UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
LAFAYETTE DIVISION

TIPPECANOE COUNTY RIGHT TO LIFE, INC., Plaintiff, v. GREATER LAFAYETTE PUBLIC TRANSPORTATION CORPORATION, doing business as CITYBUS, Defendant.	)	CASE NO. 4:18-cv-00052

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

This case involves viewpoint-based censorship of protected speech using a vague policy that gives government officials unbridled discretion to pick and choose what views to permit and exclude. Specifically, CityBus, a government-run bus company, refused to allow Tippecanoe County Right to Life, Inc. (TCRTL) to run an ad on the sides of its buses, claiming that the ad conveys a "political viewpoint" in violation of CityBus's advertising policy. Compl. ¶¶ 2, 4-7. But the ad CityBus rejected (pictured below) is simply an educational ad explaining the biological fact that a child after birth is the same human that he or she was before birth. *Id.* ¶ 5.

CityBus rejected this educational ad because, in its opinion, the ad expresses a "political viewpoint." But CityBus allowed other ads that could prompt political action or are even patently political on their face, such as ads encouraging people to "pump some democracy," to learn "about the healthcare crisis in Indiana," "to file your free complaint of housing discrimination," to "help the environment," to have children "get vaccinated" against a sexually transmitted disease, and to "drive away hunger" for those in need. *Id.* ¶¶ 9-10, 129-146. CityBus has even allowed ads educating people about unborn and newborn life—some of the very topics covered by TCRTL's ad—such as ads encouraging women to "[n]urture [babies] with nutrients" by breastfeeding, warning that "[m]others who use drugs during pregnancy put their babies at risk for serious complications," and emphasizing the importance of "prenatal care." *Id.* ¶¶ 147-152; App. in Supp. of Pl.'s Mot. for Prelim. Inj. (App.) 16-17 (¶¶ 28-32). Moreover, CityBus even

agreed to run the pictures from TCRTL's ad if an organization *other than* TCRTL submitted them, further demonstrating CityBus's viewpoint discrimination. Compl. ¶¶ 88-94.

By establishing a forum for advertisements on countless topics, including those addressed by TCRTL's ad, and then denying TCRTL's ad for allegedly expressing a "political viewpoint," CityBus denied TCRTL's free speech, due process, and equal protection rights. TCRTL now seeks a preliminary injunction requiring CityBus to allow TCRTL's ad and preventing CityBus from using certain provisions of its advertising policy to infringe on fundamental rights.

STATEMENT OF FACTS

Greater Lafayette Public Transportation Corporation, which does business as "CityBus," is a government entity that established a forum for organizations to advertise on a wide array of topics. Compl. ¶¶ 2-3, 21-22.[1] Specifically, CityBus's policy and practice is to allow and even encourage organizations to pay to place advertisements on the inside and outside of its public-transportation buses servicing Lafayette and West Lafayette. *Id.* ¶¶ 2, 38-42. In actively encouraging people to advertise with CityBus, CityBus claims to provide "over 5 million rides each year," resulting in "a LOT of eyes seeing your message." *Id.* ¶ 39.

This advertising opportunity appealed to Tippecanoe County Right to Life, Inc. (TCRTL). As a non-profit organization dedicated to protecting life, TCRTL seeks to educate the public about the attributes of unborn children, including their humanity. *Id.* ¶¶ 4, 31-36. After investigating, TCRTL concluded that advertising with CityBus offered a unique opportunity to spread its educational message to the public in a cost-effective way. *Id.* ¶¶ 4, 39-55, 62.

In addition to providing an effective way to reach a broad audience of drivers, pedestrians, and bus riders on a recurring basis, CityBus claims that its bus ads regularly reach some of those

[1] All facts provided in Plaintiff's Verified Complaint and the Appendix in Support of Plaintiff's Motion for Preliminary Injunction are incorporated by reference, but a summary of facts is provided here.

whom TCRTL consider particularly important to educate: young people, college students, and low-income individuals.[2] *Id.* ¶¶ 39, 42-44, 62. Because of TCRTL's interest in educating these demographics, it decided to begin its educational campaign with CityBus by advertising on buses servicing Purdue University and the Greenbush area (which includes significant numbers of low-income households) in Lafayette. *Id.* ¶¶ 43-44, 51, 60.

In October 2017, TCRTL and CityBus entered into a contract for CityBus to run a "curb-appeal ad" (measuring approximately two feet by eight feet) from TCRTL on the side of certain buses, and TCRTL submitted the design for its educational ad (pictured above) to CityBus. *Id.* ¶¶ 63-67; App. 1. The ad included TCRTL's name, website address, two ultrasound images of an unborn child, a picture of an infant, and the words "ME," "ME, AGAIN," and "STILL ME" superimposed over the pictures. Compl. ¶¶ 55-59.

To TCRTL's surprise, CityBus rejected the ad. Bryce Gibson, CityBus's Manager of Development, informed TCRTL of CityBus's rejection via e-mail. *Id.* ¶ 68. The e-mail explained that, "[p]ursuant to CityBus's policies and procedures," Gibson and CityBus's General Manager, Martin Sennett, reviewed the ad and rejected it because it "does not comply with CityBus's guidelines." App. 2. In explaining the denial, Gibson included a block quote from CityBus's advertising policy describing a category of prohibited ads, and bolded certain portions of the policy for emphasis as follows:

> Political campaign and viewpoint speech. **The advertisement contains** political campaign speech referring to a specific ballot question (other than candidates for office, see below), initiative petition, referendum, or **political viewpoint.**
>
> **CityBus accepts advertising that meets all of the following criteria for political advertising for candidates for office: (1) No statement of a political viewpoint**, initiative petition, or referendum is made in the advertisement. (2) The advertisement

[2] TCRTL believes that these demographics are more likely than many others to face crisis pregnancies and consider abortion as an option. Moreover, TCRTL desires to educate college students about the humanity of unborn children because it believes that people often form their worldview in college. Compl. ¶¶ 43-44.

> contains only the candidate's name and political party affiliation, picture or graphic representation of the candidate, office the candidate is seeking, election date, and district the candidate is running in. (3) The advertisement includes a statement identifying the person or committee that is paying for the advertising. (4) Graphics contained in the advertisement do not imply a political viewpoint.

