

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

WOMEN’S HEALTH LINK, INC.,)	
)	
<i>Plaintiff,</i>)	
v.)	CAUSE NO.
)	
FORT WAYNE PUBLIC)	
TRANSPORTATION CORP.,)	
)	
<i>Defendant.</i>)	

VERIFIED COMPLAINT

Plaintiff, by and through counsel, and for its Verified Complaint against Defendant, hereby states as follows:

INTRODUCTION

1. This is a civil rights action under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution, brought to remedy a violation of the constitutional rights of Plaintiff Women’s Health Link, Inc.

2. Plaintiff brings this action challenging Defendant Fort Wayne Public Transportation Corp.’s (“Citilink”) exclusion of Plaintiff’s interior bus card advertisement from the forum it has established for public service announcements.

3. Plaintiff’s public service announcement promotes Women’s Health Link, a free referral resource in Fort Wayne, Indiana for women seeking physical, emotional, spiritual, or mental health care.

4. Plaintiff's mission is to walk with women through life to ensure they have life-affirming health care. It carries out this mission by providing a free referral service to assist women in entering the healthcare, legal or psychiatric system and by providing free, life-affirming counseling services.

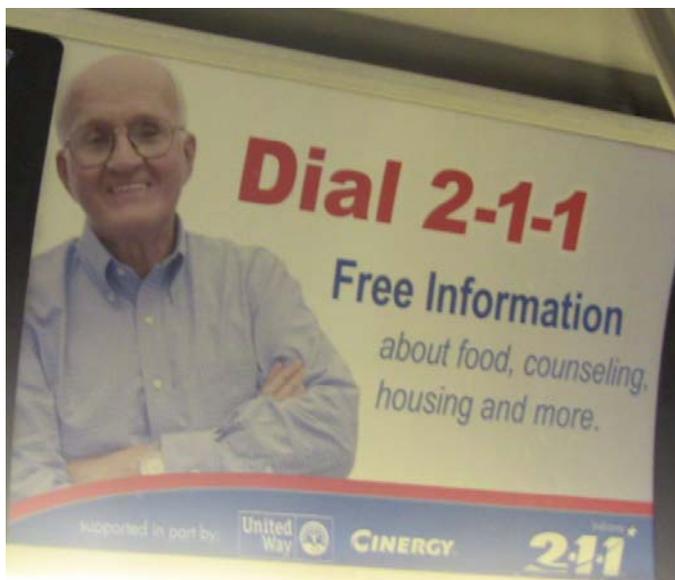
5. Pursuant to its Policy Governing All Advertising In or Upon Citilink Vehicles and Facilities, Statement of Advertising Rates, and Transit Advertising Contract (collectively, the "Policies") and practice, Citilink allows nonprofit organizations to place public service announcements regarding their services and programs on 11"x17-28" cards in bus interiors, vinyl signs on the tail ends of buses, or "full wrap" advertising that covers a bus' complete exterior, provided such announcements meet Citilink's general requirements for commercial advertisements and do not "express or advocate opinions or positions upon political, religious, or moral issues."

6. In this case, Plaintiff requested to place 11"x17" advertising cards in the interior of Citilink's buses that contained a picture of a young woman, Women's Health Link's logo, website, telephone number, tagline "You're Not Alone," and description "You are not alone. Free resource for women seeking health care." Plaintiff's proposed public service announcement is depicted below.



7. Citilink permits many nonprofit and government organizations to place public service announcements in the interior of its buses, an opportunity it promotes as “a cost-effective way to reach Fort Wayne workers, seniors, students, etc.” Examples of the nonprofit and government entities Citilink has allowed to place such public service announcements are: the State of Indiana, Parkview Health, The Foundation for Fighting Blindness, and the United Way.

8. The United Way’s interior bus card, which Citilink included in its advertising forum, is substantively indistinguishable from Women’s Health Link’s proposed public service announcement, containing a picture of an older man, United Way’s logo, the telephone number for the 2-1-1 program, and tagline “Dial 2-1-1,” “Free information about food, counseling, housing and more.” The United Way’s public service announcement is depicted below.



9. Citilink prohibited Plaintiff's public service announcement and denied it equal access to its advertising forum because of Women's Health Link's life-affirming viewpoint and association with a pro-life group.

10. Citilink permits nonprofit and government organizations to include pictures, logos, website addresses, phone numbers, mottos/taglines, and descriptive content of their services in their public service announcements.

11. Pursuant to its Policies and practice, Citilink denied and continues to deny Plaintiff the ability to advertise its health-care-related services through the public service announcement forum described above, which is made generally available to nonprofit, academic, and government organizations.

12. In denying Plaintiff access to its public service announcement forum, Citilink violated its own written policy, which permits health-care-related public service announcements like the one Plaintiff submitted here and those Citilink allows the United Way to display promoting the "Dial 2-1-1" program.

13. Citilink also acted pursuant to its unconstitutional Policies and practice in denying Plaintiff access to the public service announcement forum.

14. Specifically, Citilink's Policy Governing All Advertising In or Upon Citilink Vehicles and Facilities ("Advertising Policy") states that "Citilink reserves the right to suspend, modify, or revoke the application of any or all of this policy as it deems necessary ... to fulfill the goals and objectives of Citilink."

15. Moreover, Citilink's Statement of Advertising Rates states as part of the "Terms and Conditions" of an advertising contract that "[a]ll advertising copy is subject to approval and may be rejected or removed if considered objectionable by Citilink."

16. Yet Citilink's Policies fail to set out any binding written guidelines for its officials to follow in deciding whether to permit or deny a nonprofit organization's public service announcement, thereby granting Citilink officials unbridled discretion to accept or reject private expression protected by the First Amendment.

17. Citilink's Transit Advertising Contract makes clear that, even if a public service announcement "compl[ies] with the established Policy Governing all Advertising in or upon Citilink Vehicles and Facilities," if "Citilink, or its representatives, shall subsequently disapprove any advertisement, Citilink shall have the right to remove said advertisement forthwith."

18. This contract language underscores the broad, unbounded power Citilink officials exercise over Plaintiff's protected expression.

