THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BLAINE COLEMAN,

Plaintiff,

vs.

Civil Action No. 11-CV-15207
HON. MARK A. GOLDSMITH

ANN ARBOR TRANSPORTATION AUTHORITY, et al.,

Defendants.
_____/

ORDER REQUIRING DEFENDANT ANN ARBOR TRANSPORTATION AUTHORITY TO RECONSIDER PLAINTIFF'S ADVERTISEMENT AND SETTING A STATUS CONFERENCE

The Court issued an Opinion and Order (Dkt. 50) on September 28, 2012, concluding that Plaintiff was entitled to preliminary injunctive relief on First Amendment grounds, as a result of the decision by Defendant Ann Arbor Transportation Authority (AATA) to reject Plaintiff's bus advertisement. That Opinion, however, left open the particular relief to which Plaintiff was entitled. The Opinion required additional briefing on whether the AATA should be ordered to run Plaintiff's ad, or whether it should be ordered to reconsider Plaintiff's ad under a constitutionally sound policy. In supplemental briefs filed by the parties, Plaintiff argued for an order to run the ad, while the AATA argued for reconsideration.

Since the filing of the briefs, the AATA has adopted a new advertising policy (Dkt. 61), which makes two potentially significant changes to the policy under which Plaintiff's ad was initially rejected. The new policy omits the "good taste" grounds for rejection of an ad, which this Court had found to be facially unconstitutional. Opinion at 28-29 (Dkt. 50). In addition, the new policy modifies the provision that previously disallowed ads supporting or opposing

political candidates or ballot propositions; the new policy more broadly bans "political or political campaign advertising." In a status conference with counsel, AATA's counsel stated that the modifications were designed in light of American Freedom Defense Initiative v. Suburban Mobility Authority for Regional Transportation (SMART), 698 F.3d 885 (6th Cir. 2012), issued shortly after this Court's September 28 Opinion, and upholding certain advertising restrictions imposed by a public bus company.

The Court determines that, regardless of whether the Court may later order the AATA to run Plaintiff's ad, it is appropriate at this juncture for the AATA to reconsider the ad under the revised policy. The AATA's decision under the revised policy may affect whether the Court subsequently orders additional preliminary relief, and what the nature of such relief would be. Furthermore, reconsideration would be consistent with the AATA's position on relief and not inconsistent with Plaintiff's position, although Plaintiff certainly argues that reconsideration resulting in a further rejection of his ad would not accord him appropriate preliminary relief. The Court intimates no view on whether Plaintiff is correct.

Accordingly, the Court establishes the following schedule:

1. Plaintiff shall resubmit to the AATA the ad he wishes to run – either the original version of the ad or a revised version – by December 21, 2012.

2. The AATA shall reconsider Plaintiff's ad under the revised advertising policy and submit notice of the AATA's decision to Plaintiff and to the Court by January 4, 2013.

3. The Court will conduct a telephonic status conference on this matter on January 9, 2013, at 1:30 p.m. to discuss whether additional preliminary injunctive relief is necessary or appropriate and what additional proceedings in this action may be required.

SO ORDERED.

Dated: December 17, 2012
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on December 17, 2012.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager