UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

WOMEN'S HEALTH LINK, INC.,	)	
	)	
Plaintiff,	)	
v.	)	CAUSE NO. 1:14-cv-0107-RLM-RBC
	)	
FORT WAYNE PUBLIC TRANSPORTATION CORP.,	)	
	)	
Defendant.	)	

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

NOW COMES Plaintiff, by and through counsel, and hereby moves this Court for a preliminary injunction, pursuant to Fed. R. Civ. P. 65 and L.R. 65-1. Plaintiff requests an order prohibiting Defendant Fort Wayne Public Transportation Corp., commonly known as Citilink, from enforcing its policies, including Citilink's Policy Governing All Advertising In or Upon Citilink Vehicles and Facilities, Statement of Advertising Rates, and Transit Advertising Contract, (hereinafter the "Policies") to prohibit Plaintiff from displaying its health-care-related public service announcement in and on Citilink buses, and ordering Defendant to permit Plaintiff's public service announcement on equal terms with other nonprofit and government organizations. Plaintiff also seeks an order facially enjoining the portions of these Policies that grant Citilink officials unbridled discretion to deny public service announcements for any reason. As grounds for this Motion, Plaintiff relies upon the Verified Complaint, the brief filed in support, and any oral argument granted by the Court.

Plaintiff is likely to succeed on the merits of its claims. Citilink violated the First Amendment by excluding Plaintiff's health-care-related public service announcement based on its viewpoint and content, and Plaintiff's expressive association with a pro-life group. Moreover, it did so pursuant to Policies that grant Citilink officials unbridled discretion to silence disfavored speech and lack guidelines to restrain their hands. These Policies are also void-for-

vagueness because their operative terms leave Plaintiff and others seeking access to the advertising forum no way of determining what is prohibited.

Plaintiff is banned from Defendants' speech forum, while other nonprofit and government organizations are free to advertise within. It is imperative that Defendant's censorship of Plaintiff's health-care-related speech immediately cease. Plaintiff therefore respectfully requests that this Court take up Plaintiff's Motion for Preliminary Injunction as soon as possible.

Plaintiff requests waiver of any bond requirement because it is a nonprofit organization that is here engaged in public interest litigation involving free speech, free association, and due process rights. Requiring a bond would deter the vindication of these constitutional freedoms, the protection of which should not be based upon a party's ability to pay. *See, e.g., Ogden v. Marendt*, 264 F. Supp. 2d 785, 765 (S.D. Ind. 2003) ("The requirement of a bond would … impact negatively on the Plaintiffs' exercise of their constitutional rights and the rights of other members of the public affected by the … law."); *Pinzon v. Lane*, 675 F. Supp. 429, 433 (N.D. Ill. 1987) ("[G]iven the identity of the plaintiff class and the constitutional rights involved, this is one of the rare situations recognized as not calling for the giving of security under Rules 65(c) ….").

Respectfully submitted this 8th day of May, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2014, a copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

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BRIEF IN SUPPORT OF PLAINTIFF'S
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INTRODUCTION

City transportation systems frequently establish advertising fora for a wide variety of nonprofit and commercial speech. They thereby open transportation facilities to myriad expressive activities, including displaying advertising cards inside transportation vehicles, placing vinyl signs on vehicles' exterior, and full wrap advertising around whole vehicles. Defendant Fort Wayne Public Transportation Corp.—better known as "Citilink"—is no exception. By policy and practice, it has broadly opened its advertising forum for both commercial advertisements and public service announcements by nonprofits and government entities alike. Appendix in Support of Plaintiff's Motion for Preliminary Injunction ("App.") 1-11. As Citilink's Statement of Advertising Rates explains, "[e]verything about Citilink Transit Advertising is BIG except the cost…. 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." Ver. Compl. ¶ 56; App. 7.

Under its Policy Governing All Advertising In or Upon Citilink Vehicles and Facilities, Citilink grants a variety of speakers access to its advertising channels to discuss a broad array of subject matters. Citilink has granted access to its forum to both for-profit and non-profit organizations. Ver. Compl. ¶¶ 57-59; App. 2-3. These organizations' advertisements include pictures, logos, website addresses, mottos/taglines, phone numbers, and descriptive content of their services. Ver. Comp. ¶ 67; App. 9, 18-22. Citilink allows these organizations to advertise in and on city buses, including through interior 11"x17-28" card advertisements, vinyl signs on the tail ends of buses, and "full wrap" advertisements that cover a bus' complete exterior. Ver. Compl. ¶ 5; App. 7-11.

Despite broadly opening its doors to the advertising and promotional messages of commercial and nonprofit/government organizations, Citilink abruptly slammed that door shut when Plaintiff sought to display a public service announcement, which was designed to inform women about the free resources Plaintiff provides, inside city buses for a period of three months. Ver. Compl. ¶¶ 19-22; App. 13-17. Like the United Way and other nonprofit and government

organizations permitted access, Plaintiff desired to communicate its message through an image, words, website address, and phone number. Ver. Compl. ¶ 6; App. 17. Plaintiff's proposed public service announcement also concerned health care, a subject Citilink routinely allows other nonprofit and government groups to discuss. Ver. Compl. ¶ 68; App. 18-22. Yet Citilink denied Plaintiff's request based on its viewpoint on women's health care and association with Allen County Right to Life. Ver. Compl. ¶¶ 86-87, 90-91, 98; App. 13-14.

United Way Ad - Accepted

Women's Health Link Ad - Rejected

Citilink's content and viewpoint based exclusion of Plaintiff's speech clearly violates the First Amendment. *See Air Line Pilots Ass'n v. Dep't of Aviation of City of Chi.*, 45 F.3d 1144, 1160 (7th Cir. 1995) ("[S]uppression of a proposed but distinct view because of some content element included in it is impermissible."); *Planned Parenthood Ass'n/Chi. Area v. Chi. Transit Auth.*, 767 F.2d 1225, 1228 (7th Cir. 1985) (affirming a preliminary injunction requiring a public transport authority to display Planned Parenthood ads after they were rejected "based on the content of the message and the identity of the speaker"); *Entm't Software Ass'n v. Chi. Transit Auth.*, 696 F. Supp. 2d 934, 942 (N.D. Ill. Jan. 7, 2010) ("Once a public forum is opened up to expression by some groups, the government may not prohibit the expression of others on the basis of what they intend to say."). Citilink's discrimination against Plaintiff's speech based on its expressive association with Allen County Right to Life does so as well. *See Christian Legal Soc. v. Walker*, 453 F.3d 853, 861 (7th Cir. 2006) (recognizing that "[i]nfringements on expressive association are subject to strict scrutiny").

