

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 AMERICAN FREEDOM DEFENSE
5 INITIATIVE,

6 Plaintiff,

7 -v-

Case No .

8 SUBURBAN MOBILITY AUTHORITY
9 FOR REGIONAL TRANSPORTATION
10 (SMART) ,

11 Defendant .

12 -----/

13 EXCERPTS FROM HEARING ON PRELIMINARY INJUNCTION

14 BEFORE THE HONORABLE DENISE PAGE HOOD

15 United States District Judge

16 237 U.S. Courthouse and Federal Building

17 231 Lafayette Boulevard West

18 Detroit, Michigan 48226

19 Tuesday, July 13, 2010

20 APPEARANCES:

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(APPEARANCES CONTINUED)

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1 Tuesday, July 13, 2010

2 Detroit, Michigan

3 At approximately 2:00 p.m.

4 **THE CLERK:** Calling case number 10-12134,
5 American Freedom versus Suburban Mobility Authority.

6 **THE COURT:** Good afternoon. Plaintiffs, put
7 your appearances on, and then the Defendants.

8 **MR. MUISE:** Robert Muise from the Thomas
9 More Law Center for the Plaintiffs.

10 **MR. YERUSHALMI:** David Yerushalmi for the
11 Plaintiffs.

12 **MR. GORDON:** Good afternoon Your Honor.
13 Avery Gordan on behalf of Defendants SMART, Gibbons and
14 Hertel.

15 **MR. CHUBB:** Good afternoon, Your Honor.
16 Anthony Chubb also on behalf of SMART, Hertel and
17 Gibbons.

18 (Subsequent proceedings held in open Court
19 regarding argument on preliminary injunction were
20 stenographically recorded but not ordered transcribed.)

21 **THE COURT:** So your objection is granted in
22 part and denied in part, and I'm ready to proceed.

23 **MR. YERUSHALMI:** Plaintiffs will call Ms.
24 Gibbons to the stand.

25 **THE WITNESS:** My name is Beth Ann Gibbons;

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1 G I B B O N S.

2 B E T H A N N G I B B O N S, after being
3 first duly sworn, was examined under her oath and
4 testified as follows:

5 D I R E C T E X A M I N A T I O N

6 BY MR. YERUSHALMI:

7 Q. Ms. Gibbons, you understand you're testifying here
8 on behalf of SMART, correct?

9 A. Yes.

10 MR. YERUSHALMI: May I approach the
11 Witness, Your Honor?

12 THE COURT: You may.

13 MR. YERUSHALMI: Would the Court like a
14 copy?

15 THE COURT: Well, I don't know what it is.
16 Is it a document already attached?

17 MR. YERUSHALMI: Yes.

18 THE COURT: Is it Exhibit G?

19 MR. YERUSHALMI: It is Exhibit G.

20 THE COURT: And I don't think I need another
21 copy of it if you're following the same exhibit numbers
22 as your attachments, you just need to identify what it
23 is attached to so the record will be clear.

24 And I think that G is attached to your --

25 MR. YERUSHALMI: Pamela Geller Declaration.

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1 **THE COURT:** I have it as Exhibit G to your
2 Motion for Temporary Restraining Order or Preliminary
3 Injunction. And in that Table of Contents it is listed
4 as Atheist Bus Advertisement?

5 **MR. YERUSHALMI:** Yes, Your Honor.

6 **BY MR. YERUSHALMI, CONTINUING:**

7 Q. Could you take a look at what has been handed to
8 you as Exhibit G on the front page. Are you familiar
9 with this advertisement?

10 A. Yes.

11 Q. Could you describe it, please?

12 A. It is an ad that says, "Don't believe in God?
13 You are not alone. DetroitCoR.org".

14 Q. This was the ad that ran on SMART buses in
15 February/March of 2010?

16 A. Yes.

17 Q. And when SMART reviewed this ad to determine
18 whether it satisfied its advertising policies,
19 guidelines and procedures, it determined that this ad
20 was in compliance, correct?

21 A. Yes.

22 Q. When SMART determined that this ad was in
23 compliance with its advertising policies, guidelines and
24 procedures, it examined just the ad copy and the
25 artwork, correct?

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1 A. Yes.

