UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

American Freedom Defense Initiative, et al.)) Plaintiff,)) vs.)) Suburban Mobility Authority) For Regional Transportation) (SMART), GARY L. HENDRICKSON,) Individually and in his official capacity as) Chief Executive of SMART; JOHN) HERTEL, individually and in his official) Capacity as General Manager of SMART) and BETH GIBBONS, individually and in) her official capacity as Marketing Program) Manager of SMART,) Defendants.)	Civil Action No. 2:10-cv-12134 HON. DENISE PAGE HOOD **DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

THOMAS MORE LAW CENTER
Robert J. Muise, Esq. (P62849)
Richard Thompson, Esq. (P21410)
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106
rmuise@thomasmore.org
(734) 827-2001
Fax: (734) 930-7160
Co-Counsel for Plaintiffs

SMART
Avery E. Gordon, Esq. (P41194)
Anthony Chubb, Esq. (P72608)
535 Griswold Street, Suite 600
Detroit, MI 48226
agordon@smartbus.org
achubb@smartbus.org
(313) 223-2100
Fax: (248) 244-9138
Co-Counsel for Defendants SMART, Hertel and Gibbons

LAW OFFICES OF DAVID YERUSHALMI, P.C.
David Yerushalmi, Esq. (Arz. Bar No. 009616;
DC Bar No. 978179; Cal. Bar No. 132011; NY Bar No. 4632568)
P.O. Box 6358
Chandler, AZ 85246
David.yerushalmi@verizon.net
(646) 262-0500
Fax: (801) 760-3901
Co-Counsel for Plaintiffs

DEFENDANTS' RESPONSE

TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Defendants Suburban Mobility Authority for Regional Transportation (SMART), John Hertel, and Beth Gibbons, by and through their attorneys, respectfully submit the following Response to Plaintiffs' Motion for a Preliminary Injunction and assert that said motion be denied on the grounds set forth in the following brief, affidavits and exhibits attached hereto.

SMART, having created a non-public forum for advertising on its buses precisely as articulated by this Court in *Lehman v City of Shaker Heights*, 418 U.S. 298 (1974), is well within its rights to prohibit political advertisements. This consistently applied, viewpoint neutral policy does not violate Plaintiffs rights, and therefore the Motion must be denied.

Plaintiffs' rights have not been violated, there is no irreparable harm to anyone but your Defendants and Plaintiffs likelihood of prevailing is virtually impossible. For these reasons, as more fully set forth below, Defendant's pray this Honorable Court deny Plaintiff's Motion for Preliminary Injunction.

Respectfully submitted,

SMART
/s/ Avery Gordon
Avery E. Gordon, Esq. (P41194)

/s/ Anthony Chubb
Anthony Chubb, Esq. (P72608)

Co-Counsel for Defendants

CONCISE STATEMENT OF ISSUES PRESENTED

A. WHETHER SMART MAY CREATE A NONPUBLIC FORUM FOR BUS ADVERTISING?

Plaintiff says "No."

Defendant says "Yes."

B. WHETHER DEFENDANT SMART MAY PROHIBIT POLITICAL BUS ADVERTISING WHERE IT CREATED A NONPUBLIC FORUM?

Plaintiff says "No."

Defendant says "Yes."

TABLE OF AUTHORITIES

CASES

STATUTES

** Indicates Most Controlling Authority

DEFENDANTS' BRIEF IN RESPONSE TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

This case involves a political organization's attempt to promote their political agenda by placing anti-Islamic political advertisements on SMART buses that operate throughout southeast, Michigan. Such political advertisements are in violation of SMART's established, consistently applied and viewpoint neutral advertising policy, and, as such, were properly prohibited. Further, in the creation and administration of this policy, SMART has established and maintained a nonpublic forum in which political advertisement was never allowed. As such, Plaintiffs' Motion for Preliminary Injunction must fail.

STATEMENT OF FACTS

The Suburban Mobility Authority for Regional Transportation ("SMART") is an instrumentality of the State of Michigan established by Michigan Public Act 204 of 1967. MCL 124.401 et seq. *at* 124.403. Its mission critical purpose, pursuant to the Act, is to operate public mass transportation throughout the four southeastern-most counties in Michigan (Wayne, Oakland, Macomb and Monroe Counties).

