

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

4 AMERICAN FREEDOM DEFENSE
5 INITIATIVE; PAMELA GELLER;
6 and ROBERT SPENCER,
7 Plaintiffs,

8 -v- Case No. 10-12134

9 SUBURBAN MOBILITY AUTHORITY
10 for REGIONAL TRANSPORTATION
11 (SMART); GARY L. HENRICKSON,
12 individually and in his official
13 capacity as Chief Executive of
14 SMART;
15 JOHN HERTEL, individually and in
16 his official capacity as
17 General Manager of SMART;
18 and BETH GIBBONS, individually and
19 in her official capacity as
20 Marketing Program Manager of
21 SMART,
22 Defendants.

23 _____/

24

25 (APPEARANCES CONTINUED)

AFDI, et al v SMART - Case No. 10-12134

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MOTION FOR PRELIMINARY INJUNCTION
BEFORE THE HONORABLE DENISE PAGE HOOD
United States District Judge
237 U.S. Courthouse and Federal Building
231 Lafayette Boulevard West
Detroit, Michigan 48226
Tuesday, July 13, 2010

APPEARANCES:

FOR THE PLAINTIFFS: ROBERT J. MUISE,
THOMAS MORE LAW CENTER
24 FRANK LLOYD WRIGHT DR.
ANN ARBOR, MI 48106

And

DAVID YERUSHALMI,
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FOR THE DEFENDANTS: ANTHONY CHUBB,
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	I N D E X	PAGE
1		
2	PRELIMINARY MATTERS	4
3	MOTION FOR TEMPORARY RESTRAINING ORDER	
4	BETH ANN GIBBONS	
5	DIRECT EXAMINATION BY MR. YERUSHALMI	12
6	CROSS EXAMINATION BY MR. GORDON	23
7	REDIRECT EXAMINATION BY MR. YERUSHALMI	28
8	PAMELA GELLER	
9	DIRECT EXAMINATION BY MR. YERUSHALMI	30
10	CROSS EXAMINATION BY MR. GORDON	33
11	REDIRECT EXAMINATION BY MR. YERUSHALMI	39
12	ARGUMENT BY MR. MUISE	42
13	RESPONSE BY MR. GORDON	53
14	REBUTTAL BY MR. MUISE	69
15		
16		
17		
18		
19		
20		
21		
22		
23	E X H I B I T S	
24		
25		

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Tuesday, July 13, 2010

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Detroit, Michigan

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

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7

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

8

9

MR. MUISE: Good afternoon, Your Honor.
Robert Muise from the Thomas Moore Law Center for the
Plaintiffs.

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MR. YERUSHALMI: Good afternoon, Your Honor.
David Yerushalmi for the Plaintiffs.

13

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MR. GORDON: Good afternoon, Your Honor.
Avery Gordon on behalf of Defendants SMART, Gibbons and
Hertel.

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MR. CHUBB: Good afternoon, Your Honor.
Anthony Chubb also on behalf of Defendants SMART, Hertel
and Gibbons.

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20

THE COURT: Are we expecting someone
different relative to Gary Hendrickson?

21

22

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25

MR. GORDON: If I may, Your Honor, Avery
Gordon for Defendants. There is no one that we know who
knows who that is. And Mr. Hendrickson is not now
certainly part of the organization or as I mentioned
anybody that the SMART staff knows of.

AFDI, et al v SMART - Case No. 10-12134

1 THE COURT: Then I am ready to proceed.
2 This is a Motion for Preliminary Injunction. The Court
3 received a Motion that was a Motion for Temporary
4 Retraining Order and a Motion for Preliminary Injunction
5 and found that the Motion for Temporary Restraining
6 Order -- well, the Court denied it for the reason it
7 stated in its Opinion, but I set it for a hearing on the
8 Motion for Preliminary Injunction, and so I'm ready to
9 proceed on that if you're ready.

10 MR. MUISE: Plaintiffs are, Your Honor.

11 **MR. GORDON:** We are, Your Honor, although
12 there is one preliminary matter that the Defendants
13 would like to take up with the Court.

14 THE COURT: Okay.

15 **MR. GORDON:** Your Honor, of course we met
16 and over the phone with Plaintiffs' Counsel prior to the
17 submission of the stipulation as the Court ordered.

18 But Your Honor, we believe that this Motion
19 can be decided on the pleadings and the exhibits alone;
20 both the Complaint, the Motion for Preliminary
21 Injunction; the Defendant's Response to it, as well as
22 the Plaintiffs' reply, all of the Exhibits and
23 Declarations that were attached to those materials.

24 We would ask the Court to reconsider its
25 request of the parties and at the very least to perhaps

AFDI, et al v SMART - Case No. 10-12134

1 try and provide some guidelines for the nature and
2 extent of the testimony to be elicited.

3 THE COURT: I'm not exactly sure what you're
4 asking.

5 MR. GORDON: What I'm suggesting, Your
6 Honor, is that the taking of testimony this afternoon,
7 the Defendants believe, is unnecessary and we would ask
8 the Court to reconsider its request of the parties to
9 provide that.

10 We believe that Ms. Geller, for example, has
11 had three bites at the apple, to use the popular
12 colloquialism. First, as part of her Complaint, she had
13 the opportunity to say what she will as well as in her
14 Motion. And then after receiving the Plaintiffs'
15 response -- I'm sorry, the Defendants' response to the
16 Plaintiffs' Motion, Ms. Geller also filed a reply. And
17 her testimony today could only be duplicative of what
18 she has already provided or will do little more than
19 provide a soapbox for her political pronouncements.

20 In my conversation with Mr. Yerushalmi on
21 Thursday of last week, his intention, I was advised, of
22 calling the SMART staff, the SMART witnesses, was simply
23 because he wanted an opportunity to talk to the
24 decisionmaker, and as such, Ms. Gibbons' testimony would
25 be unnecessary, Mr. Hawkins' testimony would be

1 unnecessary.

2 We would ask the Court, as I said, to
3 reconsider the taking of testimony this afternoon and
4 allow the parties to argue the preliminary injunction
5 motions on the pleadings, briefs and exhibits alone.

6 THE COURT: As you know, I'm not in my
7 regular courtroom, and I thought you all had filed a
8 witness list, did you?

9 MR. GORDON: Yes, Your Honor.

10 THE COURT: May I see a copy of it? I
11 didn't bring over the entire file.

12 MR. GORDON: Permission to approach, Your
13 Honor?

14 THE COURT: Yes. I thought I could get by
15 without getting the whole file.

16 MR. GORDON: This is what was filed, but the
17 parties have made some minor revisions that we have
18 agreed to.

19 But as I mentioned, Your Honor --

20 THE COURT: (Interposing) I know what your
21 argument is, I just want to -- so you don't think Ms.
22 Geller, Ms. Gibbons or Mr. Hertel need to be called?

23 MR. GORDON: Correct, Your Honor.

24 THE COURT: And the other people that are
25 listed as rebuttal are Ms. Dryden and Mr. Hawkins; is

1 that correct?

2 MR. GORDON: That's correct, Your Honor.

3 MR. YERUSHALMI: Your Honor, if I may?

4 THE COURT: You may.

5 MR. YERUSHALMI: If Ms. Gibbons is going to
6 testify as we have stipulated subsequent to the filing
7 of the Joint Witness List, we have signed additional
8 stipulations as the authorized representative of SMART,
9 the likelihood is we do not need to call Mr. Hertel, and
10 the likelihood is we would not need to call Ms. Dryden
11 or Mr. Hawkins and that is why they're only listed as
12 rebuttal witnesses.

13 But there are important parts of the
14 decision-making process at SMART that are not before the
15 Court that is important that we elicit through
16 testimony. And that is the purpose of Ms. Gibbons's
17 testimony especially with regard to the Atheist Ad that
18 was run and the controversy surrounding that, and the
19 decision-making process regarding SMART's decision to
20 have that ad run in fact to replace that ad.

21 MR. GORDON: May I respond, Your Honor?

22 THE COURT: Can I ask a question first?

23 MR. GORDON: Of course. I apologize.

24 THE COURT: So you're saying you don't need
25 to call Mr. Hertel, Ms. Dryden or Mr. Hawkins?

AFDI, et al v SMART - Case No. 10-12134

1 MR. YERUSHALMI: If Ms. Gibbons can continue
2 to testify on behalf of SMART relative to her
3 Declaration, I'm fine with her.

4 THE COURT: You accept at least that much,
5 right?

6 MR. GORDON: Your Honor, I believe that this
7 is an attempt --

8 THE COURT: (Interposing) First, do you
9 accept that much? Do you agree that probably Ms.
10 Gibbons is not going to testify any differently than her
11 Declaration?

12 MR. GORDON: I can assure the Court of that,
13 Your Honor.

14 THE COURT: So then I think what Opposing
15 Counsel is saying is that if she is going to testify
16 relative to her Declaration that he does not perceive a
17 need to call Mr. Hertel, Ms. Dryden or Mr. Hawkins.