2 Q. It didn't look to things extrinsic to the
3 advertising itself to determine that?

4 A. Correct.

5 Q. SMART determined that this advertising copy was
6 not political?

7 A. Correct.

8 Q. And it determined that it was not scornful or
9 disparaging of Christians, Jews or Muslims or any other
10 groups?

11 A. No.

12 Q. SMART further determined that this ad was purely
13 religious?

14 A. Yes.

15 Q. After this ad ran on the SMART buses, were they
16 subject to vandalism?

17 A. Yes.

18 Q. Were they subject to extensive vandalism?

19 A. I don't know what that means.

20 Q. There was more than one ad that was vandalized?

21 A. Yes.

22 Q. In fact, one ad was scratched where it says,
23 "Don't believe in God?" On this particular exhibit, the
24 "Don't" is scratched out?

25 A. Yes.

1 Q. And there was another instance where the "Don't"
2 was ripped off?

3 A. Yes.

4 Q. Were there other instances of vandalism?

5 A. Not that I'm aware of.

6 Q. And after this vandalism, there was quite a local
7 controversy in the media?

8 A. Yes.

9 Q. After the controversy and all the media
10 surrounding the vandalism of the "Don't believe in God?"
11 Ad, SMART took a decision that it was going to replace
12 the ads and put them back on the buses?

13 A. No.

14 Q. Did SMART take a decision to repair the ads that
15 had been vandalized?

16 A. No.

17 Q. The ads that were vandalized were left on the
18 buses as is?

19 A. No.

20 Q. What happened to those ads?

21 A. They were replaced with CBS Outdoor who made that
22 decision.

23 **MR. YERUSHALMI:** May I approach, Your Honor?

24 **THE COURT:** Yes, you may.

25 **BY MR. YERUSHALMI, CONTINUING:**

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1 Q. I've handed you what has been marked as Exhibit B
2 to the Pamela Geller Declaration filed in support of the
3 Motion for Preliminary Injunction. Do you see the ad on
4 the second page?

5 A. Yes.

6 Q. This is the ad that the Plaintiff submitted for
7 approval by SMART?

8 A. Yes.

9 Q. SMART determined that this particular ad violated
10 its policies and guidelines?

11 A. Yes.

12 Q. And it determined that it was not purely
13 religious?

14 A. Yes.

15 Q. And they determined that it was political in
16 nature?

17 A. Yes.

18 Q. And further determined that it held a group of
19 people up to scorn and disparagement?

20 A. Right.

21 Q. There are, in fact, no policies written or
22 available elsewhere by SMART that provide you with the
23 -- strike that.

24 Beyond the ad guidelines that are provided
25 in the contract between SMART and CBS Outdoor and the ad

1 guidelines that are provided on the Web site of SMART
2 that have been entered into the record, are there any
3 other written guidelines or policies or manuals
4 available?

5 A. No.

6 Q. In what way is the ad before you that was
7 provided by my clients political?

8 A. It was determined not -- it was not based on the
9 content, it was based on the knowledge of what had
10 happened in Miami with Miami Dade Transit that declared
11 it political.

12 Q. So when you examined this ad, there was nothing
13 about the ad itself that was political?

14 A. Correct.

15 Q. It was nothing about the ad itself that
16 disparages or scorns any particular people?

17 A. No, it was not political than the content.

18 Q. I'm not sure I understood that.

19 There is nothing in the ad that disparages
20 or scorns any particular people?

21 A. Correct, yes. I'm not sure.

22 **THE COURT:** Correct what?

23 **THE WITNESS:** I'm not sure.

24 **THE COURT:** You're not sure whether it scorns
25 any particular people; is that your answer?

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1 **THE WITNESS:** Right.

2 **BY MR. YERUSHALMI, CONTINUING:**

3 Q. On the face of this ad, the content in this ad,
4 what makes it political and the atheist ad that we
5 looked at earlier not political?

6 **THE COURT:** Well, that is a compound
7 question.

8 **MR. YERUSHALMI:** I'm sorry, Your Honor.
9 Strike the question.

10 **MR. YERUSHALMI:** I believe we're done for
11 now, Your Honor.

12 **THE COURT:** This is the now. This is the
13 time you have to examine.

14 **MR. YERUSHALMI:** May I have a second?

15 **THE COURT:** Yes.