Incidental to SMART's provision of public transportation, SMART sells advertising on the interior and exterior of its transit vehicles for the purpose of enhancing revenue to further support its mission critical purpose. The sale of advertising is conducted by SMART's exclusive agent, CBS Outdoor, Inc. ("CBS"). This agreement was established in a contract executed in February of 2009 (the "Contract"). (Pertinent provisions of which are attached at Ex. A). Importantly, SMART has created a non-public forum.

The Contract includes a provision at Section 5.07(B), "Restriction on Content", which prohibits certain advertising as follows:

B. Restriction on Content

> In order to minimize chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience, Offeror shall not allow the following content:
> 1. Political or political campaign advertising.
> 2. Advertising promoting the sale of alcohol or tobacco.
> 3. Advertising that is false, misleading, or deceptive.
> 4. Advertising that is clearly defamatory or likely to hold up to scorn or ridicule any person or group of persons.
> 5. Advertising that is obscene or pornographic; or in advocacy of imminent lawlessness or unlawful violent action.

The Contract further sets forth, in Section 5.07(C), Review of Advertising Content, the process for the review of advertising material to determine violations of the Restriction on Content, as follows:

C. Review of Advertising Content

> Before displaying any advertising, exhibit material, or announcement which Contractor [CBS] believes may be in violation of Section 5.07.B, "Restriction on Content", Contractor shall first submit the material to SMART for review. SMART shall make the final determination as to all violations of Section 5.07.B.

Throughout the term of the Contract SMART has actively enforced this policy and has rejected all advertising deemed to violate the Authority's content policy. For example, SMART has previously rejected proposed advertisements deemed to violate the policy which were deemed to be political (Ex. B), as well as advertisements deemed to be in advocacy of violence (Ex. C).

On or about May 12, 2010, Plaintiff Geller contacted CBS Sales Manager Robert Hawkins regarding the potential posting of advertisements on SMART buses. The advertisement proposed by Defendants states "Fatwa on your head? Is your family or community threatening you? LEAVING ISLAM? Got Questions? Get Answers! *Refuge*FromIslam.com". (Ex. D).

As set forth in the Contract, having determined that the advertising was a likely violation of the Contract's content policy, CBS contacted SMART requesting a final determination. (Hawkins Affidavit, Ex. E). SMART Marketing Manager Beth Gibbons reviewed the proposed advertisement and discussed it with staff giving it careful consideration. SMART determined that

the proposed advertisement violated at least two enumerated prohibitions within the content policy. Specifically, it was found that the proposed advertisement was in violation of Contract Section 5.07(B)(1), as political advertising, and Section 5.07(B)(4), as likely to hold up to scorn and ridicule a group of persons. SMART therefore rejected the proposed advertisement. FDI was notified of the rejection. As such, and contrary to the misleading allegations in Plaintiffs' motion, FDI never entered into a contract with CBS or SMART for advertising on SMART buses. (*See*, Hawkins Affidavit, Ex. E). Plaintiffs' Complaint was filed and served on Defendants and it included a Motion for Temporary Restraining Order (TRO)/Preliminary Injunction. This Honorable Court denied the TRO and correctly held, "Plaintiffs' suspicion that their request was denied due to the content of their advertisement is not yet enough to establish that a First Amendment violation has occurred."

ARGUMENT

I. Standard For Issuing A Preliminary Injunction

In Plaintiffs' Motion for Temporary Restraining Order / Preliminary Injunction and Brief in Support, Plaintiffs assert that the standard for issuing a TRO or a preliminary injunction is the same. This is uncontested by SMART. In *Hamilton's Bogarts, Inc. v. Michigan*, 501 F.3d 644, 649 (6th Cir. 2007), the court stated:

> Four factors must be considered and balanced by the district court in making its determination: "(1) whether the plaintiff has established a substantial likelihood or probability of success on the merits; (2) whether there is a threat of irreparable harm to the plaintiff; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by granting injunctive relief."

See also, Connection Distributing Co. v. Reno, 154 F.3d 281, 288 (6th Cir. 1998). In weighing the merits of a Motion for Preliminary Injunction, the court should balance the factors. *Id.* at 288.

