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**IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

ALAN KORWIN and TRAINMEAZ, LLC,

Plaintiffs,

vs.

DEBBIE COTTON and CITY OF  
PHOENIX,

Defendants.

Case No.: CV2011-009838

**COMPLAINT**

**(for Injunctive and Declaratory Relief)**

**Introduction**

This civil-rights lawsuit seeks to vindicate Plaintiffs' constitutionally guaranteed right to free speech, one of the most venerated rights under the constitutions of the United States and the State of Arizona. Plaintiff Alan Korwin simply seeks to advertise his lawful business, TrainMeAZ, LLC, in a way that he believes is best suited to attract his prospective customers. Defendants' response has been to rebuke Plaintiffs' advertising ingenuity, unwisely chilling the

creative marketing efforts of small businesses in times of economic difficulty. Defendants' Transit Advertising Standards impose greater restrictions on noncommercial than on commercial speech, are impermissibly vague, and are arbitrarily and unequally applied. Because Defendants are violating Plaintiffs' federal and state constitutional rights to free expression, due process and equal protection, the Transit Advertising Standards as written and enforced cannot stand.

### **Parties, Jurisdiction and Venue**

1. Plaintiff Alan Korwin is a citizen of the United States and a resident of the State of Arizona. He is the manager of Plaintiff TrainMeAZ, LLC.

2. Plaintiff TrainMeAZ, LLC, is an Arizona limited liability company founded in 2010 and organized under the provisions of A.R.S. Title 29, Chapter 4. Its place of business is located in Scottsdale.

3. Defendant City of Phoenix is a municipal corporation organized under the laws of the State of Arizona and located within Maricopa County.

4. Defendant Debbie Cotton is Director of the Phoenix Public Transit Department, and is sued in her official capacity only.

5. The Public Transit Director is responsible for, among other things, planning, directing, and coordinating activities related to administration, and operation and maintenance. See Phoenix City Code Article XX § 2-501.

6. Jurisdiction over this action, claims and parties is provided by A.R.S. §§ 12-123, 12-1801,

and 12-1831; and 42 U.S.C. § 1983.

7. Venue is proper pursuant to A.R.S. § 12-401.

**Facts Common to All Claims**

8. Plaintiff Alan Korwin is the Manager of Plaintiff TrainMeAZ, LLC.

9. Plaintiff TrainMeAZ, LLC, is an Arizona limited liability company organized under the provisions of A.R.S. Title 29, Chapter 4 and operated for profit. Its costs are financed by various contributing sponsors, which include shooting ranges, trainers, and others who hope to attract business through TrainMeAZ.

10. Plaintiff TrainMeAZ, LLC, operates a “one-stop-shopping” website for training and educational opportunities statewide, which will be organized by skill level, location, firearm type, type of shooting discipline and class date. Arizona Representative John Kavanagh has called it “the perfect response from the free market, replacing government-enforced training requirements with wholesome market-driven classes and marksmanship opportunities statewide.”

11. Plaintiff TrainMeAZ, LLC, also produces a “Where-to-Shoot Guide” Gun Map, which will be sold for profit.

12. To attract customers, Plaintiff TrainMeAZ, LLC, engages in a variety of advertising campaigns, such as billboards and public relations.

13. Defendant City of Phoenix provides advertising space on transit shelters, benches and

buses, which it makes available to the public by leasing the shelter and bench spaces to CBS Outdoor (“CBS”), and bus spaces to Clear Channel Outdoor. Both companies then lease these spaces to customers like Plaintiffs.

14. The City, through its Public Transit Department, promulgated the Transit Advertising Standards to regulate the advertising displayed on its transit buses, shelters, and benches. The newest version became effective on December 8, 2009.

15. Section B of the Advertising Standards states, “The subject matter of transit bus, shelter, and bench advertising shall be limited to speech which proposes a commercial transaction.”

16. On October 5, 2010, Plaintiff Korwin, acting in his capacity as manager of Plaintiff TrainMeAZ, LLC, signed an Advertiser Agreement with CBS to put up 6’x4’ promotional advertisements at 50 transit-shelter locations throughout the City of Phoenix in two four-week segments.

17. The posters depict a heart with the words “GUNS SAVE LIVES” at the top, the words “ARIZONA SAYS: EDUCATE YOUR KIDS TrainMeAZ.com” at the bottom, and several paragraphs of text in the background explaining why gun safety is important; how one can use TrainMeAZ.com to find training opportunities, shooting ranges and classes; and encouraging people to visit Arizona for the unique opportunities the state offers.

18. On October 11, CBS began putting up the posters at the transit shelters and completed putting them up as planned on October 12.

19. On October 19, CBS informed Plaintiff Korwin that the City was unhappy with the posters. Plaintiff Korwin inquired as to why the City objected to the posters, and he maintained the contract should be honored and the promotional advertisements remain in place.

20. On October 20, Plaintiff Korwin participated in a conference call with representatives from CBS, Assistant Phoenix City Attorney Ted Mariscal, and Public Transit Department Public Information Officer Marie Chapple.

21. During the conference call, Mr. Mariscal informed Plaintiff Korwin that the City believed that the posters were not commercial, and instead were public service announcements, which are prohibited by the City's Transit Advertising Standards.

22. Plaintiff Korwin asserted that the posters were commercial because TrainMeAZ, LLC, is a for-profit business and the posters were aimed at attracting customers for shooting ranges, firearm trainers and the company's contributing sponsors.

23. Despite Plaintiff Korwin's inquiries, Mr. Mariscal was unable to articulate the Department's standards for determining whether an advertisement proposes a commercial transaction.