19. Prior to filing this complaint, Plaintiff submitted two requests to place its Women's Health Link public service announcement on 70 interior cards on Citilink's buses for a period of 3 months, which at Citilink's standard monthly rate of \$175 would have cost a total of \$525.

20. Plaintiff's first advertising request was denied because Citilink stated that Women's Health Link public service announcement was not commercial in nature and, more importantly, that Plaintiff's website contained information about "controversial issues."

21. Citilink also alleged that Plaintiff has a known association with Allen County Right to Life, a pro-life organization, as an additional basis for the denial.

22. Plaintiff next submitted a public service announcement request, which Citilink also rejected because, as a Citilink official explained: "We feel that this ad does not educate the general public or raise awareness regarding a significant social issue in a viewpoint neutral manner. We do not choose to post this ad as a PSA."

23. Plaintiff challenges Citilink Policies described above both facially and as-applied to its health-care-related public service announcement.

24. Citilink's censorship of Plaintiff's speech, and the Policies on which that censorship was based, violate the First and Fourteenth Amendments to the United States Constitution.

JURISDICTION AND VENUE

25. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, and under federal law, particularly 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. §§ 1983 and 1988.

26. This Court possesses original jurisdiction over Plaintiff's claims by operation of 28 U.S.C. §§ 1331 and 1343.

27. This Court is vested with authority to issue the requested declaratory relief under 28 U.S.C. §§ 2201 & 2202 and Federal Rule of Civil Procedure 57.

28. This Court has authority to award the requested injunctive relief under Federal Rule of Civil Procedure 65 and 28 U.S.C. § 1343(a)(3).

29. This Court is authorized to award nominal damages under 28 U.S.C. § 1343(a)(4).

30. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.

31. Venue is proper under 28 U.S.C. § 1391 in the Northern District of Indiana because Plaintiff's claims arose there and because Defendant is located within the Northern District of Indiana.

PLAINTIFF

32. Plaintiff Women's Health Link, Inc. is a nonprofit corporation based in Fort Wayne, Indiana.

33. Plaintiff is staffed by a degreed and experienced social worker and serves as a free referral resource for women seeking physical, emotional, spiritual, or mental health care.

34. Plaintiff opened its doors in 2013 after elected officials, health professionals, and citizens in the Fort Wayne area determined that women needed help navigating the often complicated health care process.

35. Advertising on Citilink buses is crucial to ensure that women in need become aware of Plaintiff's existence and the free services it provides.

36. Plaintiff's primary mission is to walk with women through life to ensure they have life-affirming health care. Women's Health Link pursues this mission by providing women with unplanned and crisis pregnancies life-affirming counseling and referring them to health-care-related services that provide alternatives to abortion, such as medical checkups, baby supplies, and adoption counseling.

37. Social worker Julie Perkins serves as Women's Health Link's Executive Director.

38. Mrs. Perkins has a bachelor's degree in Human Development and Family Studies and worked as a social worker at Fort Wayne's Parkview Hospital for 13 years.

39. During Mrs. Perkins time at Parkview Hospital, she worked with women in crisis situations and gained experienced in the Emergency Room, New Life Center, and Neonatal Intensive Care Unit.

40. Mrs. Perkins has wide-ranging experience with federal aid programs such as Medicaid and Women Infant and Children (“WIC”), as well as experience supporting birth mothers and adoptive parents, and arranging medical home health care.

41. Plaintiff uses its extensive network of community health care contacts, including its partnership with nine medical professionals, to connect women with service providers and ensure they receive high-quality, life-affirming health care.

42. Plaintiff provides women with referrals for gynecological care, prenatal care, primary medical care, housing, emotional needs, mammograms, financial issues, birth control information, sexual assault help, sexual education, adverse prenatal diagnoses, veterans services, adoption, tests for sexually transmitted diseases, spiritual care, and mental health care.

43. Plaintiff also provides a number of other services that promote women’s and children’s health. For example, Women’s Health Link offers women childcare vouchers, self-defense training, information about career training, women’s health issues, vaccinations, and health insurance, baby and maternity clothing, diapers and baby formula, ultrasound and fetal heartbeat services, and necessary baby items such as car seats, cribs, and strollers.

44. To fulfill its mission of ensuring that women have life-affirming health care, women must be aware of the free services Plaintiff provides.

45. Plaintiff therefore desires immediate access to Citilink’s advertising forum, including the ability to access Citilink’s public service announcement forum on the same terms as other nonprofit and government entities.

DEFENDANT

46. Defendant Fort Wayne Public Transportation Corp. (“Citilink”) is a municipal corporation organized under the laws of the State of Indiana and may sue and be sued. Ind. Code § 36-1-2-10 (defining “municipal corporation,” among other things, as a “public transportation corporation ... or other separate local governmental entity that may sue and be sued”); *id.* § 36-9-4-36 (“The board of directors of a public transportation corporation may, in the name of the corporation, sue or be sued in court.”); *see also Wade v. S. Bend Pub. Transp. Corp.*, No. 86-488, 1989 WL 516281, at *3 (N.D. Ind. May 16, 1989).

47. Citilink is charged, *inter alia*, with the administration, operation, and supervision of all Citilink bus advertising forums in Fort Wayne.

48. Citilink is also charged with the formulation, adoption, implementation, and enforcement of municipal policies and practices, including the Citilink Policies governing public service announcements challenged here.

49. Citilink is responsible for its employees’ enforcement of the Citilink Policies and practices governing advertising by nonprofit organizations.

50. Citilink is responsible for the enactment, enforcement, and existence of Citilink Policies and practices related to advertising by nonprofit organizations in and on Fort Wayne buses.

51. Citilink excluded Plaintiff's health-care-related public service announcement from the interior of Citilink buses thereby denying it equal access to communication channels made available to other nonprofit and government organizations pursuant to its Policies and practices governing public service announcements.

52. Citilink is responsible for its officials' implementation and application of Citilink Policies and practices pertaining to advertising by nonprofit organizations in and on Fort Wayne buses.

53. Citilink is similarly responsible for delegating to Citilink officials final authority to approve or deny advertising requests submitted by nonprofit organizations, including the denial of Plaintiff's health-care-related public service announcement.

ALLEGATIONS OF FACT

Citilink Policies and Practice Regarding Public Service Announcements by Nonprofit Organizations

54. As the official policy maker, Citilink has enacted and is responsible for the Policies and practice challenged herein.