II. Plaintiffs Cannot Satisfy The Four Elements To Obtain a Preliminary Injunction

A. Plaintiffs Have Not Demonstrated a Probability of Success on the Merits

Plaintiffs bear the burden of proof of establishing that SMART has impermissibly regulated Plaintiffs' protected free speech in a designated public forum, or, alternatively, that SMART has engaged in viewpoint discrimination in prohibiting Plaintiffs' speech in its established nonpublic forum. As set forth below, it is clear that SMART has established a non-public forum, consistently applied its content restriction policy, and the Plaintiffs have therefore failed to meet their burden of proof.

1. SMART has Not Impermissibly Regulated Protected Speech in a Designated Public Forum

Plaintiffs' Motion should be examined in a three step approach. First, the court should determine whether the speech in question is protected speech. Second, the court should conduct a forum analysis in order to determine what constitutional standard applies. Finally, the court should determine whether Defendant's actions and policy comport with the applicable standard. Plaintiffs' Motion, though conducting this analysis, is based on false information and incorrect assertions, and therefore results in an incorrect determination of their likelihood of success. As set forth below, it is clear that SMART's policies and actions are within well-established law, and the Plaintiffs therefore are unlikely to succeed based upon the merits of their Complaint.

a. Plaintiffs' Political and Anti-Islam Advertisement is Not Protected Free Speech.

Plaintiffs contend their political advertisement is protected free speech. ("Brief in Support" page 5, herein after "Brief"). Plaintiff presumptively asserts they have an unlimited and absolute right to display any and all proposed non-commercial advertisements regardless of SMART's content restriction policy. Plaintiffs' assertion is misguided. In *Capital Square Review & Advisory Board v. Pinette*, 515 U.S. 753 (1995), the court stated, "[I]t is undeniable of course, that speech

which is constitutionally protected against state suppression is not thereby accorded a guaranteed forum on all property owned by the state." Further, in *Cornelius v. NAACP Legal Defense and Educational Fund*, 473 U.S. 788 (1985), the court established:

> "Even protected speech is not equally permissible in all places and all times. Nothing in the constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be cause by the speakers' activities."

To balance the government's interest in regulating the use of its property and the public's interest in free speech, courts have adopted a forum analysis as a means of determining when the Government's interest in limiting the use of property to its intended purpose outweighs the interest of those wishing to use the property for other purposes. Accordingly, the extent to which the Government can control access depends on the nature of the relevant forum. *United States v. Kokinda*, 497 U.S. 720 (1990).

b. Forum Analysis

Plaintiffs assert that SMART advertising space is a designated public forum (Brief page 7 and 8). As established herein, the proper classification of SMART advertising space is that of a non-public forum as created and maintained by SMART's policy and practice by establishing and enforcing its content restriction policy.

The determination as to whether the denial of Plaintiffs' anti-Islam advertisement was proper requires the court to engage in forum analysis. Established case law has set forth three distinct fora: traditional public fora, designated public fora, and nonpublic fora. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800 (1985).

c. SMART Advertising Space is a Nonpublic Forum

It is well established that exterior panels of city buses are not considered traditional public forums. Traditional public fora are places in which "by long tradition or by government fiat have devoted to assembly and debate." *Perry Education Ass'n v. Perry Local Educators' Ass'n*., 460 U.S. 37, 45 (1983). Specifically, Traditional public fora are streets, sidewalks, and parks "which have been immemorially held in trust for the use of the public…for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. CIO*, 307 U.S. 496, 515 (1939). Defendant has unequivocally, through its policy and practice, not created a public forum. During years of operation, SMART has not by tradition or fiat devoted its exterior panels to unregulated debate.

As noted, Plaintiffs erroneously assert that defendant has established a designated public forum (Brief page 7 and 8). Plaintiff argues this position through multiple factual inaccuracies and conjecture. A designated public forum is "created by government designation of a place or channel of communication for use by certain speakers, or for the discussions of certain subjects." *Cornelius*, 473 U.S. at 802 (1985). Plaintiff asserts defendant has established a designated public forum based on its express policy and its practices (Brief page 7). Plaintiff refers to SMART's policy through reference to "Advertising Guidelines" which is presented as "Exhibit H" in Plaintiffs' Brief. This exhibit is, in fact, merely a copy of an advertisement promotion on SMART's website. The information on the website is merely promotional in nature and is clearly not intended to be a comprehensive content restriction policy. In fact, to the contrary, Plaintiffs attempt to mislead this Court as the page they cite to specifically states, but for which Plaintiffs neglect to include, "SMART has in place advertising guidelines for which all advertisements are reviewed against. Any such advertising which does not violate the SMART advertising guidelines or the law must be posted."