Citilink's Policies[1] are also rife with boundless discretion and ill-defined terms, which are forbidden by the prior restraint and void-for-vagueness doctrines. For all of these reasons and the other grounds explained herein, Plaintiff is likely to succeed on the merits of its claims. Plaintiff is therefore entitled to a preliminary injunction (1) facially enjoining Citilink's Policies, (2) prohibiting the enforcement of those Policies as applied to prohibit Plaintiff's public service announcement, and (3) ordering Citilink to display Plaintiff's public service announcement on equal terms with those of other nonprofit and government organizations.

STATEMENT OF FACTS[2]

Plaintiff challenges, both facially and as applied, Citilink Policies that govern advertisements and public service announcements by commercial groups and nonprofit/government organizations. Ver. Compl. ¶ 5; App. 1-7. Citilink's Policy Governing All Advertising In or Upon Citilink Vehicles and Facilities ("Advertising Policy") generally permits nonprofit and government organizations to place public service announcements in and on city buses provided they meet some of Citilink's usual requirements for commercial advertisements[3] and do not "express or advocate opinions or positions upon political, religious, or moral issues." Ver. Compl. ¶ 59; App. 2-3. But even if a public service announcement meets these written criteria, the 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." Ver. Compl. ¶ 174; App. 4.

Reinforcing the unbounded discretion of Citilink officials is Citilink's Statement of Advertising Rates, which states as part of the "Terms and Conditions" of an advertising contract

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[1] The term "Policies," as used herein, refers to Citilink's Advertising Policy, Statement of Advertising Rates, and Transit Advertising Contract. *See* Ver. Compl. ¶¶ 14-15, 17, App. 1-7.

[2] For sake of brevity, Plaintiff incorporates by reference the Verified Complaint's more complete statement of facts and provides an abbreviated summary here.

[3] Citilink's general advertising requirements prohibit ads related to alcohol, tobacco, and firearms, as well as various forms of unprotected speech. *See* Ver. Compl. ¶ 58, App. 2-3. None of these provisions are challenged here.

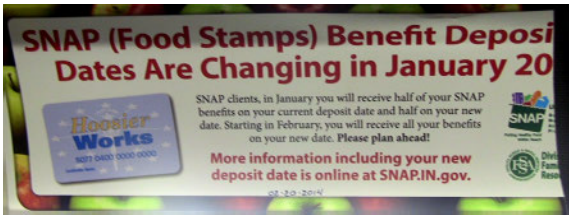
that "[a]ll advertising copy is subject to approval and may be rejected or removed if considered objectionable by Citilink." Ver. Compl. ¶ 175; App. 7. Citilink's Transit Advertising Contract accordingly makes clear that, even if a public service announcement complies with its written Advertising Policy, if Citilink "subsequently disapprove[s] any advertisement, [it] shall have the right to remove said advertisement forthwith." Ver. Compl. ¶ 176; App. 6.

Pursuant to its Policies and practice, Citilink has broadly opened its advertising to commercial, nonprofit, and government entities so that they may advertise and promote their purposes, services, products, and programs. Ver. Compl. ¶ 65-68. For instance, Citilink allows for-profit, nonprofit, and government organizations to display 11"x17-28" card advertisements inside city buses, large vinyl signs on the tail ends of buses, and "full wrap" advertising that covers a bus' complete exterior. *Id.* ¶ 5; App. 7-11. Citilink opens this forum to a wide array of private and public groups. Just a few of the nonprofit and government organizations that Citilink has allowed to access its advertising forum are the State of Indiana, Parkview Health, The Foundation for Fighting Blindness, and United Way. Ver. Compl. ¶ 7; App. 18-22.

What is more, Citilink allowed each of these nonprofit and government groups to display public service announcements dedicated to health-care-related issues. Ver. Compl. ¶ 68; App. 18-22. Their public service announcements, like Plaintiff's, include photographs, logos, website addresses, phone numbers, mottos/taglines, descriptions of their products or services, and other promotional messages. Ver. Compl. ¶ 68; App. 18-22. In fact, Citilink actively promotes card advertisements placed inside city buses as "a cost-effective way to reach Fort Wayne workers, seniors, students, etc." App. 7. Following are descriptions of just a few announcements that Citilink has permitted:

- 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;

- Announcements sponsored by the State of Indiana informing beneficiaries of the Supplemental Nutrition Assistance Program ("SNAP") that their benefit deposit date has changed and advising them to "Please plan ahead!";



- Fort Wayne Vision Walk announcements, an event sponsored by the Foundation for Fighting Blindness to raise funds to find cures for blindness, which lists event details, a website, provides contact information, and contains a graphic and slogan;

- United Way announcements for the "Dial 2-1-1" program, which provides callers with "Free Information about food, counseling, housing and more;"

Ver. Compl. ¶¶ 8, 68; App. 18-19, 21.

Plaintiff sought access to display its public service announcement in Citilink's advertising forum on the same terms as other nonprofit groups twice, but its advertisement was rejected both times. Ver. Compl. ¶ 79-98; App. 13-16. Plaintiff is a nonprofit corporation based in Fort Wayne Indiana that opened in 2013 to help meet women's health care needs. Ver. Compl. ¶¶ 32, 34. It is staffed by a degreed and experienced social worker and uses an extensive network of contacts to connect women with those who provide high-quality, life-affirming health care. *Id.* ¶¶ 33, 41. Plaintiff also provides a variety of direct services that promote women's and children's health, such as child care vouchers, baby and maternity clothing, ultrasound services, and baby items such as formula, car seats, cribs, and strollers. *Id.*¶ 43.

To inform women in need of its recent opening and free services, Plaintiff twice applied to place 70 advertising cards on Citilink buses for three months at a total cost of $525. *Id.* ¶¶ 19, 35; App. 12-16. Plaintiff's proposed public service announcement contained a picture of a young woman, Women's Health Link's logo, website, phone number, tagline "You're Not

Alone" and description "Free resource for women seeking health care." Ver. Compl. ¶ 6; App. 17.