16 (Whereupon Mr. Muise and Mr. Yerushalmi
17 confer)

18 **MR. YERUSHALMI:** A few more questions, Your
19 Honor.

20 **BY MR. YERUSHALMI, CONTINUING:**

21 Q. When the atheist ad that we looked at earlier was
22 put back up by CBS Outdoor, who paid for that?

23 A. CBS Outdoor.

24 Q. And that was agreeable to SMART?

25 A. We had no knowledge of it at the time.

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1 Q. But you agreed that the ad, notwithstanding the
2 **controversy**, should continue?

3 A. It was part of the contract.

4 Q. It did not violate any policy, advertising policy
5 or guideline with SMART?

6 A. No.

7 Q. Where in the SMART guidelines and policies and
8 procedures does it spell out the distinction between a
9 political ad and a nonpolitical ad?

10 A. It is in Section 5.107(B).

11 **THE COURT:** You said 5.07(D)?

12 **THE WITNESS:** "B", as in boy, where we have
13 advertising guidelines.

14 **MR. YERUSHALMI:** May I approach, Your Honor?

15 **THE COURT:** You may.

16 **BY MR. YERUSHALMI, CONTINUING:**

17 Q. I've handed you what has been marked as Exhibit A
18 to your Opposition Brief to the Motion. Do you
19 recognize this document?

20 A. Yes.

21 Q. In fact, this is the Section of the SMART CBS
22 Outdoor contract that you were referring to earlier,
23 5.07(B), correct?

24 A. Yes.

25 Q. Can you point to me the language that indicates

1 the distinction between a political ad and a
2 non-political ad?

3 A. We have a listing of five categories of
4 advertising. Political or political campaign
5 advertising is one of them. Is not allowed. Offers are
6 not allowed for political or political campaign
7 advertising.

8 Q. If I may ask the Witness to just raise your
9 voice.

10 A. I'm sorry.

11 Q. Are you referring to Subsection (B)(1)?

12 A. Yes.

13 Q. (B)(1) merely states:

14 "Political or political campaign
15 advertising."

16 A. Yes.

17 Q. Where in the SMART guidelines, policies and
18 procedures does it distinguish between that which is
19 political and that which is not political?

20 A. I'm not sure I understand what you're asking.

21 Q. You testified earlier that the Atheist Ad was
22 purely religious and was not political. Yes?

23 A. Yes.

24 Q. And the Atheist Ad took certain positions
25 relative to people's belief in God or nonbelief in God?

1 A. Yes.

2 Q. You indicated that the Plaintiff's ad that was
3 handed to you earlier on "Leaving Islam" was, in fact, a
4 political ad?

5 A. Yes.

6 Q. I'm simply trying to understand what were the
7 policy guidelines, procedures used by SMART to
8 distinguish between the earlier ad, the Atheist Ad being
9 non-political and this ad being political?

10 **MR. GORDON:** Your Honor, I object. This
11 assumes facts not in evidence specifically that the
12 policy in some fashion explains the difference between
13 what is a political ad and not a political ad.

14 **THE COURT:** That's what he is asking,
15 whether it does.

16 Aren't you asking that?

17 **MR. YERUSHALMI:** Yes, Your Honor.

18 **THE COURT:** Do you understand what the
19 question is?

20 **THE WITNESS:** Now I do, thank you.

21 Each ad is looked at with -- on its own
22 against these policies. And so the determination was
23 made that this was a political ad. That it did not or
24 it fell into this guideline that we do not allow
25 political and political campaign advertisement.

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1 **BY MR. YERUSHALMI, CONTINUING:**

2 Q. So in fact, there is no policy or guideline or
3 training manual or anything else that would set out why
4 this is political and the Atheist Ad is not political?

5 A. Right.

6 **MR. YERUSHALMI:** I have nothing further,
7 Your Honor.

8 **THE COURT:** Your Colleague is standing
9 again.

10 (Whereupon Mr. Muise and Mr. Yerushalmi
11 confer.)

12 **MR. YERUSHALMI:** I apologize, one more
13 question.

14 **BY MR. YERUSHALMI, CONTINUING:**

15 Q. I just want to confirm that Islam as content for
16 an ad is acceptable religious content according to
17 SMART's policies and guidelines?

