

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

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' ANSWER TO COMPLAINT

NOW COME the Defendants, Suburban Mobility Authority for Regional Transportation (SMART), John Hertel, and Beth Gibbons, by and through their attorney, and in Answer to the Complaint filed in this matter state as follows:

INTRODUCTION

1. In answer to Paragraph 1 of Plaintiffs' Complaint, these Defendants admit that it did not allow Plaintiffs from displaying certain advertisement on their buses. These Defendants deny any allegations in Paragraph 1 of Plaintiffs' Complaint that allege or claim that these Defendants engaged in Free Speech Restrictions, and as to the remaining allegations contained therein these Defendants are without sufficient knowledge with which to respond and neither admit nor deny the allegations contained therein and leave Plaintiffs to their proofs.

2. In answer to Paragraph 2 of Plaintiffs' Complaint, these Defendants are without sufficient knowledge with which respond and therefore, neither admit nor deny the allegation contained therein and leave Plaintiffs to their proofs.

JURISDICTION AND VENUE

3. In answer to Paragraph 3 of Plaintiffs' Complaint, these Defendants are without sufficient knowledge with which to respond and therefore neither admit nor deny the allegations contained therein and leave Plaintiffs to their proofs.

4. In answer to Paragraph 4 of Plaintiffs' Complaint, these Defendants are without sufficient knowledge with which to respond and therefore neither admit nor deny the allegations contained therein and leave Plaintiffs to their proofs, and for further answer state that Plaintiffs are making allegations of law, which are within the sole province of this Honorable Court.

5. In answer to Paragraph 5 of Plaintiffs' Complaint, these Defendants admit the same.

PLAINTIFFS

6. In answer to Paragraph 6 of Plaintiffs' Complaint, these Defendants are without sufficient knowledge with which to respond and therefore neither admit nor deny the allegations contained therein and leave Plaintiffs to their proofs.

7. In answer to Paragraph 7 of Plaintiffs' Complaint, these Defendants are without sufficient knowledge with which to respond and therefore neither admit nor deny the allegations contained therein and leave Plaintiffs to their proofs.

8. In answer to Paragraph 8 of Plaintiffs' Complaint, these Defendants admit that Plaintiffs sought advertising space on SMART vehicles, and as to the remaining allegations contained therein, these Defendants are without sufficient knowledge with which to respond and neither admit nor deny the same and leave Plaintiffs to their proofs.

9. In answer to Paragraph 9 of Plaintiffs' Complaint, these Defendants are without sufficient knowledge with which to respond and therefore neither admit nor deny the allegations contained therein and leave Plaintiffs to their proofs.

10. In answer to Paragraph 10 of Plaintiffs' Complaint, these Defendants are without sufficient knowledge with which to respond and therefore neither admit nor deny the allegations contained therein and leave Plaintiffs to their proofs.

DEFENDANTS

11. In answer to Paragraph 11 of Plaintiffs' Complaint, these Defendants admit that SMART is a public authority that receives certain funding from the State of Michigan and certain entities of the federal government, as well as revenue from Macomb, Oakland, and Wayne Counties; in further answer, these Defendants further admit that SMART functions through its management, which includes certain of these Defendants, and as to the remaining

allegations contained therein, deny the same because in the manner and form as alleged, the same is untrue.

12. In answer to Paragraph 12 of Plaintiffs' Complaint, these Defendants deny the same because in the manner and form as alleged, the same is untrue.

13. In answer to Paragraph 13 of Plaintiffs' Complaint, these Defendants admit that John Hertel is the General Manager of SMART and as to the remaining allegations contained therein, these Defendants deny the same because in the manner and form as alleged, the same is untrue.

14. In answer to Paragraph 14 of Plaintiffs' Complaint, these Defendants admit that Beth Gibbons was the Marketing Program Manager of SMART and as to the remaining allegations contained therein these Defendants deny the same because in the manner and form as alleged, the same is untrue.

STATEMENT OF FACTS

15. In answer to Paragraph 15 of Plaintiffs' Complaint, these Defendants admit that they are a public authority as established by State of Michigan and for further answer, admit that SMART is mandated to comply with state and federal law.

16. In answer to Paragraph 16 of Plaintiffs' Complaint, these Defendants admit that SMART has certain advertising guidelines and that certain portions of those advertising guidelines are accurately described in Paragraph 16 of Plaintiffs' Complaint, for further answer these Defendants state that the advertising guidelines as quoted by Plaintiffs are selective and do not reflect the entire advertising guidelines adopted by SMART, and for further answer these Defendants deny the remaining allegations contained therein because in the manner and form alleged, the same is untrue.