55. Citilink, pursuant to its Policies and practice, permits nonprofit organizations to place public service announcements in and on Fort Wayne buses through interior bus cards, vinyl signs on the rear of buses, and full exterior bus advertising wraps.

56. Citilink's Statement of Advertising Rates states:

Everything about Citilink Transit Advertising is BIG except the cost. BIG impact. BIG results. BIG value for your advertising dollar. Citilink provides approximately two (2) million rides each year. Bus riders are a captive audience and are likely to read interior advertising while riding to their destinations. Interior bus card advertising is a cost-effective way to reach Fort Wayne workers, senior, students, etc. Exterior ads are rolling billboards that everyone in the community can see.

57. Citilink's Advertising Policy allows for commercial advertisements, as well as public service announcements by nonprofit organizations and government entities.

58. Citilink's Advertising Policy states that it will not display or maintain any commercial advertisement that falls within one or more of the following categories: (a) demeaning or disparaging, (b) alcohol, tobacco, and firearms, (c) profanity, (d) violence, (e) unlawful goods, services, or conduct, (f) obscenity or nudity, (g) prurient sexual suggestiveness, (h) implied endorsement by Citilink, (i) false, misleading, or deceptive speech, (j) libelous speech, copyright infringement, etc., (k) compromises transit safety, (l) unclear identification of the advertiser, (m) non-paid advertising, and (n) non-commercial advertising.

59. Citilink's Advertising Policy also allows for public service announcements, stating: "Citilink may make advertising space available for public service announcements by governmental entities, academic institutions, or nonprofit organizations. Such announcements are subject to the provisions set forth in [(a) through (l) above] and shall not express or advocate opinions or positions upon political, religious, or moral issues."

60. But although these written “guidelines apply to all advertising coordinated or sold by Citilink, any sub-contractor or third party partner,” Citilink’s Advertising Policy stipulates that “Citilink reserves the right to suspend, modify, or revoke the application of any or all of this policy as it deems necessary to comply with legal mandates, to accommodate its primary transportation function, and to fulfill the goals and objectives of Citilink.”

61. Other Citilink advertising policy documents confirm that Citilink does not consider any of the written standards contained in its Advertising Policy to be binding on Citilink officials.

62. Citilink’s Statement of Advertising Rates, for example, notes that a term and condition of advertising on Citilink buses is that “[a]ll advertising copy is subject to approval and may be rejected or removed if considered objectionable by Citilink.”

63. In the same vein, the terms and conditions listed on Citilink’s Transit Advertising Contract stipulate that “[t]o be accepted, advertising must comply with the established Policy Governing all Advertising in or upon Citilink Vehicles and Facilities.” But “[i]n the event Citilink, or its representatives, shall subsequently disapprove any advertisement, Citilink shall have the right to remove said advertisement forthwith.”

64. Thus, Citilink’s Policies and practice permit officials to reject a public service announcement that meets all of the Advertising Policies’ written criteria if they decide doing so will “fulfill the goals and objectives of Citilink”

and may “disapprove” it for any reason; for example, if they consider a public service announcement to be “objectionable.”

65. Pursuant to its Policies and practice, Citilink generally permits nonprofit organizations, academic institutions, and government entities to advertise their programs and services on its buses.

66. Citilink has, for example, permitted at least the following nonprofit organization and government entities to place health-care-related public service announcements in the interior of its buses: the State of Indiana, Parkview Health, The Foundation for Fighting Blindness, and the United Way

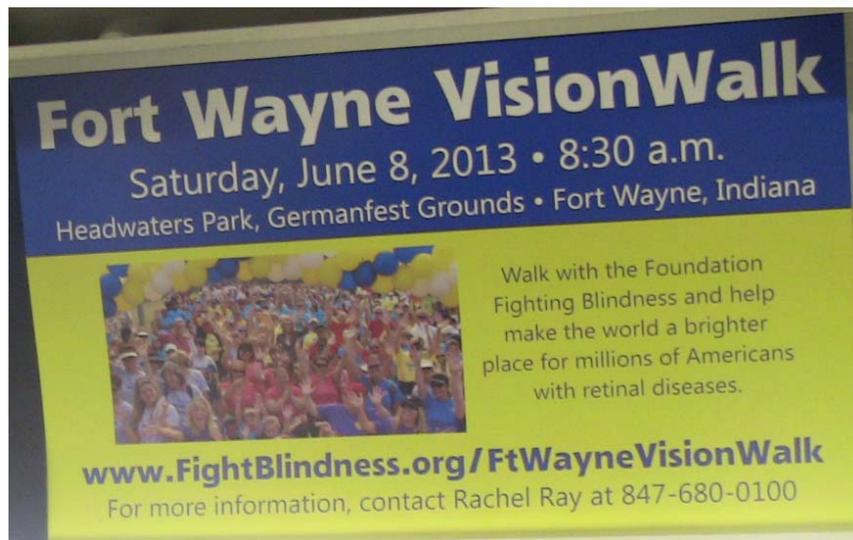
67. Citilink has allowed these nonprofit organizations and government entities to place health-care-related public service announcements inside of Citilink’s buses that include photographs, logos, website addresses, mottos/taglines, phone numbers, and descriptive content of their services.