18 MR. GORDON: And yet, Your Honor, this is
19 only proof --

20 THE COURT: (Interposing) I want to get
21 those three out of the way, if I could, Counsel.

22 Are you in agreement with that?

23 MR. GORDON: I am, Your Honor.

24 THE COURT: Are they here?

25 MR. GORDON: Yes, Your Honor. All of the

AFDI, et al v SMART - Case No. 10-12134

1 witnesses are in the courtroom as we speak.

2 THE COURT: And so they could be excused if
3 you want, right?

4 MR. YERUSHALMI: Yes, Your Honor.

5 THE COURT: Of course they're welcome to
6 stay, but --

7 MR. GORDON: Pardon me?

8 THE COURT: They are welcome to stay, Mr.
9 Hertel, Ms. Dryden and Mr. Hawkins, but they do not
10 anticipate that they will need to call them as
11 witnesses. So if they want to be excused, they're
12 permitted to be excused. That's up to them and you.

13 Now, relative to Ms. Geller and Ms. Gibbons,
14 I don't really need to hear their testimony relative to
15 statements that they have already made or the
16 identification of exhibits because I don't think there
17 is a dispute about that, is there?

18 MR. GORDON: No, Your Honor.

19 MR. YERUSHALMI: No, Your Honor. In fact,
20 we had no intention of examining them on those grounds,
21 and indeed, in our witness list we have joint
22 stipulations already filed with the Court where all the
23 exhibits that have been filed with the Court are already
24 in the foundation laid, et cetera.

25 In addition to that, and we have before the

AFDI, et al v SMART - Case No. 10-12134

1 Court today additional stipulations as to law and fact,
2 if I may?

3 THE COURT: You may.

4 MR. GORDON: Your Honor, may I address the
5 issue that is on the floor right now?

6 THE COURT: You don't want me to see these
7 stipulations?

8 MR. GORDON: No, if the Court will be
9 proceeding as it directed the parties, Mr. Yerushalmi
10 and I have agreed to those stipulations. And in fact,
11 I am good with that under any set of circumstances.

12 THE COURT: And let me ask, they are 1
13 through 3 but not 4; is that right?

14 MR. GORDON: Yes, Your Honor.

15 THE COURT: And as well as the Exhibits that
16 are in document 15, which I just gave back to you. I'll
17 get another copy of it.

18 MR. GORDON: That is correct, Your Honor.

19 THE COURT: And with the caveat that Ms.
20 Geller and Ms. Gibbons not be asked questions that are
21 already part of the record as their statement, I think
22 we should go ahead and proceed.

23 MR. GORDON: Your Honor, if I may?

24 This is proof that we just need discovery in
25 this case, and the Court is asking the parties to try

1 these important issues without the benefit of that
2 discovery. That is why I think this Motion can be heard
3 and decided, as I say, on the pleadings and briefs and
4 the exhibits that have been attached to those pleadings
5 and papers filed with the Court.

6 THE COURT: I'm not expecting that this will
7 be a discovery deposition, Counsel, I expect that this
8 will be only as to the elements of the Preliminary
9 Injunction.

10 MR. YERUSHALMI: That is our intention, Your
11 Honor.

12 MR. GORDON: Very good, thank you, Your
13 Honor.

14 THE COURT: And in the event it starts to
15 sound like a discovery deposition, Counsel, you should
16 re-raise your objection, okay.

17 MR. GORDON: Very good, thank you, Your
18 Honor.

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

21 MR. YERUSHALMI: Plaintiffs will call Ms.
22 Gibbons to the stand.

23 THE WITNESS: My name is Beth Ann Gibbons;
24 G I B B O N S.

25 B E T H A N N G I B B O N S, after being

AFDI, et al v SMART - Case No. 10-12134

1 first duly sworn, was examined under her oath and
2 testified as follows:

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

4 BY MR. YERUSHALMI:

5 Q. Ms. Gibbons, you understand you're testifying on
6 behalf of SMART, correct?

7 A. Yes.

8 MR. YERUSHALMI: May I approach the
9 Witness, Your Honor.

10 THE COURT: You may.

11 MR. YERUSHALMI: Would the Court like a
12 copy?

13 THE COURT: Well, I don't know what it is.
14 It it a document already attached?

15 MR. YERUSHALMI: Yes.

16 THE COURT: Is it Exhibit G?

17 MR. YERUSHALMI: It is Exhibit G.

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

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

23 MR. YERUSHALMI: Pamela Geller Declaration.

24 THE COURT: I have it as Exhibit G to your
25 Motion for Temporary Restraining Order or Preliminary

AFDI, et al v SMART - Case No. 10-12134

1 Injunction. And in that Table of Contents, it is listed
2 as Atheist Bus Advertisement?

3 MR. YERUSHALMI: Yes, Your Honor.

4 BY MR. YERUSHALMI, CONTINUING:

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

8 A. Yes.

9 Q. Could you describe it, please?

10 A. It is an ad that says, "Don't believe in God?
11 You're not alone. DetroitCoR.org."

12 Q. This is the ad that ran on SMART buses in
13 February/March of 2010?

14 A. Yes.

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

19 A. Yes.

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

24 A. Yes.

25 Q. It didn't look to things extrinsic to the

1 advertising itself to determine that?

2 A. Correct.

3 Q. SMART determined that this advertising copy was
4 not political?

5 A. Correct.

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

9 A. No.

10 Q. SMART further determined that this ad was purely
11 religious?

12 A. Yes.

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

15 A. Yes.

16 Q. Were they subject to extensive vandalism?

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

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

19 A. Yes.

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

23 A. Yes.

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

1 A. Yes.

2 Q. Were there other instances of vandalism?

3 A. Not that I'm aware of.

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

6 A. Yes.

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

11 A. No.

12 Q. Did SMART make a decision to repair the ads that
13 had been vandalized?

14 A. No.

15 Q. The ads that were vandalized were left on the
16 buses as is?

17 A. No.

18 Q. What happened to those ads?

19 A. They were replaced with CBS Outdoor made that
20 decision.

21 MR. YERUSHALMI: May I approach, Your Honor?

22 THE COURT: Yes, you may.

23 BY MR. YERUSHALMI, CONTINUING:

24 Q. I've handed you what has been marked as Exhibit B
25 to the Pamela Geller Declaration filed in support of the

1 Motion for Preliminary Injunction. Do you see the ad on
2 the second page?

3 A. Yes.

4 Q. This is the ad that the Plaintiff submitted for
5 approval by SMART?

6 A. Yes.

7 Q. SMART determined that this particular ad violated
8 its policies and guidelines?

9 A. Yes.

10 Q. And it determined that it was not purely
11 religious?

12 A. Yes.

13 Q. And they determined that it was political in
14 nature?

15 A. Yes.

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

18 A. Right.

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

22 Beyond the ad guidelines that are provided
23 in the contract between SMART and CBS Outdoor and the ad
24 guidelines that are provided on the Web site of SMART
25 that have been entered into the record, are there any

1 other written guidelines or policies or manuals
2 available?

3 A. No.

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

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

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

12 A. Correct.

13 Q. It was nothing about this ad itself that
14 disparages or scorns any particular people?

15 A. No, it was not political than in the content.

16 Q. I'm not sure I understand that.

17 There is nothing in the ad that disparages
18 or scorns any particular people?

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

20 THE COURT: Correct what?

21 THE WITNESS: I'm not sure.

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

24 THE WITNESS: Right.

25 BY MR. YERUSHALMI, CONTINUING:

AFDI, et al v SMART - Case No. 10-12134

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

4 THE COURT: Well, that is a compound
5 question.

6 MR. YERUSHALMI: I'm sorry, Your Honor.
7 Strike the question.

8 I believe we're done for now, Your Honor.

9 THE COURT: This is the now. This is the
10 time you have to examine.

11 MR. YERUSHALMI: May I have a second?

12 THE COURT: Yes.

13 (Whereupon Mr. Muise and Mr. Yerushalmi
14 confer.)

15 BY MR. YERUSHALMI, CONTINUING:

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

18 A. CBS Outdoor.

19 Q. And that was agreeable to SMART?

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

21 Q. But you agreed that the ad, notwithstanding the
22 controversy, should continue?

23 A. It was part of the contract.

24 Q. Did not violate any policy, advertising policy or
25 guideline with SMART?

1 A. No.

2 Q. Where in the SMART guidelines and policies and
3 procedures does it spell out the distinction between a
4 political ad and a nonpolitical ad?

5 A. It is in Section 5.07(B).

6 THE COURT: You said 5.07(D)

7 THE WITNESS: "B", as in boy, where we have
8 advertising guidelines.

9 MR. YERUSHALMI: May I approach, Your Honor?

10 THE COURT: You may.

11 BY MR. YERUSHALMI, CONTINUING:

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

15 A. Yes.

16 Q. In fact, this is the Section of the SMART CBS
17 Outdoor contract that you were referring to earlier,
18 5.07(B), correct?

