot will house at least 65 buses that will journey through and park within Ivy City on a daily basis, spewing exhaust, clogging up the narrow streets while navigating through the neighborhood and clanging at all hours as if Ivy City was nothing more than a permanent construction zone.

48. All the while, more unsuspecting and suspecting citizens are in the cross hairs of this planning and development debacle being pushed by the District of Columbia Government, and more may well become poor health victims in the absence of judicial intervention.
49. Mayor's Executive Order 2012-14, signed and issued on 25 January 2012, came as a surprise to most.
50. In particular, Advisory Neighborhood Commission 5B (hereafter "ANC") was not informed of this sudden, abrupt, precipitous action, despite a legal requirement for special notice in advance of such action to the ANC.
51. Moreover, the view of ANC 5B04 was not even considered, let alone was it given "Great Weight" as prescribed by law.
52. Upon learning of the Mayor's Executive Order, ANC 5B, on 8 July 2012, passed a unanimous Resolution opposing the Order and the planned bus depot construction.
53. The Order was issued by the Mayor without any regard to the health and safety risks the proposed bus depot would cause to a community, already reeling from poor environmental and safety exposure.
54. And, the Order was issued without regard to the impact on property values placing a bus depot might have on Ivy City homeowners.
55. Many others relied upon the promise of a better Ivy City that the District of Columbia Government gave in a range of documents and during various meetings. These families and nonprofit entities like Manna, Mi Casa and D.C. Habitat for Humanity --- groups that have nearly completed the construction of 58 new homes in Ivy City --- were lured into this web of promises by the relevant part of the District's Comprehensive Plan and its Neighborhood Stabilization Program. They were also lured by the knowledge that Crummell School, after years of work, had been given a Historical Site designation.
56. The environmental hazards that will be occasioned by yet another vehicle depot in Ivy City and the total lack of fulfillment in its promise and many pledges by the District Government cannot, must not be countenanced by this Court.
57. The Crummel School closed its doors in 1972. Prior to its closing, it served as a playground for the neighborhood with a variety of activities, such as swings, basketball, baseball and track. Social events, such as dances and other gatherings were held there.
58. The closing of Crummell opened up the dumping ground for Ivy City. To the South, adjacent to and overlooking Ivy City was placed a Juvenile Detention Center. At its West, on both sides of the street, was placed two lots full of school buses that park when not being driven and often idle when driven. At its East was placed a lot full of snow plows and salt trucks. The District has recently purchased an additional 6.2 acres of land at that location,

presumably to place more snow plows and salt trucks for its Department of Public Works. At its North is the LOVE Nightclub which brings hundreds of cars as well as buses into the neighborhood several nights a week, intruding onto parking in the neighborhood when there is overflow at the Crummell School Parking Lot and other lots surrounding the Club. Adjacent to LOVE, on street parking are huge two and a quarter ton commercial trucks that line the street. At the end of the snow plow and salt truck lot are International Limousine buses, at least fifty strong that park daily. And, across from the Masjid Education Center on Gallaudet, next to Crummell School, several buses park from a faith-based entity. Ivy City is surrounded by pollution of every kind, noise, traffic and poor air quality.

59. Very recently, the District gave a permit for a marijuana cultivation center also across from the Masjid Education Center. That permit was issued despite the fact that the center did not receive the requisite minimum score for its placement.
60. There seems no end to the dumping that is going on, no tunnel's light for our low income, barely surviving community, little hope. A bus depot at the very core of Ivy City will remove all hope.

#### **FIRST CAUSE OF ACTION**

61. Plaintiff is informed and believe, and on that basis allege, that at all times herein mentioned each of the Defendants was an agent, servant, employee, and/or joint venture of the remaining Defendant, and was at all times acting within the course and scope of such agency, service, employment, and/or joint venture, and each Defendant has ratified, approved, and authorized the acts of the remaining Defendant with full knowledge of the facts.
62. There is a unity of interest between Defendants, and each acts as the alter ego of the other.

#### **Failure to provide Notice to the ANC**

63. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 62.
64. Notice of pending governmental action and an opportunity to express views about that pending action are fundamental, inescapable statutory due process requirements when it comes to the role of ANCs. In the instant case, no notice was given to the subject ANC and thus no opportunity to express its views was provided. Indeed, when the ANC learned of the pending action with respect to the proposed bus depot, it voted eight to zero against the depot.
65. Notice to ANCs of certain actions or proposed action by the District government is governed by sections 13(b) and (c) of the *Advisory Commissions Act of 1975*, effective October 10, 1975, D.C. Law 1-21, as amended by the



*Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000*, effective June 27, 2000, D.C. Law 13-135, D.C. Official Code §1-309.10 (b) and (c) (2004 Supp.) (collectively, the ANC Act)