Citilink's Assistant General Manager initially indicated that Plaintiff's public service announcement "look[ed] fine" and asked Plaintiff to submit a signed advertising contract, Ver. Compl. 82; App. 12, but then indicated that its announcement was rejected because (1) the ad was not commercial in nature, (2) Women's Health Link's website broached "controversial issues," and (3) Plaintiff is associated with Allen County Right to Life, a group that promotes life-affirming alternatives to abortion. Ver. Compl. ¶¶ 85-91; App. 13. Because Citilink regularly accepts public service announcements, *i.e.*, non-commercial ads, Women's Health Link's website does not discuss "controversial issues," and discriminating against Plaintiff's speech based on its expression association with Allen County Right to Life would violate the First Amendment, Ver. Compl. ¶¶ 57-59, 86, 135, Plaintiff applied again. This time Plaintiff emphasized that it wished to display a public service announcement, not a commercial ad. *Id.* ¶¶ 96-97; App. 14, 16. Citilink rejected Plaintiff's second application as well because (4) it did not "feel" that Plaintiff's public service announcement raised awareness about "a significant social issue in a viewpoint neutral manner." Ver. Compl. ¶ 98; App. 14. Neither of these "criteria" are listed in Citilink's written Advertising Policy. Ver. Compl. ¶ 99; App. 1-4. This lawsuit followed.

STANDARD OF REVIEW

Obtaining a preliminary injunction requires Plaintiff to "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). Provided this threshold is met, the Court "[3] weighs the competing harms to the parties if an injunction is granted or denied and also [4] considers the public interest." *Id.* Because preliminary injunctions are designed to minimize the effects of a wrong decision, "the greater the likelihood of success on the merits, the less heavily the balance of harms must tip in [the plaintiff's] favor." *Id.*

ARGUMENT

I. Plaintiff has Demonstrated a Substantial Likelihood that Citilink's Denial of Its Public Service Announcement Violates the First and Fourteenth Amendments.

Citilink's Policies invite viewpoint discrimination against speech that administrators disfavor, grant Citilink officials unbridled discretion over protected speech, and are also void for vagueness. Those Policies, on their face and in application to deny Plaintiff's health-care-related public service announcement, thus violate the First and Fourteenth Amendments.

A. Citilink's Policies and Censorship of Plaintiff's Health-Care-Related Public Service Announcement Violate the Free Speech Clause.

1. Plaintiff's Public Service Announcement Is Fully Protected by the First Amendment.

Government generally "has no power to restrict expression because of its message, [or] ideas." *Brown v. Entm't Merchants Ass'n*, 131 S. Ct. 2729, 2733 (2011) (concluding California's restrictions on the sale of violent video games violated the First Amendment). Only a few limited categories of speech, such as obscenity, incitement, and fighting words, are exempt from this rule. *Id.* Plaintiff's public service announcement plainly does not fit into any of these categories. Accordingly, its health-care-related speech is fully protected by the First Amendment. *See Entm't Software Ass'n*, 696 F. Supp. 2d at 943 ("Advertisements are a form of speech and truthful ads are generally entitled to the protection of the First Amendment."); *see also id.* at 950 (enjoining enforcement of a transit authority's policy against displaying advertisements for violent video games).

2. Citilink Engaged in Unlawful Viewpoint Discrimination.

Although Citilink has created a designated public forum and impermissibly engaged in content discrimination by excluding Plaintiff's public service announcement, *see infra* Parts I.A.3-4, the Court can bypass this forum issue altogether and rule for Plaintiff based on Citilink's clear-cut viewpoint discrimination. Viewpoint discrimination violates the First Amendment regardless of a forum's classification. *See Perry Educ. Assn v. Perry Local Educators' Ass'n*, 460 U.S. 37, 64 (1983) ("Regardless of the nature of the forum, the critical inquiry is whether the

board has engaged in prohibited viewpoint discrimination."); *DeBoer v. Vill. Of Oak Park*, 267 F.3d 558, 567 (7th Cir. 2001) ("[V]iewpoint … discrimination … is impermissible regardless of forum status.").

Viewpoint discrimination occurs when the government prohibits a speaker from expressing a viewpoint on a subject matter that falls within a forum's scope. *See Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (recognizing "the State must respect the lawful boundaries it has itself set" and may not "discriminate against speech on the basis of its viewpoint"). Such "[d]iscrimination against speech because of its message is presumed to be unconstitutional." *Id.* at 828. Here, Citilink excluded Plaintiff's public service announcement concerning free health-care-related services, but allowed numerous other nonprofit and government groups to discuss the same topic from a different perspective. That is textbook viewpoint discrimination, which violates the Free Speech Clause of the First Amendment. *See Christian Legal Soc.*, 453 F.3d at 865 n.2 (noting that even in a nonpublic forum speech restrictions "must not discriminate on the basis of viewpoint").

The Supreme Court explained almost twenty years ago that:

> It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys…. In the realm of private speech or expression, government regulation may not favor one speaker over another. Discrimination against speech because of its message is presumed to be unconstitutional. When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant…. 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.

Rosenberger, 515 U.S. at 828-29 (internal citations omitted).

Several courts of appeals have found viewpoint discrimination under facts that are indistinguishable from those at issue in this case. The Third Circuit, for instance, identified viewpoint discrimination in *Pittsburgh League of Young Voters Education Fund. v. Port Authority of Allegheny County*, 653 F.3d 290 (3d Cir. 2011). In that case, a group of public interest organizations wished to place ads in public buses "informing ex-prisoners that they [had]

the right to vote." *Id.* at 292. Transit officials denied their request and pointed to a policy that prohibited non-commercial ads. *Id.* Yet officials allowed other non-commercial advertisers to display ads educating "readers about their legal rights." *Id.* at 298. Recognizing that "if the government allows speech on a certain subject, it must accept all viewpoints on the subject, even those that it disfavor or that are unpopular," *id.* at 296 (internal citation omitted), the Third Circuit concluded that this evidence "amply establishe[d] viewpoint discrimination," *id.* at 299.