Id. Gibson also attached a copy of CityBus's advertising policy to his e-mail. *Id.* at 2-8. This was the first time that TCRTL was ever informed of the advertising policy, and TCRTL believes that the policy was not available on CityBus's website then (or when this lawsuit was filed) even though the website provides other information about advertising with CityBus.[3] Compl. ¶¶ 76-77.

Kevin Niebrugge, the President of TCRTL, viewing the ad as educational, not political, met with Gibson and Sennett on October 27, 2017 to discuss CityBus's denial of TCRTL's ad. *Id.* ¶¶ 78-80. During the meeting, Sennett confirmed what Gibson explained in his e-mail: that CityBus believed the ad impermissibly stated a "political viewpoint." *Id.* ¶ 81. CityBus never questioned the factual accuracy of the ad, however. *Id.* ¶ 84. When Niebrugge asked if removing TCRTL's name from the ad would make it acceptable, Gibson claimed that the ad sponsor's name must appear on the ad. *Id.* ¶ 87. When Niebrugge then asked about having a different organization run the ad under its name, Gibson and Sennett indicated that they would need to consult with CityBus's attorneys regarding that question. *Id.* ¶ 88-89.

On October 31, 2017, after consulting with counsel, Sennett called Niebrugge to inform him that a certain organization *other than* TCRTL could run the ad with its name on it *if it removed the words* "ME," "ME, AGAIN," and "STILL ME." *Id.* ¶¶ 91-94. TCRTL decided against asking a different organization to run this gutted ad because it would not accomplish its goal of educating the public about the humanity of unborn children, nor educate people about TCRTL itself. *Id.* ¶ 96.

[3] CityBus's website now includes a link to the advertising policy. *See* https://www.gocitybus.com/advertise. It appears that this link was added as a post-litigation response to TCRTL's Verified Complaint, which critiqued the apparent absence of the policy on CityBus's website. Compl. ¶ 77; App. 15 (¶ 16).

After CityBus denied its ad, TCRTL submitted a public records request to CityBus in November 2017 requesting all advertisements that CityBus had allowed on its buses in the prior three years. App. 15 (¶¶ 18-19). TCRTL submitted another request to CityBus in February 2018, seeking all advertisements that CityBus declined in the prior three years. *Id.* at 28 (¶¶ 77-78). CityBus's responses revealed that it had accepted ads covering a broad spectrum of topics, such as companies advertising their services and products, organizations educating the public and encouraging action, a church promoting its worship services and declaring "GOD FIRST," and people running for elected office. Compl. ¶¶ 10-11, 115-152; App. 16-28 (¶¶ 24-76). The responses also showed that, despite accepting ads on countless subjects, CityBus rejected only one ad (aside from TCRTL's) during a three-year window, and that ad (pictured in section I.A.5, *infra*) related to voting (an inherently political subject). App. 28-29 (¶¶ 77-82).

Believing that its ad is no more an expression of a "political viewpoint" than other ads CityBus accepted (some of which are patently political), and that the advertising policy and denial of its ad are unconstitutional, TCRTL brought this action to secure the rights of free speech, due process, and equal protection for itself and others. It now seeks prompt, preliminary relief.

ARGUMENT

TCRTL seeks a preliminary injunction to enjoin portions of CityBus's advertising policy that are facially invalid and to prevent CityBus from applying its policies to reject TCRTL's ad. To obtain a preliminary injunction, TCRTL must "demonstrate that (1) it has no adequate remedy at law and will suffer irreparable harm if a preliminary injunction is denied; and (2) there is some likelihood of success on the merits of [its] claim." *Korte v. Sebelius*, 735 F.3d 654, 665 (7th Cir. 2013). After TCRTL satisfies this burden, this Court should "weigh[] the competing harms to the parties if an injunction is granted or denied and also consider[] the public interest." *Id.* This "balancing proceeds on a sliding-scale analysis," meaning that "the greater the

likelihood of success on the merits, the less heavily the balance of harms must tip in [TCRTL's] favor." *Id.* In First Amendment cases, such as this one, "the likelihood of success on the merits will often be the determinative factor." *Id.* (quoting *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 589 (7th Cir. 2012)).

I. There is a substantial likelihood that CityBus's advertising policy is invalid facially and as applied to deny TCRTL's educational ad.

As relevant to this motion, CityBus's advertising policy prohibits speech that refers to or states a "political viewpoint," as well as graphics that "imply a political viewpoint."[4] App. 6. It even provides for CityBus officials to reject any ad that "falls within, or *may* fall within" these prohibitions. *Id.* at 8 (emphasis added). The policy then goes a step further, allowing CityBus to "suspend, modify, or revoke" the advertising prohibitions to "fulfill the goals and objectives of CityBus" or to "accommodate [CityBus's] primary transportation function." *Id.* at 7. These policies and their application to ban TCRTL's educational ad are constitutionally deficient for the reasons discussed below.

A. CityBus's advertising policy and application of that policy to ban TCRTL's ad violate the First Amendment's Free Speech Clause.

1. CityBus censors speech based on its viewpoint.

Viewpoint discrimination is "an egregious form of content discrimination." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). It exists when one viewpoint on a topic is permitted, while another viewpoint is forbidden. *See DeBoer v. Vill. of Oak Park*, 267 F.3d 558, 571 (7th Cir. 2001) ("[T]he government engages in viewpoint discrimination when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise

[4] Although these restrictions on "political viewpoint" are referenced within the policy's regulation of "political campaign speech" and "political advertising for candidates for office," App. 6, CityBus's invocation of the policy in denying TCRTL's ad suggests that it believes its ban on "political viewpoint[s]" applies to *all* ads.

includible subject."). Therefore, "[t]he government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger*, 515 U.S. at 829.

CityBus's restriction on advertisements stating or implying a "political viewpoint" is an unconstitutional, viewpoint-based restriction on speech both facially and as applied to prohibit TCRTL's educational ad. Such restrictions are, at a minimum, subject to strict scrutiny. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2230-31 (2015) (applying strict scrutiny to a content-based law and noting that viewpoint-discrimination is a more blatant and egregious type of content-based discrimination); *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1885 (2018) (explaining that, in designated public forums, "restrictions based on content must satisfy strict scrutiny, and those based on viewpoint are prohibited"). This is true regardless of CityBus's motivations for adopting its viewpoint-based policy. *See Reed*, 135 S. Ct. at 2228 (noting that even regulations that are only content-based must face "strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech (quoting *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 429 (1993))).

a. CityBus's policy prohibiting "political viewpoint[s]" is facially invalid as a viewpoint-based speech restriction.