18 **THE COURT:** I don't -- well, I'm not sure I
19 understand your question.

20 **MR. YERUSHALMI:** Let me retry.

21 **BY MR. YERUSHALMI, CONTINUING:**

22 Q. The ad before you is relating to Islam in some
23 fashion, right?

24 A. Yes.

25 **THE COURT:** And you're referring to B?

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1 **MR. YERUSHALMI:** I'm referring to Exhibit B.

2 **THE COURT:** Okay. Proceed.

3 **BY MR. YERUSHALMI, CONTINUING:**

4 Q. I just want to confirm that Islam is not a
5 forbidden content and that it is a religious content and
6 religious content is permitted by SMART?

7 A. Yes.

8 **MR. YERUSHALMI:** No further questions.

9 **THE COURT:** Do you have any questions?

10 **MR. GORDON:** Yes, Your Honor.

11 **C R O S S E X A M I N A T I O N**

12 **BY MR. GORDON:**

13 Q. Ms. Gibbons, Mr. Yerushalmi asked you one or two
14 questions about the Pinckney Pro-life ad; do you recall
15 that just a few moments ago?

16 A. No.

17 Q. Tell me, you're familiar with the Pinckney
18 Pro-life ad, are you not?

19 A. Yes.

20 Q. And Your Honor, that was attached as Exhibit B to
21 Defendant's Response to Plaintiff's Motion for
22 Preliminary Injunction.

23 Can you tell me, please, Ms. Gibbons, when
24 that ad was posted, had you been aware of any
25 controversy related to it?

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1 A. The Pinckney Pro-life ad was not posted.

2 Q. And that was because of why?

3 A. Because it was determined to be political.

4 Q. And Mr. Yerushalmi was asking you about the
5 Atheist Awareness ad?

6 A. Yes.

7 Q. And can you tell me were you aware of any
8 controversy relating to that ad prior to the ad being
9 submitted for posting?

10 A. No.

11 Q. At some point FDI submitted an ad by way of CBS;
12 is that correct?

13 A. Yes.

14 Q. And can you tell me at the time that you received
15 that ad, had you been made aware of any controversy, any
16 political issue relating to that ad?

17 A. Yes.

18 Q. And how did you become aware of that?

19 A. I received an electronic newsletter called,
20 "Transportation Communications Newsletter" and that
21 lists out various articles or informational documents on
22 topics on alternate transportation. And in that
23 particular issue that I received, there was an article
24 from the Miami Herald on the Miami Dade Transit issue
25 with the Islam ads.

1 Q. I have a copy of that, may I approach, Your
2 Honor?

3 **THE COURT:** You may. And have you shown
4 this to Opposing Counsel?

5 **MR. GORDON:** I have. And I have a copy for
6 him as well.

7 **THE COURT:** And this consists of two pieces?

8 **MR. GORDON:** Yes, Your Honor.

9 **THE COURT:** Let's mark them so we will have
10 a way of referring to them on the record.

11 What exhibit number are you at at the end of
12 your pleadings? Is it H?

13 **MR. GORDON:** I believe that is correct.

14 **THE COURT:** So we're marking them I?

15 **MR. GORDON:** Yes, Your Honor.

16 **THE COURT:** And J.

17 You don't have any objection to them being
18 marked I and J, right?

19 **MR. MUISE:** No objection, Your Honor.

20 **THE COURT:** Alright, thank you.

21 **BY MR. GORDON, CONTINUING:**

22 Q. Ms. Gibbons, attached is the Miami Herald article
23 that the link refers to, is it not?

24 A. Yes.

25 Q. The Court will not hold you to the details, but

1 can you tell us approximately how far in advance of your
2 receipt of the proposed advertisement on SMART buses
3 that you became aware of this controversy?

4 A. About a day after I received the Transportation
5 Communications Newsletter.

6 **THE COURT:** I'm not sure when that is.

7 **THE WITNESS:** About April 17th I became
8 aware of it.

9 **THE COURT:** Of the issue in the news
10 article?

11 **THE WITNESS:** Correct.

12 BY **MR. GORDON, CONTINUING:**

13 Q. I would like to change topics now, Ms. Gibbons,
14 and ask you one or two questions following up on a
15 question that Mr. Yerushalmi asked you regarding the
16 political content of the FDI ad.

