

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

AMERICAN FREEDOM DEFENSE
INITIATIVE; *et al.*,

Plaintiffs,

v.

SUBURBAN MOBILITY AUTHORITY
for REGIONAL TRANSPORTATION
("SMART"), *et al.*,

Defendants.

No. 2:10-cv-12134-DPH-EAS

Hon. Denise Page Hood

PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT

AMERICAN FREEDOM LAW CENTER
Robert J. Muisse, Esq. (P62849)
P.O. Box 131098
Ann Arbor, MI 48113
rmuisse@americanfreedomlawcenter.org
(734) 635-3756

David Yerushalmi, Esq.
2020 Pennsylvania Avenue NW
Suite 189
Washington, D.C. 20006
dyerushalmi@americanfreedomlawcenter.org
(646) 262-0500

Counsel for Plaintiffs

SMART
Avery E. Gordon, Esq. (P41194)
535 Griswold Street, Suite 600
Detroit, MI 48226
agordon@smartbus.org
(313) 223-2100

VANDEVEER GARZIA, P.C.
Christian E. Hildebrandt (P46989)
1450 W. Long Lake Road,
Suite 100
Troy, MI 48098
childebrandt@vgpclaw.com
(248) 312-2800

Counsel for Defendants

Pursuant to this Court’s Order of December 11, 2020 (Doc. No. 90), the Sixth Circuit’s unanimous decision in *American Freedom Defense Initiative v. Suburban Mobility Authority*, 978 F.3d 481 (6th Cir. 2020), Rule 58(d) of the Federal Rules of Civil Procedure, and E.D. Mich. LR 58.1, Plaintiffs American Freedom Defense Initiative, Pamela Geller, and Robert Spencer (collectively referred to as “Plaintiffs”), by and through their undersigned counsel, hereby move the Court to enter judgment in their favor granting Plaintiffs declaratory and injunctive relief, nominal damages, and their reasonable costs, including attorneys’ fees, as the prevailing plaintiff pursuant to 42 U.S.C. § 1988.

More specifically, Plaintiffs seek the entry of a judgment in their favor as follows: (1) Declaratory Relief: a declaration that Defendants violated Plaintiffs’ right to freedom of speech protected by the First Amendment; a declaration that SMART’s restriction on “political” advertising as set forth in its Advertising Guidelines is unreasonable in violation of the First Amendment; and a declaration that SMART’s scorn-or-ridicule restriction as set forth in its Advertising Guidelines is viewpoint based in violation of the First Amendment; (2) Injunctive Relief: an injunction enjoining the challenged restrictions and their enforcement against Plaintiffs’ “Leaving Islam” advertisement; (3) Nominal Damages: an award of nominal damages in the amount of \$3 (\$1 per Plaintiff) for the loss of Plaintiffs’

constitutional rights; and (4) Attorneys' Fees and Costs: an award of attorneys' fees and costs in the amount of \$207,500.

In support of this motion, Plaintiffs rely upon the Sixth Circuit's Opinion in *American Freedom Defense Initiative v. Suburban Mobility Authority*, 978 F.3d 481 (6th Cir. 2020), the pleadings and papers of record, as well as their brief accompanying this motion.

Pursuant to E.D. Mich. LR 7.1, on December 23, 2020, a meet-and-confer was held in which Defendants' counsel stated that Defendants approve the form and content of the proposed Judgment.¹

For the reasons set forth more fully in the accompanying brief, Plaintiffs hereby request that the Court grant this motion and enter the proposed Judgment.

WHEREFORE, Plaintiffs hereby request that the Court grant this motion.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq.

/s/ David Yerushalmi

David Yerushalmi, Esq.

Counsel for Plaintiffs

¹ A copy of the proposed Judgment is attached as Exhibit 1 to this motion, and it will be submitted in Word via ECF (utilities) pursuant to Local Rule.

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**BRIEF IN SUPPORT OF PLAINTIFFS’ MOTION
FOR ENTRY OF JUDGMENT**

ISSUE PRESENTED

Whether the Court should enter the proposed Judgment in light of the Sixth Circuit's unanimous opinion in *American Freedom Defense Initiative v. Suburban Mobility Authority*, 978 F.3d 481 (6th Cir. 2020).

CONTROLLING OR MOST APPROPRIATE AUTHORITY

American Freedom Defense Initiative v. Suburban Mobility Authority, 978 F.3d 481 (6th Cir. 2020)

Carey v. Phipus, 435 U.S. 247 (1978)

Hensley v. Eckerhart, 461 U.S. 424 (1983)

Saieg v. City of Dearborn, 641 F.3d 727 (6th Cir. 2011)

Fed. R. Civ. P. 58(d)

E.D. Mich. LR 58.1

ARGUMENT

By way of summary, at issue in this case was the constitutionality of Defendants' rejection of Plaintiffs' "Leaving Islam" ad based on SMART's Advertising Guidelines. Defendants rejected Plaintiffs' ad on two grounds. First, Defendants claimed that the ad was "political" in violation of SMART's Advertising Guideline prohibiting "[p]olitical or political campaign advertising." And second, Defendants claimed that the ad was "likely to hold up to scorn or ridicule any person or group of persons" in violation of SMART's guidelines. The parties filed cross-motions for summary judgment. On March 22, 2019, the Court entered an order granting Defendants' motion for summary judgment and denying Plaintiffs' motion for summary judgment. (Order [Doc. No. R.83]). Plaintiffs appealed that ruling.