Under CityBus's advertising policy prohibiting "political viewpoint[s]," advertisers can offer multiple viewpoints on a given subject as long as the *viewpoint* is not "political." *See* App. 6. Consider, for example, an ad CityBus permitted stating that "1 in 5 Indiana teenagers are abusing prescription drugs." *Id.* at 19-20 (¶¶ 41-42). If the ad had followed that statement about the rate of drug abuse by saying "so God's intervention is needed," that would be a *religious* viewpoint (which is seemingly permitted by CityBus's policy) regarding a permissible subject (the extent of drug abuse) and therefore permitted under CityBus's policy. But had the ad instead

added the phrase "so government intervention is needed," that would be a "political viewpoint" and therefore prohibited (if CityBus were consistent in its rejection of ads).

Thus, because its advertising policy singles out for censorship "political viewpoint[s]" on "otherwise includible subject[s]," CityBus facially "engages in viewpoint discrimination" by "suppress[ing] the [political] point of view." *See DeBoer*, 267 F.3d at 571; *see also id.* at 568-69 (explaining the Supreme Court's holding that a school "engaged in viewpoint discrimination when it excluded a church from presenting films teaching family values (a subject otherwise permissible in the forum) from a Christian perspective" (citing *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993))).

CityBus's claimed prohibition of *all*—as opposed to just *some*—"political viewpoint[s]" does not resolve its viewpoint-discrimination problem. *See Air Line Pilots Ass'n v. Dep't of Aviation*, 45 F.3d 1144, 1159 (7th Cir. 1995) (stating that it "matters little" in the viewpoint-discrimination analysis "whether the entire category of 'political speech' was prohibited" because "[a] view labelled as 'political' (presumably because it is controversial or challenges the status quo) may nevertheless exist in opposition to a view that has otherwise been included in a forum"). That is because allowing discussion on a subject, while prohibiting a *viewpoint* on that subject—whether that viewpoint is broadly defined as "theistic," "atheistic," "*political*, economic, or social"—is necessarily "viewpoint discrimination." *See Rosenberger*, 515 U.S. at 831-32 (emphasis added); *see also Air Line Pilots*, 45 F.3d at 1159 ("The appropriate focus of the viewpoint inquiry examines whether the proposed speech dealt with a subject that was 'otherwise permissible' in a given forum." (quoting *Lamb's Chapel*, 508 U.S. at 394)); *Grossbaum v. Indianapolis-Marion Cty. Bldg. Auth.*, 63 F.3d 581, 588, 591, 592 & 592 n.12 (7th Cir. 1995) (holding that exclusion of a menorah pursuant to a policy prohibiting all "[r]eligious

displays and symbols" was a viewpoint-based "prohibition of the menorah's message" where secular holiday displays were permitted). Because that is precisely what CityBus's advertising policy does, its restriction on stating or implying "political viewpoint[s]" is facially invalid.

b. CityBus's use of the prohibition on "political viewpoint[s]" to reject TCRTL's ad constitutes viewpoint discrimination.

CityBus's prohibition on "political viewpoint[s]" is not only facially invalid as a viewpoint-based speech restriction, but CityBus also applied (and is applying) the restriction in a viewpoint-based manner to reject TCRTL's ad. This is apparent under the proper "viewpoint inquiry," which asks "whether or not the forum has included speech on the same *general* subject matter." *Air Line Pilots*, 45 F.3d at 1160 (emphasis added). If it has, "then suppression of a proposed but distinct view because of some content element included in it is impermissible." *Id.*; *see also Rosenberger*, 515 U.S. at 829 (noting that viewpoint discrimination exists when the government "targets not subject matter, but particular views taken by speakers on a subject").

The subjects of TCRTL's ad include educational facts regarding unborn and newborn human life. CityBus has accepted advertisements on those precise subjects. For example, one ad depicted a baby nursing, the caption "[n]urture me with nutrients," and the statement that "[b]reastfeeding has natural benefits for both mother and child. Your actions do make a difference."[5] Compl. ¶¶ 147-152. Another ad CityBus permitted encouraged women to "Confirm Your Pregnancy with a Free Ultrasound." App. 18-19 (¶¶ 37-38). Yet another ad included drawings of two pregnant women (referring to unborn life), the words "Now what?," and the words "adoption support center" (referring to newborn life). *Id.* at 17-18 (¶¶ 33-34).

[5] Unlike TCRTL's ad, this breastfeeding ad—like many of the other ads CityBus accepted—not only *educated* the public, but went a step further and *advocated* action. Moreover, merely educating people regarding breastfeeding can prompt political action, such as the passage of laws to reduce breastfeeding-related burdens. *See* Compl. ¶ 152.

Like TCRTL's ad, some ads that CityBus accepted even addressed the biological continuity between an unborn and a newborn child. For example, one ad depicted a sleeping infant and the words "[t]his moment brought to you by prenatal care." *Id.* at 16-17 (¶¶ 28-29). The ad also bore the name of its sponsor, "Labor of Love," and the words "Helping Indiana Reduce Infant Death." *Id.* Another ad that CityBus accepted depicted an infant with a tube running into his or her nose, and the statement that "[m]others who use drugs during pregnancy put their babies at risk for serious complications." *Id.* at 17 (¶¶ 30-32), 32-33 (¶¶ 12-14). Thus, both of these ads that CityBus permitted explained that the actions impacting unborn children (e.g., prenatal care and drug use during pregnancy) affect the child after birth as well. That can only be true if a human after birth is the same human that existed in his or her mother's womb.

Further confirming that the subject of TCRTL's ad is permitted in the forum is CityBus's willingness to allow an organization (other than TCRTL) to display the *same* three pictures on TCRTL's ad. Compl. ¶ 91. What CityBus would not tolerate was the *viewpoint* or *perspective* regarding those pictures expressed by the words "ME," "ME, AGAIN," and "STILL ME." *Id.* ¶¶ 91-92; *Grossbaum*, 63 F.3d at 590 ("Viewpoint is synonymous with perspective." (quoting *Good News/Good Sports Club v. Sch. Dist.*, 28 F.3d 1501, 1506 (8th Cir. 1994))). And CityBus's refusal to let TCRTL run the pictures (even without the words) under its own name also shows viewpoint-based censorship via exclusion of a speaker because of the speaker's views.[6] *See DeBoer*, 267 F.3d at 572 (noting that the "requirement of viewpoint neutrality emphasizes that the government should be indifferent to a speaker's viewpoint"); *Rosenberger*, 515 U.S. at 829 ("The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.").