19 A. Yes.

20 Q. Can you point to me the language that indicates
21 the distinction between a political ad and a
22 nonpolitical ad?

23 A. We have a listing of five categories of
24 advertising. Political or political campaign
25 advertising is one of those. Is not allowed. Offers

1 are not allowed for political or political campaign
2 advertising.

3 Q. If I may ask the Witness to just raise your
4 voice.

5 A. I'm sorry.

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

7 A. Yes.

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

9 "Political or political campaign
10 advertising."

11 A. Yes.

12 Q. Where in the SMART guidelines, policies and
13 procedures does it distinguish between that which is
14 political and that which is not political?

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

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

18 A. Yes.

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

21 A. Yes.

22 Q. You indicated that the Plaintiffs' ad that was
23 handed to you earlier on "Leaving Islam" was, in fact, a
24 political ad?

25 A. Yes.

1 Q. I'm simply trying to understand what were the
2 policy guidelines, procedures used by SMART to
3 distinguish between the earlier ad, the Atheist Ad being
4 nonpolitical and this ad being political?

5 MR. GORDON: Your Honor, I object. This
6 assumes facts not in evidence specifically that the
7 policy in some fashion explains the difference between
8 what is a political ad and not a political ad.

9 THE COURT: That's what he is asking,
10 whether it does.

11 Aren't you asking that?

12 MR. YERUSHALMI: Yes, Your Honor.

13 THE COURT: Do you understand what the
14 question is?

15 THE WITNESS: Now I do, thank you.

16 Each ad is looked at with -- on its own
17 against this policies. And so the determination was
18 made that this was a political ad. That it did not or
19 it fell into this guideline that we do not allow
20 political and political campaign advertisement.

21 BY MR. YERUSHALMI, CONTINUING:

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

25 A. Right.

1 MR. YERUSHALMI: I have nothing further,
2 Your Honor.

3 THE COURT: Your Colleague is standing
4 again.

5 (Whereupon Mr. Muise and Mr. Yerushalmi
6 confer.)

7 BY MR. YERUSHALMI, CONTINUING:

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

11 THE COURT: I don't -- well, I'm not sure I
12 understand your question.

13 MR. YERUSHALMI: Let me retry.

14 BY MR. YERUSHALMI, CONTINUING:

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

17 A. Yes.

18 THE COURT: And you're referring to B?

19 MR. YERUSHALMI: I'm referring to Exhibit B.

20 THE COURT: Okay. Proceed.

21 BY MR. YERUSHALMI, CONTINUING:

22 Q. I just want to confirm that Islam is not a
23 forbidden content and that it is a religious content and
24 religious content is permitted by SMART?

25 A. Yes.

1 MR. YERUSHALMI: No further questions.

2 THE COURT: Do you have any questions?

3 MR. GORDON: Yes, Your Honor.

4 C R O S S E X A M I N A T I O N

5 BY MR. GORDON:

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

9 A. No.

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

12 A. Yes.

13 Q. And Your Honor, that was attached as Exhibit B to
14 Defendant's Response to Plaintiffs' Motion for
15 Preliminary Injunction.

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

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

20 Q. And that was because of why?

21 A. Because it was determined to be political.

22 Q. And Mr. Yerushalmi was asking you about the
23 Atheist Awareness ad?

24 A. Yes.

25 Q. And can you tell me were you aware of any

1 controversy relating to that ad prior to the ad being
2 submitted for posting?

3 A. No.

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

6 A. Yes.

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

10 A. Yes.

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

12 A. I received an electronic newsletter called,
13 "Transportation Communications Newsletter" and that
14 lists our various articles or informational documents on
15 topics on alternate transportation. And in that
16 particular issue that I received, there was an article
17 from the Miami Herald on the Miami Dade Transit issue
18 with the Islam ads.

19 Q. I have a copy of that, may I approach, Your
20 Honor?

21 THE COURT: You may. And have you shown
22 this to Opposing Counsel?

23 MR. GORDON: I have. And I have a copy for
24 him as well.

25 THE COURT: And this consists of two pieces?

AFDI, et al v SMART - Case No. 10-12134

1 MR. GORDON: Yes, Your Honor.

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

4 What exhibit number are you at at the end of
5 your pleadings? Is it H?

6 MR. GORDON: I believe that is correct.

7 THE COURT: So we're marking them I?

8 MR. GORDON: Yes, Your Honor.

9 THE COURT: And J.

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

12 MR. MUISE: No objection, Your Honor.

13 THE COURT: Alright, thank you.

14 BY MR. GORDON, CONTINUING:

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

17 A. Yes.

18 Q. The Court will not hold you to the details, but
19 can you tell us approximately how far in advance of your
20 receipt of the proposed advertisement on SMART buses
21 that you became aware of this controversy?

22 A. About a day after I received the Transportation
23 Communications Newsletter.

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

25 THE WITNESS: About April 17th I became

AFDI, et al v SMART - Case No. 10-12134

1 aware of it.

2 THE COURT: Of the issue in the news
3 article?

4 THE WITNESS: Correct.

5 BY MR. GORDON, CONTINUING:

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

10 In both reading the controversy surrounding
11 the Miami Dade Transit issue, can you tell us whether
12 you were able to determine that the FDI ad was
13 political?

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

17 Q. I see.

18 Did you have reason to believe that the
19 presentation of the ad to SMART was a continuation of
20 the political controversy and the political campaign
21 that was begun at the Miami Dade Transit property?

22 MR. YERUSHALMI: Objection, Your Honor,
23 misstates the testimony and no foundation.

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

AFDI, et al v SMART - Case No. 10-12134

1 MR. GORDON: Thank you, Your Honor.

2 BY MR. GORDON, CONTINUING:

3 Q. Ms. Gibbons, what did you learn, if anything,
4 about FDI's intention following their efforts in
5 Florida?

6 MR. YERUSHALMI: Objection, calls for
7 speculation.

8 THE COURT: No, I don't think it calls for
9 speculation. Overruled

10 THE WITNESS: They were -- that it was an
11 issue that they were carrying forward into the Detroit
12 market.

13 BY MR. GORDON, CONTINUING:

14 Q. Did you learn of any other markets they might be
15 going into?

16 A. Not that I'm aware of.

17 MR. GORDON: No other questions, Your Honor.

18 THE COURT: Any other questions?

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

21 THE COURT: Yes, you may.

22 Do you have any follow-up questions?

23 MR. YERUSHALMI: Redirect, Your Honor?

24 THE COURT: Yes.

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

AFDI, et al v SMART - Case No. 10-12134

1 BY MR. YERUSHALMI:

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

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

7 Q. In other words, you added information related to
8 the advertising guidelines?

9 A. Right. We clarified that we did not arbitrarily,
10 you know, make decisions on what ads can be placed and
11 not placed on our buses and that we do have advertising
12 guidelines that we review.

13 Q. And other than the advertising information the
14 guidelines provided on the Web site, and other than the
15 contract that we looked at earlier, Section 5.07, there
16 are no other written guidelines, policies or manuals
17 available?

18 A. No.

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

21 A. Yes.

22 Q. You indicated that as a result of a newspaper
23 article, you determined at that time my client's ad was
24 political?

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

1 Q. You had already testified earlier that the
2 content was not political but that you looked at what
3 occurred in Miami?

4 A. Correct.

5 Q. And all you know about what occurred in Miami is
6 the article that you looked at earlier that you
7 referenced?

8 A. Yes.

9 MR. YERUSHALMI: I have nothing further.

10 MR. GORDON: Nothing further, Your Honor.

11 THE COURT: You may step down, thank you.

12 MR. YERUSHALMI: I would like to call Pamela
13 Geller.

14 P A M E L A G E L L E R, after being first
15 duly sworn, was examined under her oath and testified as
16 follows:

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

18 BY MR. YERUSHALMI:

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

20 A. I am.

21 Q. And you're the Director of American Freedom
22 Defense Initiatives?

23 A. Executive Director.

24 Q. Why did you run the ad which is the subject of
25 this litigation?

AFDI, et al v SMART - Case No. 10-12134

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

2 Q. And could you explain what you mean by religious
3 liberty?

4 A. Well, I have been an investigative journalist, a
5 published author. The field of my study, intense study
6 for the past eight years, has been Islam, and I saw an
7 increasing trend --

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

11 THE COURT: Counsel?

12 MR. YERUSHALMI: Your Honor, if the
13 Defendants are prepared to concede that all of the
14 earlier testimony by Ms. Gibbons regarding the intent
15 and what took place not within the content, the four
16 corners of the ad itself, then we don't need to get into
17 this.