In addition, Plaintiffs argue that SMART has created a designated public forum through its past practice. Plaintiffs cite SMART's acceptance of an atheist awareness advertisement in support of their argument. (Plaintiffs' brief at page 2). This advertisement was, per the contract, reviewed by SMART for a final determination of whether it violated the content restriction policy. SMART determined that it was purely religious in nature, and therefore did not violate the content restriction policy. (Ex. F).

It is clear that SMART has established a nonpublic form. A nonpublic forum is "[p]ublic property which is not by tradition or designation a forum for public communication." *Perry Educ. Ass'n*, at 46. Moreover, "Control over access to nonpublic forum can be based on subject matter and speaker identity, so long as distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint-neutral; i.e., government's decision to restrict access in nonpublic forum need only be reasonable." *Helms v. Zubaty,* 495 F.3d 252, (C.A. 6 2007).

Lehman v. City of Shaker Heights, 418 U.S. 298 (1974) is controlling of the exact issue as in the instant case. In *Lehman*, a political candidate sought advertising space on the City of Shaker Heights' buses. The bus system refused the advertisements and plaintiff brought an action for violation of First Amendment and Fourteenth Amendment rights. The court found no constitutional violations, nor indicia of traditional or designated public fora were present, stating:

> "Here, we have no open spaces, no meeting hall, park, street corner, or other public thoroughfare. Instead, the city is engaged in commerce. It must provide rapid, convenient, pleasant, and inexpensive service to the commuters of Shaker Heights. The car card space, although incidental to the provision of public transportation, is a part of the commercial venture. In much the same way that a newspaper or periodical, or even a radio or television station, need not accept every proffer of advertising from the general public, a city transit system has discretion to develop and make reasonable choices concerning the type of advertising that may be displayed in its vehicles. In making these choices, this Court has held that a public utility 'will be sustained in its protection of activities in public places when those activities do not interfere with the general public convenience, comfort and safety." *Lehman*, 418 U.S. at 303.

The reasoning in *Lehman* is applicable in the instant issue. The *Lehman* court correctly asserted that the denial was consistent with its goal of providing rapid, convenient, pleasant service to commuters, and that the City of Shaker Heights had the discretion to develop and make reasonable choices concerning the types of advertising that may be displayed in its vehicles and that the city's refusal to accept political advertising was not a violation of the First or Fourteen Amendment. *Id.* at 303.

Given the foregoing, it is clear that SMART has created a nonpublic forum pursuant by creating and consistently applying its content restriction policy.

d. Reasonable Basis Scrutiny is Appropriate for Nonpublic Fora.

Plaintiffs assert the proper standard in level of scrutiny is subject to "strict scrutiny [and] content neutral time, place and manner regulations of speech if the regulations are narrowly tailored to serve a significant government interest…" (Brief page 8). This would be the appropriate standard if the forum was a designated public forum.

However, for a nonpublic forum, as we have in the instant case, a rational basis test should be applied to any content restrictions. Speech regulation in a nonpublic forum must be "reasonable [rational] in light of the purposes served by the forum." *Rosenberger v. Rector and Visitors of University of Virginia*, 115 S.Ct. 2510, 2517 (1995); *see also, Lamb's Chapel v. Center Moriches Union School Dist.,* 508 U.S. 384, 392-93 (1993); *Cornelius*, 473 U.S. at 806; *Perry*, 460 U.S. at 49. Additionally, the Supreme Court has stated that the "decision to restrict access to a nonpublic forum need only be reasonable; it need not be the most reasonable or the only reasonable limitation.... [A] finding of strict incompatibility between the nature of the speech or the identity of the speaker and the functioning of the nonpublic forum is not mandated." *Cornelius*, 473 U.S. at 808, (1985).