68. Some of the public service announcements that Citilink has permitted include the following:

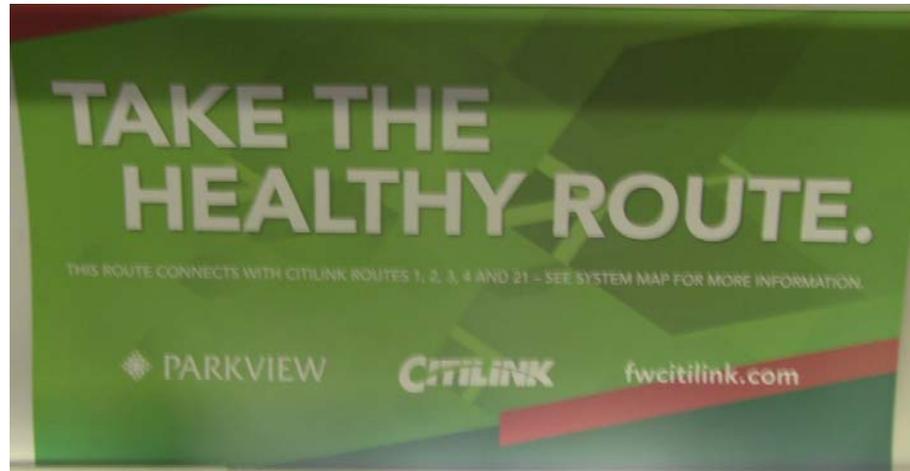
- a. Announcements for the Healthy Indiana Plan, a health care plan sponsored by the State of Indiana, that states “Uninsured? We’ve Got You Covered, Indiana” with a description of the program, a logo, and graphics of two women and two men, the State of Indiana’s public service announcement is depicted below;



- b. Fort Wayne Vision Walk announcements, an event sponsored by the Foundation for Fighting Blindness to raise funds to find cures for blindness, which lists the date, time, location of the event, and the event's website, provides a contact person and phone number, contains a graphic of a crowd of walkers, and states "Walk with the Foundation Fighting Blindness and help make the world a brighter place for millions of Americans with retinal diseases;" the Foundation for Fighting Blindness' public service announcement is depicted below;



- c. Parkview Health and Citilink announcements that state “Take the Healthy Route” and inform riders that their route connects with others that presumably lead to Parkview’s facilities; the Parkview and Citilink public service announcement is depicted below;



- d. Announcements sponsored by the State of Indiana informing beneficiaries of the Supplemental Nutrition Assistance Program (“SNAP”), otherwise known as food stamps, that their benefit deposit date has changed and advising them to “Please plan ahead!”; the State of Indiana’s public service announcement is depicted below;



- e. United Way announcements for the “Dial 2-1-1” program, which provides callers with “Free Information about food, counseling, housing and more;” the United Way’s public service announcement is depicted above in paragraph 8.

69. The United Way, which “recruits the people and organizations who bring the passion, expertise and resources needed to get things done” and seeks to “[i]ncrease by one-third the percentage of healthy young people and adults,” United Way, Contact Us, *available at* <http://www.unitedway.org/pages/contact-us/> (last visited Feb. 12, 2014), offers the same type of services as Plaintiff.

70. For example, the United Way’s “2-1-1” program, which Citilink allows to be advertised in its buses, “is a national dialing code for free access to health and human services information and referral” and helps to “connect individuals and families in need to community-based organizations.” United Way of Allen County, Indiana 2-1-1, *available at* <http://www.unitedwayallencounty.org/211> (last visited Feb. 12, 2014).

71. Plaintiff similarly offers women free access to health and human services, information, and referrals to community organizations and health care providers.

72. Because vulnerable members of the community use Fort Wayne’s public transportation system on a regular basis and riders have extended periods of time in which to study announcements that respond to their

particular needs, Citilink's advertising forum is a crucial means for Plaintiff to get into contact with women who need the free services it provides.

73. Citilink itself recognizes in its Statement of Advertising Rates that because it provides about 2 million rides each year, interior bus cards are a "cost-effective way to reach Fort Wayne workers, seniors, students, etc."

74. Indeed, at Citilink's standard rate, placing 2 bus cards in each of Citilink's 35 buses for a period of 3 months would cost Plaintiff just \$525.00.

Plaintiff's Public Service Announcement

75. Plaintiff Women's Health Link was founded because elected officials, health professionals, and citizens in the Fort Wayne area determined that women needed help navigating the complex and expensive health care marketplace.

76. Plaintiff opened its doors in 2013 and set out to publicize the free services it provides to women in need.

77. Plaintiff designed a public service announcement for use in Citilink buses that contains a picture of a young woman smiling, Women's Health Link's logo and tagline "You're not alone," the address for Plaintiff's website (womenshealthlink.org), Plaintiff's phone number, and the message "You are not alone. Free resources for women seeking health care." Women's Health Link's proposed public service announcement is depicted above in paragraph 6.

78. Like other public service announcements Citilink allows to be displayed in its buses, Women's Health Link's public service announcement was designed to prompt viewers to call Plaintiff's phone number or visit

Plaintiff's website where they could access further information about the free services Women's Health Link provides, interface with social media, and contact a representative who could help them with their individual health care needs.

Citilink's Denial of Plaintiff's Public Service Announcement

79. Acting on Women's Health Link's behalf, Becky Rogness, former Communications Manager of Allen County Right to Life and a former member of Women's Health Link's Board of Directors, contacted Betsy Kachmar, Citilink's Assistant General Manager, in October 2013 about placing Plaintiff's public service announcement in Citilink buses.

80. Ms. Kachmar indicated that advertising space was available immediately and instructed Mrs. Rogness to send her a signed advertising contract and Women's Health Link's proposed public service announcement.

81. On November 6, 2013, Mrs. Rogness sent Women's Health Link's proposed public service announcement to Ms. Kachmar for advance approval before Plaintiff had 70 copies printed by a commercial printer and submitted a signed contract.

82. The same day, Ms. Kachmar responded, "I think this ad looks fine," and indicated that Mrs. Rogness should send in a signed advertising contract.

83. On November 12, 2013, Mrs. Rogness first spoke with Women's Health Link's other board members and then emailed Ms. Kachmar a signed

advertising contract, along with questions regarding how Plaintiff should submit payment.

84. The November 12th contract (dated November 7th) indicated that the advertised company was Women's Health Link, listed Becky Rogness (Women's Health Link's former board member) as the contact person, requested 70 11" x 17" bus card displays for three months at Citilink's standard monthly rate of \$175, did not specify whether the proposed advertisement was a public service announcement or a commercial advertisement, and was signed by Mrs. Rogness.

85. That afternoon Mrs. Rogness received a call from Ms. Kachmar who said that she should not have approved Women's Health Link's advertisement because Citilink's attorneys had determined that it was not commercial in nature and that, more importantly, they believed that Women's Health Link's website contained information about "controversial issues."

86. Because Women's Health Link's website does not contain any information about controversial issues, Mrs. Rogness pressed Ms. Kachmar for an explanation of this comment. Ms. Kachmar explained that the problem was Women's Health Link's connection to Allen County Right to Life, an association which Mrs. Rogness explained to Ms. Kachmar does not appear on Plaintiff's website.