18 THE COURT: I don't know what you mean by
19 that.

20 Do you know what he means by that?

21 MR. GORDON: No. And I don't believe Ms.
22 Gibbons testified to intent.

23 MR. YERUSHALMI: Your Honor, earlier
24 Counsel for the Defendants asked Mrs. Gibbons what she
25 had learned of the intent of the Plaintiffs in running

1 the ad. The whole point of the cross examination was
2 that the ad itself was not political but that it somehow
3 stirred a political controversy elsewhere and there was
4 a political campaign being run. I'm simply trying to
5 get at the purpose for this particular ad.

6 THE COURT: I'm going to allow that.

7 MR. GORDON: Your Honor, the Complaint
8 already admits to the political nature of the ad within
9 its four corners and the efforts that took place at
10 paragraph 8.

11 If I may, Your Honor, I would be happy to
12 read that.

13 THE COURT: No, you don't need to, thank
14 you. Your objection is noted and preserved.

15 You may answer.

16 THE WITNESS: An increasing trend in --

17 THE COURT: (Interposing) Well, wait a
18 minute. Before you do that, perhaps you should pose
19 your question again because this doesn't sound like the
20 answer to the question you posed. But it may be, I
21 don't know that yet. So pose your question again.

22 BY MR. YERUSHALMI, CONTINUING:

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

25 A. Religious choice. The ability to choose any

1 religion free of harm in America.

2 Q. You indicate -- strike that.

3 Where else have you run this ad?

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

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

7 A. They did run in Miami. Probably not one but two
8 articles, opinion pieces, if I might not, written
9 basically from a press relief from unindicted
10 co-conspirator in Hama Lin-kaia (ph). Other than that,
11 they were up and they ran with an additional 20 buses at
12 50 percent off.

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

16 A. Nothing. And in New York City, it is the
17 complete five Boroughs.

18 MR. YERUSHALMI: I have nothing further,
19 Your Honor.

20 THE COURT: Alright, thank you.

21 Do you wish to examine this Witness?

22 MR. GORDON: Yes, Your Honor. Just a few
23 questions.

24 C R O S S E X A M I N A T I O N

25 BY MR. GORDON:

AFDI, et al v SMART - Case No. 10-12134

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

3 A. Good afternoon.

4 Q. My name is Avery Gordon.

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

7 A. No.

8 Q. It didn't?

9 A. No, sir.

10 Q. Have your ads created controversy anywhere?

11 A. There has been discussion about my ads. There has
12 been discussions, but we believe that any opposition to
13 these ads shows support for the death penalty for
14 Apostates.

15 Q. Ms. Geller, did you have an opportunity to review
16 the Complaint that was filed in this case before it was
17 filed?

18 A. Yes. Or my lawyer's.

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

22 A. Of my Complaint?

23 Q. Yes, Ma'am.

24 A. Oh, yes, of course.

25 Q. Paragraph 8 states:

AFDI, et al v SMART - Case No. 10-12134

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

5 Is that true?

6 A. FDI is a human rights organization devoted to
7 freedom of speech, religious liberty. Well, freedom of
8 speech is a political issue. The ads, the bus ads, were
9 not political. Those were religious liberty bus ads.
10 I'm doing other things.

11 MR. GORDON: Your Honor, can I ask the Court
12 to direct her to answer the question? I'm trying to ask
13 the question.

14 THE COURT: Yes. Can you pose the question
15 again, and then please answer the question directly,
16 okay.

17 BY MR. GORDON, CONTINUING:

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

19 "FDI promotes its political objectives by,
20 inter alia, sponsoring anti-jihad bus and
21 billboard campaigns which include seeking
22 advertising space on SMART vehicles."

23 A. Yes.

24 Q. Is that a true statement?

25 A. Not about that particular bus ad, but that is not

1 all that FDI does. FDI does not just do that particular
2 bus ad, we're involved in many different initiatives.

3 Q. I understand that, but your Complaint in this
4 instance sues SMART. You blamed SMART and two of its
5 employees, and so my question to you is did the
6 paragraph number 8 that I just read -- let me read it
7 again.

8 THE COURT: No, we heard it. Just pose your
9 question.

10 THE WITNESS: With a --

11 THE COURT: (Interposing) Excuse me, we need
12 a question so we have an answer. Not meaning to
13 interrupt you all, but if I don't have a question and an
14 answer, it doesn't help.

15 MR. GORDON: Of course. Thank you, Your
16 Honor.

17 BY MR. GORDON, CONTINUING:

18 Q. My question to you, Ma'am, is, is that a true
19 statement?

20 A. If religious liberties --

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

23 A. Yes, it is a true statement.

24 Q. And I can't help but notice absent -- conspicuous
25 by its absence is the words "religious speech". Can you

1 tell me was that intentional on your part?

2 A. Religious liberty?

3 Q. Religious speech?

4 A. Religious liberty.

5 Q. Religious objectives?

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

10 Q. (Interposing) Thank you, Ms. Geller. I
11 appreciate your answer.

12 I'd also like to read to you Paragraph
13 Number 9, if I may. This one relates to you, Ma'am. It
14 says:

15 "Plaintiff Pamela Geller is the Executive
16 Director of FDI, and she engages in
17 political and religious speech through FDI's
18 activities, including FDI's anti-jihad bus
19 and billboard campaigns."

20 My question to you first is, is that a true
21 statement?

22 A. Yes.

23 Q. And can you tell me, the anti-jihad bus campaign,
24 was SMART part or one of the campaigns that was mounted
25 by you?

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

4 Q. Well, let's take a moment here. You said Detroit
5 rejected you?

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

7 Q. Did the City of Detroit reject you?

8 A. It was D DOT and SMART, was it not.

9 Q. It is D DOT, the Detroit Department of
10 Transportation and SMART. So actually, your testimony
11 of just a second ago that you were rejected only by
12 Detroit is not true, you were rejected by Detroit and
13 SMART?

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

16 Q. Ms. Geller, finally I would like to read to you
17 from Paragraph Number 1 of the Complaint. Paragraph
18 Number 1 of the Complaint, under Introduction, says that
19 you are challenging, and I'm going to quote:

20 "...challenging Defendants' restriction on
21 Plaintiffs' right to engage in political and
22 religious speech in a public forum."

23 Is that correct?

24 A. Yes.

25 Q. Let me ask you another question. Your blog

1 today, your online blog today indicated that you would
2 be in Detroit, did it not?

3 A. Yes.

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

6 A. Yeah. I'm fighting for religious liberty, and I
7 think it is the one of the major issues of our time,
8 religious freedom.

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

10 A. There is no questioning that, yes.

11 Q. I said there is no question yet.

12 THE COURT: Well, let's pose one.

13 MR. GORDON: No further questions, Your
14 Honor. Thank you.

15 THE COURT: Do you have any other questions,
16 Counsel?

17 MR. YERUSHALMI: Short redirect, Your Honor?

18 THE COURT: Okay.

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

20 BY MR. YERUSHALMI:

21 Q. Your organization, FDI, intended on running
22 additional ads beyond the religious liberty ad that you
23 sought to place on SMART?

24 A. Yes.

25 Q. And in fact, you had an entire campaign which

AFDI, et al v SMART - Case No. 10-12134

1 included political speech as well as religious speech?

2 A. Yes, because FDI is a human rights organization
3 devoted to freedom of speech, religious liberty, and
4 individual rights, and we fight them on many fronts.
5 And yes, we use media.

6 In this particular case, it was religious
7 liberty.

8 Q. And you will agree with Ms. Gibbons's earlier
9 testimony that there is nothing in the content of this
10 ad which is political?

11 MR. GORDON: Objection, Your Honor. Her
12 agreement with Ms. Gibbons is truly irrelevant.

13 THE COURT: Why don't you rephrase your
14 question so it just asks for the answer without
15 requiring that she agree with another witness.

16 MR. YERUSHALMI: Fair enough.

17 BY MR. YERUSHALMI, CONTINUING:

18 Q. The content of this ad was purely religious and
19 religious liberty?

20 MR. GORDON: Objection, Your Honor.
21 Leading.

22 THE COURT: It is leading, but I'm going to
23 permit it.

24 THE WITNESS: The content of the ad was
25 purely religious.

1 MR. YERUSHALMI: No further questions, Your
2 Honor.

3 THE COURT: I have a question, and if you
4 all object to my questions, you should say so for the
5 record; otherwise, your objection is waived. Do you
6 understand that, both sides?

7 MR. GORDON: Yes, Your Honor.

8 MR. YERUSHALMI: Yes, Your Honor.

9 THE COURT: In these other communities, I
10 think it's, you said, Miami, New York City, Brooklyn,
11 and San Francisco, do you have the same ad that's being
12 proposed here running?