In *Ridley v. Massachusetts Bay Transportation Authority*, 390 F.3d 65 (1st Cir. 2004), transit officials similarly rejected ads "designed to raise questions about marijuana laws," *id.* at 69, ostensibly because they promoted illegal activity by juveniles, *id.* at 85. But the same officials allowed "other ads … which could be seen as promoting illegal activity among juveniles," including several provocative ads promoting alcoholic beverages. *Id.* at 84. Looking to comments made by transit officials, the fact that comparable ads were permitted, and a lack of fit between the ads' exclusion and the transit authority's purported goals, *id.* at 87, the First Circuit held that transit officials had unlawfully "engaged in viewpoint discrimination," *id.* at 89.

Likewise, in *AIDS Action Committee of Massachusetts, Inc. v. Massachusetts Bay Transportation Authority*, 42 F.3d 1 (1st Cir. 1994), transit officials refused to display public service announcements promoting "the use of condoms to help stop the spread of the virus which causes AIDS," *id.* at 1, purportedly because they were sexually suggestive and inappropriate for children's eyes, *id.* at 5. The same officials nonetheless approved ads for the movie *Fatal Instinct* that were equally, if not more, sexually provocative. *Id.* Refusing to run the condom ads while approving the *Fatal Instinct* ads gave "rise to an appearance of viewpoint discrimination" that the transit authority could not convincingly rebut. *Id.* at 11; *see also id.* at 12 (concluding that the likely rejection of these condom ads because they might "generate controversy" also impermissibly led to "an appearance of viewpoint discrimination"). Accordingly, the First Circuit ruled that transit officials impermissibly "handicap[ped] the expression of particular ideas." *Id.* at 13 (quotation omitted); *see also Lebron v. Wash. Metro. Area Transit Auth.*, 749 F.2d 893, 896, 899 (D.C. 1984) (concluding that transit officials could only prohibit an artist

"from using a public forum to say what he wants to say" through a political poster if they "declin[ed] to accept political advertising in general").

Analogous cases such as these establish the proper analysis of Citilink's censorship of Plaintiff's health-care-related public service announcement. *See also Air Line Pilots*, 45 F.3d at 1160 (explaining that the proper viewpoint inquiry is "whether or not the forum has included speech on the same general subject matter. If this is the case then suppression of a proposed but distinct view because of some content element included in it is impermissible."); *id.* at 1160 (remanding for further review of the nature of an airport advertising forum and whether restrictions on the use of that forum were reasonable and viewpoint neutral). Citilink has broadly opened its advertising forum, involving at least three channels of communication, for use by outside organizations. The advertising forum is open to for-profit and non-profit organizations of all stripes and these myriad organizations may promote virtually anything but "political, religious, or moral issues."[4] Ver. Compl. ¶ 59; App. 2-3.

Under these Policies, Citilink permits the State of Indiana, Parkview Health, The Foundation for Fighting Blindness, United Way, and more to advertise their health-care-related purposes, products, and services. They do so through images, website addresses, phone numbers, mottos/taglines, and other promotional messages. But Citilink rejected Plaintiff's public service announcement promoting free services because of its particular views on health care and expressive association with Allen County Right to Life. That is viewpoint discrimination under governing caselaw. *See, e.g.*, *Rosenberger*, 515 U.S. at 829 ("When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant."); *Southworth v. Bd. of Regents of Univ. of Wis. Sys.*, 307 F.3d 566, 570 (7th Cir. 2002) ("[T]he whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views." (quotation

[4] Citilink's ban on discussing "moral issues" is unconstitutionally vague as explained herein, *see infra* Part I.C, and its prohibition on "political" and "religious" speech is troubling because the advertising forum is otherwise open to noncommercial speech, *see also Air Line Pilots*, 45 F.3d at 1154 n.7 (noting that "the content of the word 'political' is not immediately obvious").

omitted)).

For example, United Way's public service announcement shows its logo, a picture of an older man smiling, the combination headline and phone number "Dial 2-1-1," and the explanatory phrase "Free Information about food, counseling, housing and more." Ver. Compl. ¶ 8; App. 18. There is no meaningful distinction between United Way's public service announcement and Plaintiff's, which shows its logo, a picture of a young woman smiling, the headline "You are not alone," along with Plaintiff's website address and phone number, and the explanatory phrase "Free resource for women seeking health care." Ver. Compl. ¶ 6; App 17. Both announcements seek to inform citizens about essential health care services. Yet Citilink approved United Way's public service announcement and rejected Plaintiff's even though they both addressed the same topic—health care. That is clear-cut viewpoint discrimination. *See Pittsburgh League*, 653 F.3d at 298 ("The suspicion of viewpoint discrimination is fortified by the high degree of similarity between the coalition's ad and the comparator ads.").

Citilink's viewpoint discrimination against Plaintiff's health-care-related speech is also evident in several other ways. Officials allowed other public service announcements, like the State of Indiana's Healthy Indiana Plan announcement and The Foundation for Fighting Blindness' Vision Walk announcement, to inform Citilink's customers of programs and services designed to improve the public health. Ver. Compl. ¶ 68; App. 20-21. The State of Indiana, for instance, promoted a new state-subsidized health insurance plan to help those with a relatively low income better afford health care services. Ver. Compl. ¶ 68; App. 21. In the same vein, the Foundation for Fighting Blindness advertised a charitable event designed to fund research into retinal diseases. Ver. Compl. ¶ 68; App. 20. Although Citilink officials approved these health-care-related announcements, Plaintiff's public service announcement informing readers of a free health care referral resource for women was rejected. Ver. Compl. ¶ 85-98; App. 12-14.

The only rational explanation for this difference in treatment is viewpoint discrimination. And that conclusion is further proven correct by Citilink officials' stated reasons for denying Plaintiff's public service announcement. First, Citilink officials said that Plaintiff's ad was not

commercial, Ver. Compl. ¶ 85, 94; App. 13, which although true is irrelevant because many of the public service announcements permitted in Citilink's advertising forum are not commercial in nature. That is the whole reason a separate category exists in Citilink's Advertising Policy for "public service announcements," as opposed to commercial ads. *See* Ver. Compl. ¶ 58-59; App. 3 (demonstrating that Citilink's Advertising Policy exempts public service announcements from the ban on non-commercial advertising).