87. Ms. Kachmar stated that Citilink believed that Women's Health's Link's association with Allen County Right to Life was problematic because

Right to Life has a particular preference as to how to deal with women's health care needs, *i.e.*, it promotes life-affirming alternatives to abortion.

88. Ms. Kachmar indicated that she personally did not believe that Women's Health Link's advertisement was controversial but that Citilink's lawyers thought that Women's Health Link's website dealt with "controversial issues," which according to Ms. Kachmar are banned by Citilink's advertising Policies.

89. When Ms. Kachmar read Mrs. Rogness what seemed to be a Citilink advertising policy describing "controversial issues" and "public interest speech," Mrs. Rogness asked for a copy. But Ms. Kachmar advised that she could not send out a copy of this policy without permission and Mrs. Rogness never received a copy of any such policy statement.

90. Mrs. Rogness' conversation with Ms. Kachmar indicated that Citilink had rejected the advertising contract not because of the nature of Women's Health Link's public service announcement but because of Plaintiff's association with Allen County Right to Life, which is not mentioned either on Plaintiff's public service announcement or its website.

91. This impression was confirmed when Ms. Kachmar said that she had asked Citilink's attorneys if omitting any indication that Plaintiff's services were free from the Women's Health Link's advertisement would enable her to approve it. The attorneys told Ms. Kachmar that they would still disapprove Women's Health Links' advertisement because of their concerns related to Plaintiff's website.

92. Ms. Kachmar kindly offered to pay for the 70 card advertisements Women's Health Link had printed due to her prior approval of them, but Plaintiff chose not to take her up on this offer.

93. On November 14, 2013, Mrs. Rogness emailed Ms. Kachmar to obtain the text of the statement on "controversial issues" she had referred to on the phone because she needed to explain to Women Health Link's marketing committee why Plaintiff's public service announcement was not approved.

94. Ms. Kachmar emailed a response that same day stating:

Per our phone conversation yesterday, it has been determined that the proposed Women's Health Link ad (see attached) does not meet the commercial requirement (1(n)) in our advertising policy (see attached). The ad mentions free resources & the website information accessed via the weblink also references all services that are free. This does not demonstrate a subject matter that is primarily for a commercial purpose.

I am therefore not able to enter into a contract to post this proposed advertisement in our buses.

95. This rationale did not make sense to Mrs. Rogness because Citilink allows public service announcements, non-commercial forms of advertisement that Citilink's Advertising Policy expressly permits and that Citilink officials routinely approve.

96. Therefore, on November 26, 2013, Julie Perkins (Women's Health Link's Executive Director) emailed another advertising contract to Ms. Kachmar with the accompanying message:

We are submitting the attached for display as a public service announcement on Citilink buses in accordance with section 2 (entitled "Public Service Announcements") of the Policy governing All Advertising in or upon Citilink Vehicles and Facilities. We are also submitting a signed contract. It is not clear to us whether we

have to pay to display our proposed public service announcement or if Citilink offers space for public service announcements for free. We would prefer not to pay anything to display our proposed public service announcement. However, if Citilink requires other public service announcements to pay for space, we will also pay for space to display our public service announcement. We have filled out the rental charge section of the contract in case we have to pay. We will look for your written response as soon as possible.

97. The November 26th advertising contract (dated November 25th) indicated that the advertised company was Women's Health Link, listed Julie Perkins (Women's Health Link's Executive Director) as the contact person, requested 70 11" x 17" bus card displays for three months at Citilink's standard monthly rate of \$175, and was signed by Mrs. Perkins. The application clearly explained that Plaintiff was "requesting space to display [its] proposed public service announcement pursuant to section 2 of Citilink's Policy Governing All Advertising in or upon Citilink Vehicles and Facilities."

98. Ms. Kachmar emailed a response to Mrs. Perkins on December 2, 2013 that stated: "Per your request for Citilink to post your Women's Health Center advertisement as a Public Service Announcement. We feel that this ad does not educate the general public or raise awareness regarding a significant social issue in a viewpoint neutral manner. We do not choose to post this ad as a PSA."

99. Nothing in Citilink's written Advertising Policy requires a public service announcement to "educate the general public or raise awareness regarding a significant social issue" or to be "viewpoint neutral."

100. Moreover, viewpoint neutrality is a First Amendment standard that applies to government actors like Citilink, not private entities like Plaintiff. And

enforcing a “viewpoint neutrality” requirement on private speech would be impossible since all private speech expresses one viewpoint or another.

101. In addition, Women’s Health Link’s proposed public service announcement (1) addresses women in the “general public,” and (2) “raises awareness” of free services designed to promote women’s health, which is undoubtedly “a significant social issue.”

102. Women’s Health Link’s proposed public service announcement is also not demeaning, related to controlled substances, profane, violent, related to unlawful activity, obscene, sexually suggestive, capable of implying an endorsement by Citilink, false, libelous or otherwise not protected by the First Amendment, capable of advocating a disregard for transit safety, or unclear as to the identity of the advertiser.

103. No language included in Women’s Health Links’ proposed public service announcement “expresses or advocates opinions or positions upon political, [or] religious ... issues,” which is the written criteria for public service announcements included in Citilink’s written Advertising Policy.

104. The Advertising Policy also bans public service announcements that “express[] or advocate[] opinions or positions upon ... moral issues.”

105. But by their very nature, public service announcements address moral issues, as their primary purpose is to raise public awareness about important issues, services, and programs that are in the public interest.

106. Indeed, Women’s Health Link offers its health-care related services and referrals based on the belief, which is shared by Fort Wayne elected

officials, health professional, and citizens, *see supra* ¶ 34, that it is a moral good to provide people, and especially women, free help in navigating the often complicated world of health-care-related services.

107. Citilink permits United Way to express its viewpoint on this subject matter through a public service announcement, yet is barring Plaintiff from expressing its views concerning the same subject matter.

108. Other public service announcements that Citilink has approved also express viewpoints on issues that are moral (and in some instances political) in nature.

109. For example, the Foundation for Fighting Blindness announcement promoting the Fort Wayne Vision Walk expresses the moral view that people should participate to “help make the world a brighter place for millions of Americans with retinal disease.”

