

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.

Case No. \_\_\_\_\_

**COMPLAINT**

[42 U.S.C. § 1983]

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Plaintiffs American Freedom Defense Initiative (hereinafter referred to as “FDI”), Pamela Geller, and Robert Spencer (“Plaintiffs”), by and through their undersigned counsel, bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

### **INTRODUCTION**

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging Defendants’ restriction on Plaintiffs’ right to engage in political and religious speech in a public forum created by Defendants based on the content and viewpoint of Plaintiffs’ message (hereinafter “Free Speech Restriction”). Defendants’ Free Speech Restriction prohibited Plaintiffs from displaying advertisements on SMART buses that travel along major roads and highways throughout various counties in Michigan, including Macomb, Oakland, and Wayne.

2. Plaintiffs seek a declaration that Defendants violated their clearly established constitutional rights as set forth in this Complaint; a declaration that Defendants’ Free Speech Restriction violates the United States Constitution and 42 U.S.C. § 1983 as set forth in this Complaint; a preliminary and permanent injunction enjoining the enforcement of Defendants’ Free Speech Restriction as set forth in this Complaint; and nominal damages for the past loss of Plaintiffs’ constitutional rights. Plaintiffs also seek an award of reasonable costs of litigation, including attorneys’ fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law.

### **JURISDICTION AND VENUE**

3. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court. Plaintiffs' claim for nominal damages is authorized by 42 U.S.C. § 1983.

5. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

### **PLAINTIFFS**

6. Plaintiff FDI is an organization that is incorporated under the laws of the State of New Hampshire. Its "objective is to go on the offensive when legal, academic, legislative, cultural, sociological, and political actions are taken to dismantle our basic freedoms and values."

7. "FDI acts against the treason being committed by national, state, and local government officials, the mainstream media, and others in their capitulation to the global jihad and Islamic supremacism, the ever-encroaching and unconstitutional power of the federal government, and the rapidly moving attempts to impose socialism and Marxism upon the American people."

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

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

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

### **DEFENDANTS**

11. Defendant SMART is a governmental agency. It was created under Michigan law, and it receives funding from the federal government, the State of Michigan, and the counties of Macomb, Oakland, and Wayne. SMART and its officials are responsible for the acts, rules, regulations, policies, practices, procedures, and/or customs of SMART, including the challenged restriction on Plaintiffs' speech (Free Speech Restriction).

12. Defendant Gary L. Hendrickson, at all times relevant herein, was the Chief Executive of SMART acting under color of state law. As Chief Executive, Defendant Hendrickson is responsible for creating, adopting, and enforcing the rules, regulations, policies, practices, procedures, and/or customs of SMART, including the challenged restriction on Plaintiffs' speech (Free Speech Restriction).

13. Defendant John Hertel, at all times relevant herein, was the General Manager of SMART acting under color of state law. As General Manager, Defendant Hertel is responsible for creating, adopting, and enforcing the rules, regulations, policies, practices, procedures, and/or customs of SMART, including the challenged restriction on Plaintiffs' speech (Free Speech Restriction).

14. Defendant Beth Gibbons, at all times relevant herein, was the Marketing Program Manager of SMART acting under color of state law. As Marketing Program Manager, Defendant Gibbons is responsible for creating, adopting, and enforcing the rules, regulations, policies, practices, procedures, and/or customs of SMART, including the challenged restriction on Plaintiffs' speech (Free Speech Restriction).

### **STATEMENT OF FACTS**

15. As a governmental agency that receives state and federal funds, SMART is mandated to comply with federal and state laws, including the First and Fourteenth Amendments to the United States Constitution.

16. According to SMART's "Advertising Guidelines," "First Amendment free speech rights require that SMART not censor free speech and because of that, SMART is required to provide equal access to advertising on our vehicles." Consequently, as a matter of official policy, practice, custom, and/or procedure, SMART has intentionally dedicated its advertising space on its vehicles to expressive conduct (hereinafter "Free Speech Policy").

17. Pursuant to its Free Speech Policy, SMART permits a wide variety of commercial, noncommercial, public-service, public-issue, political, and religious advertisements on the outside of its vehicles.

18. For example, pursuant to its Free Speech Policy, SMART permitted the Detroit Area Coalition of Reason, an atheist organization, to place an anti-religion advertisement on its vehicles. The atheist advertisement stated the following: "Don't believe in God? You are not alone." The advertisement also listed the website ([DetroitCoR.org](http://DetroitCoR.org)) of the organization. A true and accurate photograph of this advertisement is attached to this Complaint as Exhibit 1.

19. On or about May 12, 2010, Plaintiffs submitted a request to display an anti-jihad advertisement on SMART vehicles. Plaintiffs' advertisement stated the following: "Fatawa on your head? Is your family or community threatening you? Leaving Islam? Got questions? Get answers!" The advertisement also included the following website address: [RefugeFromIslam.com](http://RefugeFromIslam.com). A true and accurate photograph and a true and accurate image of the advertisement are attached to this Complaint as Exhibit 2.

20. Plaintiffs' request to display their advertisement met all of the procedural requirements established by SMART to display such advertisements on its vehicles. Plaintiffs entered into a contract through SMART's advertising agency, completed all of the requisite forms, and made all of the requisite payments.

21. On or about May 24, 2010, Defendants denied Plaintiffs' request and refused to display Plaintiffs' advertisement. Defendants' denied Plaintiffs' advertisement, and thus denied Plaintiffs access to a public forum to express their political and religious message, based on the content and viewpoint expressed by Plaintiffs' message (Free Speech Restriction).

### **FIRST CLAIM FOR RELIEF**

#### **Freedom of Speech—First Amendment (42 U.S.C. § 1983)**

22. Plaintiffs hereby incorporate by reference all stated paragraphs.

23. By reason of the aforementioned Free Speech Restriction, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of their right to engage in political and religious speech in a public forum in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

24. Defendants' Free Speech Restriction is content- and viewpoint-based in violation of the Free Speech Clause of the First Amendment.

25. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

## **SECOND CLAIM FOR RELIEF**

### **Equal Protection—Fourteenth Amendment (42 U.S.C. § 1983)**

26. Plaintiffs hereby incorporate by reference all stated paragraphs.

27. By reason of the aforementioned Free Speech Restriction, created, adopted, and enforced under color of state law, Defendants have unconstitutionally deprived Plaintiffs of the equal protection of the law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, in that Defendants, through their acts, policies, practices, procedures, and/or customs, including their Free Speech Restriction, prevented Plaintiffs from expressing a message based on its content and viewpoint, thereby denying the use of a public forum to those whose views Defendants find unacceptable.

28. As a direct and proximate result of Defendants' violation of the Equal Protection Clause of the Fourteenth Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask this Court:

- A) to declare that Defendants' Free Speech Restriction violates the First and Fourteenth Amendments to the United States Constitution as set forth in this Complaint;
- B) to preliminarily and permanently enjoin Defendants' Free Speech Restriction and its application to Plaintiffs' speech as set forth in this Complaint;
- C) to award Plaintiffs nominal damages for the past loss of their constitutional rights as set forth in this Complaint;
- D) to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and
- E) to grant such other and further relief as this Court should find just and proper.

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