17. In answer to Paragraph 17 of Plaintiffs' Complaint, these Defendants admit that SMART permits various commercial and noncommercial, public-service, and religious advertisements on SMART vehicles but deny that SMART permits political advertisements; and as to the remaining allegations contained therein, these Defendants are without sufficient knowledge with which to respond and leave Plaintiffs to their proofs.

18. In answer to Paragraph 18 of Plaintiffs' Complaint, these Defendants admit that the Detroit Area Coalition of Reason placed certain advertisements on its vehicles and for further answer admit that there is attached to the Complaint an Exhibit 1 and that said Exhibit shall speak for itself, and as to the remaining allegations contained therein, these Defendants are without sufficient knowledge with which to respond and therefore neither admit nor deny the allegations contained therein and leave Plaintiffs to their proofs.

19. In answer to Paragraph 19 of Plaintiffs' Complaint, these Defendants admit that the Plaintiffs submitted a request to SMART for advertisement on SMART vehicles, and for further answer admit that there is attached to Plaintiffs' Complaint an Exhibit 2, and for further answer, admits that the advertisement as requested by Plaintiffs and set forth as an exhibit in Plaintiffs' Complaint is a reasonable facsimile, but deny it is a true and accurate representation.

20. In answer to Paragraph 20 of Plaintiffs' Complaint, these Defendants deny the same because in the manner and form as alleged, the same is untrue.

21. In answer to Paragraph 21 of Plaintiffs' Complaint, these Defendants admit that they denied Plaintiffs' request to display Plaintiffs' advertisement, and as to the remaining allegations contained therein, deny the same because in the manner and form as alleged, the same is untrue.

FIRST CLAIM FOR RELIEF

Freedom of Speech – First Amendment

(42 U.S.C. § 1983)

22. In answer to Paragraph 22 of Plaintiffs' Complaint, these Defendants repeat and reincorporate each and every answer as set forth herein, word for word, paragraph for paragraph.

23. In answer to Paragraph 23 of Plaintiffs' Complaint, these Defendants deny the same because in the manner and form as alleged, the same is untrue.

24. In answer to Paragraph 24 of Plaintiffs' Complaint, these Defendants deny the same because in the manner and form as alleged, the same is untrue.

25. In answer to Paragraph 25 of Plaintiffs' Complaint, these Defendants deny the same because in the manner and form as alleged, the same is untrue.

SECOND CLAIM FOR RELIEF

**Equal Protection – Fourteenth Amendment
(42 U.S.C. §1983)**

26. In answer to Paragraph 26 of Plaintiffs' Complaint, these Defendants repeat and reincorporate each and every answer as set forth herein, word for word, paragraph for paragraph.

27. In answer to Paragraph 27 of Plaintiffs' Complaint, these Defendants deny the same because in the manner and form as alleged, the same is untrue.

28. In answer to Paragraph 28 of Plaintiffs' Complaint, these Defendants deny the same because in the manner and form as alleged, the same is untrue.

PRAYER FOR RELIEF

In answer to the unnumbered paragraph below Paragraph 28 of Plaintiffs' Complaint, these Defendants deny that the Plaintiffs are entitled to relief as set forth in Paragraph A, B, C, D, and E;

WHEREFORE these Defendants pray that this Honorable Court dismiss said cause and grant other relief to these Defendants that is fair, just and equitable.

/s/Avery E. Gordon_P41194
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AFFIRMATIVE DEFENSES

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Robert J. Muise, Esq. (P62849)
Richard Thompson, Esq. (P21410)
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106
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Co-Counsel for Plaintiffs

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(646) 262-0500
Fax: (801) 760-3901
Co-Counsel for Plaintiffs

AFFIRMATIVE DEFENSES

NOW COME the Defendants, Suburban Mobility Authority for Regional Transportation (SMART), John Hertel, and Beth Gibbons, by and through their attorney and for their Affirmative Defenses, state as follows:

1. The speech that is the subject matter of Plaintiffs' claim is not protected speech.
2. That the Plaintiffs may not be real parties in interest.
3. That the Plaintiffs may have failed to exhaust all administrative remedies.
4. That the Plaintiffs' claims are barred because of governmental immunity or other immunity granted by law.
5. That Plaintiffs have failed to state a claim upon which relief can be granted and/or there are no genuine issues as to any material facts.
6. That Defendants reserve the right to add to, amend or alter these Affirmative Defenses as may become necessary

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CERTIFICATE OF SERVICE

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Fax: (801) 760-3901
Co-Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on **Wednesday, July 7, 2010**, I electronically filed the foregoing paper with the Clerk of the court using the ECF system which will send notification of such filing to the following:

THOMAS MORE LAW CENTER
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Ann Arbor, MI 48106
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