[6] Although CityBus indicated that TCRTL could run certain ads, Compl. ¶ 86, that does not resolve the viewpoint-based discrimination of refusing to allow TCRTL to run an ad that another organization could run.

Because CityBus allowed educational speech regarding unborn and newborn human life (and even the biological connection between the two), CityBus engaged in impermissible viewpoint-based discrimination by banning TCRTL's perspective on those topics.

2. CityBus's decision to forbid TCRTL's ad is unreasonable in light of the purpose of the forum and the other ads CityBus allowed.

Beyond the requirement that CityBus not engage in viewpoint-based discrimination, CityBus's decision to decline TCRTL's ad must also be "reasonable." It is not.

"[T]he reasonableness of a given restriction 'must be assessed in light of the purpose of the forum and all the surrounding circumstances.'" *Air Line Pilots*, 45 F.3d at 1159 (quoting *Int'l Soc'y for Krishna Consciousness v. Lee*, 505 U.S. 672, 687 (1992) (O'Connor, J., concurring)). This "requires an examination of both the governmental interest and the particular forum's nature and function." *Id.* It also requires "a determination of whether the proposed conduct would 'actually interfere' with the forum's stated purposes." *Id.* (quoting *Multimedia Pub. v. Greenville-Spartanburg Airport*, 991 F.2d 154, 159 (4th Cir. 1993)).

TCRTL's ad is simple, scientifically sound, and innocuous. Unsurprisingly, in rejecting the ad, CityBus provided no evidence that the ad was likely to cause a serious disruption. App. 15 (¶ 17). Nor could it. CityBus has a history of allowing ads addressing subjects that many find controversial.[7] Its advertising policy even explicitly permits advertisements for candidates for office—one of the most "political" and controversial topics imaginable.[8] *Id.* at 6; Compl. ¶¶ 117-

[7] For example, CityBus has permitted ads encouraging the vaccination of children against a sexually transmitted disease, church attendance (including one ad saying "GOD FIRST"), joining the Indiana National Guard, quitting smoking because there are now "fewer places to smoke," participating in a research study if you "overeat, purge, diet severely, or exercise excessively," tanning at a tanning salon, and getting dermatology treatments to slow aging and freeze away fat. App. 21 (¶¶ 49-50), 23-25 (¶¶ 55-56, 59-62), 26-27 (¶¶ 69-74).

[8] CityBus's advertising policy purports to limit ads for candidates for office to a statement "identifying the person or committee that is paying for the advertising" and, beyond that, "*only* the candidate's name and political party affiliation, picture or graphic representation of the candidate, office the candidate is seeking, election date, and district the candidate is running in." App. 6 (emphasis added). It also prohibits "political viewpoint[s]" in the ads. *Id.* However, CityBus has allowed ads that violate those terms.

120. If an ad saying "Trump for President!" is permissible, it is unreasonable to say that TCRTL's ad is not. *Cf. Minn. Voters All.*, 138 S. Ct. at 1888 ("[T]he State must be able to articulate some sensible basis for distinguishing what may come in from what must stay out."). Moreover, CityBus has accepted multiple ads that certainly express a "political viewpoint" if TCRTL's does. For example, CityBus has accepted ads declaring a "healthcare crisis in Indiana,"[9] encouraging people to file a "free complaint of housing discrimination,"[10] urging people to "help the environment," and imploring people to have children "get vaccinated" against a sexually transmitted disease.[11] Compl. ¶¶ 9-10, 129-137, 141-146.

Put simply, because CityBus has allowed "'political' or other public interest messages in the past, [CityBus] cannot now claim that those messages are incompatible with the purpose of the forum." *See Air Line Pilots*, 45 F.3d at 1156. Denying TCRTL's ad as impermissibly political was unreasonable in light of CityBus's policy and practice.

For example, CityBus accepted one ad for a mayoral candidate that included the words "Putting People First" even though that statement goes beyond what is permitted (i.e., the ad sponsor and the candidate's name, image, party affiliation, office sought, election date, and district) and expresses the "political viewpoint" that people—not anything else, such as animals, trees, corporations, or special interest groups—deserve first priority in policy making. Compl. ¶¶ 117-118. As another example, CityBus permitted an ad for a judicial candidate that included the phrase "Fair, Trusted, and Committed to Tippecanoe County." Compl. ¶¶ 119-120. As with the mayoral ad, this phrase went beyond what is permitted by CityBus's policy and expressed the "political viewpoint" that judges should be fair (rather than beholden to prejudices and political considerations), trusted (rather than having an appearance of bias or suffering from a lack of confidence in their abilities and judiciousness), and committed to Tippecanoe County (rather than their own ambitions and selfish pursuits).

[9] This ad advertised a conference about healthcare. At that conference, the panelists advocated for the expansion of Medicaid in Indiana, which was opposed by then-Governor Mike Pence, and at least one panelist argued for universal healthcare. Compl. ¶¶ 129-132.

[10] One ad CityBus permitted said "The Fair Housing Act is clear," and encouraged people denied housing because of race, gender, or disability to "contact the Indiana Civil Rights Commission today to speak with a trained civil rights investigator." App. 22 (¶¶ 53-54). It is difficult to say that encouraging people to seek the government's assistance to combat discrimination is non-political, but reporting biological facts is political.

[11] This ad related to HPV (human papillomavirus), a sexually transmitted disease. In 2015, the Indiana legislature rejected a bill calling for the government to establish goals and plans to increase HPV vaccination rates for Indiana's children. A newspaper article reported that bill supporters blamed the bill's failure on "conservative groups who are squeamish about the nature of HPV" and that Indiana's House Speaker said there was "a national debate about the safety of vaccinations." Compl. ¶¶ 141-146.

3. CityBus created a designated public forum, but forum analysis is unnecessary because CityBus engages in viewpoint-based and unreasonable speech restrictions.