13 THE WITNESS: Exactly.

14 THE COURT: And do you have any other ads
15 running?

16 THE WITNESS: I had a campaign in Chicago on
17 tops of taxicabs running. It is a different campaign.

18 THE COURT: It is a different campaign on
19 top of Chicago --

20 THE WITNESS: (Interposing) Taxicabs.

21 THE COURT: But in these others, Miami, New
22 York City, Brooklyn and San Francisco, they are all bus
23 ads?

24 THE WITNESS: Yes.

25 THE COURT: Are they all the same ones?

1 THE WITNESS: Yes.

2 THE COURT: There have been no other ads
3 that have been proposed to any of those?

4 THE WITNESS: Well, There is another ad that
5 has been proposed, but it is a different campaign. The
6 contract has not yet been signed, the artwork has been
7 -- we're in the last stage of the artwork.

8 THE COURT: So there is not an existing ad
9 already proposed to them?

10 THE WITNESS: No, Ma'am.

11 THE COURT: That's all I have. Anything
12 else?

13 MR. GORDON: No, Your Honor.

14 THE COURT: You may step down, Ma'am. Thank
15 you.

16 Are you ready for argument?

17 MR. MUISE: Yes, Your Honor.

18 Good afternoon, Your Honor. Obviously, this
19 case is before you and this hearing is on a preliminary
20 injunction. There are four factors that this Court has
21 to weigh.

22 The factor, though, that this is in the
23 First Amendment context, the often dispositive factor,
24 is the likelihood of success on the merits, because as
25 the case law has made very plain that loss of the First

1 Amendment rights constitutes irreparable harm. Whether
2 it frankly causes general harm to others; it's always in
3 the public interest. And those two and the public
4 interest issue, obviously, are tied up in protecting
5 First Amendment liberties.

6 So at the end of the day, I think the main
7 issue for this Court to decide is the likelihood of
8 success on the merits on the First Amendment claim, and
9 those other factors for the injunction typically fall in
10 place in the First Amendment context in favor of
11 granting injunction if there is a likelihood of success.

12 Interestingly, in the Court's Order denying
13 without prejudice the temporary restraining order, the
14 Court said, quote:

15 "Plaintiffs' suspicion that their request
16 was denied due to the content of the
17 advertisement is not yet enough to establish
18 that a First Amendment violation has
19 occurred."

20 I would submit, Your Honor, that that is no
21 longer a suspicion but an established fact that it was
22 not only content-based but it was plainly
23 viewpoint-based, which is the most egregious form of
24 discrimination in the First Amendment.

25 The Court's analysis of the likelihood of

1 success really takes a three-step approach, and I want
2 to kind of run through that in light of the evidence
3 that you have before you in this Court and the evidence
4 that was submitted during the hearing today.

5 Plainly, a religious freedom message,
6 conveying a message on a billboard or a sign is speech
7 that is protected by the First Amendment.

8 So that the question here is not whether or
9 not the speech itself is protected speech, the question
10 is whether or not Defendants' restrictions on that
11 speech meets the constitutional requirements under the
12 appropriate level of scrutiny.

13 And to get to that point, the next step then
14 is for the Court to determine the nature of the forum.

15 The Supreme Court has made plain that the
16 Court engage in a forum analysis to see whether or not
17 the restriction of the speech which is otherwise
18 protected, whether that restriction sustains
19 constitutional scrutiny.

20 I think what the evidence shows really
21 without much dispute is that by their policy and by
22 their practice, the Defense in this case have created a
23 public forum for speech, and particularly for speech
24 where the subject matter is religion.

25 When you have the acceptance of a

1 controversial, noncommercial advertisement, such as the
2 atheist advertisement, one that was so controversial to
3 the point there was vandalism to the ads, the ads
4 weren't pulled after the vandalism, the ads were
5 repaired and put back up.

6 And as Ms. Gibbons testified that those ads
7 were consistent and met the policies, procedures and
8 guideline requirements of Defendants, the same policies
9 and procedures and guidelines that they apparently used
10 to reject my client's advertisements.

11 When the Government demonstrates a
12 willingness to open their property to controversial
13 speech, and certainly, I think the Court, you know,
14 doesn't have to leave common sense prior to taking the
15 bench, when you look at that atheist advertisement,
16 that advertisement itself, that is not an innocuous
17 commercial advertisement that was provided mainly for
18 the purpose of raising revenue such as the
19 advertisements at issue in the Lehman versus Shaker
20 Heights case. That is a controversial message, one so
21 controversial that it caused people to vandalize that
22 message. And yet, that message, based on the policy and
23 procedures of SMART, is one that they consider to be
24 acceptable.

25 So that accepting that atheist message in

1 light of all these facts shows that it is inconsistent
2 with the argument that the advertising space is solely
3 for commercial purposes, and a willingness on the part
4 of the Government to open that forum, the advertising
5 space, to noncommercial controversial speech, and
6 certainly speech and acceptable subject matter of that
7 speech is religion.

8 Plainly, comparing the advertisements, there
9 is nothing distinguishable from that atheist
10 advertisement, which was acceptable, and my client's
11 advertisement that the Defendants, the Government, had
12 restricted.

13 And even more interestingly, and you heard
14 from it in her Affidavit and her Declaration as well as
15 her testimony today, Mrs. Gibbons, that after the
16 controversy with the Atheist Ad that is when SMART
17 decided to put on their Web site that language about
18 equal access, First Amendment. And plainly, again, the
19 Court need not leave its common sense prior to taking
20 the bench, it is obvious that that Atheist Ad created
21 such a fervor and controversy that SMART said, look,
22 we're a government agency, we must provide equal access,
23 this is a First Amendment issue, so we're going to allow
24 this Atheist Ad to take place.

25 So plainly, by policy, by practice, they

AEDI, et al v SMART - Case No. 10-12134

1 have created a public forum of speech, at a minimum for
2 speech where the subject matter that is acceptable is
3 religion as a subject matter which is the plainly the
4 subject matter of our client's advertisement.

5 In a public forum, designated or
6 traditional, and here it is designated a public forum,
7 the level of scrutiny when you make a content-base
8 restriction is strict scrutiny.

9 THE COURT: That's where I'm going to stop
10 you for just a few minutes. I have a quick matter I
11 have to take care of. It is not going to take very
12 long.

13 (Recess in Proceedings)

14 * * * * *

15 THE COURT: Counsel, you may continue on
16 your argument. You were beginning to talk about the
17 level of scrutiny to be implied.

18 MR. MUISE: Yes, Your Honor. And also, when
19 a public forum has been created by the Government, as we
20 argue it has here by their practice and procedures, the
21 level of scrutiny for a content-base restriction is
22 stricter. Meaning the Government must have a compelling
23 reason for restricting the ad. And certainly, there is
24 no compelling reason or no compelling interest that
25 would have or would permit the Government to allow an

1 atheist advertisement, one that even subjected their
2 buses to vandalism, and then put that back up and then
3 turn around and say this, my client's religious freedom
4 message, is not permissible.

5 And when you have -- and Ms. Gibbons
6 testified about, you know, some opinion pieces she read
7 about Miami Dade and there was some response to the
8 messages, the religious freedom messages they were
9 running in Miami Dade, the case law is very plain as
10 well that a listener's reaction to speech, if he
11 restricts speech based on a listener's reaction to a
12 speech, or in this case viewer's reaction to a speech
13 because it is a billboard, that is not a content-neutral
14 basis for restricting speech. In fact, it is
15 essentially effectuating heckler's veto, which is
16 impermissible under the First Amendment.

17 Even assuming, and I think it would be
18 inaccurate to conclude or assume that the forum is a
19 nonpublic forum, even in a nonpublic forum, and
20 principally because of the policies and practices and
21 certainly there is an intention on the part of the
22 Government and a willingness to open the forum up to
23 speech, to open the speech to something beyond just
24 revenue driven innocuous commercial speech, but to
25 include controversial religion, and in fact,

AFDI, et al v SMART - Case No. 10-12134

1 anti-religious speech in the Atheist Ad.

2 But even assuming it is a nonpublic forum,
3 the Government's restriction in this case, first of all,
4 must be reasonable. And secondly, must be
5 viewpoint-neutral.

6 The reasonableness question, when you look
7 in light of the fact that they allowed the atheist
8 advertisement, it demonstrates that the forum itself is
9 compatible to that form of speech. That subject matter
10 of religion is a subject matter that is permissible in
11 that forum for the speech. I mean, if anything, the
12 Atheist Ad is one that perhaps may have disrupted the
13 transportation's mission because of the vandalism that
14 occurred. And yet, that ad was put back on, and it was
15 allowed to proceed. And there is no evidence that our
16 advertisement has ever caused any vandalism like the
17 Atheist Ad.

18 So to make the distinction that the Atheist
19 Ad is permissible in this forum, surely it is even a
20 nonpublic forum, but the advertisement that my client
21 wants to run is, in fact, unreasonable.

