

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

PEOPLE FOR THE ETHICAL )  
TREATMENT OF ANIMALS, INC., )  
 )  
Plaintiff, )  
 )  
v. ) Case No. 4:20-CV-3681  
 )  
SHANE HINCKLEY, )  
 )  
Defendant. )

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**RESPONSE TO PLAINTIFF’S MOTION TO DISMISS FOR LACK OF JURISDICTION**

Because of this lawsuit, which alleges that Texas A&M University’s (“TAMU”) transit system advertising policy was unconstitutionally vague, overbroad, and discriminated against Plaintiff People for the Ethical Treatment of Animals’ (“PETA”) viewpoint, the University substantially revised its policy and Defendant Shane Hinckley now moves this Court to dismiss the suit as moot. In response, PETA files this brief statement of non-opposition to the motion.

This is Defendant’s second motion to dismiss. His prior motion argued that *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974) controls, permitting Defendant to deny “political” advertising in the limited public forum created by the advertising space on the sides of Texas A&M University buses. PETA opposed that motion, arguing that *Minn. Voters Alliance v. Mansky*, 585 U.S. \_\_\_, 138 S. Ct. 1876 (2018), controls this case, and that bans on “political” advertising in a limited public forum, without more, are incapable of reasoned application and therefore violate the First Amendment.

As a matter of first impression within this Circuit, the Court agreed with PETA and denied Defendant’s first motion to dismiss. Defendant now acknowledges that its prior policy was

unconstitutional under *Mansky*. ECF No. 30 at 1 (“effectively every court to analyze the issue has found broadly defined bans on ‘political’ speech like TAMU’s to be unconstitutional”); *id.* at 2 (substantially the same); *id.* at 6 (“TAMU has . . . recognized that there is a significant risk that its old policy is unconstitutional due to *Mansky*”); *id.* at 7 (same); *id.* at 8 (“TAMU is acknowledging the significant risk that its broadly defined ban on ‘political’ ads is unconstitutional, and it has not reenacted the vague ‘political’ definition that is the subject of this suit”); *id.* at 9 (recognizing such “repeated acknowledgments”).

PETA’s suit alleged that the ban on “political” ads in TAMU’s transit advertising guidelines discriminated against PETA’s viewpoint in violation of the Free Speech Clause of the First Amendment, was unconstitutionally vague in violation of the Due Process Clause of the 14th Amendment, and was unconstitutionally overbroad. PETA’s suit sought prospective injunctive relief under the *Ex parte Young* doctrine.

As the ban on “political” advertisements is no longer in effect at TAMU, ECF No. 30, PETA does not oppose Defendant’s Motion to Dismiss for Lack of Jurisdiction on the basis of mootness.

Dated: May 27, 2021

By: /s/ Gabriel Walters  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 27, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system to all counsel of record.

/s/ Gabriel Walters  
Gabriel Walters