110. The State of Indiana announcement for the Healthy Indiana Plan promotes the moral view that uninsured people should obtain health insurance.

111. Given the current national debate over the Obama Administration’s Affordable Care Act, the Healthy Indiana Plan announcement could be interpreted as political as well.

112. The Citilink Advertising Policy contains no criteria at all to guide officials in determining what qualifies as a moral issue.

113. Women’s Health Link’s proposed advertisement therefore meets all of Citilink’s Advertising Policy’s legitimate written criteria for public service

announcements, as Plaintiff is a nonprofit organization that offers all women free health-care-related services.

114. Upon information and belief, Citilink regularly solicits and accepts public service announcements similar to Plaintiff's for display in and on Citilink buses. *See, e.g.*, Citilink, Advertising Opportunities, http://www.fwcitilink.com/bus_transit_advertising.htm (last visited Feb. 13, 2014).

115. Plaintiff desires immediate access to display its Women's Health Link public service announcement inside of Citilink buses and to gain equal access to all advertising opportunities Citilink makes available to other nonprofit organizations.

116. Citilink's failure to follow the specific terms of its written Advertising Policy, as well as Citilink's policy and practice of granting unlimited discretion to Citilink officials to accept or reject public service announcements on any grounds—as reflected in Citilink's Advertising Policy, Statement of Advertising Rates and Transit Advertising Contract—prevent Plaintiff from accessing these vital means of communication on equal terms with other nonprofit groups.

ALLEGATIONS OF LAW

117. Private speakers are entitled to equal access to public fora, free of content and viewpoint-based discrimination.

118. Plaintiff's life-affirming speech is fully protected by the First Amendment.

119. Policies establishing prior restraints on private speech may not delegate overly broad discretion to government decision-makers or allow for content and viewpoint-based restrictions, and must be narrowly tailored to serve a compelling government interest.

120. The government may not discriminate against private speech based on its viewpoint, regardless of the forum in question.

121. Content-based restrictions on speech in a designated and limited designated public forum are presumptively unconstitutional and are subject to strict scrutiny.

122. Time, place, and manner restrictions on speech must be content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.

123. All of the acts of Citilink, its officers, agents, employees, and servants were executed and are continuing to be executed by Citilink under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of Indiana.

124. Plaintiff is suffering irreparable harm as a result of Citilink's conduct.

125. Plaintiff has no adequate or speedy remedy at law to correct or redress the deprivation of its rights by Citilink.

126. Unless Citilink's unconstitutional Policies and practices are enjoined, Plaintiff will continue to suffer irreparable injury to its First and Fourteenth Amendment rights.

FIRST CAUSE OF ACTION

**Violation of Plaintiff's First Amendment Right
to Freedom of Speech
(42 U.S.C. § 1983)**

127. Plaintiff re-alleges and incorporates herein, as though fully set forth, paragraphs 1 through 126 of this Complaint.

128. The First Amendment's Freedom of Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits censorship of Plaintiff's life-affirming expression.

129. Citilink's written Advertising Policy allows non-profit organizations to place public service announcements in and on Citilink buses as long as their advertisements do not "express[] or advocate[] opinions or positions upon political, religious, or moral issues."

130. For example, Citilink has permitted, *inter alia*, the State of Indiana, Parkview Health, The Foundation for Fighting Blindness, and the United Way to place public service announcements in Citilink buses that provide information about a state-subsidized health insurance program, food stamp benefits, general services provided by a nonprofit health care system, a charity event designed to raise funds to find cures for blindness, and a help-line that aids individuals in obtaining food, counseling, housing, and other health-care-related services.

131. But Citilink prohibits Plaintiff's health-care related public service announcement even though it meets all of the legitimate criteria included in Citilink's written Advertising Policy.

132. This unequal treatment of Plaintiff's health-care-related expression is a content-based restriction in an otherwise open designated and limited designated public forum. A limited designated public forum is "a public facility limited to the discussion of certain subjects or reserved for some types or classes of speaker." *Ill. Dunesland Pres. Soc. v. Ill. Dep't of Natural Res.*, 584 F.3d 719, 723 (7th Cir. 2009). Restrictions on speech in such a forum are subject to strict scrutiny. *See Christian Legal Soc. v. Walker*, 453 F.3d 853, 866 n.2 (7th Cir. 2006).

133. Pursuant to its Policies, Citilink permits nonprofit organizations to advertise and promote for any public-service related purpose, and in practice Citilink has permitted such organizations to promote and advertise health-care-related services, including health plans, food stamp benefits, general health-care provision, charitable activities designed to fight disease, and a help line that refers individuals to providers of free health-care services.

134. But Citilink denied Plaintiff's public service announcement, which promotes Women's Health Link, a free referral resource that provides life-affirming counseling, connects women to health care service providers, and ensures that they receive high-quality health care.

135. Citilink permits other nonprofit organizations and government entities, like the State of Indiana, Parkview Health, The Foundation for Fighting Blindness, and the United Way, to place public service announcements in Citilink buses promoting programs designed to improve public health, yet denies Plaintiff's public service announcement concerning the same subject

matter (and promoting a similar program) due to Plaintiff's life-affirming viewpoint regarding the promotion of public health, association with a pro-life group, and alleged discussion of "controversial issues" on its website, which constitutes unlawful viewpoint discrimination.

136. Citilink's Statement of Advertising Rates, which allows Citilink to "reject[] or remove[]" any advertisement if it is "considered objectionable by Citilink," and Citilink's Transit Advertising Contract, which provides that Citilink may "disapprove any advertisement" and "remove said advertisement" at any time for any reason, impose an unconstitutional prior restraint by vesting Citilink officials with unbridled discretion to approve or deny protected speech by nonprofit organizations.

137. Citilink's Policies contain no binding guidelines or limitations regarding the circumstances in which Citilink officials may ban or prohibit public service announcements by nonprofit organizations.

138. Citilink's written Advertising Policy only bans public service announcements that "express or advocate opinions or positions upon political, religious, or moral issues."

139. Plaintiff's public service announcement does not express or advocate an opinion or position on a political or religious issue.