22 But even more impermissible is the viewpoint
23 restriction nature of this. When you have a permissible
24 subject matter and the policy doesn't exclude religion
25 as a permissible subject matter. We know from the

1 testimony that religion is a permissible subject matter.
2 And for you to say that this atheist controversial,
3 anti-God, and I would say anti-Christian, anti-Jewish,
4 anti-Islam advertisement, that that religious speech as
5 subject matter is okay. But within the same subject
6 matter, my client's religious freedom message is not
7 okay, making those distinctions of a similar subject
8 matter is itself a viewpoint-based distinction which is
9 impermissible.

10 So in sum, even if the forum -- well, we
11 believe the forum is a public forum based on that policy
12 and practice, the content-based restriction is plainly
13 unconstitutional. Plainly a viewpoint-based restriction
14 in a public forum is impermissible.

15 But even assuming that the forum is
16 nonpublic, the restriction here is not reasonable, and
17 in fact, is viewpoint-based.

18 So no matter how you look at this, the forum
19 analysis, when you look at what they actually at the end
20 of the day the restriction that they imposed, the
21 viewpoint-base restriction on a permissible subject
22 matter, that being religion, in my client's -- the
23 viewpoint my client expresses on that subject, that,
24 itself, is impermissible whether it is a public forum or
25 nonpublic forum.

1 And I want to make one final point on the
2 question of the political speech and so forth. There
3 are categories of speech and then there is subject
4 matter of the message.

5 Typically, when you look at the First
6 Amendment context, you talk about political speech,
7 religious speech resting on the highest rung of
8 protections under the First Amendment as compared with
9 commercial advertisement which may have some additional
10 restrictions imposed on them.

11 So as a category of speech, religious
12 expression, political speech are the highest protected.

13 The restrictions that they have imposed here
14 isn't a restriction on a category or speech, it is a
15 restriction on a subject matter. Even in their
16 guideline they have, the subject matter they restrict is
17 political. They don't restrict religion.

18 So the restriction that is at issue here is
19 the question: Is the category of speech that is
20 permissible, whether this be a public forum or nonpublic
21 forum, is religion, and our client's speech, the subject
22 matter of the message is, in fact, religion.

23 So if they prohibit our subject matter
24 within that permissible subject matter, again, that is a
25 viewpoint-based restriction.

1 The other thing is when you look at the
2 restrictions themselves, there is nothing, nothing that
3 can guide government officials, and certainly this case
4 provides a perfect example, that guide government
5 officials to be able to make a distinction as to why
6 this anti-God, anti-Christian, anti-Jew, anti-religion
7 atheist message, quote, unquote, is not political, but
8 this religious freedom message that addresses Islam is,
9 in fact, political. That is left to the whims of the
10 government official.

11 Unfortunately, these restrictions permit --
12 they're not restrictions, but these guidelines permit
13 them to make arbitrary and capricious decisions as to
14 which messages are permissible and which messages are
15 not permissible, which again, the First Amendment does
16 not permit.

17 We're talking about government officials.
18 They can't pick and choose as to which viewpoints they
19 say are permissible and which ones are impermissible.

20 And there is nothing in the guidelines that
21 make them distinguish, okay, how is the Atheist Ad a
22 nonpolitical ad but the Islam ad is a political ad? And
23 how is one religion and how is one not religion?

24 Again, when you look at these objectively or
25 observe both of those, those are messages that deal with

1 the subject matter of religion, and when they make
2 distinctions between subject matters, they are
3 essentially making viewpoint-based distinctions. No
4 matter how you slice this or cut this, this is an
5 unconstitutional restriction on our client's speech.

6 THE COURT: Do you wish to argue?

7 MR. GORDON: Yes, Your Honor, I certainly
8 do. And I would like to begin where Mr. Muise left off.

9 He expressed a great deal of confusion about
10 the difference between religious speech and political
11 speech.

12 Religious speech is, in fact, religious
13 speech. Unfortunately, advocating religious freedom is
14 a political issue.

15 Your Honor, we have to be very careful when
16 we listen to Plaintiffs because they confuse some terms
17 like "content" and "viewpoint".

18 I agree that SMART --

19 THE COURT: (Interposing) Before you go on,
20 do you have some case support for advocating religious
21 freedom being political speech?

22 MR. GORDON: Your Honor, I believe that the
23 Court --

24 THE COURT: Is it in your brief?

25 MR. GORDON: No, Your Honor. But luckily,

1 Your Honor -- pardon me for just one moment.

2 Your Honor, Black's Law Dictionary, the 8th
3 Edition, defines political as pertaining to politics of
4 or related to the conduct of government.

5 THE COURT: That is the definition of what,
6 political?

7 MR. GORDON: Political, yes, Your Honor.

8 And Your Honor, I'm very lucky on this issue
9 because Plaintiffs have seen to it that they and SMART
10 do not actually disagree that much, and the reason is
11 because the Complaint is rife with admissions on this
12 very topic.

13 I previously raised the issue with Mrs.
14 Geller of the Complaint that was filed in this action.
15 In particular, I questioned her with regard to Paragraph
16 Number 8, which read:

17 "FDI promotes its political objectives by,
18 inter alia, sponsoring anti-jihad bus and
19 billboard campaigns, which includes seeking
20 advertising space on SMART vehicles."

21 Conspicuous by its absence is any
22 relationship or any objective of religion or religious
23 speech.

24 In addition, Paragraph 9 states that:

25 "Pamela Geller is the Executive Director of

1 FDI, and she engages in political and
2 religious speech through FDI's activities,
3 including FDI's anti-jihad bus and billboard
4 campaigns."

5 Paragraph Number 10 states:

6 "Plaintiff Robert Spencer is the Associate
7 Director of FDI, and he engages in political
8 and religious speech through FDI's
9 activities, including FDI's anti-jihad bus
10 and billboard campaigns."

11 My point is there is absolutely no
12 disagreement on whether or not this was political. That
13 is at least until the reply to the Defendant's response
14 to Plaintiffs' Motion. Then suddenly, everything was
15 religious freedom speech.

16 Your Honor, even the very first Paragraph of
17 this Complaint makes it perfectly clear what the
18 Plaintiffs' aims and goals are in this case. They are,
19 and I quote:

20 "...challenging Defendants' restriction on
21 Plaintiffs' right to engage in political and
22 religious speech in a public forum."

23 And having said that, that brings me to the
24 next issue that Mr. Muise tends to confuse. He talks
25 about public forum and open public forum and designated

1 public forum. Anything but a nonpublic forum, which is
2 precisely what SMART has created.

3 But Your Honor, I'm getting just a tiny bit
4 ahead of myself.

5 If I may, and as you know, consistent with
6 the briefs, the parties agree that there are four
7 elements that the Court must balance.

8 The first element, of course, is whether or
9 not the Plaintiffs can establish a substantial
10 likelihood of success. Not is it likely to succeed, but
11 a substantial likelihood of success.

12 Secondly, whether there is a threat of
13 irreparable harm to the Plaintiffs.

14 Thirdly, whether issuing the injunction
15 would cause substantial harm to others. And finally,
16 whether the public interest would be served by granting
17 this injunction.

18 Plaintiffs have trouble with each and every
19 single one of these four elements because SMART,
20 conscious of the law in this area, conscious of this
21 Circuit's ruling in Lehman versus Shaker Heights,
22 created a forum, a nonpublic forum wherein it could
23 prohibit political advertising.

24 It is simply not substantially certain that
25 Plaintiffs will succeed, and as a result, this Motion

1 must be denied.

2 Your Honor, there are three distinct public
3 fora. The first is a traditional or open public forum.
4 The courts refer to those that have been traditionally
5 used for unregulated public debate: Sidewalks, parks,
6 city hall.

7 Next is a designated public forum. That is
8 where the Government has created a place for use by only
9 certain speakers for certain subjects.

10 Finally, there is what we have here, Your
11 Honor, a nonpublic forum in which certain government
12 property may be opened but only to limited speech.

13 Having said that, however, the First
14 Amendment does not open up government property to
15 unregulated debate merely because the property is owned
16 by the government.

17 The Supreme Court held in the *Cornelius*
18 case, which is cited in our brief, and I quote, Your
19 Honor:

20 "We will not find that a public forum has
21 been created in the face of clear evidence
22 of a contrary intent. Nor will we infer
23 that the government intended to create a
24 public forum when the nature of the property
25 is inconsistent with expressive activity."

1 Your Honor, I would ask the Court's
2 indulgence, I would just like to re-read just the first
3 part of that:

4 "We will not find that a public forum has
5 been created in the face of clear evidence
6 of a contrary intent."

7 Regulation of speech in a nonpublic forum,
8 of course must be reasonable in light of the purposes
9 served by that forum. It doesn't have to be the most
10 reasonable. It doesn't have to be the only reasonable
11 limitation. A strict or a direct incapability between
12 the speech or the speaker's identity and the public
13 transit effort is not required.

14 Clearly, SMART has maintained a nonpublic
15 forum in which political advertising is prohibited
16 precisely as this Circuit has demonstrated in *Lehman*
17 versus *Shaker Heights*.

18 SMART's content policy states that SMART
19 will not accept political or political campaign
20 advertising.

21 Conspicuous by its absence from its content
22 policy is religious speech. Put differently, SMART
23 allows religious ads.

24 Plaintiffs like to muddy the water because
25 they will look at us and say, oh, but that was

1 controversial or it wasn't controversial, and since it
2 was controversial SMART should have known not to post
3 it.

4 The issue is not controversial, but why is
5 that a topic in this case? Here is why. Because the
6 atheist awareness advertisement, pure religious speech,
7 when presented to SMART, there was absolutely no reason
8 to believe that there was one wit of political content
9 or that there was any controversy whatsoever. And you
10 heard Ms. Gibbons testify to that.

11 She also testified that in this instance,
12 with this ad, she had become aware of a very hot
13 political issue by way of the Internet and learned what
14 was happening at the Miami Dade Transit Authority in
15 Florida. That was even before FDI ever made its way to
16 Detroit.

17 Your Honor, I have to go back to a crucial
18 issue, if I may.

19 In this case, there is absolutely no way
20 Plaintiffs can, with a straight face, dispute that these
21 ads and the speaker's identity is political and
22 politically charged.

23 Although Plaintiffs' reply seems now to
24 suddenly characterize the ads as only religious speech,
25 this is a new development.

1 Your Honor, Plaintiffs are political.
2 Plaintiffs' organization is political. In fact, the
3 Complaint does not even attribute religious speech to
4 FDI. The ads are political. And the bus advertising
5 campaign itself is political.

6 In no less than six paragraphs of their
7 pleadings and papers do Plaintiffs admit exactly that.
8 Exactly that.

9 Only now, only in their reply and only today
10 in court do they claim that their ads are exclusively
11 religious freedom speech.

12 In Paragraph 8, Plaintiffs admit that FDI
13 promotes its political objectives by sponsoring
14 anti-jihad bus ads.

15 As I mentioned, Your Honor, nowhere in
16 Paragraph 8 or anyplace else within the Complaint does
17 FDI admit or assure the reader that they're involved in
18 religious speech.

19 If we add Ms. Geller's Declaration, the
20 number of paragraphs dealing with this issue alone rises
21 to six.

22 On page 2 of Paragraphs 3 and 6, Ms.
23 Geller's Declaration also addresses this topic. Only in
24 their reply, Your Honor, do they characterize their
25 speech differently. Only here in court do they try to

1 characterize their speech differently. Why? Because
2 they want to say that SMART declined these ads as a
3 result of the content.

4 Let me say again. That would be true as
5 long as we're all talking about the same thing. Not
6 viewpoint. Not viewpoint. Our policy is
7 viewpoint-neutral. It is content-based, however,
8 because we do reject, as Lehman and other courts have
9 said, we are entitled to without a violation of
10 Plaintiffs' First and Fourteenth Amendment rights.

11 I'd like to address the ads themselves if I
12 may for just a moment, Your Honor. They are clearly
13 political. Consistent with Plaintiffs' overall
14 approach, of course. Just as you would expect. For
15 example, the ad contains this political component: FDI
16 itself is very vocal in criticizing Islam as a
17 tyrannical, political and legal system in its writings
18 and the Web site that the ad itself refers to.

19 MR. MUISE: Your Honor, I'm going to object
20 to this. This is so impertinent material. He is
21 talking about content and this is like an ad hoc attack
22 now on Plaintiffs. It's plain what this has turned
23 into. There is no reason for this Court to hear any
24 more of this.

25 THE COURT: Your objection is noted for the

AFDI, et al v SMART - Case No. 10-12134

1 record and overruled.

2 MR. GORDON: Your Honor, clearly the ad
3 intended a political message in the text of the
4 advertisement itself by criticizing the Shorea or the
5 legal component of that system.

6 The message in the ad broadcast by the
7 sentence, which is included in Plaintiffs' Exhibits, is
8 quote, "Fatwa on your head", end quote. This, too,
9 displays a political message by referring to a form of
10 edict that is issued under the presumed authority of
11 Muslim officials who get that authority under the
12 Islamic political system.

13 Frankly, the bus advertising campaign
14 itself, as testified to today by Ms. Gibbons, has itself
15 become a hot button political issue because of the
16 manner in which the ads were proposed and challenged and
17 in which -- in the Miami Dade Transit matter.

18 That happened earlier this year. That came
19 to Ms. Gibbons' attention prior to the ad even making
20 its way here.

21 The message proposed, the advertisement
22 proposed, again as testified by Ms. Geller, the same ads
23 were used, is merely a continuation of that political
24 campaign that was first launched in Miami.

25 Reports on that campaign in the media, as

1 Ms. Gibbons testified to, and the commentary on those
2 reports themselves have clearly demonstrated the
3 political divide that this campaign has created.

4 I'll move on, Your Honor. Let me just say
5 that as in Lehman, cited in our brief, SMART's content
6 policy is reasonable.

7 A rational basis test is used in nonpublic
8 forum. Everybody agrees. SMART's policy, like that one
9 precisely in Lehman, sets out a policy, and SMART's
10 policy exists in order to assure three things. One, to
11 minimize the chance of abuse. The appearance of
12 favoritism. And the risk of imposing on a captive
13 audience.

14 That policy is in the contract, and is an
15 exhibit in our response.

16 SMART furthers these goals as well as
17 protecting its mission critical goal of providing safe
18 and efficient mass transportation by not jeopardizing
19 advertising as a revenue source.

20 Courts have recognized this as a reasonable
21 goal, Your Honor.

22 Our brief cites to Christ's Bride Ministries
23 versus SEPTA, and also to the Lehman case, and I would
24 like to read a brief passage, if I may, from the Lehman
25 case:

1 "Revenue earned from long-term commercial
2 advertising could be jeopardized by a
3 requirement that short-term candidacy or
4 issue-oriented advertisements be displayed
5 on a car or cars. Users would be subjected
6 to the blare of political propaganda. There
7 could be lurking doubts about favoritism and
8 sticky administrative problems might arise
9 in parceling out limited space to eager
10 politicians. In these circumstances, the
11 managerial decision to limit car card space
12 to innocuous and less controversial
13 commercial and service oriented advertising
14 does not rise to the dignity of a First
15 Amendment violation. Were we to hold to the
16 contrary, display cases in public
17 hospitals, libraries, office buildings,
18 miliary compounds and other public
19 facilities immediately would become
20 high targets open to every would-be
21 pamphleteer and politician, and this the
22 Constitution does not require."
23 Importantly, SMART's policy is
24 viewpoint-neutral. We don't accept candidate
25 advertising without regard to who the candidate is.

AFDI, et al v SMART - Case No. 10-12134

1 Your Honor, we do not accept advertising
2 that is for or against any ballot proposal. We don't
3 care what side of the issue you're on. And we don't
4 accept ads relating to charged political issues, again
5 no matter what side you're on.

6 Again, hereto Plaintiffs have not met their
7 burden. SMART has been approached with offers to post
8 other political ads and we have respectfully declined
9 those offers.

10 In a nonpublic forum, SMART may, indeed,
11 prohibit political advertising without violating
12 Plaintiffs' First and 14 Amendment rights, precisely as
13 described in Lehman.

14 Your Honor, SMART has no interest in
15 politics or political issues. SMART survives by an add
16 roll on property taxes. This Court may take judicial
17 notice of the fact that on August 3, in less than one
18 month from now, a public vote on the transit tax will be
19 before the voters.

20 SMART operates in a diverse region composed
21 of the four counties it serves. Again, that happens by
22 our enabling legislation Act 204 cited in our brief.

23 My clients have no interest in politics or
24 political issues, Your Honor. Religion is not the
25 issue, the issue is politics. Precisely as it was in

1 Lehman. Our policy mirrors Lehman.

2 The lack of interest in politics by my
3 client goes beyond the Michigan Campaign Finance Act, or
4 on the federal level, the Hatch Act, both of which each
5 in their own way focus on certain political activities
6 of employees by this agency.

7 Your Honor, this Circuit in Lehman provided
8 SMART with a roadmap for transit authorities to create a
9 nonpublic forum as a limit to its advertisement but
10 still to allow us to provide some source of additional
11 revenue for those much critical operations.

12 SMART has diligently and carefully followed
13 that roadmap in a completely viewpoint-neutral way. And
14 today, Your Honor, my client looks to this Court to
15 assure the stability of our reliance on this Court's
16 holdings.

17 It would be very difficult, maybe even
18 unfair or unreasonable for the Court to pull that
19 roadmap out from under us at this time.

20 Your Honor, September 1st, I'm with the
21 Authority for 18 years. I have to tell you that I have
22 represented this client for all of that time. And
23 finally, Judge, finally, for the first time in 18 years,
24 a Plaintiff has actually admitted to nominal damages.