17 In both reading the controversy surrounding
18 the Miami Dade Transit issue, can you tell us whether
19 you were able to determine that the FDI ad was
20 political?

21 A. I knew that it was of concern in that there is
22 controversy on both sides of the issue on whether they
23 should be posted or shouldn't be posted.

24 Q. I see.

25 Did you have reason to believe that the

1 presentation of the ad to SMART was a continuation of
2 the political controversy and the political campaign
3 that was begun at the Miami Dade Transit property?

4 **MR. YERUSHALMI:** Objection, Your Honor,
5 misstates the testimony and no foundation.

6 **THE COURT:** I think you need to phrase it so
7 it is not leading. You may rephrase your question.

8 **MR. GORDON:** Thank you, Your Honor.

9 **BY MR. GORDON, CONTINUING:**

10 Q. Ms. Gibbons, what did you learn, if anything,
11 about FDI's intention following their efforts in
12 Florida?

13 **MR. YERUSHALMI:** Objection, calls for
14 speculation.

15 **THE COURT:** No, I don't think it calls for
16 speculation. Overruled.

17 **THE WITNESS:** They were -- that it was an
18 issue that they were carrying forward into the Detroit
19 market.

20 **BY MR. GORDON, CONTINUING:**

21 Q. Did you learn of any other markets they might be
22 going into?

23 A. Not that I'm aware of.

24 **MR. GORDON:** No other questions, Your Honor.

25 **THE COURT:** Any other questions?

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1 **MR. GORDON:** Your Honor, I'm sorry, can the
2 Court indulge me for just one moment?

3 **THE COURT:** Yes, you may.

4 Do you have any follow-up questions?

5 **MR. YERUSHALMI:** Redirect, Your Honor?

6 **THE COURT:** Yes.

7 **R E D I R E C T E X A M I N A T I O N**

8 **BY MR. YERUSHALMI:**

9 Q. After the controversy relating to the Atheist Ad
10 that we looked at earlier, you added some material to
11 your Web site titled, "Advertise with SMART"?

12 A. That page was always there -- yes, you're right,
13 I'm sorry.

14 Q. In other words, you added information related to
15 the advertising guidelines?

16 A. Right. We clarified that we did not arbitrarily,
17 you know, make decisions on what ads can be placed and
18 not placed on our buses and that we do have advertising
19 guidelines that we review.

20 Q. And other than the advertising information the
21 guidelines provided on the Web site, and other than the
22 contract that we looked at earlier, Section 5.07, there
23 are no other written guidelines, policies or manuals
24 available?

25 A. No.

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1 Q. You testified regarding the placement of ads by
2 my clients in Miami Dade; do you recall?

3 A. Yes.

4 Q. You indicated that as a result of a newspaper
5 article, you determined that my client's ad was
6 political?

7 A. That it was a political issue, yes.

8 Q. You had already testified earlier that the
9 content was not political but that you looked at what
10 occurred in Miami?

11 A. Correct.

12 Q. And all you know about what occurred in Miami is
13 the article that you looked at earlier that you
14 referenced?

15 A. Yes.

16 **MR. YERUSHALMI:** I have nothing further.

17 **MR. GORDON:** Nothing further, Your Honor.

18 **THE COURT:** You may step down, thank you.

19 **MR. YERUSHALMI:** I would like to call Pamela
20 Geller.

21 **P A M E L A G E L L E R,** after being first
22 duly sworn, was examined under his oath and testified as
23 follows:

24 **D I R E C T E X A M I N A T I O N**

25 **BY MR. YERUSHALMI:**

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1 Q. You're one of the Plaintiffs in this action?

2 A. I am.

3 Q. And you're the Director of American Freedom
4 Defense Initiatives?

5 A. Executive Director.

6 Q. Why did you run the ad which is the subject of
7 this litigation?

8 A. I ran the ad in defense of religious liberty.

9 Q. And could you explain what you mean by religious
10 liberty?

11 A. Well, I have been an investigative journalist, a
12 published author. The field of my study, intense study
13 for the past eight years has been Islam, and I saw an
14 increasing trend --

15 **MR. GORDON:** (Interposing) Your Honor, we're
16 going to object. Ms. Geller's intent on why she would
17 run the ad is really irrelevant I think.

