

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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

Case Number: 2:10-CV-12134

Plaintiffs,

HON. DENISE PAGE HOOD

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.

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**ORDER DENYING PLAINTFFS' MOTION FOR TEMPORARY RESTRAINING  
ORDER AND NOTICE OF HEARING ON MOTION FOR PRELIMINARY  
INJUNCTION**

**I. BACKGROUND**

This matter is before the Court on a Motion for Temporary Restraining Order submitted by Plaintiffs American Freedom Defense Initiative ("FDI"), Pamela Geller ("Geller"), and Robert Spencer ("Spencer") (collectively "Plaintiffs") dated June 17, 2010. Plaintiffs filed a two-count Complaint against Defendants Suburban Mobility Authority for Regional Transportation ("SMART"), Mr. Gary Hendrickson ("Hendrickson"), Mr. John Hertel ("Hertel"), Ms. Beth Gibbons ("Gibbons") (collectively "Defendants"). The Complaint alleges violations of the First Amendment's Free Speech Clause, and the Fourteenth Amendment's

Equal Protection, Clause, bringing a cause of action under 42 U.S.C. § 1983. Plaintiffs seek a temporary restraining order to enjoin the alleged restriction of Plaintiffs' right to free speech by Defendants. (Brief, p.2).

Plaintiff FDI is an organization which describes its objective as “go[ing] on the offensive when legal, academic, legislative, cultural, sociological, and political actions are taken to dismantle our basic freedoms and values.” (Complaint ¶ 6). Plaintiff Pamela Geller is FDI's Executive Director, and Plaintiff Robert Spencer is FDI's Associate Director. (Complaint ¶¶ 9-10). Plaintiffs promote the organization's objectives by “*inter alia*, sponsoring anti-jihad bus and billboard campaigns, which includes seeking advertising space on SMART vehicles.” (Complaint ¶ 8). Defendant SMART is a governmental agency that receives state and federal funds. (Complaint ¶ 11). Defendant Hendrickson is the Chief Executive of SMART, Defendant Hertel is the General Manager of SMART, and Defendant Gibbons is the Marketing Program Manager of SMART. (Complaint ¶¶ 12-14).

Plaintiffs state that SMART allows advertisements regarding a wide range of subject matters on the outside of its vehicles including, but not limited to, commercial, non-commercial, political, and religious advertisements. (Complaint ¶ 17). Plaintiffs further state that SMART has a policy under which it “has intentionally dedicated its advertising space on its vehicles to expressive conduct.” (Complaint ¶ 16). Plaintiffs claim that they submitted a request to advertise on SMART vehicles. Plaintiffs allege that, despite the fact that their advertisement complied with the procedural requirements, they entered a contract with SMART's advertising agency, and they submitted all required forms and payments, Defendants denied their request, in violation of the First and Fourteenth Amendment rights. (Complaint ¶¶ 20-21).

## II. ANALYSIS

Plaintiffs seek a temporary restraining order enjoining Defendants' restriction on their right to free religious and political speech. Plaintiffs argue that Defendants rejected Plaintiffs' request to advertise because they objected to the content of their proposed advertisement. Plaintiffs argue that Defendants have not provided a content-neutral basis for denying Plaintiffs' request. Plaintiffs claim that a temporary restraining order is necessary to prevent further irreparable harm from occurring due to Defendants' infringement upon their First Amendment rights.

The Court has the authority to issue a temporary restraining order under Fed. R. Civ. P. 65 (b), which states:

### **(b) Temporary Restraining Order**

(1) *Issuing Without Notice*. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1). A temporary restraining order expires in 14 days unless the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. Fed. R. Civ. P. 65(b)(2). Before a court may issue a temporary restraining order, it should be assured that the movant has produced compelling evidence of irreparable and imminent injury and that the movant has exhausted reasonable efforts to give the adverse party notice. *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Sniadach v. Family Finance*

*Corp.*, 339 U.S. 337 (1969); 11 Wright & Miller, Federal Practice and Procedure § 2951, at 504-06 (1973).

Addressing the irreparable injury requirement, it is well-settled that “even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.” *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989). At present, however, Plaintiffs have not clearly shown that such an injury has occurred. Plaintiffs provide a declaration from Plaintiff Geller, as the basis for their belief that a First Amendment violation has occurred. Plaintiff Geller states “I have heard nothing from Ms. Gibbons or from any other SMART representative. The only information that I received from SMART, as relayed to me through Mr. Hawkins, was that SMART rejected my Advertisement, and thus rejected my religious freedom message.” (Declaration of Pamela Geller, Exhibit 1 to Brief, ¶ 17). Plaintiffs’ suspicion that their request was denied due to the content of their advertisement is not yet enough to establish that a First Amendment violation has occurred.

Plaintiffs provided notice of their request for a temporary restraining order to opposing counsel by serving their motion on Defendants. The Court will address Plaintiffs’ request after a hearing on Plaintiffs’ Motion for Preliminary Injunction.

### **III. CONCLUSION**

For the reasons set forth below,

**IT IS ORDERED** that Plaintiffs’ Motion for Temporary Restraining Order [Docket No. 8, filed on June 17, 2010] is **DENIED** without prejudice.

**IT IS FURTHER ORDERED** that Defendants file any responses to Plaintiffs’ Motion for Preliminary Injunction with the Clerk’s Office by July 2, 2010. Any reply must be filed by July 9, 2010. A hearing on Plaintiffs’ Motion for Preliminary Injunction is set for July 13, 2010

at 2 p.m. before the Honorable Denise Page Hood, Theodore Levin United States Courthouse, 231 W. Lafayette Blvd., Detroit, Michigan. The parties must meet and confer to narrow the issues and exchange witness lists and exhibits to be presented at the hearing, if any. A joint witness list, if any, must be submitted to the Court by July 9, 2010.

S/Denise Page Hood  
Denise Page Hood  
United States District Judge

Dated: June 22, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 22, 2010, by electronic and/or ordinary mail.

S/William F. Lewis  
Case Manager