24. At the end of the call, Plaintiff Korwin was under the impression that the City would provide guidelines for creating an acceptable alternative and also reconsider whether the current poster was commercial. Instead, unbeknownst to Plaintiff, the City demanded that CBS take down the posters without further consideration.

25. Following the City's orders, CBS began taking down the posters on October 19 and finished doing so on October 20.

26. On October 27, Plaintiff Korwin met with Phoenix City Councilman Sal DiCiccio at City Hall. Additional persons attending this meeting include City Manager David Cavazos, Assistant City Manager Ed Zuercher, Defendant Cotton, and several TrainMeAZ contributing sponsors.

27. At the October 27 meeting, Defendant Cotton acknowledged that the Transit Department is supposed to review advertisements placed at transit shelters, but she could not provide details about the process, such as during what time frame review takes place or whether the Transit Department regularly reviews advertisements.

28. At this time, representatives of the City still were unable to articulate meaningful standards for determining whether an advertisement proposes a commercial transaction, but continued to assert that Plaintiffs' advertisement was a public service announcement.

29. On November 2, Defendant Cotton called Plaintiff Korwin and told him that the Transit Department would not approve his advertisement.

30. During this phone conversation, Defendant Cotton told Plaintiff Korwin that the City requires CBS to exercise extra care for messages that are "controversial," but she was unable to provide guidelines or explain why such additional scrutiny is permissible.

31. To this date, Defendants have not provided Plaintiffs with any guidelines on what constitutes proposing a commercial transaction or what is sufficiently controversial as to be

prohibited.

32. The Transit Advertising Standards and Defendants' enforcement of them have caused Plaintiffs to suffer ongoing and irreparable injuries.

33. Defendants' removal of Plaintiffs' advertisements and Defendants' failure to articulate guidelines by which it makes its determinations have harmed Plaintiffs.

34. Defendants have permitted at transit shelters other advertisements that do not propose a commercial transaction.

35. At all times and in all of their actions encompassed by this Complaint, Defendants acted under color of state law.

### **Count I – Free Expression**

36. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 35, as though fully set forth herein.

37. The First Amendment to the U.S. Constitution and Article II, § 6 of the Arizona Constitution guarantee Plaintiffs the right to free expression.

38. Defendants' policy that advertisements at transit shelters are limited to commercial purposes is a content-based restriction on speech.

39. The government may not impose greater restrictions on noncommercial than on commercial speech. *See Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 513 (1981).

40. As applied, the City's policy is arbitrary and subjective, leading in this instance to

censorship and the forced removal of an advertisement that does propose a commercial transaction.

41. By rejecting Plaintiffs' advertisement, Defendants, acting under color of state law, violated Plaintiffs' right to free speech and expression as guaranteed by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, and by Article II, § 6 of the Arizona Constitution.

42. Plaintiffs have no adequate legal, administrative or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

### **Count II – Vagueness**

#### **(Due Process and Equal Protection)**

43. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 42, as though fully set forth herein.

44. The Fourteenth Amendment to the United States Constitution and Article II, § 4 of the Arizona Constitution protect Plaintiffs' right to due process under the law.

45. The Fourteenth Amendment to the United States Constitution and Article II, § 13 of the Arizona Constitution protect Plaintiffs' right to equal protection of the law.

46. Section B of the Transit Advertising Standards states, "The subject matter of transit bus, shelter, and bench advertising shall be limited to speech which proposes a commercial transaction."



47. The Transit Advertising Standards do not set forth a definition of what “proposes a commercial transaction.” That phrase is so vague that it fails to give people of ordinary intelligence reasonable notice about what advertisements are permitted and what advertisements are forbidden. This imprecision gives to the Public Transit Director and other individuals charged with enforcing the Transit Advertising Standards virtually unconstrained discretion in interpreting the Standards, leaving room for arbitrary decisions.

### **Count III – Arbitrary Enforcement**

#### **(Due Process and Equal Protection)**

48. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 47, as though fully set forth herein.

49. Defendants have not set forth clearly defined guidelines for determining what “proposes a commercial transaction.” Defendants’ irrational and arbitrary application of the Transportation Advertising Standards have impermissibly restricted Plaintiffs’ free expression and denied them their rights to due process under the law.

50. Defendants’ arbitrary prohibition of Plaintiffs’ advertisement while approving other similar advertisements denies equal protection to Plaintiff.

### **Request for Relief**

To serve the interests of equity and justice, Plaintiffs request that this honorable Court award the following relief:

A. Declare that the City of Phoenix's Transit Advertising Standard limiting transit bus, shelter, and bench advertising to speech that proposes a commercial transaction violates the state and federal constitutions;

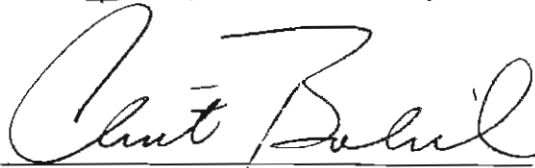
B. Declare that Defendants' application and enforcement of the Transit Advertising Standards to deny the advertisement at issue in this case violates Plaintiffs' state and federal constitutional rights;

C. Permanently enjoin Defendants from enforcing the standard limiting transit bus, shelter, and bench advertising to speech which proposes a commercial transaction;

D. Award costs and attorney fees to Plaintiffs pursuant to A.R.S. §§ 12-341 and 12-348, the private attorney general doctrine, and 42 U.S.C. § 1988;

E. Award such other and additional relief as may be just and equitable.

**RESPECTFULLY SUBMITTED** this 11th day of May, 2011 by:



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