As stated above, it is SMART's principle function to provide transportation throughout southeast Michigan to bus passengers. Thus, SMART's decision to deny the Anti-Islam ad requires SMART to merely show a reasonable basis between the restriction and purpose of the property.

e. Smart's Content Restriction Policy is Reasonable

Given the nature of transit and the nonpublic forum established, SMART's content restriction policy is reasonable and constitutional. The court in *Packer Corp. v. Utah,* 285 U.S. 105 (1932) has stated that such policies are reasonable because "street car advertising was a special class of advertising in that other forms of advertising were seen as a matter of choice. Newspapers, magazines, radio advertisements, and a television can be turned off. But SMART's riders cannot turn off the advertisements and would be forced to endure the advertising thrust upon them." *Id.* The court has further stated, "The reasonableness of the Government's restriction [on speech in a nonpublic forum] must be assessed in light of the purpose of the forum and all the surrounding circumstances." *Cornelius*, 473 U.S. at 809.

SMART's content policy states it is set forth "in order to minimize chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience". The courts have determined such goals to be reasonable in light of the purposed served by the forum. *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974) at 303. By prohibiting political advertising, and advertising likely to hold up persons to ridicule or scorn, SMART furthers these goals, as well as its overall goal of providing public transportation services by not jeopardizing advertising as a revenue source, which the courts have recognized as a reasonable goal. *Christ's Bride Ministries, Inc. v. SEPTA*, 148 F.3d 242 (1998) at 255.

f. Plaintiffs Have Not Met Their Burden of Proof of Establishing that SMART has Impermissibly Limited Speech in a Public Forum

Plaintiffs have not proven that SMART created a public forum in which the proposed advertisement is protected speech. Rather, it is clear that, SMART has created a nonpublic forum upon which SMART's content restriction policy is lawfully imposed.

Plaintiffs' proposed advertisement is prohibited by that lawfully imposed content restriction policy, Plaintiffs have failed to meet their burden of proof and their request for a Preliminary Injunction must be denied.

2. SMART Did Not Engage In Viewpoint Discrimination

Plaintiffs allege that SMART, pursuant to established practice, permits political advertising. (Brief at page 2). Presumptively, Plaintiffs therefore argue that SMART's failure to accept their proposed political advertisement constitutes impermissible viewpoint discrimination. It is the Plaintiffs burden to establish a likelihood of success on the merits of a motion for a preliminary injunction. *Hamilton* at 649. Plaintiffs failed to submit any evidence supporting this claim, and, as such, have failed to establish the facts necessary to support a finding of a likelihood of success of the merits of their allegation.

In fact and to the contrary, SMART has previously been approached regarding political advertisements with incidental mention of religion, and also denied those advertisements. The Pinckney Pro-Life organization approached CBS with a proposed advertisement which depicted Jesus and stated, "Hurting after Abortion? Jesus, I trust in you." (Ex. B). Following contract procedure, CBS forwarded the proposed advertisement to SMART to make a final determination as to whether it violated the content restriction policy. After review, the advertisement was rejected as prohibited political advertising. (Gibbons Affidavit Ex. H).

Given the foregoing, Plaintiffs have failed to submit a scintilla of evidence supporting their argument that SMART has engaged in viewpoint discrimination, and have therefore failed to meet their burden of proof, and the requested relief may therefore not be granted based upon Plaintiffs' claim of constitutionally impermissible viewpoint discrimination.

B. Plaintiffs Will Not Suffer Irreparable Harm Without a Preliminary Injunction

It is well established in this court that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347 373 (1976). Further, the "Supreme Court has unequivocally admonished even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief." *Id.* However, Plaintiff has not established, through cited exhibits or brief, that the proposed advertisement constitutes protected speech, as any such right relies on the Plaintiffs' faulty conclusion that the forum in question is a public forum.

C. Granting The Preliminary Injunction Will Cause Substantial Harm to Others

Plaintiffs assert "if Defendants are restrained from enforcing their free speech restriction against Plaintiffs, Defendants will suffer no harm because the exercise of constitutionally protected expression can never harm any of Defendants' or others' legitimate interests." (Brief page 13). This statement is based on Plaintiffs' ill-founded presumption that SMART advertising space is a public forum. As a clearly established nonpublic forum, Plaintiffs' speech is not constitutionally protected expression, and will result in harm to SMART and its riders.

