

August 1, 2019

Via email

Charles Watts
 City Attorney
 City of Greensboro, NC
 charles.watts@greensboro-nc.gov

Re: People for the Ethical Treatment of Animals—Greensboro Transit Agency Rejection of Circus-Related Advertisement

Dear City Attorney Watts:

I am deputy general counsel to People for the Ethical Treatment of Animals (“PETA”). As you may know, PETA requested to purchase an advertisement placement on the Greensboro Transit Agency (“GTA”) public buses on June 10, 2019, and the advertisement was rejected.

Specifically, PETA contacted Streetlevel Media, which conducts all advertising sales for the GTA, and sought to place its “Your Fun Hurts” advertisement on transit buses. PETA requested to run the advertisement for 4 weeks, starting at the beginning of August, to correspond with the upcoming UniverSoul Circus performances taking place in Greensboro beginning on August 13, 2019. The advertisement artwork depicts an animal performing a circus trick inside the mouth of a human circus performer with the text, “Your Fun Hurts.” A copy of the proposed advertisement is enclosed with this letter.

Through Streetlevel Media, the GTA informed PETA that it would not place the advertisement. The GTA’s reasons for rejecting the advertisement were as follows:

Let [PETA] know that we would not approve this add [*sic*] or any add [*sic*] that sheds a negative light on a community event that the City is hosting.

We will be glad to consider another advertising strategy/campaign that promotes Peta [*sic*]; however, we will not allow this advertisement as it sheds a negative light on a community event that the City is hosting.

The GTA’s “Character of Advertisements” policies restrict the range of permissible advertisements. The GTA’s character policies state that, “[t]he GTA will have sole and unquestioned authority to determine what constitutes appropriate advertisements and category exclusivity.”

The GTA is imposing an unconstitutional viewpoint-based restriction on the freedom of speech guaranteed by the First Amendment of the United States and the North Carolina Bill of Rights. We therefore respectfully request that you reverse this ruling by **August 8, 2019**, or we are prepared to proceed with filing

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 TREATMENT
 OF ANIMALS
 FOUNDATION

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 2154 W. Sunset Blvd.
 Los Angeles, CA 90026
 323-644-PETA

Norfolk
 501 Front St.
 Norfolk, VA 23510
 757-622-PETA

Berkeley
 2855 Telegraph Ave.
 Ste. 301
 Berkeley, CA 94705
 510-763-PETA

PETA FOUNDATION IS AN
 OPERATING NAME OF FOUNDATION
 TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

a lawsuit in federal court in North Carolina on PETA's behalf seeking an injunction, declaratory relief, costs and attorney's fees.

The GTA's rejection of PETA's "Your Fun Hurts" advertisement was based on an unconstitutional desire to restrict speech that reflects a particular viewpoint on the use of animals in circuses, particularly pertinent and timely given the upcoming UniverSoul performances. Restrictions that prohibit any noncommercial, political, controversial, or issue-based content on public transit advertisement spaces must be viewpoint neutral. *See Am. Freedom Def. Initiative v. Washington Metropolitan Area Transit Auth., WMATA*, 901 F.3d 356, 364 (D.C. Cir. 2018). A government "violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985).

In other words, a government or government agency must demonstrate that the subject matter of a proposed advertisement is prohibited, rather than the viewpoint on that subject matter expressed in the advertisement. *Nat'l Ass'n for the Advancement of Colored People v. City of Philadelphia*, 834 F.3d 436, 446 (3d Cir. 2016). Accordingly, a transit authority's rejection of an advertisement is unconstitutional and constitutes viewpoint discrimination if the authority demonstrates a willingness to accept other advertisements that express a different viewpoint on the same subject matter. *Ridley v. Massachusetts Bay Transportation Auth.*, 390 F.3d 65, 69 (1st Cir. 2004).

The GTA stated to PETA that it was willing to accept future and similar advertisements supporting PETA's campaigns, so long as they do not express an undesired viewpoint on "a community event that the City is hosting"—i.e., an event being held within the City. The GTA also suggested that it would consider placing advertising from PETA if it were not critical of the UniverSoul event, or if it would not shed "a negative light on a community event that the City is hosting." In doing so, the GTA made clear that advertisements relating to UniverSoul or animal advocacy are permitted by the GTA's policy, and PETA's advertisement was rejected solely because it expresses a negative viewpoint of the UniverSoul event, to the City's displeasure. Accordingly, the GTA's rejection of the advertisement plainly discriminates against PETA's viewpoint.

In addition, the GTA's policy that the agency has "unquestioned authority" to determine whether or not an advertisement is "appropriate" is a facially unconstitutional restriction on speech. Restrictions that are so vague as to fail to constrain an official's decision to limit speech without objective criteria are unconstitutional. *Miller v. City of Cincinnati*, 622 F.3d 524, 539 (6th Cir. 2010). For that reason, policies that give government or agency officials "unbridled discretion" to determine which speech is allowed to be expressed violate the First Amendment. *See Kalman v. Cortes*, 723 F. Supp. 2d 766, 803 (E.D. Pa. 2010). The GTA policy's allowance that an authority may reject speech based on "unquestioned authority" to determine whether or not the speech is "appropriate" is as broadly discretionary as having no policy at all. For this additional reason, the GTA's rejection of PETA's advertisement under this policy is an unconstitutional restriction on speech.

We are optimistic that the GTA will accept PETA's advertisement and this matter will be promptly resolved. We respectfully request a response on or by August 8, 2019, as time is of the essence given the event's August dates. I hope that we can resolve this issue without resorting to

litigation, but PETA reserves all of its rights in this regard. Thank you for your attention to this matter.

Very truly yours,



Jared Goodman
Deputy General Counsel for Animal Law



Enclosure



The above mockup of the advertisement was submitted for GTA's approval. In the final advertisement, a zebra would replace the elephant and the text would read:

YOUR FUN HURTS ANIMALS
UniverSoul Circus exploits animals instead of focusing on its talented human acts. Don't go.