

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
09 MAY -5 PM 12:53
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

INDIANA ATHEIST BUS CAMPAIGN,)
)
Plaintiff,)
)
v.)
)
BLOOMINGTON PUBLIC)
TRANSPORTATION CORPORATION,)
)
Defendant.)

No.

1 : 09 -cv- 0555 LJM -JMS

Complaint for Declaratory and Injunctive Relief

Introduction

1. The Indiana Atheist Bus Campaign (“INABC”) has sought to advertise on buses of the Bloomington Transit bus system, owned and operated by defendant, Bloomington Public Transportation Corporation (“BPTC”), but has been refused pursuant to defendant’s policy that allows it to refuse any advertisement which it deems to be a controversial public service announcement or a “statement of position in support of or in opposition to controversial public issues.” The policy is unconstitutionally vague in violation of due process clause of the Fourteenth Amendment of the United States Constitution and is violative of IABC’s rights under the First Amendment. The policy must be enjoined.

Jurisdiction, venue and cause of action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
3. Declaratory relief is authorized by 28 U.S.C. §§ 2201, 2202.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

5. This case is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

Parties

6. The INABC is an organization which has members in and around Bloomington, Indiana.

7. The BPTC is a public transportation corporation, located in Bloomington, Indiana, and is a separate municipal corporation established by Indiana law. IND. CODE § 36-9-4-12.

Facts

8. Indiana law, Indiana Code § 36-9-4-1, *et seq.*, allows a municipality to establish a public transportation corporation to initiate an urban transportation system.

9. Pursuant to this legislative authority the BPTC has been established and owns, operates, and controls the Bloomington Transit bus system which provides bus services on a number of routes throughout Bloomington.

10. BPTC, through Bloomington Transit, operates approximately 36 buses with an annual ridership of approximately 2.36 million passenger trips.

11. BPTC, through Bloomington Transit, sells advertising space both on the interior and exterior of its buses.

12. The advertising is handled through a private company, Crosstown Communications.

13. The BPTC has created a formal policy governing advertising on the buses and it is attached to this Complaint as Exhibit 1.

14. The policy is in the form of a resolution and states in pertinent part that:

WHEREAS, the Bloomington Public Transportation Corporation (BPTC) hereby amends its bus advertising policy to read as follows:

It shall be the policy of the Bloomington Public Transportation Corporation (BPTC) to limit access to the BPTC advertising forum in order to minimize the potential for abuse, eliminate the appearance of favoritism and reduce the risk of imposing controversial views upon a captive audience. In accordance with the aforementioned rationale:

1. The BPTC advertising forum shall be offered only to purveyors of goods and services saleable in commerce, the display of works of art and the display of non-controversial public service announcements, subject to all terms of this policy.
2. BPTC shall not accept advertising placards from candidates for political office, nor their representatives. Names, pictures or representations of candidates or current holders of public offices shall not be included in any manner on advertising placards, including on otherwise valid applications by purveyors of goods and services saleable in commerce, the display of works of art and the display of non-controversial public service announcements.
3. Statements of position in support of or in opposition to controversial public issues shall not be accepted. Pictorial representations that imply support of or opposition to controversial public issues shall not be accepted.

BPTC specifically reserves the right to review each application for advertising before acceptance, and acceptance is conditional upon compliance with this policy.

15. A wide variety of advertisements are posted on and in the buses operated by Bloomington Transit including ads for traditional commercial businesses as well as those for not-for-profit organizations such as the YMCA and Stone Belt (“one of the oldest and largest service providers for individuals with developmental disabilities in south central Indiana”). Additionally, there are advertisements for events connected to or at Indiana University. Advertisements have also been posted by labor unions.

16. The INABC is modeled after the Atheist Bus Campaign which began in London, England with advertisements on buses that questioned the existence or relevance of God. The campaign has spread with ad campaigns on buses in Canada, Spain, Italy, Germany, Finland, Switzerland, Croatia and Australia.

