

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

AMERICAN FREEDOM DEFENSE
INITIATIVE; PAMELA GELLER; and
ROBERT SPENCER,

Plaintiffs,

v.

SUBURBAN MOBILITY AUTHORITY
for REGIONAL TRANSPORTATION
("SMART"); GARY L. HENDRICKSON,
individually and in his official capacity as
Chief Executive of SMART; JOHN
HERTEL, individually and in his official
capacity as General Manager of SMART;
and BETH GIBBONS, individually and in
her official capacity as Marketing Program
Manager of SMART,

Defendants.

2:10-cv-12134-DPH-MJH

**PLAINTIFFS' MOTION TO
REQEUST THE COURT RULE
ON DEFENDANTS' PENDING
EMERGENCY MOTION TO
STAY PRELIMINARY
INJUNCTION**

Hon. Denise Page Hood

Magistrate Judge Hluchaniuk

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On July 13, 2010—*more than a year ago*—this court held a hearing on Plaintiffs’ motion for preliminary injunction. On March 31, 2011, this court entered its order granting Plaintiffs’ motion based upon the fact that Defendants’ refusal to run Plaintiffs’ advertising on their buses was a violation of Plaintiffs’ right to freedom of speech. (Doc. No. 24).

Just prior to their filing a Notice of Appeal of this court’s order (Doc. No. 29), Defendants filed an emergency motion asking this court to stay its order on the grounds that the court’s grant of the preliminary injunction was manifest and reversible error. (Doc. No. 27).

The motion was fully briefed and a hearing was held before this court on May 12, 2011. At the conclusion of this hearing, the court indicated that it would rule by the following Monday, May 16, 2011, at the latest. The court has yet to rule on Defendants’ motion.

To date, Defendants have refused, and continue to refuse, to place Plaintiffs’ advertising on their buses even after all conditions of the contract have been satisfied. Thus, the court’s failure to rule is effectively granting Defendants’ motion for a stay notwithstanding the fact that neither the law nor the facts authorize such a stay. Moreover, this *de facto* stay is depriving Plaintiffs of their First Amendment right to freedom of speech and prolonging what was evident to this court when it issued its order granting the preliminary injunction: Defendants were wrong to censure Plaintiffs’ speech and should rectify that wrong immediately. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”).

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this court issue its ruling on the pending emergency motion to stay the enforcement of the preliminary injunction.

[Signature page follows.]

Respectfully submitted,

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/s/ David Yerushalmi

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2011, a copy of the foregoing PLAINTIFFS' MOTION TO REQUEST THE COURT RULE ON DEFENDANTS' PENDING EMERGENCY MOTION TO STAY PRELIMINARY INJUNCTION was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: None.

LAW OFFICES OF DAVID YERUSHALMI, P.C.

/s/ David Yerushalmi
David Yerushalmi, Esq.