Second, Citilink officials alleged that Plaintiff's website—not its public service announcement—discussed "controversial issues." Ver. Compl. ¶ 85, 88. But Plaintiff did not ask to post its webpages in Citilink buses. It applied to display a public service announcement—on the same terms as other nonprofit and government groups—that simply informed women that they are not alone and referred them to a nonprofit organization that would help them to obtain health care. Ver. Compl. ¶ 6, App. 12-17. There is nothing "controversial" about that. So dogged administrators turned to Plaintiff's website, which is of no relevant concern to Citilink or government bureaucrats in general.

But nothing on Women's Health Link's website is "controversial" either, Ver. Comp. 86, 88, unless one objects to Plaintiff's stated mission of "walk[ing] with women through life to ensure they have life-affirming health care," *id.* ¶¶ 4, 36; Women's Health Link, Mission, *available at* http://www.womenshealthlink.org/mission/ (last visited Apr. 26, 2014). Plaintiff's life-affirming viewpoint is thus the only basis for Citilink officials' statement that its speech is "controversial." *Cf. Air Line Pilots*, 45 F.3d at 1157 ("Only by reference to message viewpoint … is the City's objection apparent."). And it is well established that "[t]o exclude a group simply because it is controversial" amounts to "viewpoint discrimination" for controversy will only occur if "some take issue with its viewpoint." *C.E.F. of N.J. Inc. v. Stafford Twp. Sch. Dist.*, 386 F.3d 514, 527 (3d Cir. 2004) (Alito, J.); *see also Hopper v. City of Pasco*, 241 F.3d 1067, 1079 n.12 (9th Cir. 2001) ("By definition, that which is 'controversial' is a cause of disagreement, or subject to opposing views." (quotation omitted)).

That is why federal courts have long barred government officials—at all levels—from

granting "the use of a forum to people whose views it finds acceptable, but deny[ing] use to those wishing to express less favored or more controversial views." *Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 96 (1972). Citilink's attempt to do so here cannot pass constitutional muster. *See United Food & Commercial Workers Union v. Sw. Reg'l Transit Auth.*, 163 F.3d 341, 361 (6th Cir. 1998) (recognizing that a ban on "controversial" advertisements "unquestionably allows" for "viewpoint discrimination" in rejecting the exclusion of a union bus advertisement on the grounds that it was controversial and not aesthetically pleasing); *AIDS Action Comm.*, 42 F.3d at 12 (explaining that rejecting ads because they might "generate controversy" leads to an impermissible "appearance of viewpoint discrimination").

Doubtless, Citilink officials failed to conduct searches for "controversial" material on the webpages of all the other organizations that applied and were permitted to display public service announcements, as Citilink officials have no objection to their viewpoints. But if they had, Citilink administrators would have noted that groups like United Way of Allen County are associated with organizations that some would clearly find "controversial." One such entity, which United Way of Allen County helps to fund, is AIDS Task Force, Inc., United Way, Community Partnerships, *available at* http://www.unitedwayallencounty.org/node/441 (last visited Apr. 29, 2014), a group which visits "middle and high schools," advocates for "increased condom usage," and gives "access to free condoms when appropriate," AIDS Task Force, Inc., Outreach Services – Overview, *available at* http://www.aidsfortwayne.org/index.php?option=com_content&view=article&id=37&Itemid=131 (last visited Apr. 29, 2014). Moreover, to the extent the State of Indiana's Healthy Indiana Plan announcement is associated with the Affordable Care Act, *see* Healthy Indiana Plan and the Affordable Care Act, *available at* http://www.in.gov/fssa/hip/2428.htm (last visited Apr. 30, 2014), some would certainly view it as "political" and "controversial" on its face. *But see* App. 3 (banning "political" ads).

Third, Citilink officials' openly based their denial of Plaintiff's public service announcement on its association with Allen County Right to Life, a pro-life organization. Ver. Compl. ¶¶ 86-87, 90; *see infra* Part I.B. Hence, no doubt exists that Plaintiff's life-affirming

viewpoint led to Citilink officials' rejection of its public service announcement, although they accepted many others that dealt with health care services from a different perspective.

Fourth, Citilink's claim that it denied Plaintiff's announcement because it does not address "a significant social issue" makes no sense: women's health—a term found in Plaintiff's very name—is obviously a significant social issue. And Citilink officials' final justification for censuring Plaintiff's speech, *i.e.*, that it does not discuss a permissible topic "in a viewpoint neutral manner," Ver. Compl. ¶ 98; App. 14, is just another barefaced critique of Plaintiff's views on health care. Moreover, this criticism is fundamentally misguided. Citilink assumes a test that constrains the government—viewpoint neutrality—applies to private speakers. But under the First Amendment it is government actors like Citilink that must regulate private speech in a viewpoint neutral manner. Private expression is never required to be viewpoint neutral—in practical terms, it *cannot* be since all speech expresses a view of some kind—and none of the public service announcements Citilink has allowed are so in practice. Ver. Compl. ¶¶ 105-111.

United Way's ad is, for example, predicated on the view that all people should have ready access to food, counseling, and housing. And the Foundation for Fighting Blindness' ad is based on the view that society should dedicate itself to finding cures for retinal disease. Individuals who are "viewpoint neutral" on these issues would not bother to join these organizations, let alone pay significant sums to sponsor a public service announcement.

3. Citilink Has Created a Designated Public or Limited Designated Public Advertising Forum.

Absent viewpoint discrimination, a private speaker's right to access a government speech forum generally depends on its classification. That inquiry turns on the government's intent but only as reflected by its "*consistent* policy and practice and the forum's compatibility with expressive activity." *Air Line Pilots*, 45 F.3d at 1152. Here, Citilink's advertising forum for commercial and noncommercial speech constitutes the relevant forum. *See id.* at 1151 ("The relevant forum is defined by … the access sought by the speaker." (quotation omitted)).

The Seventh Circuit has held that where a transit authority "allow[s] its advertising space

to be used for a wide variety of commercial, public service, [and] public-issue … ads," *Planned Parenthood*, 767 F.2d at 1232, it becomes a designated "public forum," *id.* at 1233; *see also id.* at 1232 (concluding the Chicago Transit Authority's "advertising system ha[d] become a public forum"). Citilink's Advertising Policy does just that, granting bus card and other promotional opportunities to a broad assortment of commercial entities and nonprofit/government groups that Citilink allows to tackle almost any topic. Ver. Compl. ¶ 58-59; App. 1-4.