On October 23, 2020, the U.S. Court of Appeals for the Sixth Circuit reversed this Court's grant of summary judgment in Defendants' favor and "remand[ed] for proceedings consistent with [its] opinion." *Am. Freedom Def. Initiative v. Suburban Mobility Auth.*, 978 F.3d 481, 502 (6th Cir. 2020).

The Sixth Circuit held that SMART's Advertising Guidelines banning "political" ads "contain the same basic problems that [*Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876 (2018)] identified: They adopt an amorphous ban on 'political' speech that cannot be objectively applied" in violation of the First

Amendment. *Am. Freedom Def. Initiative*, 978 F.3d at 498.

With regard to the scorn-or-ridicule restriction, the Sixth Circuit held that “[o]n its face and as applied, . . . SMART's restriction engages in impermissible viewpoint discrimination” in violation of the First Amendment. *Id.* at 500.

Accordingly, as set forth in the Sixth Circuit’s Opinion, Defendants violated Plaintiffs’ First Amendment right to freedom of speech by rejecting their ad based on the challenged restrictions. *See id.* (remanding to determine the “proper remedy for these First Amendment violations”); *id.* at 493 (concluding that “SMART’s Advertising Guidelines violate the Free Speech Clause”).

“Pursuant to the law of the case doctrine, and the complementary ‘mandate rule,’ upon remand the trial court is bound to proceed in accordance with the mandate and law of the case as established by the appellate court.” *Westside Mothers v. Olszewski*, 454 F.3d 532, 538 (6th Cir. 2006) (internal quotations and citations omitted). This requires the trial court to “implement both the letter and the spirit of the appellate court’s mandate, taking into account the appellate court’s opinion and the circumstances it embraces.” *Id.* (internal quotations and citations omitted).

In its Opinion, the Sixth Circuit declared that Defendants violated Plaintiffs’ rights protected by the First Amendment, concluding that the challenged restrictions are unconstitutional and thus unenforceable, thereby entitling Plaintiffs

to declaratory and injunctive relief. *See, e.g., Saieg v. City of Dearborn*, 641 F.3d 727, 741 (6th Cir. 2011) (concluding that the plaintiff was entitled to declaratory and injunctive relief for the violation of his First Amendment right to freedom of speech). In addition to declaratory and injunctive relief, Plaintiffs are entitled to nominal damages as a matter of law. *See Carey v. Piphus*, 435 U.S. 247, 266-67 (1978); *Saieg*, 641 F.3d at 741 (“In addition to declarative and injunctive relief, *Saieg* is entitled to nominal damages for the violation of his constitutional rights.”) (citing *Carey*, 435 U.S. at 266).

Accordingly, Plaintiffs are the prevailing party because the Sixth Circuit Opinion has resulted in “an enforceable ‘alteration of the legal relationship of the parties.’” *Buckhannon Bd. & Care Home v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598, 622 (2001). Therefore, Plaintiffs are also entitled to their “fully compensatory” attorneys’ fees and costs pursuant to 42 U.S.C. § 1988. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (“[P]laintiffs may be considered ‘prevailing parties’ for attorney’s fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.”) (internal quotations and citation omitted); *see also id.* at 435 (“Where a plaintiff has obtained excellent results, his attorney should recover a *fully compensatory fee.*”) (emphasis added); *see also Buckhannon Bd. & Care Home, Inc.*, 532 U.S. at 604 (“[E]nforceable judgments on the merits . . . create the

‘material alteration of the legal relationship of the parties’ necessary to permit an award of attorney’s fees.”). As set forth in the approved, proposed Judgment, Plaintiffs are entitled to their reasonable attorneys’ fees and costs in the amount of \$207,500.²

Thus, pursuant to the Sixth Circuit’s Opinion, the “mandate rule,” and controlling law regarding nominal damages and attorneys’ fees, Plaintiffs propose (and Defendants approve) the entry of the following Judgment:

This action comes before the Court on remand from the U.S. Court of Appeals for the Sixth Circuit, which rendered its opinion in *American Freedom Defense Initiative v. Suburban Mobility Authority*, 978 F.3d 481 (6th Cir. 2020).

Based on the opinion of the Sixth Circuit,

IT IS ORDERED AND ADJUDGED that this Court’s order granting summary judgment to Defendants and denying summary judgment to Plaintiffs (Doc No. 83) is REVERSED and judgment is hereby entered in Plaintiffs’ favor on their First Amendment claims.

Accordingly, the Court hereby declares that, pursuant to the opinion of the Sixth Circuit, Defendants violated Plaintiffs’ right to freedom of speech protected by the First Amendment. The Court further declares, consistent with the Sixth Circuit opinion, that SMART’s Advertising Guidelines restricting “political” advertisements and advertisements “likely to hold up to scorn or ridicule any person or group of persons” violate the Free Speech Clause of the First Amendment and are hereby enjoined.

IT IS FURTHER ORDERED AND ADJUDGED that in addition to declaratory and injunctive relief, Plaintiffs are entitled to nominal

² This is a discount of Plaintiffs’ actual costs and fees, which exceed this amount.

damages in the amount of \$3.00 and an award of reasonable attorneys' fees and costs in the amount of \$207,500.00.

So Ordered.

As set forth above, Plaintiffs' proposed Judgment "implement[s] both the letter and the spirit of the appellate court's mandate," as required.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Court enter the proposed Judgment.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq.

/s/ David Yerushalmi

David Yerushalmi, Esq.

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2021, a copy of the foregoing 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.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq. (P62849)