140. Citilink's Policy that allows its officials to deny public service announcements they deem to "express or advocate opinions or positions upon ... moral issues" grants them unbridled discretion over protected speech.

141. Citilink officials have unbridled discretion, absent any guidelines or criteria whatsoever, to determine what public service announcements “express or advocate opinions or positions upon ... moral issues,” and exercised that discretion in denying Plaintiff’s announcement while accepting similar announcements that address the same or similar moral topics.

142. In violation of its written Advertising Policy, Citilink officials refused to accept Plaintiff’s public service announcement because of Women’s Health Link’s association with Allen County Right to Life and because they viewed Plaintiff’s website as addressing “controversial” issues.

143. Plaintiff’s association with Allen County Right to Life is protected by the First Amendment to the United States Constitution.

144. Barring Plaintiff’s advertisement based on its association with Allen County Right to Life therefore violates the First Amendment.

145. Moreover, the First Amendment does not permit Citilink officials to reject public service announcements based on the viewpoints nonprofit organizations express on their websites or in other materials.

146. The First Amendment prohibits Citilink officials from engaging in viewpoint discrimination by permitting public service announcements related to health-care-related services they deem generally accepted but banning those they consider “controversial.”

147. Citilink officials’ decision to ban Women’s Health Link’s public service announcement is therefore not only unconstitutionally viewpoint based but also inherently unreasonable.

148. Citilink's Policies and practice allow Citilink officials to act with unbridled discretion in deciding whether to accept or reject public service announcements by nonprofit organizations for any reason, including if officials subjectively "consider[]" them to be "objectionable."

149. Citilink's Advertising Policy also explicitly states that Citilink officials may "suspend, modify, or revoke the application of any or all of this policy as [they] deem[] necessary ... to fulfill the goals and objectives of Citilink."

150. Citilink's Policies and practices, on their face and as applied, give Citilink officials unbridled discretion to prohibit certain nonprofit organizations, like Plaintiff, from placing public service announcements concerning health-care-related services in or on Citilink buses, while allowing other nonprofit organizations, like the United Way, to place public service announcements on the same topic in and on Citilink buses.

151. Citilink's Policies and practice are also overbroad because they sweep within their ambit a great deal of protected First Amendment expression.

152. The overbreadth of Citilink's Policies and practice chills Plaintiff's speech and that of other nonprofit organizations that seek to utilize the communication channels in and on Citilink buses to advertise or promote health-care-related messages.

153. Citilink's Policies and practice chill, deter, and restrict Plaintiff from freely expressing its life-affirming viewpoint on women's health care.

154. The Policies, as interpreted and applied by Citilink to prohibit Plaintiff's speech, are not the least restrictive means of serving any compelling interest Citilink seeks to promote.

155. Citilink's Policies and practice burden more of Plaintiff's speech than is necessary because they totally bar Plaintiff's health-care-related advertisements from Citilink's public service announcement forum, even though Plaintiff's public service announcement is materially indistinguishable from others allowed in the forum.

156. Citilink's Policies and practice, both facially and as applied, accordingly violate Plaintiff's right to Free Speech as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the Prayer for Relief.

SECOND CAUSE OF ACTION

Violation of Plaintiff's First Amendment Right to Freedom of Association (42 U.S.C. § 1983)

157. Plaintiff re-alleges and incorporates herein, as though fully set forth, paragraphs 1 through 126 of this Complaint.

158. The First Amendment, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, protects Plaintiff's freedom of expressive association.

159. Citilink allows other nonprofit and governmental entities to place public service announcements within its buses that are substantively indistinguishable from Plaintiff's proposed public service announcement.

160. For example, Citilink has permitted, *inter alia*, the State of Indiana, Parkview Health, The Foundation for Fighting Blindness, and the United Way to place public service announcements in Citilink buses that provide information about a state-subsidized health insurance program, food stamp benefits, general services provided by a nonprofit health care system, a charity event designed to raise funds to find cures for blindness, and a help-line that aids individuals in obtaining food, counseling, housing, and other health-care-related services.

161. But Citilink prohibits Plaintiff's health-care related public service announcement because of its association with Allen County Right to Life, which Citilink views as a "controversial" organization.

162. Implicit in the First Amendment freedoms of speech, assembly, and petition is the freedom to gather together to express ideas—the freedom of association.

163. Plaintiff's expressive association with Allen County Right to Life to advance life-affirming ideas is therefore protected by the First Amendment to the United States Constitution.

164. Citilink has unconstitutionally infringed upon Plaintiff's freedom of association by rejecting its proposed public service announcement, and thus

penalizing Women's Health Link, because of its association with Allen County Right to Life.

165. Moreover, Citilink has unconstitutionally withheld the benefit of access to its public service announcement forum from Plaintiff because of its association with Allen County Right to Life.

166. This substantially impairs Plaintiff's ability to freely express its viewpoint on women's health care, the very ideas that brought it and Allen County Right to Life together.

167. Citilink's exclusion of Plaintiff from its public service announcement forum is accordingly subject to strict scrutiny under the First Amendment.

168. This prohibition on Plaintiff's speech is not the least restrictive means of serving any compelling interest Citilink seeks to promote.

169. Citilink's Policies and practice burden more of Plaintiff's speech than is necessary because they totally bar Plaintiff's health-care-related advertisements from Citilink's public service announcement forum, even though Plaintiff's public service announcement is materially indistinguishable from others allowed in the forum.

170. Citilink's Policies and practice, both facially and as applied, accordingly violate Plaintiff's right to Freedom of Speech and Freedom of Association as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the Prayer for Relief.

THIRD CAUSE OF ACTION

Violation of Plaintiff's Fourteenth Amendment
Right to Due Process
(42 U.S.C. § 1983)

171. Plaintiff re-alleges and incorporates herein, as though fully set forth, paragraphs 1 through 126 of this Complaint.

172. The Due Process Clause of the Fourteenth Amendment prohibits the government from censoring speech pursuant to vague standards that grant officials unbridled discretion.

173. Citilink's Policies explicitly grant Citilink officials unbridled discretion to accept or reject public service announcements for any reason and lack sufficient guidelines or directives to guide Citilink officials when they review the requests of nonprofit organizations to place public service announcements in or on Citilink buses.

