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## **D.C. Tour Guide Sues: ‘We’re Not Allowed to Talk to Our Customers’**

May 6, 2014

By Laretta Brown

**(CNSNews.com)** - Tonia Edwards and Bill Main, owners of a company that gives guided Segway tours around Washington, D.C., are suing the city for the right to describe the city’s points of interest to customers without a city tour guide license.

“We’re not allowed to talk to our customers, so we’re not allowed to describe any of the buildings, we’re not allowed to describe any of the history of D.C., even though a lot of what we do is on federal property and not on the District of Columbia property,” Tonia Edwards told CNSNews.com, describing some of the restrictions they face because of D.C. licensing regulations.

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit heard arguments Monday morning in the case of *Edwards v. District of Columbia* to determine whether D.C. tour guide licensing law violates the First Amendment.

The case began in July 2010 when the District issued new regulations that define a tour guide and require for-profit tour guides to obtain a license. The regulations state that, “No person shall offer to act as a sightseeing tour guide on the roads, sidewalks, public spaces, or waterways of the District of Columbia unless the person holds a valid sightseeing tour guide license issued by the Department of Consumer and Regulatory Affairs.”

In order to receive a D.C. tour guide license, would-be guides must submit an application, pay a \$200 licensing fee and pass an examination, “covering the applicant’s knowledge of public buildings and points of historical and general interest in and about the District.”

The Institute for Justice, a civil liberties law firm that is representing the company Segs in the City, filed a complaint in 2010 in the U.S. District Court for the District of Columbia, arguing that the licensing requirement “imposes special burdens on Plaintiffs because of the content of their speech,” and limits their speech by threatening “fines and imprisonment if they speak (on certain subjects) without a license.”

The federal district court ruled against Edwards and Main in March 2013. Judge Paul Friedman defended his judgment in the case, arguing that the restrictions apply to the conduct of the tour guide, not to the content of his or her speech.

“The plain language of the regulations thus makes clear that speech is not the trigger for the licensing requirement. Rather... the regulations are triggered by conduct: the guiding or directing of a sightseeing trip or tour. Any individual who guides or directs people around the District for profit, regardless of whether that individual, like plaintiffs, "occasionally point[s] out or describ[es] points of interest along the route...must first acquire a license. Therefore, like the statute, these regulations require a license regardless of any message a tour guide may wish to convey, he explained.

Edwards and Main appealed the decision, and the Cato Institute later filed a friend-of-the-court brief on their behalf. Robert McNamara, senior attorney at the Institute for Justice, argued against the regulations in court on Monday.

Speaking outside the courtroom, McNamara said he was “confident that the court is going to recognize the core principle in this case, and that’s that the Constitution protects your right to speak for a living, and that’s true whether you’re a journalist or a stand-up comedian or a tour guide.”

The District argued both in its brief and in court Monday that the “minimal requirements for licensure,” including passing a multiple-choice test about the District and its tourist attractions, satisfy intermediate scrutiny because they “ensure that prospective guides are who they say they are: persons with at least a minimal grasp of the history and geography of Washington, D.C.”

McNamara argued that “D.C. can regulate to protect public health and safety,” but “what they can’t do is what they’re trying to do here, which is impose regulations on speech without any evidence that the speech is causing real harm. They’re simply not allowed to do that under the First Amendment.”

Mary Wilson, senior assistant to the attorney general, argued in court today that D.C. requires licenses to protect consumers from unscrupulous tour guides. In response to this, McNamara told CNSNews.com, “There’s no evidence that tour guides are dangerous in any way. In fact, in almost every city in the United States, tour guides ply their trade without passing a multiple choice test, and there’s no evidence that anyone has ever been harmed by that in any way.”

Tonia Edwards told CNSNews.com that she thought the oral arguments had gone well on Monday, and she expressed hope that the case would be settled in their favor after “fighting this case for four years now.”

“I think they got a lot of the issues out, especially some of the anomalies where there was, you know, the tour bus drivers can do their job without a license but we take them around on a Segway and we need a license. It just seems completely strange that one needs one and one doesn’t because they’re doing the guiding as much as we are,” Edwards pointed out.