The degree to which CityBus can restrict protected speech in advertisements on its buses (government property) depends on the type of "forum" it created for advertisers. *See Planned Parenthood Ass'n v. Chi. Transit Auth.*, 767 F.2d 1225, 1231 (7th Cir. 1985). "Generally speaking," the Supreme Court recognizes three types of forums: "traditional public forums, designated public forums, and nonpublic forums." *Minn. Voters All.*, 138 S. Ct. at 1885. But "[s]ome decisions recognize a fourth category" of forums, "variously called a 'limited designated public forum' . . . , a 'limited public forum,' or a 'limited forum.'" *Women's Health Link, Inc. v. Fort Wayne Public Transp. Corp.*, 826 F.3d 947, 951 (7th Cir. 2016). The Seventh Circuit, however, looks skeptically on recognizing this fourth category. *See Gilles v. Blanchard*, 477 F.3d 466, 473-74 (7th Cir. 2007) (recognizing that some courts "carved out [this] fourth [forum] category," but "doubt[ing] the utility of multiplying categories in this fashion"); *see also Horina v. City of Granite City*, 538 F.3d 624, 632 (7th Cir. 2008) (recognizing the *Gilles* court's "dubious[]" view of other courts expanding the categories of public forums).

Mercifully, forum analysis is unnecessary in this case because both viewpoint-based and unreasonable speech restrictions, as exist here, are impermissible regardless of forum type. *See, e.g.*, *Air Line Pilots*, 45 F.3d at 1151 (noting that in nonpublic forums, where the government has the greatest leeway, restrictions on speech must still "be reasonable and may not discriminate on the basis of viewpoint"); *Women's Health Link*, 826 F.3d at 951 (determining that it is unnecessary to decide the forum type where the refusal to allow speech was "an unjustifiable, because arbitrary and discriminatory, restriction on free speech").

If this Court engages in forum analysis, however, it should reject CityBus's contention, as stated in its advertising policy and rejection e-mail to TCRTL, that it established a nonpublic

forum. *See* App. 2, 4. Instead, CityBus's advertising forum is properly classified as a designated public forum—"spaces that have 'not traditionally been regarded as a public forum,' but which the government has 'intentionally opened up for that purpose.'" *Minn. Voters All.*, 138 S. Ct. at 1885 (quoting *Pleasant Grove City v. Summum*, 555 U.S. 460, 469-70 (2009)). A designated public forum is usually "available for specified forms of private expressive activity" or expression "at specified times." *Women's Health Link*, 826 F.3d at 951.

Determining the forum type "is not merely a matter of deference to a stated purpose." *Air Line Pilots*, 45 F.3d at 1152. Rather, this Court should look to (1) CityBus's "*consistent* policy and practice" and (2) "the nature of the property and its compatibility with expressive activity." *Id.* This evaluation includes consideration of "the forum's past uses," *id.*—here, the advertisements CityBus previously permitted—and whether TCRTL's ad "is inconsistent or incompatible with the primary use of" CityBus, *Planned Parenthood*, 767 F.2d at 1232.

First, as for policy and practice, CityBus allows ads on countless topics, including ads that necessarily express a "political viewpoint" if TCRTL's ad does. *See, e.g.*, Compl. ¶¶ 117-152. It has even allowed ads that violate the explicit terms of its advertising policy. *See, e.g.*, *id.* ¶¶ 122-128 (ads promoting voting and democracy); footnote 8, *supra*. CityBus's longstanding openness to just about any ad from any paying advertiser is further demonstrated by its prior practice of using its website to encourage advertisements but not to inform advertisers of its policy. Compl. ¶¶ 39, 42, 77. It is also confirmed by the fact that CityBus rejected only one ad (other than TCRTL's) during a three-year window, while accepting more than 150 ads within a three-year period. App. 16 (¶ 23), 29 (¶ 79).

These facts demonstrate that CityBus has created a designated public forum. This conclusion is supported by the Seventh Circuit's analysis in *Planned Parenthood*, where a bus

company had a "contractual directive" to reject "vulgar, immoral, or disreputable advertising." 767 F.2d at 1232. Despite these restrictions, the Seventh Circuit noted that the bus company "allowed its advertising space to be used for a wide variety of commercial, public-service, public-issue, and political ads," and concluded that it had established a designated public forum. *Id.* at 1232-33. This Court should reach the same conclusion here given CityBus's general openness to advertisers and lax enforcement of its policy as written. *Cf. id.* at 1232 (describing the policy as "laissez-faire" and noting that advertising on the buses was "virtually guaranteed to anyone willing to pay the fee"); *Air Line Pilots*, 45 F.3d at 1153-54 (explaining that the "stated policy" is "not dispositive" as to the forum type, but that "a court must examine the *actual* policy—as gleaned from the *consistent* practice with regard to various speakers").

Second, regarding compatibility with the forum, because CityBus "already permits its facilities to be used for public-issue and political advertising, it cannot argue that such use is incompatible with the primary use of the facilities." *Planned Parenthood*, 767 F.2d at 1232.

Given CityBus's history of allowing ads on a wide range of topics and failing to consistently enforce its policy as written, it has created a designated public forum. *See, e.g.*, *Planned Parenthood*, 767 F.2d at 1230-32 (finding that a public forum existed even though the bus company had previously attempted to reject an anti-Vietnam war ad and an "Impeach Nixon" ad); *United Food & Commercial Workers Union v. Sw. Regulation Transit Auth.*, 163 F.3d 341, 355 (6th Cir. 1998) ("Acceptance of a wide array of advertisements, including . . . public-issue advertisements, is indicative of the government's intent to create an open forum."); *Christ's Bride Ministries, Inc. v. Se. Penn. Transp. Auth.*, 148 F.3d 242, 252 (3d Cir. 1998) (holding that "the exclusion of only a very narrow category of ads" and the "practice of permitting virtually unlimited access to the forum . . . created a designated public forum").

4. CityBus's restriction on "political viewpoint[s]" is a content-based speech regulation facially and as applied to reject TCRTL's ad.