SMART advertising revenues are an essential component of operating revenue. The loss of advertising revenue that could result from opening SMART advertising space

to unregulated public debate would result in financial hardship to SMART. (Hollis Affidavit Ex. G.) This loss in revenue, should it result in reduction of SMART service, would harm SMART ridership.

D. Granting the Preliminary Injunction Negatively Impacts the Public Interest

Plaintiffs state that "the impact of the TRO/ Preliminary injunction on the public interest turns in large part on whether the Plaintiffs' constitutional rights are violated by the enforcement of SMART's Free Speech Restriction." (Brief page 13). Beyond the interest of the Plaintiffs, at issue is the impact that would be felt by metropolitan Detroit. The imposition of the proposed anti-Islamic, political advertisements upon the captive audience that consists of the elderly and disabled, the transit dependent as well as the communities that SMART serves could further racial tensions, increase violence, and create untold other negative reactions. SMART, which survives by way of an ad velorum property tax levied every four years, is dependent upon a favorable vote of the electorate in SMART's service area.

CONCLUSION

Since SMART has created a non-public forum, it may limit advertising and exclude political advertising. This viewpoint neutral policy does not infringe on Plaintiffs' Constitutional rights. Plaintiffs have failed to show this Court that it will suffer irreparable harm or that there is a likelihood of their prevailing. Based upon the foregoing, Defendants respectfully request that this court deny Plaintiffs' motion.

Respectfully submitted,

SMART
/s/ Avery Gordon
Avery E. Gordon, Esq. (P41194)

/s/ Anthony Chubb
Anthony Chubb, Esq. (P72608)

Co-Counsel for Defendants

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

American Freedom Defense Initiative, et al. Plaintiff, vs. Suburban Mobility Authority For Regional Transportation (SMART), GARY L. HENDRICKSON, Individually and in his official capacity as Chief Executive of SMART; JOHN HERTEL, individually and in his official Capacity as General Manager of SMART and BETH GIBBONS, individually and in her official capacity as Marketing Program Manager of SMART, Defendants.	)	Civil Action No. 2:10-cv-12134 HON. DENISE PAGE HOOD **CERTIFICATE OF SERVICE**

THOMAS MORE LAW CENTER
Robert J. Muise, Esq. (P62849)
Richard Thompson, Esq. (P21410)
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106
rmuise@thomasmore.org
(734) 827-2001
Fax: (734) 930-7160
Co-Counsel for Plaintiffs

SMART
Avery E. Gordon, Esq. (P41194)
Anthony Chubb, Esq. (P72608)
535 Griswold Street, Suite 600
Detroit, MI 48226
agordon@smartbus.org
achubb@smartbus.org
(313) 223-2100
Fax: (248) 244-9138
Co-Counsel for Defendants SMART, Hertel and Gibbons

LAW OFFICES OF DAVID YERUSHALMI, P.C.
David Yerushalmi, Esq. (Arz. Bar No. 009616;
DC Bar No. 978179; Cal. Bar No. 132011; NY Bar No. 4632568)
P.O. Box 6358
Chandler, AZ 85246
David.yerushalmi@verizon.net
(646) 262-0500
Fax: (801) 760-3901
Co-Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on **Friday, July 2, 2010**, I electronically filed the Defendant's Response to Plaintiff's Motion for Preliminary Injunction with the Clerk of the court using the ECF system which will send notification of such filing to the following:

THOMAS MORE LAW CENTER
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106
(734) 827-2001
rmuise@thomasmore.org
P62849

LAW OFFICES OF DAVID YERUSHALMI, P.C.
P.O. Box 6358
Chandler, AZ 85246
(646) 262-0500
david.yerushalmi@verizon.net

/s/Avery E. Gordon, Esq. (P41194)
/s/Anthony Chubb, Esq. (P72608)
SMART
535 Griswold, Suite 600
Detroit, MI 48226
(313) 223-2100
agordon@smartbus.org
achubb@smartbus.org

Counsel for Defendants SMART, Hertel and Gibbons