More specifically, Citilink's public service announcement forum is a "limited designated public forum" because it is reserved for nonprofit and government groups and excludes a narrow range of topics. *See Ill. Dunesland Pres. Soc. v. Ill. Dep't of Natural Res.*, 584 F.3d 719, 723 (7th Cir. 2009) (explaining this type of forum may be "limited to the discussion of certain subjects or reserved for some types or classes of speaker"); *Christ's Bride Ministries, Inc. v. Se. Pa. Transp. Auth.*, 148 F.3d 242, 253 (3d Cir. 1998) ("[S]ome restrictions on speech does not foreclose a public forum."); *see also id.* at 252 (concluding based on a transit authority's policies, goals, and practice that it had "created a designated public forum"). But this distinction is immaterial because speech restrictions in limited designated public forums are still "subject to the strict scrutiny test." *Christian Legal Soc.*, 453 F.3d at 866 n.2.

Citilink granted access to its public service announcement forum to a broad spectrum of nonprofit and government organizations to promote their purposes, products, and services, and denied access to Plaintiff. Ver. Compl. ¶ 68, 94, 98, 114-15. Federal courts within the Seventh Circuit have found a limited designated public forum in these circumstances. As the United States District Court for the Northern District of Illinois has explained, "[c]ourts will infer an intent to designate property as a public forum where the government makes the property generally available to a class of speakers or grants permission as a matter of course." *Entm't Software*, 696 F. Supp. 2d at 943. It matters not that Citilink's "guidelines and alcohol/tobacco bans [place] minimal limits around the edges of what otherwise remains an entirely permissive forum for public discourse" because Citilink's guidelines "do not evince a governmental intent to … selectively restrict[] access to the advertising system to all but a few approved speakers." *Id.*

at 945. Instead, they grant "general access for an entire class of speakers" to engage in "public-service, commercial and other advertising." *Id.* at 944 (quotation omitted).

Courts of appeals outside the Seventh Circuit have held the same. *See, e.g.*, *United Food*, 163 F.3d at 355 ("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*, 148 F.3d at 252 (holding that (1) "the exclusion of only a very narrow category of ads," (2) "goal[] of generating revenues through the sale of ad space," and (3) "practice of permitting virtually unlimited access to the forum … created a designated public forum"). Citilink "has no longstanding practice of prohibiting ads like [Plaintiff's]." *Christ's Bride*, 148 F.3d at 255. Indeed, its "past practice is, instead, to include such ads." *Id.* Thus, Citilink has established a designed public forum for public service announcements, including health-care-related public service announcements like Plaintiff's.

4. Citilink's Content-Based Restrictions Fail Strict Scrutiny.

Because Plaintiff's health-care-related public service announcement plainly fits within Citilink's "designated public form," any "content-based restrictions on speech that come within the forum must pass strict scrutiny." *Id.* Citilink's censorship of Plaintiff's public service announcement cannot hurdle that bar because its decision was plainly based on the content of Plaintiff's health-care-related message. *See supra* Part I.A.2; *see also Rosenberger*, 515 U.S. at 829 (recognizing that "[v]iewpoint discrimination is [simply] an egregious form of content discrimination"). No other plausible basis for excluding Plaintiff's public service announcement was ever mentioned. And numerous other nonprofit and government entities were allowed to make health-care-related public service announcements, while Plaintiff was not, which is plainly unreasonable. *See Schultz v. City of Cumberland*, 228 F.3d 831, 840 (7th Cir. 2000) (explaining that content neutrality demands that government officials not "single out a particular category of speech," such as controversial speech, "for different treatment"). Indeed, the subject of Plaintiff's "speech, and the manner in which it was presented, were [undoubtedly] compatible with the purposes of the [public service announcement] forum," *Christ's Bride*, 148 F.3d at 256,

thus rendering the content of Plaintiff's speech the only distinguishing feature.

Citilink's Policies are also impermissibly content based because they contain provisions "which permit the Government to discriminate on the basis of the content of [a speaker's] message." *Regan v. Time, Inc.*, 468 U.S. 641, 648-49 (1984). They allow administrators to review the content of public service announcements and censure any speech officials suppose to "express or advocate opinions or positions upon … moral issues," Ver. Compl. ¶ 59; App. 3, "consider[] objectionable," Ver. Compl. ¶ 15; App. 7, "deem[] necessary [to exclude] to fulfill the goals and objectives of Citilink," Ver. Compl. ¶ 14; App. 4, or otherwise "subsequently disapprove" for any reason, Ver. Compl. ¶ 17, App. 6. Citilink's advertising Policies further lack sufficient standards to prevent officials' censorship of disfavored content and views. *See City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 763 (1988) ("[W]ithout standards governing the exercise of discretion, a government official may decide who may speak and who may not based upon the content of the speech or viewpoint of the speaker."); *id.* at 772 (invalidating a policy that gave a city mayor "unfettered discretion to deny a permit application" for newsracks).

Citilink's Policies thus explicitly grant officials boundless discretion to censor speech on a whim. Such blatantly unconstitutional directives, as explained further below, cannot withstand strict scrutiny. Indeed, the Sixth Circuit has cogently explained that:

> [D]eferring to the unproven subjective determinations of state officials … would leave First Amendment rights with little protection. An official harboring bias against a particular viewpoint could readily exclude ads communicating that viewpoint simply by "determining" that the ad was controversial, aesthetically unpleasing, or otherwise offensive. We simply will not allow such speculative allegations to justify the exclusion of a speaker from government property.

United Food, 163 F.3d at 357-58.

5. Citilink's Policies Impose an Unlawful Prior Restraint.

Citilink's Policies further violate the First Amendment by requiring prior approval of public service announcements but lacking any binding standards or guidelines that officials must apply in finally determining what advertisements are allowed. *See Southworth*, 307 F.3d at 579

(holding "that the prohibition against unbridled discretion is a component of the viewpoint-neutrality requirement"). Citilink's Policies thus constitute unlawful prior restraints under controlling caselaw.