Because CityBus created a designated public forum, not only is viewpoint-based discrimination prohibited, but it also cannot engage in any content-based speech restrictions without facing strict scrutiny. *See Planned Parenthood*, 767 F.2d at 1232. A "regulation of speech is content based if [it] applies to particular speech because of the topic discussed or the idea or message expressed." *Reed*, 135 S. Ct. at 2227. Thus, CityBus's prohibition on speech expressing a "political viewpoint"—facially and as applied to deny TCRTL's ad—is, by definition, a content-based regulation of speech and therefore "presumptively unconstitutional." *See id.* at 2226. And any "innocuous justification" CityBus may assert for its policy "cannot transform [its] facially content-based [policy] into one that is content neutral." *Id.* at 2228.

5. CityBus's advertising policy is facially invalid as a prior restraint on speech that gives government officials unbridled discretion and is substantially overbroad.

Contributing to the viewpoint-based discrimination issue is the unbridled discretion that CityBus officials have to restrict speech given the extreme flexibility in the advertising policy. Indeed, the "prohibition against unbridled discretion is a component of the [First Amendment's] viewpoint-neutrality requirement." *Southworth v. Bd. of Regents of Univ. of Wis. Sys.*, 376 F.3d 757, 771 (7th Cir. 2004) (quoting *Southworth v. Bd. of Regents of Univ. of Wis. Sys.*, 307 F.3d 566, 578 (7th Cir. 2002)). That is because "[w]here virtually unlimited discretion exists, 'the possibility is too great that it will be exercised in order to suppress disfavored speech.'" *DeBoer*, 267 F.3d at 572 (quoting *MacDonald v. City of Chi.*, 243 F.3d 1021, 1026 (7th Cir. 2001)). Thus, "[a]ny regulations governing a speaker's access to a forum must contain 'narrow, objective, and definite standards' to guide a governmental authority, so that such regulations do not operate as a prior restraint that may result in censorship." *Id.* at 573 (quoting *Shuttlesworth v. City of*

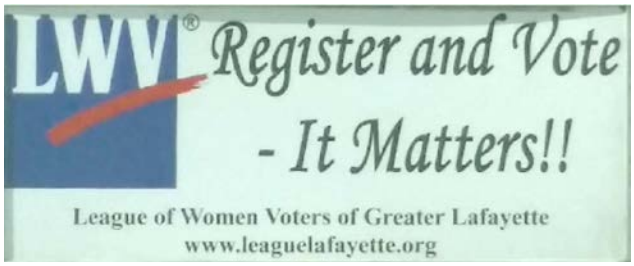
Birmingham, 394 U.S. 147, 151 (1969)); *see also Weinberg v. City of Chicago*, 310 F.3d 1029, 1045-46 (7th Cir. 2002) (explaining that prior restraints are "presumed invalid," "exist[] when a law gives 'public officials the power to deny use of a forum in advance of actual expression,'" and must not "plac[e] unbridled discretion in the hands of . . . officials which may result in censorship" (quoting *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975))).

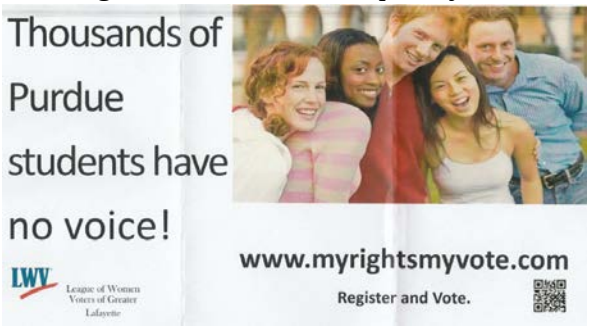
Rather than provide the required "principled limits to guide the decisions of [its] officials," CityBus's advertising policy does just the opposite, as revealed by its terms discussed below. *See Deboer*, 267 F.3d at 573.

"Political viewpoint." CityBus's advertising policy prohibits ads stating a "political viewpoint." But what does "political" mean? The policy provides no definition or guidance. The Seventh Circuit already warned that "the content of the word 'political' is not immediately obvious" and "is not self-defining." *Air Line Pilots*, 45 F.3d at 1155 n.7; *see also Allen v. Bartholomew Cty. Court Servs. Dep't*, 185 F. Supp. 3d 1075, 1082, 1086-87 (S.D. Ind. 2016) (preliminarily enjoining as "unconstitutionally vague" a policy banning "political activity" and observing that "[t]he word 'political' is, of course, subject to interpretation"). And the Supreme Court recently explained that the "term 'political' . . . can be expansive." *Minn. Voters All.*, 138 S. Ct. at 1888. So expansive, in fact, that "merely imploring others to 'Vote!' could qualify" as "political." *Id.* But CityBus allowed ads doing just that—and more. For instance, one ad CityBus allowed said "Pump Some Democracy" and noted that "Election Day is November 8th." Compl. ¶¶ 124-125. Not only did this encourage voting, but it promoted "democracy," as opposed to a different form of government (e.g., a monarchy)—expressing yet another "political viewpoint." Another ad CityBus permitted said "Exercise Your Right to Vote." *Id.* ¶¶ 122-123. And an additional ad CityBus allowed said "Register and Vote – It Matters!!" and included the words

"League of Women Voters of Greater Lafayette" and the League's website address. *Id.* ¶¶ 126-127. Notably, the League's website confirms that the League's purpose is political in that it "influences public policy through education and advocacy" and also "advocate[s] for or against particular policies in the public interest." *Id.* ¶ 128.

Interestingly, the *only* ad that CityBus prohibited (excluding TCRTL's ad) in at least a three-year window was a different voting ad from the same League. App. 28-29 (¶¶ 77-82). The minor differences between the League's ad that CityBus allowed (left) and prohibited (right) illustrates the difficulty in distinguishing "political viewpoint" from "non-political viewpoint"—and highlights the unbridled discretion that results when vague terms are not adequately defined.





Presumably, CityBus took issue with the statement, "Thousands of Purdue students have no voice!" in the ad it prohibited. But that is arguably an alternative "political viewpoint" to the ad described above (and permitted) telling people that they have a "Right to Vote" (i.e., that they *do* have a voice). Compl. ¶¶ 122-123. And if the assertion that some students "have no voice" is a "political viewpoint," the same must be true of another ad CityBus permitted referring to a "healthcare crisis in Indiana" and declaring "Need Health Insurance? Too Bad... You May Have Just Lost the Chance for Coverage." Compl. ¶¶ 129-130.

