

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS**

UNITED COALITION OF REASON INC.,
a Delaware corporation,

PLAINTIFF

v.

No. _____

**CENTRAL ARKANSAS TRANSIT
AUTHORITY**, an Arkansas public corporation,
and **ON THE MOVE ADVERTISING, INC.,**
an Arkansas corporation

DEFENDANTS

COMPLAINT

United Coalition of Reason Inc. (the “Plaintiff”), as its complaint against Central Arkansas Transit Authority (the “Authority”) and On the Move Advertising, Inc. (the “Advertising Agent,” and, together with the Authority, the “Defendants”), alleges as follows:

NATURE OF THE CLAIMS

1. The Plaintiff seeks injunctive and declaratory relief under 42 U.S.C. §1983 against Defendants for refusing to contract with Plaintiff to lease advertising space to Plaintiff on the Authority’s buses on the same terms available to other advertisers in violation of the Free Speech Clause of the First Amendment to the United States Constitution.

JURISDICTION AND VENUE

2. This case arises under the First Amendment to the Constitution of the United States and presents a federal question within this court’s jurisdiction pursuant to 28 U.S.C. §§1331 and 1343(a)(3). The court has the authority to issue a declaratory judgment under 28 U.S.C. §2201 and to issue injunctive relief under 28 U.S.C. §1343 and Fed. R. Civ. P. 65.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. 1391(b) because the Defendants reside within the Eastern District of Arkansas and the events giving rise to the Plaintiff's claims occurred therein.

PARTIES

4. The Plaintiff is a Delaware nonprofit corporation, the principal office of which is located at 1777 T Street, N.W., Washington, D.C. 20009.

5. The Plaintiff is a national organization whose mission is to help local nontheistic groups work together to achieve higher visibility, gain more members, and have a greater impact in their local areas. One of the Plaintiff's primary methods of carrying out this mission is through sponsoring prominent local public advertising campaigns.

6. The Authority is a public corporation, resident within the Eastern District of Arkansas, created pursuant to §14-334-101 *et seq.* of the Arkansas Code. Pursuant to §14-334-104 of the Arkansas Code, the Authority "constitute[s] a public corporation" and "[t]he exercise of the powers and performance of duties provided for in [the statute] by [such an] authority are declared to be public and governmental functions, exercised for a public purpose and matters of public necessity. . ."

7. The Authority provides mass transit bus service to the public in the Little Rock, Arkansas, metropolitan area.

8. The Advertising Agent is an Arkansas corporation, resident within the Eastern District of Arkansas, hired by the Authority as its agent to handle the business of leasing the advertising space available on the Authority's buses to advertisers.

9. The Advertising Agent refers to itself as "Agent for Authority" in the standard Advertising Lease Contracts it enters into with those who want to lease advertising space on the

Authority's buses. These standard contracts further provide that they are "in fact a mere sublease by On the Move Advertising, Inc. who is leasing that Advertising Space from the Central Arkansas Transit Authority under and pursuant to the terms and provisions of that certain Advertising Space Rental Agreement" and that the advertiser's "rights [t]hereunder are conditioned upon the prior written consent by Central Arkansas Transit Authority to this sublease."

STATEMENT OF FACTS

10. The facts alleged as to the parties stated above are incorporated herein by reference.

11. On or about February 25, 2011, the Plaintiff entered into negotiations with the Advertising Agent regarding the lease of advertising space on the Authority's buses to the Plaintiff in order permit the Plaintiff to run an advertisement in such space. The Plaintiff's proposed advertisement (the "Proposed Advertisement") consisted of a background of blue sky and white clouds with the following text: "Are you good without God? Millions are," and the website address of a local group affiliated with the Plaintiff.

12. The Plaintiff informed the Defendants that the Plaintiff wanted the Proposed Advertisement to run during the weeks preceding and including Little Rock's Riverfest, May 27-29, 2011.

13. In response to an e-mail message dated February 28, 2011, from Plaintiff's media broker to the Advertising Agent conveying the content of the Proposed Advertisement, the Advertising Agent forwarded the message to Betty Wineland, the Executive Director of the Authority, stating in her accompanying message (in its entirety): "Dear God.....HELP!" Ms.

Wineland replied: "I need Him now more than ever. Good grief. I think we need to throw religion into the advertising policy – as a negative. Stall while CATA reviews." Lydia Robertson, president of the Advertising Agent, then replied to Plaintiff's media broker, stating that "we are placing this order in a special category" due to the risk of "damage/vandalism done to the buses or signage due to its message." She then stated that "in reality, Arkansas is the buckle of the Bible Belt and I can easily envision zealots or upstanding citizens with a strong faith acting out."

14. The Defendants insisted that any contract with the Plaintiff contain a provision providing that the Plaintiff indemnify the Advertising Agent against any damage to the signs displaying the Proposed Advertisement or the Authority's buses and provide a damage deposit against such contingency in the amount of \$36,000.

15. In an e-mail message dated March 3, 2011, Ms. Robertson admitted that "I have never before required such a deposit."

16. In an e-mail message dated March 8, 2011, the Advertising Agent stated that the Authority "is concerned about image in the community" and referred to signs such as the Proposed Advertisement as "controversial."

17. The Advertising Agent stated to Plaintiff's media broker that negotiations over the contract would not be finalized until all of the key players from the Authority had weighed in with their opinions of the Proposed Advertisement.

18. The Defendants then jointly refused to enter into a contract with the Plaintiff altogether, stating in an e-mail message dated March 9, 2011, that "both Central Arkansas Transit Authority and On the Move Advertising, Inc. have decided to decline the [Plaintiff's] schedule offer."