Supreme Court precedent establishes a "heavy presumption" against the validity of prior restraints and permits such regulations only if they do not "delegate overly broad ... discretion to a government official." *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992). In *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969), for example, the Supreme Court struck down a parade permitting requirement because it allowed city officials to approve or deny parade permits based solely on "their own ideas of 'public welfare, peace, safety, health, decency, good order, morals, or convenience.'" *Id*. at 150. The Court held that such a scheme, which made the peaceful enjoyment of First Amendment freedoms contingent on "the uncontrolled will of an official," unquestionably violated the Constitution. *Id*. at 151.

Lower courts have long applied this rule to advertising forums established by transit authorities. *See, e.g., N.Y. Magazine v. Metro. Transp. Auth.*, 136 F.3d 123, 131 (2d Cir. 1998) ("[T]he government agency's action, first, must fit within one of the narrowly defined exceptions to the prohibition against prior restraints, and second, must have been accomplished with procedural safeguards that reduce the dangers of suppressing constitutionally protect speech." (quotation omitted)); *Lebron*, 749 F.2d at 896 ("Because WMATA, a government agency, tried to prevent Mr. Lebron from exhibiting his poster in advance of actual expression, WMATA's action can be characterized as a prior restraint ….." (quotations and internal citation omitted).

Citilink's Policies delegate complete discretion regarding the acceptance or rejection of public service announcements to Citilink officials. Administrators must therefore determine for themselves what speech addresses "moral issues," Ver. Compl. ¶ 59; App. 3, is "considered objectionable," Ver. Compl. ¶ 15; App. 7, hampers "the goals and objectives of Citilink," Ver. Compl. ¶ 14; App. 4 or should otherwise be "disapprove[d]," Ver. Compl. ¶ 17, App. 6. Because these terms are wholly subjective, officials necessarily reference their own opinions in making these decisions, as reasonable people can—and frequently do—disagree as to what

advertisements are "moral" as opposed to service or product oriented, "objectionable" instead of inoffensive, and facilitative of Citilink's "goals" rather than injurious to them. Speech that is innocuous to one official may well be offensive to another, as exemplified by the facts of this case. *See* Ver. Compl. ¶¶ 88 (explaining that Citilink's assistant manager did not find Plaintiff's speech to be controversial but its lawyers did).

Where, as here, "[o]ne need only glance" at Citilink's Policies to realize "that there is absolutely nothing to guide … officials in determining whether to grant" final approval of a public service announcement, the Seventh Circuit has identified "an impermissible degree of [official] discretion." *Weinberg v. City of Chi.*, 310 F.3d 1029, 1044 (7th Cir. 2002); *see also id.* at 1046 (concluding Chicago's peddling law, which "place[d] unbridled discretion in the hands of city officials," constituted an impermissible prior restraint on free speech). Such regulations are "the sharpest censorship tool possible" and grant officials "the ability to ban messages … simply because of [their] disfavored status." *Id.* at 1045. Because courts will not "presume that officials will act in good faith and follow standards not explicitly contained in" their written regulations, *id.* at 1046, Citilink's Policies undoubtedly "pose a real or substantial threat of censorship," *Graff v. City of Chi.*, 9 F.3d 1309, 1318 (7th Cir. 1993) (quotation omitted). Accordingly, they "violate[] the law of prior restraint." *Weinberg*, 310 F.3d at 1046.

A comparison to the county policy at issue in *Forsyth* is instructive. That policy empowered an official to set a fee for administrative time and police protection related to parade permit requests without "any narrowly drawn, reasonable and definite standards … guiding [his] hand." *Southworth*, 307 F.3d at 578 (quoting *Forsyth*, 505 U.S. at 132-33). Because the county administrator was "not required to rely on any objective factors," did not need to "provide any explanation for his decision," and was empowered to make a fee assessment that was "unreviewable," the Supreme Court concluded that the county's policy "vest[ed] … unbridled discretion in a government official." *Id.* (quoting *Forsyth*, 505 U.S. at 133). Citilink's Policies—which allow transit officials to deny advertising requests for any reason with no explanation—do the same and thus plainly violate the First Amendment.

B. Citilink's Rejection of Plaintiff's Public Service Announcement Violates Its First Amendment Freedom to Expressive Association.

Citilink openly based its rejection of Plaintiff's public service announcement on Women's Health Link's expressive association with Allen County Right to Life—a pro-life group—because it prefers alternatives to abortion. Ver. Compl. ¶ 87. But, as the Supreme Court has explained, "the ability of like-minded individuals to associate for the purpose of expressing commonly held views may not be curtailed." *Knox v. Serv. Emps. Int'l Union*, 132 S. Ct. 2277, 2288 (2012). Citilink's "[i]nfringement" of Plaintiff's right to "expressive association [is thus] subject to strict scrutiny," which requires Citilink to establish that its actions serve a compelling interest "'unrelated to the suppression of ideas'" that cannot be achieved "'through means significantly less restrictive of associational freedoms.'" *Christian Legal Soc.*, 453 F.3d at 861 (quoting *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000)).

For the reasons stated above in Part I.A, Citilink cannot show that its censorship of Plaintiff's speech was based on a valid interest unrelated to suppressing its life-affirming viewpoint and the life-affirming content of its message. Citilink's total ban on Plaintiff's innocuous public service announcement, which does not even mention abortion, also fails to represent the least restrict means of serving any valid interest Citilink may possess.

C. Citilink's Policies Are Unconstitutionally Vague in Violation of the Due Process Clause of the Fourteenth Amendment.

Vague policies allow administrators to censure speech at their whim. But the Due Process Clause of the Fourteenth Amendment precludes government—at all levels—from adopting policies that do not define proscribed behavior "with sufficient definiteness that ordinary people can understand what conduct is prohibited and … fail[] to establish standards to permit enforcement in an nonarbitrary, nondiscriminatory manner." *Fuller v. Decatur Pub. Sch. Bd. of Educ. Sch. Dist. 61*, 251 F.3d 662, 666 (7th Cir. 2001); *see also Brown*, 131 S. Ct. at 2735 (explaining that "a heightened vagueness standard appli[es] to restrictions upon speech entitled to First Amendment protection"). Citilink's Policies—which allow officials to censure speech they suppose to "express or advocate opinions or positions upon … moral issues," Ver. Compl.