Thus, the ambiguity of "political viewpoint"—not to mention CityBus's inconsistent interpretation of the phrase—is sufficient standing alone to doom CityBus's policy. But CityBus further exacerbated the issue by prohibiting ads with graphics that merely "imply" a political

viewpoint. App. 6. Worse still, CityBus's policy not only instructs CityBus officials to ban ads that *actually* state or imply a "political viewpoint"—whatever that means—but also all ads that "*may*" do so. *Id.* at 6, 8 (emphasis added). The extreme unbridled discretion that results from these provisions essentially grants CityBus officials the power to ban speech at will, based on their personal predilections. This renders the policy helplessly invalid.

"Goals and objectives" and "primary transportation function." While CityBus's policy prohibiting ads that actually or *may* state or imply a "political viewpoint" grants virtually limitless discretion to CityBus officials to ban speech as they please, the policy goes on to explain that officials can completely ignore the already-vague policy in certain circumstances. That is, officials may "suspend, modify, or revoke" the ban on "political viewpoint[s]" in order "to fulfill the goals and objectives of CityBus" or "to accommodate its primary transportation function." App. 7. Officials can interpret these exceptions in countless ways, yet the policy offers no guidance regarding their meaning or proper application.

In *DeBoer*, the Seventh Circuit rejected a requirement that speech "benefit[] the public as a whole" for failing to provide "concrete standards or guideposts" to determine when people "satisf[y] this precondition to the exercise of First Amendment rights." 267 F.3d at 573. The provision's ambiguity created "too great a risk that it could be used to engage in prohibited censorship of speech." *Id.* at 574. In justifying its decision, *DeBoer* explained that the Supreme Court previously rejected, because of unbridled-discretion issues, a law providing for the rejection of speech that is not "in the public interest" and another law providing for the refusal of speech when considerations of "public welfare, peace, safety, decency, good order, morals or convenience require that it be refused." *Id.* at 573 (quoting *Shuttlesworth*, 394 U.S. at 149-51; *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 769-72 (1988)).

The same deficiencies exist here, where CityBus officials can reject speech "to fulfill the goals and objectives of CityBus" or "to accommodate its primary transportation function." *See also Air Line Pilots*, 45 F.3d at 1159 n.11 (stating that banning "advertisements disruptive of airlines and air travel" is problematic because "it partakes of a level of selectivity that gives the appearance of hostility" to certain viewpoints). Thus, CityBus's policy grants officials unbridled discretion to "suspend, modify, or revoke" a policy that itself grants unbridled discretion.

The practical implications of the flexible escape valves included in CityBus's policy are that (1) even if an ad *unquestionably* violates CityBus's policy, a CityBus official can allow it and (2) even if an ad is *unquestionably* permitted by CityBus's advertising policy, a CityBus official can reject it. No elaboration is needed regarding the viewpoint-based discrimination issues these possibilities raise. *Cf. City of Lakewood*, 486 U.S. at 769-70 ("To allow these illusory 'constraints' to constitute the standards necessary to bound a licensor's discretion renders the guarantee against censorship little more than a high-sounding ideal.").

Given these faults with CityBus's policy, it matters not whether CityBus officials truly "strive to enforce the [policy] in an evenhanded manner" despite the extreme latitude they possess. *See Minn. Voters All.*, 138 S. Ct. at 1891. The constitution requires that their "discretion must be guided by objective, workable standards." *Id.* That guidance is lacking. Without that guidance, a CityBus official's "own politics may shape his views on what counts as 'political'" or when to invoke the provisions allowing suspension of the policy altogether. *See id.* Therefore, CityBus's advertising policy is facially invalid because it grants unbridled discretion to suppress speech. *Cf. City of Lakewood*, 486 U.S. at 759 ("[A] facial challenge lies whenever a licensing law gives a government official or agency substantial power to discriminate based on the content or viewpoint of speech by suppressing disfavored speech or disliked speakers.").

Additionally, the same flexibility rendering CityBus's policy invalid as a prior restraint granting unbridled discretion to government officials also renders it facially overbroad. That is because the lack of narrowly drawn standards means that CityBus's policy prohibits "a substantial amount of protected speech" in violation of the overbreadth doctrine. *See Smith v. Exec. Dir. of Ind. War Mem'ls Comm'n*, 742 F.3d 282, 286 (7th Cir. 2014). Because nearly any statement may state or imply a "political viewpoint," CityBus's policy is analogous to the ban of all "First Amendment activities" in an airport that the Supreme Court found impermissibly overbroad. *See Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569, 570, 573-77 (1987).

B. CityBus's advertising policy is void for vagueness and CityBus officials used the unbridled discretion granted by that policy to arbitrarily ban TCRTL's ad in violation of the Due Process Clause of the Fourteenth Amendment.

As discussed in the preceding section, CityBus's advertising policy is impermissibly vague because it instructs officials to ban ads that do or "may" state or imply a "political viewpoint," and further allows officials to "suspend, modify, or revoke" the prohibition on "political viewpoint[s]" to "fulfill the goals and objectives of CityBus" or to "accommodate [CityBus's] primary transportation function." The previously explained vagueness of these terms, which contributes to the issue of unbridled discretion, renders the terms facially invalid under the Due Process Clause of the Fourteenth Amendment. *See Karlin v. Foust*, 188 F.3d 446, 458 (7th Cir. 1999) ("The void for vagueness doctrine rests on the basic principle of due process that a law is unconstitutional if its prohibitions are not clearly defined." (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972))).

The Due Process Clause forbids policies that do not define prohibited behavior "with sufficient definiteness that ordinary people can understand what conduct is prohibited and . . . fail[] to establish standards to permit enforcement in a nonarbitrary, nondiscriminatory manner." *Fuller v. Decatur Pub. Sch. Bd.*, 251 F.3d 662, 666 (7th Cir. 2001). And in cases like this, where

the First Amendment is implicated, "a heightened vagueness standard appli[es]." *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 793 (2011).

The vagueness issue here is twofold. First, the challenged terms fail to inform people of "common intelligence" what speech is permitted and banned in CityBus's advertising forum. *See Bell v. Keating*, 697 F.3d 445, 462 (7th Cir. 2012). This can result in people chilling (i.e., self-censoring) their speech. *See id.* at 455 (noting that vagueness may chill speech). For instance, some may choose not to invest the time and money involved in designing and submitting an ad because of uncertainty about whether CityBus will allow it.