19. Following this refusal, the Defendants were contacted by the Plaintiff's attorney. In an e-mail message dated March 10, 2011, the Advertising Agent sought the Authority's prior approval for an e-mail message to be sent to the Plaintiff's attorney in response from the Advertising Agent. The Advertising Agent suggested to the Authority that it let the Advertising Agent "take the heat for awhile" and "Leave CATA out of it; CATA can say On the Move responded on our own." The proposed message was then in fact sent by the Advertising Agent to the Plaintiff's attorney.

20. The Advertising Agent stated that its procedure relating to advertisements is that the Authority must first approve the content.

21. As revealed in e-mail messages attached to the Motion for Preliminary Injunction (which are incorporated herein by reference) relating to a variety of other advertisements rejected by the Defendants that were provided to the Plaintiff pursuant to a request under the Arkansas Freedom of Information Act (the "FOIA Request"), it is clear that the Defendants' standard review procedure is for the Advertising Agent and the Authority to discuss the content (including the viewpoint) of proposed advertisements and, if the Authority disfavors or disapproves of the content thereof, to reject them.

22. The Defendants have stated that there is no official written policy governing the categories of advertisements that are not permitted on the Authority's buses.

23. The Authority has previously permitted, in addition to purely commercial advertisements, advertisements from religious advertisers, political candidates, and public issue groups to appear on its buses.

24. The Authority admitted in an e-mail dated February 28, 2011, that it had no policy excluding advertisements on the topic of religion from the public forum created by the advertising space on its buses.

25. The Plaintiff's attorney sent a letter to the Defendants dated May 9, 2011, stating that the Plaintiffs intended to file this complaint if the Defendants refused to enter into a contract with the Plaintiff to run the Proposed Advertisement as soon as possible on the same standard pricing and terms offered by the Defendants to every other advertiser.

26. The Authority's attorney sent a letter to the Plaintiff's attorney dated May 12, 2011, that referred to "the history of terrorism that follows the intentionally inflammatory advertisements sought to be placed by the [Plaintiff]."

27. There has never been a terrorist incident related in any way to the Plaintiff or its advertising campaigns.

28. The Advertising Agent's attorney sent a letter dated May 16, 2011, to the Plaintiff's attorney. Despite the fact that the letter referred to the Plaintiff as a "terrorist organization," a proposed form of contract (the "New Contract Offer") regarding the Proposed Advertisement was attached to this letter.

29. In contrast to the Advertising Agency's standard form of advertising space sublease contract (the "Form Contract"), an example of which was provided to the Plaintiff's attorney pursuant to the FOIA Request, the New Contract Offer (i) requires that the Plaintiff "indemnify and hold harmless the [Advertising Agent] against all personal; [sic] injury, damage or loss to person or property caused by . . . persons, theft, burglary, assault, vandalism, any criminal act . . . acts of terrorism, acts of public enemies or other causes, unless same is due to the gross negligence of [the Advertising Agent] . . ."; (ii) permits the Advertising Agent to

remove *all* of the Proposed Advertisements from the Authority's buses if "any damage occurs to the signs, Advertising Space, or any other portion of the property on which the . . . advertising appears" unless due a cause "purely accidental in nature"; and (iii) requires that the Plaintiff name the Defendants as additional insured entities on an insurance policy with a coverage limit not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate covering "contracted liability, hired vehicles, advertising liability, and acts of vandalism and terrorism."

30. None of the above provisions appear in the Form Contract, nor do any substantially similar provisions.

CAUSES OF ACTION

31. All preceding allegations are incorporated herein by reference.

32. The Defendants' joint refusal to contract with the Plaintiff to lease advertising space for its Proposed Advertisement on the Authority's buses because of the viewpoint of the Proposed Advertisement violated the Plaintiff's rights under the Free Speech Clause of the First Amendment to the United States Constitution.

33. The Defendants' lack of a clear, written, and public policy regarding the types of advertisements that are not permitted on the Authority's buses grants to individuals affiliated with the Defendants unconstitutionally standardless discretion to reject speech disfavored by such individuals because of its content or viewpoint, in violation of the Free Speech Clause of the First Amendment to the United States Constitution.

34. The Defendants' insistence, because of the supposedly controversial nature of the speech in the Plaintiff's Proposed Advertisement, that any contract with the Plaintiff include damage deposit, indemnity and/or insurance provisions that Defendants do not require of other

advertisers amounts to unconstitutional viewpoint discrimination in violation of the Free Speech Clause of the First Amendment to the United States Constitution.

35. The Authority, a public corporation of the State of Arkansas, acted under color of state law in violating the Plaintiff's First Amendment rights as described herein.

36. The Advertising Agent, as an agent of and acting in collusion and conspiracy with the Authority, acted under color of state law in violating the Plaintiff's First Amendment rights as described herein.

RELIEF SOUGHT

The Plaintiff demands that this court grant the following relief:

1. Declare that the Defendants' actions alleged herein violate the Free Speech Clause of the First Amendment to the United States Constitution;

2. Declare that the Defendants' actions alleged herein violate 42 U.S.C. §1983;

3. Permanently enjoin the Defendants from violating the First Amendment to the United States Constitution and 42 U.S.C. §1983 in their dealings with Plaintiff and order the Defendants to enter into a contract with the Plaintiff to permit the Plaintiff to lease advertising space on the Authority's buses to display the Proposed Advertisement on the same reasonable terms and at the same prices as are available to all other advertisers, which terms shall not include any requirement for a damage deposit or indemnity.

4. Award the Plaintiff its reasonable costs, disbursements and attorneys fees as allowed by law from Defendants pursuant to 42 U.S.C. §1988; and

5. Award such other and further relief as the court shall deem just.

Dated this ___ day of June, 2011.

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