174. Specifically, Citilink's Advertising Policy states that "Citilink reserves the right to suspend, modify, or revoke the application of any or all of this policy as it deems necessary to comply with legal mandates, to accommodate its primary transportation function, and to fulfill the goals and objectives of Citilink."

175. Citilink's Statement of Advertising Rates also states that a term and condition of an advertising contract with Citilink is that "[a]ll advertising

copy is subject to approval and may be rejected or removed if considered objectionable by Citilink.”

176. In the same vein, Citilink’s Transit Advertising Contract states, as a term and condition of advertising service, that: “To be accepted, advertising must comply with the established Policy Governing all Advertising in or upon Citilink Vehicles and Facilities In the event Citilink, or its representatives, shall subsequently disapprove any advertisement, Citilink shall have the right to remove said advertisement forthwith.”

177. Citilink thus explicitly makes the criteria for public service announcements included in its Advertising Policy not binding on Citilink officials.

178. Citilink also gives its officials unbridled discretion to ban public service announcements that they deem to “express or advocate opinions or positions upon ... moral issues,” even though all public service announcements are “moral” in some sense.

179. Persons of common intelligence must guess and will differ upon what expression will meet with Citilink officials’ approval and be permitted, and what speech will not and be banned.

180. There is no warning or notice as to what expression will meet with Citilink officials’ approval and be permitted, and what speech will not and be banned.

181. For example, Ms. Kachmar, Citilink’s Assistant General Manager, stated that she did not believe the content of Plaintiff’s proposed public service

announcement was “controversial,” which is why she initially approved it. But Citilink’s lawyers subsequently disapproved Women’s Health Link’s public service announcement based on Plaintiff’s association with Allen County Right to Life and the allegedly “controversial” content of Plaintiff’s website, allegations that are not only misguided, but also completely unrelated to the content of Plaintiff’s proposed public service announcement.

182. Persons of common intelligence must guess and will differ upon what expression is “objectionable,” “controversial,” “moral,” or should be banned to “fulfill the goals and objectives of Citilink.”

183. There are no binding guidelines prescribing what expression Citilink officials will deem “objectionable,” “controversial,” “moral,” or contrary to “the goals and objectives of Citilink” and consequently ban.

184. The terms “objectionable,” “controversial,” “moral,” and contrary to the “goals and objectives of Citilink” are vague, subjective, and are not defined, allowing Citilink officials to act with unbridled discretion when deciding if a nonprofit organization’s public service announcements will be permitted or proscribed.

185. The discretion Citilink’s Policies grant to Citilink officials leaves the censorship of nonprofit organizations’ protected speech subject to government bureaucrats’ subjective whims.

186. Citilink’s Policies and practice, both facially and as applied, accordingly violate Plaintiff’s rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the declaratory and injunctive relief set forth hereinafter in the Prayer for Relief.

FOURTH CAUSE OF ACTION

**Violation of Plaintiff's Fourteenth Amendment Right
to Equal Protection of the Law
(42 U.S.C. § 1983)**

187. Plaintiff re-alleges and incorporates herein, as though fully set forth, paragraphs 1 through 126 of this Complaint.

188. The Equal Protection Clause of the Fourteenth Amendment requires the government to treat similarly situated groups alike.

189. Pursuant to its Policies and practice, Citilink allows nonprofit organizations to place public service announcements regarding programs and services of interest to the public on Citilink buses for promotional purposes.

190. Citilink has treated Plaintiff disparately when compared to similarly situated nonprofit organizations by banning Plaintiff's health-care-related public service announcement.

191. By discriminating against the content and viewpoint of Plaintiff's speech, Citilink is treating Plaintiff's health-care-related speech differently than that of other similarly situated nonprofit organizations.

192. Citilink's Policies and practice violate Plaintiff's fundamental rights, including its right to freedom of speech and freedom of association.

193. When government regulations, like the Citilink Policies and practice challenged herein, infringe on a plaintiff's fundamental rights, discriminatory intent is presumed.

194. In this case, the presumption of discriminatory intent is borne out by Citilink's Policies and practice of intentionally discriminating against Plaintiff's health-care-related speech because of Plaintiff's association with Allen County Right to Life and the allegedly "controversial" viewpoint expressed on its website.

195. Citilink lacks a rational or compelling state interest for treating Plaintiff in such a disparate manner.

196. Denying Plaintiff access to Citilink's public service announcement advertising forum is not narrowly tailored in that Citilink's restriction of Plaintiff's freedom of speech and freedom of association are unrelated to any legitimate government interest.

197. Citilink's Policies and practice, both facially and as applied, thus violate Plaintiff's right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the declaratory and injunctive relief set forth hereinafter in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully pray for judgment as follows:

a. That this Court issue a Preliminary and Permanent Injunction, restraining Citilink, its officers, agents, employees, and all other persons acting in active concert with it, from enforcing the Policies challenged herein that bar Plaintiff from engaging in health-care-related expression within Citilink's public service announcement forum;

b. That this Court render a Declaratory Judgment, declaring the Policies challenged herein unconstitutional both facially and as applied to ban Plaintiff's health-care-related expression in violation of the First and Fourteenth Amendments to the United States Constitution;

c. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment;

d. That this Court retain jurisdiction of this matter for the purpose of enforcing any Orders;

e. That the Court award Plaintiff the costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. § 1988;

f. That this Court award nominal damages for the violation of Plaintiff's constitutional rights;

g. That this Court issue the requested injunctive relief without a condition of bond or other security being required of Plaintiff; and

h. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.

Respectfully submitted this 7th day of April, 2014.

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*Application for Pro Hac Vice Admission Forthcoming

VERIFICATION

I, Rebekah Rogness, a citizen of the United States and a resident of the State of Indiana have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 3rd day of April, 2014.

Rebekah Rogness
Rebekah Rogness

VERIFICATION

I, Julie Perkins, a citizen of the United States and a resident of the State of Indiana have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 7th day of April, 2014.

Julie Perkins

A handwritten signature in cursive script, appearing to read "Julie Perkins", written over a horizontal line.

VERIFICATION

I, Marianne Stroud, a citizen of the United States and a resident of the State of Indiana have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 7th day of April, 2014.


Marianne Stroud