Second, the vagueness of CityBus's policy "invites arbitrary and discriminatory enforcement." *See id.* Those concerns are explained in the section above and need not be rehashed. The concern that the vagueness of CityBus's policy allows officials to censor speech "on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application" was realized here—especially when considering the nature of the ads CityBus *did allow*. *See United Food*, 163 F.3d at 359 (quoting *Grayned*, 408 U.S. at 109).

Because the terms of CityBus's policy challenged here fail to give sufficient notice as to what speech is prohibited, and are so vague as to allow—and did in fact allow—arbitrary and discriminatory censorship of speech, CityBus's policy violates the Due Process Clause facially and as applied to reject TCRTL's ad.

C. CityBus's rejection of TCRTL's ad, while allowing similar ads from similarly situated organizations, violates the Equal Protection Clause of the Fourteenth Amendment.

"[U]nder the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views." *Police Dep't of City of Chi. v. Mosley*, 408 U.S. 92, 96 (1972). Instead, "all persons similarly situated should be treated

alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). When they are not, and the government's distinctions affect fundamental rights, "the most exacting scrutiny" applies, *Clark v. Jeter*, 486 U.S. 456, 461 (1988), and discriminatory intent is presumed, *see Plyler v. Doe*, 457 U.S. 202, 216-17 (1982) ("[W]e have treated as presumptively invidious those classifications that . . . impinge upon the exercise of a 'fundamental right.'").

TCRTL falls within the wide spectrum of organizations—including for-profit and non-profit—that advertise with CityBus. *See* Compl. ¶¶ 4, 115; App. 16-28 (¶¶ 23-76). Not only is TCRTL similarly situated to other organizations that advertise with CityBus, but its educational ad is similarly situated to other educational ads permitted by CityBus. *See, e.g.*, App. 16-17 (¶¶ 28-32); Compl. ¶¶147-150. Nevertheless, CityBus rejected TCRTL's ad, and even indicated that it would prohibit a certain modified ad from TCRTL but accept it from a different organization. Compl. ¶¶ 68, 90-91, 93-96. This differentiation between similarly-situated speakers and similarly-situated ads constitutes "groundless discrimination against constitutionally protected speech." *See Women's Health Link*, 826 F.3d at 952-53 (noting inconsistency in a bus company's treatment of a pro-life group and its ad as compared with other advertisers and their ads, and observing that the rejected ad did not even violate the bus company's policies).

Because CityBus's discrimination burdens TCRTL's fundamental rights, strict scrutiny applies to CityBus's rejection of TCRTL's ad. *See Clark*, 486 U.S. at 461.

D. CityBus cannot survive strict scrutiny.

As the analysis above demonstrates, CityBus's prohibition of "political viewpoint[s]" and rejection of TCRTL's ad is, at a minimum, subject to strict scrutiny. *See, e.g., Reed*, 135 S. Ct. at 2231 (applying strict scrutiny to a content-based law); *Minn. Voters All.*, 138 S. Ct. at 1885 (explaining that while certain "restrictions based on content must satisfy strict scrutiny, . . . those

based on viewpoint are prohibited"). Even if only strict scrutiny applies, CityBus's speech prohibition is "presumptively unconstitutional and may be justified only if [CityBus] proves that [it is] narrowly tailored to serve compelling state interests." *Reed*, 135 S. Ct. at 2226.

CityBus cannot satisfy this heavy burden to justify its law facially or as applied to reject TCRTL's innocuous educational ad. *Cf. Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) (plurality) (stating that even in "limited public forum[s,] . . . 'viewpoint discrimination' is forbidden," and that "the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of the hearers" (quoting *Street v. New York*, 394 U.S. 576, 592 (1969))). This is especially true here, where CityBus has allowed ads that express political viewpoints and its policy permits ads that can be quite controversial (e.g., ads expressing certain religious viewpoints). *Cf. Reed*, 135 S. Ct. at 2232 (stating that a "law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited" (quoting *Republican Party of Minn. v. White*, 536 U.S. 765, 780 (2002))); *Mosley*, 408 U.S. at 96, 102 ("Once a forum is opened up to . . . speaking by some groups, government may not prohibit others from . . . speaking on the basis of what they intend to say.").

II. TCRTL is suffering irreparable harm, and a preliminary injunction will restore its rights in furtherance of the public interest without harming CityBus.

CityBus's violations of TCRTL's free speech, due process, and equal protection rights inflicted irreparable harm that is ongoing, and injunctive relief is the only remedy that can stop this irreparable harm from continuing. *See Korte*, 735 F.3d at 666 ("[T]he 'loss of First Amendment freedoms . . . unquestionably constitutes irreparable injury . . . .'" (quoting *Alvarez*, 679 F.3d at 589)); *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006) ("The loss

of First Amendment freedoms is presumed to constitute an irreparable injury for which money damages are not adequate . . . .").

The harm that TCRTL is experiencing as a result of the ongoing censorship of its constitutionally protected speech greatly outweighs any harm to CityBus that would result from an injunction. In fact, CityBus would experience no harm at all in carrying out its constitutional obligations and allowing TCRTL's educational ad. *Cf. Déjà Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cty.*, 274 F.3d 377, 400 (6th Cir. 2001) (explaining that when a law is unconstitutional, "no substantial harm to others can be said to inhere in its enjoinment"). Just as the balance of harms weighs heavily in favor of issuing the injunction TCRTL seeks, an injunction requiring CityBus to comply with the constitution is also in the public interest. *See Korte*, 735 F.3d at 666 ("[O]nce the moving party establishes a likelihood of success on the merits, the balance of harms 'normally favors granting preliminary injunctive relief' because '"injunctions protecting First Amendment freedoms are always in the public interest."'" (quoting *Alvarez*, 679 F.3d at 590)).

CONCLUSION

Because CityBus rejected TCRTL's ad in violation of the First and Fourteenth Amendments, and facially bans speech based on its content and viewpoint using vague terms that granted unbridled discretion to CityBus officials, this Court should issue a preliminary injunction requiring CityBus to accept TCRTL's ad and to stop enforcing the provisions of its advertising policy challenged in this motion.

Respectfully submitted this 17th day of August, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2018, the foregoing was filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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