18 **THE COURT:** Counsel?

19 **MR. YERUSHALMI:** Your Honor, if the
20 Defendants are prepared to concede that all of the
21 earlier testimony by Ms. Gibbons regarding the intent
22 and what took place not within the content, the four
23 corners of the ad itself, then we don't need to get into
24 this.

25 **THE COURT:** I don't know what you mean by

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1 that.

2 Do you know what he means by that?

3 **MR. GORDON:** No. And I don't believe Ms.
4 Gibbons testified to intent.

5 **MR. YERUSHALMI:** Your Honor, earlier Counsel
6 for the Defendants asked Mrs. Gibbons what she had
7 learned of the intent of the Plaintiffs in running the
8 ad. The whole point of the cross examination was that
9 the ad itself was not political but that it somehow
10 stirred a political controversy elsewhere and that there
11 was a political campaign being run. I'm simply trying
12 to get at the purpose for this particular ad.

13 **THE COURT:** I'm going to allow that.

14 **MR. GORDON:** Your Honor, the Complaint
15 already admits to the political nature of the ad within
16 its four corners and the efforts that took place at
17 paragraph 8.

18 If I may, Your Honor, I would be happy to
19 read that.

20 **THE COURT:** No, you don't need to, thank
21 you. Your objection is noted and preserved.

22 You may answer.

23 **THE WITNESS:** An increasing trend in --

24 **THE COURT:** (Interposing) Well, wait a
25 minute. Before you do that, perhaps you should pose

1 your question again because this doesn't sound like the
2 answer to the question you posed. But it may be, I just
3 don't know that yet. So pose your question again.

4 **BY MR. YERUSHALMI, CONTINUING:**

5 Q. And when you say you ran the ad for religious
6 liberty purposes, what do you mean by religious liberty?

7 A. Religious choice. The ability to choose any
8 religion free of harm in America.

9 Q. You indicate -- strike that.

10 Where else have you run this ad?

11 A. They ran in Miami, they ran in New York City,
12 they're running in San Francisco.

13 Q. In fact, they did run in Miami?

14 A. They did run in Miami. Probably not one but two
15 articles, opinion pieces, if I might note, written
16 basically from a press release from unindicted
17 co-conspirator in Hamas Lin-kaia (ph). Other than that,
18 they were up and they ran with an additional 20 buses at
19 50 percent off.

20 Q. Has there been an instance as far as you know of
21 vandalism of your ads that have run in Miami, New York,
22 Brooklyn and San Francisco?

23 A. Nothing. And in New York City, it is the
24 complete five Boroughs.

25 **MR. YERUSHALMI:** I have nothing further,

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1 Your Honor.

2 **THE COURT:** Alright, thank you.

3 Do you wish to examine this Witness?

4 **MR. GORDON:** Yes, Your Honor. Just a few
5 questions.

6 **C R O S S E X A M I N A T I O N**

7 **BY MR. GORDON:**

8 Q. Good afternoon, Ms. Geller. You know I'm the
9 attorney for SMART.

10 A. Good afternoon .

11 Q. My name is Avery Gordon.

12 Ms. Geller, did the ad that was run in Miami
13 create controversy? Political controversy?

14 A. No.

15 Q. It didn't?

16 A. No, sir.

17 Q. Have your ads created controversy anywhere?

18 A. There has been discussion about my ads. There
19 has been discussions, but we believe that any opposition
20 to these ads shows support for the death penalty for
21 Apostates.

22 Q. Ms. Geller, did you have an opportunity to review
23 the Complaint that was filed in this case before it was
24 filed?

25 A. Yes. Or my lawyer's.

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1 Q. Ms. Geller, I'm going to read one or two
2 sentences out of the Complaint. I'll tell you which
3 paragraphs --

4 A. Of my Complaint?

5 Q. Yes, Ma'am.

6 A. Oh, yes, of course.

7 Q. Paragraph 8 states:

8 "FDI promotes its political objectives by,
9 inter alia, sponsoring anti-jihad bus and
10 billboard campaigns, which includes seeking
11 advertising space on SMART vehicles."