17. The INABC has been formed specifically to post advertisements on buses that question the existence or relevance of God and promote the idea that a person can be a good person without religion.

18. INABC has prepared an advertisement to place on the back of a Bloomington Transit bus which states "YOU CAN BE GOOD WITHOUT GOD." The advertisement also states the website of INABC, inatheistbus.org. There is nothing else contained on the proposed advertisement except a neutral background resembling the sky with clouds.

19. INABC is willing to pay for the advertisement consistent with the costs charged for other advertisements on the back of the buses.

20. INABC submitted its proposed advertisement to Crosstown Communications in February of 2009.

21. Crosstown Communications forwarded the proposed advertisement to Bloomington Transit for its approval, whereupon Bloomington Transit rejected it because it was deemed to be "controversial" and therefore excluded under the BPTC advertising policy.

22. The term "controversial" is vague and the advertising policy is substantially overbroad.

23. Exclusion of INABC's advertisement is not reasonable.

24. Exclusion of INABC's advertisement is causing the organization harm in that its essential goal is to place advertisements on buses to promote its beliefs.

25. Defendant's actions are causing plaintiff irreparable harm for which there is no adequate remedy at law.

26. At all times defendant has acted, and continues to act, under color of state law.

Legal claims

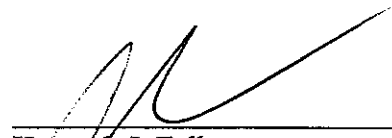
27. Defendant's advertising policy is unconstitutionally vague in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

28. Defendant's advertising policy is not reasonable and is substantially overbroad in violation of the First Amendment to the United States Constitution.

Request for relief

WHEREFORE, plaintiff requests that this Court:

- a. Accept jurisdiction of this cause and set it for hearing at the earliest opportunity.
- b. Declare that defendant's advertising policy is unconstitutional for the reasons noted above.
- c. Enter a preliminary injunction, later to be made permanent, enjoining the advertising policy and requiring defendant to display plaintiff's advertisement once the regular fee is paid.
- d. Award plaintiff its costs and reasonable attorney's fees.
- e. Award all other proper relief.



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Attorneys for Plaintiff

RESOLUTION 08-01

A resolution adopting an amended bus advertising policy for the Bloomington Public Transportation Corporation.

WHEREAS, the Bloomington Public Transportation Corporation (BPTC) hereby amends its bus advertising policy to read as follows:

It shall be the policy of the Bloomington Public Transportation Corporation (BPTC) to limit access to the BPTC advertising forum in order to minimize the potential for abuse, eliminate the appearance of favoritism and reduce the risk of imposing controversial views upon a captive audience. In accordance with the aforementioned rationale:

1. The BPTC advertising forum shall be offered only to purveyors of goods and services saleable in commerce, the display of works of art and the display of non-controversial public service announcements, subject to all terms of this policy.
2. BPTC shall not accept advertising placards from candidates for political office, nor their representatives. Names, pictures or representations of candidates or current holders of public offices shall not be included in any manner on advertising placards, including on otherwise valid applications by purveyors of goods and services saleable in commerce, the display of works of art and the display of non-controversial public service announcements.
3. Statements of position in support of or in opposition to controversial public issues shall not be accepted. Pictorial representations that imply support of or opposition to controversial public issues shall not be accepted.

BPTC specifically reserves the right to review each application for advertising before acceptance, and acceptance is conditional upon compliance with this policy.

NOW THEREFORE, BE IT RESOLVED: The BPTC Board of Directors authorizes the BPTC General Manager to implement the aforementioned policy effective January 22, 2008.

ATTEST:

APPROVE:

Alex B. Cartwright, Secretary
Bloomington Public Transportation
Corporation

Raymond L. McConn, Chairman
Bloomington Public Transportation
Corporation

Approved the ___ day of _____ 2008