¶ 59; App. 3, "consider[] objectionable," Ver. Compl. ¶ 15; App. 7, "deem[] necessary [to exclude] to fulfill the goals and objectives of Citilink," Ver. Compl. ¶ 14; App. 4, or otherwise "subsequently disapprove" for any reason, Ver. Compl. ¶ 17, App. 6— fall short on both counts.

Such "inscrutable standard[s]" are wholly subjective and fail to inform people of "common intelligence" what speech is permitted in Citilink's advertising forum and what speech is banned. *Bell v. Keating*, 697 F.3d 445, 462 (7th Cir. 2012) (quotation omitted); *see also id.* at 461-63 (concluding that Chicago's disorderly conduct ordinance was unconstitutionally vague). The Seventh Circuit has, for instance, long held that advertising policies that incorporate any kind of "morality … standards [are] too vague to be enforced." *Air Line Pilots*, 45 F.3d at 1153 n.5. Other courts have similarly recognized that regulations like Citilink's, which are presumably designed to allow the exclusion of "'controversial' [speech,] vest[] the decision-maker with an impermissible degree of discretion," *United Food*, 163 F.3d at 359, as "reasonable people may disagree about what actions evoke [such a hostile] reaction," *Bell*, 697 F.3d at 462.

Indeed, terms like "moral issues," "objectionable," "deem necessary," "goals and objectives of Citilink," and "disapprove" are "so vague and broad that" they could conceivably cover any speech that officials disfavor. *AIDS Action Comm.*, 42 F.3d at 12. Citilink's Policies thus grant "officials … unbridled discretion over [the advertising] forum's use" and "invite[] abuse by enabling … official[s] to administer the policy on the basis of impermissible factors." *United Food*, 163 F.3d at 359 (quotation omitted). The Constitution does not permit the delegation of such basic policy matters to Citilink officials "'for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.'" *Id.* (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)).

Organizations, like Plaintiff, who wish to comply with Citilink's advertising Policies must also have "notice" of what speech Citilink officials "may legitimately" proscribe. *Bell*, 697 F.3d at 462; *see also 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*, 408 U.S. at 108)). Citilink's Policies

unmistakably founder on that score as they leave broad and vague terms like "moral issues," "objectionable," and "goals and objectives of Citilink" completely undefined. Prospective advertisers like Plaintiff are thus bereft of any notice of what public service announcements Citilink officials may permit and disallow. For example, would a public service announcement offering free pregnancy screenings impermissibly address a "moral issue" or permissibly offer a free medical service? The answer necessarily depends on Citilink administrators' subjective views and courts "will not presume that … official[s] … will act in good faith and respect a speaker's First Amendment rights." *United Food*, 163 F.3d at 359. Because the Policies regulating Citilink's advertising forum are "scarcely coherent," subject to countless interpretations, and "invite[] the very discrimination that occurred in this case," they are void for vagueness and should be immediately enjoined. *AIDS Action Comm.*, 42 F.3d at 12.

II. Plaintiff is Suffering Irreparable Harm.

Plaintiff is suffering irreparable injury because Citilink has denied it equal access to speak in a speech forum broadly opened to other nonprofit and government organizations that engage in expression on health-care-related subjects. Ver. Compl. ¶¶ 116, 124; App. 18-22. That harm is ongoing. Ver. Compl. ¶ 115, 125-26. Moreover, "'[t]he loss of First Amendment freedoms … unquestionably constitutes irreparable injury.'" *Korte*, 735 F.3d at 666 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)*; see also Christian Legal Soc.*, 453 F.3d at 859 ("The loss of First Amendment freedoms is presumed to constitute an irreparable injury for which money damages are not adequate ….."). Only injunctive relief can prevent further harm to Plaintiff's First and Fourteenth Amendment rights.

III. Plaintiff's Constitutional Injury Outweighs Any Harm to Citilink.

The harm Plaintiff is suffering as a result of the ongoing censorship of its health-care-related speech greatly outweighs any harm Citilink would suffer if preliminary injunctive relief is granted. When, as here, it has been shown that restrictions on private speech are unconstitutional, "no substantial harm to others can be said to inhere in [their] enjoinment," *Déjà Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty.*, 274 F.3d 377, 400

(6th Cir. 2001), as the government cannot "claim an interest in the enforcement of an unconstitutional law," *ACLU v. Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir. 2003) (quotation omitted). Because allowing Plaintiff to engage in health-care-related expression on the same terms as all other nonprofit and government groups would cause no cognizable harm to Citilink, the balance of hardships tips clearly in Plaintiff's favor.

IV. The Public Interest Is Served by Enjoining Citilink's Unconstitutional Policies.

"'[I]njunctions protecting First Amendment freedoms are always in the public interest.'" *Korte*, 735 F.3d at 666 (quoting *Christian Legal Soc'y*, 453 F.3d at 859). Plaintiff has demonstrated that its First and Fourteenth Amendment rights have been violated by Citilink's censorship of its health-care-related speech. The public interest accordingly favors the grant of an injunction. *See ACLU of Ill. v. Alvarez*, 679 F.3d 583, 589-90 (7th Cir. 2012) ("[T]he public interest is not harmed by preliminarily enjoining the enforcement of a statute that is probably unconstitutional.").

CONCLUSION

Plaintiff has established an entitlement to injunctive relief. Citilink's ongoing censorship of Plaintiff's health-care-related speech should therefore be enjoined. Accordingly, Plaintiff respectfully requests that this Court issue an injunction (1) prohibiting Citilink from enforcing its Policies to prohibit Plaintiff's public service announcement; (2) declaring the provisions in Citilink's Policy Governing All Advertising In or Upon Citilink Vehicles and Facilities prohibiting advertisers from "express[ing] or advocat[ing] opinions or positions up … moral issues," App. 3, and allowing Citilink 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," App. 4, the provision in Defendant's Statement of Advertising Rates allowing advertisements to "be rejected or removed if considered objectionable by Citilink," App. 7, and the provision in Defendant's Transit Advertising Contract empowering Citilink to "subsequently disapprove any advertisement," App. 6, to be facially unconstitutional; and (3) permitting the display of Plaintiff's public service announcement on equal terms with those of other nonprofit and

government organizations.

Respectfully submitted this 8th day of May, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2014, a copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

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