12 Is that true?

13 A. FDI is a human rights organization devoted to
14 freedom of speech, religious liberty. Well, freedom of
15 speech is a political issue. The ads, the bus ads,
16 were not political. Those were religious liberty bus
17 ads. I'm doing other things.

18 **MR. GORDON:** Your Honor, can I ask the Court
19 to direct her to answer the question?
20 I'm trying to ask the question?

21 **THE COURT:** Yes. Can you pose the question
22 again, and then please answer the question directly,
23 okay.

24 **BY MR. GORDON, CONTINUING:**

25 Q. Ms. Geller, Paragraph 8 of your Complaint states:

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1 "FDI promotes its political objectives by,
2 inter alia, sponsoring anti-jihad bus and
3 billboard campaigns which include seeking
4 advertising space on SMART vehicles."

5 A. Yes.

6 Q. Is that a true statement?

7 A. Not about that particular bus ad, but that is not
8 all that FDI does. FDI does not just do that particular
9 bus ad, we're involved in many different initiatives.

10 Q. I understand that, but your Complaint in this
11 instance sues SMART. You named SMART and two of its
12 employees, and so my question to you is did the
13 paragraph number 8 that I just read -- let me read it
14 again.

15 **THE COURT:** No, we heard it. Just pose your
16 question.

17 **THE WITNESS:** With a --

18 **THE COURT:** (Interposing) Excuse me, we need
19 a question so we have an answer. Not meaning to
20 interrupt you all, but if I don't have a question and an
21 answer, it doesn't help.

22 **MR. GORDON:** Of course. Thank you, Your
23 Honor.

24 **BY MR. GORDON, CONTINUING:**

25 Q. My question to you, Ma'am, is, is that a true

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1 statement?

2 A. If religious liberties --

3 Q. (Interposing) This is a yes or no question, Ms.
4 Geller. Is it a true statement?

5 A. Yes, it is a true statement.

6 Q. And I can't help but notice absent -- conspicuous
7 by its absence is the word "religious speech". Can you
8 tell me was that intentional on your part?

9 A. Religious liberty?

10 Q. Religious speech?

11 A. Religious liberty.

12 Q. Religious objectives?

13 A. Yes, there was a religious objective. Those
14 girls are in trouble and they have no where to go and
15 there is a crying need for those ads. And I think it is
16 just --

17 Q. (Interposing) Thank you, Ms. Geller. I
18 appreciate your answer.

19 I'd also like to read to you Paragraph
20 Number 9 if I may. This one relates to you, Ma'am. It
21 says:

22 "Plaintiff Pamela Geller is the Executive
23 Director of FDI, and she engages in
24 political and religious speech through FDI's
25 activities, including FDI's anti-jihad bus

1 and billboard campaigns."

2 My question to you first is, is that a true
3 statement?

4 A. Yes.

5 Q. And can you tell me, the anti-jehad bus campaign,
6 was SMART part or one of the campaigns that was mounted
7 by you?

8 A. It was, but part of other -- see I didn't expect
9 to get rejected because Detroit was the only one who
10 rejected me. I had other ads as well.

11 Q. Well, let's take a moment here. You said
12 Detroit rejected you.

13 A. SMART, excuse me. I wasn't specific.

14 Q. Did the City of Detroit reject you?

15 A. It was D DOT and SMART, was it not?

16 Q. It is D DOT, the Detroit Department of
17 Transportation and SMART. So actually, your testimony
18 of just a second ago that you were rejected only by
19 Detroit is not true, you were rejected by Detroit and
20 SMART?

21 A. Right. As one -- well, it was one entity. It
22 was one city. It is the only city that rejected me.

23 Q. Ms. Geller, finally I would like to read to you
24 from Paragraph Number 1 of the Complaint. Paragraph
25 Number 1 of the Complaint, under Introduction, says that

1 you are challenging, and I'm going to quote:

2 "...challenging Defendants' restriction on
3 Plaintiffs' right to engage in political and
4 religious speech in a public forum."

5 Is that correct?

6 A. Yes.

7 Q. Let me ask you another question. Your blog
8 today, your online blog today indicated that you would
9 be in Detroit, did it not?

10 A. Yes.

11 Q. And you said you would be loaded for bear. Did I
12 get that right?

13 A. Yeah. I'm fighting for religious liberty, and I
14 think it is the one of the major issues of our time,
15 religious freedom.