25 Indeed, Your Honor, the only one likely to

AFDI, et al v SMART - Case No. 10-12134

1 suffer irreparable harm is your Defendant SMART if this
2 Court endures the Agency's efforts to follow that
3 roadmap.

4 Finally, Your Honor, in conclusion, let me
5 just say a review of the Complaint, the Motion,
6 Defendants' response and Plaintiffs' reply and nothing
7 that's happened in this courtroom today alters the fact
8 that a nonpublic forum was created by SMART. Precisely
9 as articulated in Lehman.

10 SMART is well within its rights to prohibit
11 political advertising. This is a consistently applied
12 viewpoint-neutral policy. It does not violate
13 Plaintiffs' rights, and as a result, the Motion must be
14 denied.

15 Since Plaintiffs' rights have not been
16 violated, since there will be no irreparable harm in
17 denying the motion to anyone but the Defendants and
18 their captive audience of passengers, composed primarily
19 of the elderly, the handicap and the transit-dependent,
20 I guess likelihood of prevailing is far from a
21 substantial likelihood. It is virtually impossible.

22 For these reasons, for the reasons that we
23 have set forth in our brief, Your Honor, we ask this
24 Court to deny Plaintiffs' Motion for Preliminary
25 Injunction.

AFDI, et al v SMART - Case No. 10-12134

1 THE COURT: I have a couple of questions to
2 ask you, Counsel.

3 If you look at your pleading that is Exhibit
4 B to your response to the Motion for Preliminary
5 Injunction --

6 MR. GORDON: Yes, Your Honor, the Pinckney
7 ad?

8 THE COURT: Well, it says, "Hurting after
9 Abortion?"

10 MR. GORDON: Yes, Your Honor.

11 THE COURT: And it says created by
12 ProjectLIFEBOARD.org.

13 MR. GORDON: Yes, Your Honor.

14 THE COURT: Do you know what Project
15 Lifeboard is?

16 MR. GORDON: No, not as I stand here today.
17 And in fact, once again, let's be sure of the importance
18 of this because Plaintiffs would bring this to the
19 Court's attention for the wrong reasons.

20 The fact is, the simple fact is incidental
21 mention -- incidental mention -- of religion and
22 political speech is not sufficient to take the political
23 speech component out of the advertisement.

24 THE COURT: Tell me this again. Incidental
25 what?

1 MR. GORDON: Incidental reference to
2 religion is not sufficient, Your Honor, to remove the
3 political nature of this advertisement.

4 Allow me to suggest another --

5 THE COURT: (Interposing) Of which
6 advertisement?

7 MR. GORDON: Exhibit B.

8 THE COURT: I'm just asking some questions.

9 MR. GORDON: Of course.

10 THE COURT: And if you would look at the
11 other ad, which is attached as Exhibit F, and do you
12 know what Detroit C-O-R is?

13 MR. GORDON: No, Your Honor. Because we're
14 viewpoint-neutral.

15 Content is a religious ad. We don't reject
16 religious ads. We reject political ads, Your Honor.
17 We don't care who the offer or offerer of the
18 advertisement is.

19 THE COURT: Do you think that this ad that
20 is Exhibit F is an ad that you ran; is that right?

21 MR. GORDON: Yes, Your Honor.

22 THE COURT: And it is on the side of the bus?

23 MR. GORDON: Yes, Your Honor.

24 THE COURT: And was the --

25 MR. GORDON: (Interposing) Though smaller

1 than the ad proposed by FDI.

2 THE COURT: But that was also an
3 outside-of-the-bus ad?

4 MR. GORDON: Yes, Your Honor.

5 THE COURT: And do you believe that and is
6 your argument that this Exhibit F is advocating
7 religious freedom?

8 MR. GORDON: No. Pure religious speech, Your
9 Honor.

10 THE COURT: Anything else by your argument?

11 MR. GORDON: No, Your Honor.

12 THE COURT: Okay, thank you very much.

13 MR. MUISE: Can I have a brief rebuttal?

14 THE COURT: You can have a brief rebuttal,
15 and in your rebuttal, please don't argue what you have
16 argued because I have been listening.

17 MR. MUISE: Thank you, Your Honor, I'll try
18 not to.

19 Interestingly, Your Honor, in one of the
20 statements that Counsel made, he said he doesn't care
21 who the author is, and apparently doesn't know who
22 DetroitCor.org is. Apparently, he doesn't know who the
23 organization with the antiabortion ad, but apparently,
24 has a lot of information about my particular Plaintiff.

25 And listening to his arguments, most of his

1 argument is based on things that have nothing to do with
2 the message but apparently an objection by the
3 Government as to the way my client operates with regard
4 to her organization.

5 You asked the question what authority do you
6 have for the argument that advocating religious freedom
7 is political speech and he breaks out the Black's Law
8 Dictionary. It is utter nonsense to say you're
9 advocating for religious freedom as labeled speech and
10 when the Atheist's Ad goes on, that is not advocating
11 religious freedom? I mean, it is utter nonsense.

12 And what guidelines do they have to really
13 make those sorts of distinctions?

14 So even based on his definition of political
15 speech advocating religious freedom as labeled speech,
16 the Atheist Ad plainly fits within that requirement.

17 But we're lucky, Your Honor, because we
18 don't have to rely on allegations, we can rely on the
19 testimony of Ms. Gibbons, who is testifying pursuant to
20 30(b)(6), pursuant to the stipulation of the parties,
21 and she was asked that specific question by Mr.
22 Yerushalmi, is the advertisement at issue, my client's
23 advertisement, is the content of that message political?
24 And her answer was, no.

25 Why? Because the subject matter of that

1 message is religion.

2 And it wasn't just in the reply. Your
3 Honor, Ms. Geller's Declaration, which was submitted in
4 support or opposition, throughout that Declaration made
5 very plain that her advertisement was a religious
6 freedom advertisement.

7 The Shaker case, which is a Supreme Court
8 case not a Circuit case, allowed the Government to have
9 restrictions, and those are car cards. You asked the
10 question whether they were on the outside of the buses.
11 In the Shaker case, the question of protective audience
12 was raised through the car cards that were inside the
13 buses or inside the transportation vehicle. So you do
14 have a captive audience. Here, that is not an issue
15 because it is outside of the bus.

16 What Shaker makes plain is that if the
17 Government is going to live in the advertisements and it
18 uses the term "innocuous", innocuous noncommercial -- I
19 mean, noncontroversial commercial speech because the
20 sole purpose of the advertising space is to raise
21 revenue, they can do that. The fact that here they
22 allowed this highly innocuous, highly controversial,
23 noncommercial atheist religious freedom message
24 demonstrates that they have opened the forum and they
25 certainly have opened the forum to speech that is

1 equivalent to my client's speech.

2 There is no constitutionally permissible way
3 to make the distinction between saying the atheist
4 advertisement, which we know created controversy because
5 of the vandalism, and yet was allowed to still be up and
6 still as we sit here today is permissible under the
7 guidelines. Yet my clients, by the own admission of Ms.
8 Gibbons, nonpolitically content message is impermissible
9 when they both express a religious liberty message.

10 And it appears from the argument of Counsel
11 here that he apparently doesn't like Ms. Geller and the
12 FDI and what they're doing elsewhere.

13 THE COURT: Well, Counsel, I don't know that
14 he said that, do you?

15 MR. MUISE: Well, I think his comments here
16 --

17 THE COURT: I don't think he said anything
18 about liking or disliking the Plaintiffs.

19 MR. MUISE: Well, he certainly disagreed --

20 THE COURT: Well, that is different. I
21 disagree with a lot of people that I like, so I don't
22 think it is an issue of like and dislike. So keep it
23 nonpersonal unless it is clearly personal, okay.

24 MR. MUISE: Again, going back, he made the
25 point about, well, we don't look at who the speaker is,

1 but plainly through his argument they looked at who the
2 speaker was in this case and disagrees with their
3 approach, which is beyond what the First Amendment
4 requires them to look at, which is the message that's
5 being conveyed, and is this forum, can they exclude that
6 message from this forum? And the answer to that
7 question is plainly no. And that's when the First
8 Amendment violation comes into play.

9 Thank you, Your Honor.

10 THE COURT: I'm happy to give you a written
11 order in a short time. If I feel the need to have you
12 come back to get the order, I'll notify you of the date
13 and time later on this week.

14 MR. GORDON: Very good, Your Honor.

15 THE COURT: Okay, anything further?

16 Thank you very much, and court is in recess.

17 Now, you gave me some additional
18 stipulations, I don't file them. If you want them
19 filed, you need to file them electronically. Otherwise,
20 they won't be a part of the formal record.

21 Thank you very much, and Court is in recess.

22 (Proceedings concluded at 3:55 p.m.)

23 * * * * *

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25

1 C E R T I F I C A T E

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

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

14

15

S/Cheryl E. Daniel

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FEDERAL OFFICIAL COURT REPORTER

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