**Failure to give the ANC views “Great Weight”**

- 66. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 65.
- 67. ANCs “occupy a special position in the District of Columbia.” *Bakers Local Union No. 118 v. District of Columbia Board of Zoning Adjustment*, 437 A.2d 176, 179 (D.C. 1981). The issues and concerns raised by ANC officials “shall be given great weight during the deliberations by the governmental agency and those issues shall be discussed in the written rationale for the governmental decision taken.” *D.C. Code Section 1-309.10(d)(3)(A)* (2001 Edition, as amended). That Section of the Code actually states, “The issues and concerns raised in the recommendations of the [Advisory Neighborhood] Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgment of the Commission as the source of the recommendations and explicit reference to each of the Commission’s issues and concerns.”
- 68. “[G]reat weight” implies explicit reference to each ANC issue and concern as such, as well as specific findings and conclusions with respect to each. *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1384 (D.C. 1977). However, section 1-261(d) “does not require special deference to the views of an ANC but, rather, that an agency address its concerns with particularity.” *Committee for Washington’s Riverfront Parks v. Thompson*, 451 A.2d 1177. Each exemption.
- 69. The view of the ANC concerning the proposed bus depot was not given any weight, any consideration, let alone great weight, as required by law.

**SECOND CAUSE OF ACTION**

**Failure to conduct an environmental analysis and produce an Environmental Impact Statement**

- 70. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 69.
- 71. *The District of Columbia Environmental Policy Act of 1989*, D.C. Code § 8-109 et seq. (2001 Edition, as amended) has as its purpose, “To require the Mayor or any District of Columbia board, commission, authority, or person to prepare an environmental impact statement if the Mayor, board, commission, authority, or person proposes or approves an action that, if implemented, is likely to have a significant effect on the quality of the environment; to ensure the residents of the District of Columbia safe, healthful, productive, and aesthetically pleasing surroundings;

and to develop a policy to ensure that economic, technical, and population growth occurs in an environmentally sound manner.”

72. Moreover, under *DCMR Title 20, Chapter 7200.1*, it is required that, “Before an agency, board, commission, or authority of the District of Columbia government shall approve any major action, or issue any lease, permit, **license**, certificate, or other entitlement or permission to act for a proposed major action, the environmental impact of the action must be adequately considered and reviewed by the District government, as provided in these regulations.” (Emphasis supplied.)

### **Failure to conduct an Environmental Assessment**

73. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 72.

74. The subject property, Crummell School, has been designated as an historical site

75. Under federal law, Defendant the District of Columbia Government is required to undertake an Environmental Assessment (EA), particularly if an EIS has not been done. There has been no EIS and no EA.

## **THIRD CAUSE OF ACTION**

### **Breach of Contract**

76. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 75.

77. For more than 30 years these Plaintiffs and others living and working in Ivy City have relied on the promises made, implicit and explicit, by the District of Columbia Government.

78. By remaining in, returning to and moving into Ivy City, these Plaintiffs and others have relied to their detriment on this trail of promises not kept and now stand to lose significantly their health and the value of their land.

## **FOURTH CAUSE OF ACTION**

### **Fraudulent Misrepresentation**

79. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 78.

80. In making their promises, over the years, implicitly and explicitly, Defendant, Mayor Vincent C. Gray and his predecessors misled and deceived Plaintiffs and others and misrepresented their true intent when it came to the future of Ivy

City and the destiny of Crummell School.

81. Defendant thereby intended to induce and did induce Plaintiffs and others to rely on its acts and omissions, leading Plaintiffs and others to remain in, return to or come to Ivy City.

82. In reliance on Defendants' omissions, believing that the dwelling unit she had agreed to rent was a lawfully operated unit, Plaintiff contracted to rent Defendants' illegally operated dwelling unit.

83. Plaintiffs have been injured as a result of Defendant's acts and omissions.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs demand judgment and permanent relief against Defendants as follows:

1. Finding that the Advisory Neighborhood Commission was not legally notified of the proposed bus depot.
2. Finding that the views of the Advisory Neighborhood Commission were not given great weight.
3. Finding that Defendants did not conduct an environmental analysis, did not conduct an environmental assessment and did not produce an Environmental Impact Statement before going forward with the construction of the bus depot.
4. Finding that Defendant Mayor Vincent C. Gray has breached his promises and promises made by his predecessors to the residents of Ivy City.
5. Awarding Plaintiffs appropriate compensatory damages, treble damages and punitive damages.
6. Granting a Temporary Restraining Order and a preliminary and permanent injunction, preventing Defendants from further construction activity on the bus depot.
7. Awarding Plaintiff appropriate other injunctive relief, including mandating that the District of Columbia Government go forward forthwith with its Comprehensive Plan and Neighborhood Revitalization Plan with respect to Ivy City.
8. Granting a Temporary Restraining Order and preliminary and injunctive relief suspending the implementation of Mayor's Order 2012-14.
9. Awarding Plaintiff the costs and expenses of this action, including reasonable attorneys' and experts' fees.

10. Granting injunctive relief against Defendants to prevent future wrongful conduct.

11. Awarding Plaintiff such other and further relief as this Court deems just, equitable, and proper.

**VERIFICATION**

We declare under penalty of perjury that the factual allegations made in the foregoing Complaint for Declaratory, Injunctive Relief and Damages are true to the best of our information, knowledge and belief.

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**VAUGHN BENNETT**

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**ANDRIA SWANSON**

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**JEANETTE CARTER**

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury of twelve persons of each and every claim so triable.

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**Johnny Barnes, D.C. Bar Number 212985**

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**DATED: 26 July 2012**