16 Q. Ms. Geller, there is no question now.

17 A. There is no questioning that, yes.

18 Q. I said there is no question yet.

19 **THE COURT:** Well, let's pose one.

20 **MR. GORDON:** No further questions, Your
21 Honor. Thank you.

22 **THE COURT:** Do you have any other questions,
23 Counsel?

24 **MR. YERUSHALMI:** Short redirect, Your Honor.

25 **THE COURT:** You may.

1 **R E D I R E C T E X A M I N A T I O N**2 **BY MR. YERUSHALMI:**3 Q. Your organization, FDI, intended on running
4 additional ads beyond the religious liberty ad that you
5 sought to place on SMART?

6 A. Yes.

7 Q. And in fact, you had an entire campaign which
8 included political speech as well as religious speech?9 A. Yes, because FDI is a human rights organization
10 devoted to freedom of speech, religious liberty, and
11 individual rights, and we fight them on many fronts.
12 And yes, we use media.13 In this particular case, it was religious
14 liberty.15 Q. And you will agree with Ms. Gibbon's earlier
16 testimony that there is nothing in the content of this
17 ad which is political?18 **MR. GORDON:** Objection, Your Honor. Her
19 agreement with Ms. Gibbons is truly irrelevant.20 **THE COURT:** Why don't you rephrase your
21 question so it just asks for the answer without
22 requiring that she agree with another witness.23 **MR. YERUSHALMI:** Fair enough.24 **BY MR. YERUSHALMI, CONTINUING:**

25 Q. The content of this ad was purely religious and

1 religious liberty?

2 **MR. GORDON:** Objection, Your Honor.
3 Leading.

4 **THE COURT:** It is leading, but I'm going to
5 permit it.

6 **THE WITNESS:** The content of the ad was
7 purely religious.

8 **MR. YERUSHALMI:** Nothing further, Your
9 Honor.

10 **THE COURT:** I have a question, and if you
11 all object to my questions, you should say so for the
12 record; otherwise, your objection is waived. Do you
13 understand that, both sides?

14 **MR. GORDON:** Yes, Your Honor.

15 **MR. YERUSHALMI:** Yes, Your Honor.

16 **THE COURT:** In these other communities, I
17 think it's, you said, Miami, New York City, Brooklyn,
18 and San Francisco, do you have the same ad that's being
19 proposed here running?

20 **THE WITNESS:** Exactly.

21 **THE COURT:** And do you have any other ads
22 running?

23 **THE WITNESS:** I had a campaign in Chicago on
24 tops of taxi cabs running. It is a different campaign.

25 **THE COURT:** It is a different campaign on

1 the top of Chicago --

2 **THE WITNESS:** (Interposing) taxi cabs.

3 **THE COURT:** But in these others, Miami, New
4 York City, San Francisco, they are all bus ads?

5 **THE WITNESS:** Yes.

6 **THE COURT:** Are they all the same ones?

7 **THE WITNESS:** Yes.

8 **THE COURT:** There have been no other ads
9 that have been proposed to any of those?

10 **THE WITNESS:** Well, there is another ad that
11 has been proposed, but it is a different campaign. The
12 contract has not yet been signed, the artwork has been
13 -- we're in the last stage of the artwork.

14 **THE COURT:** So there is not an existing ad
15 already proposed to them?

16 **THE WITNESS:** No, Ma'am.

17 **THE COURT:** That's all I have. Anything
18 else?

19 **MR. GORDON:** No, Your Honor.

20 **THE COURT:** You may step down. Thank you.

21 (Subsequent proceedings held in open Court
22 were stenographically recorded but not ordered
23 transcribed.)

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C E R T I F I C A T E

I, **CHERYL E. DANIEL, OFFICIAL COURT REPORTER**, after being first duly sworn, say that I stenographically recorded the foregoing proceedings held on the day and date hereinbefore recorded; that upon order of the Court or counsel, I caused those stenotype notes to be reduced to typewritten form via computer-assisted technology, and that this transcript constitutes a true, full and complete transcript of those proceedings so ordered.

I further certify that I am not related to any party to these proceedings nor have any interest in the outcome of said proceedings.

/s

CHERYL E. DANIEL,
FEDERAL OFFICIAL COURT REPORTER