

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN FREEDOM DEFENSE  
INITIATIVE; PAMELA GELLER; and  
ROBERT SPENCER,

Plaintiffs,

-v.-

MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY,

Defendant.

Case No.

**COMPLAINT**

[42 U.S.C. § 1983]

Plaintiffs American Freedom Defense Initiative (hereinafter referred to as “AFDI”), Pamela Geller, and Robert Spencer (collectively referred to as “Plaintiffs”), by and through their undersigned counsel, bring this Complaint against Defendant Massachusetts Bay Transportation Authority (hereinafter referred to as “Defendant” or “MBTA”), its employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

**INTRODUCTION**

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging Defendant’s restriction on Plaintiffs’ right to engage in protected speech in a public forum created by Defendant based on the content and viewpoint of Plaintiffs’ message. Defendant prohibited Plaintiffs from displaying an advertisement (hereinafter “AFDI Advertisement”) on MBTA property based on Defendant’s assertion that Plaintiffs’ advertisement is “demeaning or disparaging” in violation of Defendant’s Guidelines Regulating MBTA Advertising (hereinafter “Advertising Guidelines”), which operate as a prior restraint on Plaintiffs’ speech (hereinafter “Speech Restriction”).

2. Plaintiffs seek a declaration that Defendant violated their clearly established constitutional rights as set forth in this Complaint; a declaration that Defendant's Speech Restriction violates the United States Constitution and 42 U.S.C. § 1983 as set forth in this Complaint; a preliminary and permanent injunction enjoining the enforcement of Defendant's Speech Restriction as set forth in this Complaint; and nominal damages for the past loss of Plaintiffs' constitutional rights. Plaintiffs also seek an award of reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law.

### **JURISDICTION AND VENUE**

3. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this court. Plaintiffs' claim for nominal damages is authorized by 42 U.S.C. § 1983.

5. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

### **PLAINTIFFS**

6. Plaintiff AFDI is an organization that is incorporated under the laws of the State of New Hampshire. AFDI is a human rights organization dedicated to freedom of speech, freedom of conscience, freedom of religion, freedom from religion, and individual rights.

7. AFDI achieves its objective through a variety of lawful means, including through the exercise of its right to freedom of speech under the United States Constitution.

8. AFDI exercises its right to freedom of speech and promotes its objectives by, *inter alia*, purchasing advertising space on transit authority property in major cities throughout the United States, including Boston, Massachusetts. AFDI purchases these advertisements to express its message on current events and public issues, including issues involving the Israeli / Palestinian conflict (hereinafter referred to as “AFDI’s advertising campaign”).

9. Plaintiff Pamela Geller is the president of AFDI, and she engages in protected speech through AFDI’s activities, including AFDI’s advertising campaign.

10. Plaintiff Robert Spencer is the vice president of AFDI, and he engages in protected speech through AFDI’s activities, including AFDI’s advertising campaign.

#### **DEFENDANT**

11. The MBTA is a quasi-governmental organization which provides public transportation in the Commonwealth of Massachusetts. It operates bus routes, subway lines, a commuter rail network, and ferry service routes that provide transportation to millions of customers in the Greater Boston area.

12. As a governmental agency, the MBTA is mandated to comply with the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

#### **STATEMENT OF FACTS**

13. The MBTA, through its advertising agent, Titan Outdoor LLC (a/k/a Titan360 and Titan) (hereinafter “Titan”), leases space on its vehicles and transportation stations for use as advertising space.

14. The MBTA accepts noncommercial and commercial advertisements for display on its advertising space.

15. The MBTA accepts noncommercial public service, public issue, and political issue advertisements, including advertisements on controversial issues, such as the Israeli / Palestinian conflict, for display on its advertising space.

16. The MBTA has leased its advertising space for political and social commentary advertisements covering a broad spectrum of political views and ideas. By policy and practice, the MBTA has created a designated public forum for the display of public service, public issue, and political issue advertisements, including the AFDI Advertisement, on its advertising space.

17. In September 2013, the MBTA issued a statement acknowledging that some of its advertisements would be distasteful to its customers, stating, *inter alia*, “we have every confidence that our customers will understand that in our enlightened civil democracy, the answer to distasteful and uncivil speech is more, and more civilized, speech.”

18. Accordingly, Defendant permits, as a matter of policy and practice, a wide variety of commercial, noncommercial, public-service, public-issue, and political-issue advertisements on its advertising space, including advertisements addressing the hotly debated Israeli / Palestinian conflict (hereinafter “Free Speech Policy”).

19. In October 2013, the MBTA accepted for display on its advertising space a controversial advertisement that addresses the Israeli / Palestinian conflict by conveying a message and viewpoint that criticizes Israel (hereinafter “Anti-Israel Advertisement”).

20. The Anti-Israel Advertisement, which appeared on approximately 80 posters throughout the transit system, depicts four maps that purport to show “the Palestinian loss of land” to Israel between 1946 and 2010. Text accompanying the maps says: “4.7 million Palestinians are Classified by the UN as Refugees.”

21. The Anti-Israel Advertisement appears as follows:



22. A true and accurate copy of the Anti-Israel Advertisement is attached to this Complaint as Exhibit 1 and incorporated herein by reference.

23. After receiving a rash of complaints, on or about October 31, 2013, Defendant, through its advertising agent, removed all of the Anti-Israel Advertisements from the MBTA's advertising space.

24. However, on or about November 1, 2013, Defendant decided, without much of a public explanation, except to claim that it was a "miscommunication" between Defendant and its advertising agent, to repost the Anti-Israel Advertisement on the MBTA's advertising space.

25. Pursuant to Defendant's Free Speech Policy and in direct response to the original posting of the Anti-Israel Advertisement, on or about October 26, 2013, Plaintiffs submitted to Titan for display on MBTA's advertising space an advertisement that supported Israel in the debate over the Israeli / Palestinian conflict. More specifically, Plaintiff Geller contacted (via email) Scott Goldsmith, the executive vice president and chief commercial officer of Titan, and requested to run AFDI's "pro-Israel ads in 10 of the Boston T stations where the anti-Israel campaign is running." A true and correct copy of Plaintiff Geller's email is attached to this Complaint as Exhibit 2 and incorporated herein by reference.

26. AFDI's pro-Israel advertisement ("AFDI Advertisement") states, in relevant part, "In any war between the civilized man and the savage, support the civilized man. Support Israel. Defeat jihad." AFDI's Advertisement appears as follows:



27. A true and correct copy of the AFDI Advertisement is attached to this Complaint as Exhibit 3 and incorporated herein by reference.

28. The AFDI Advertisement discusses the same subject matter as the Anti-Israel Advertisement, except it does so from a viewpoint that favors Israel.

29. The quote, "In any war between the civilized man and the savage, support the civilized man," is adapted from a quote by the famous Russian-born, American author of *Atlas Shrugged*, Ayn Rand.

30. The message of the AFDI Advertisement is very timely in light of the fact that the Anti-Israel Advertisement is now running (or will be running shortly) on the MBTA's advertising space.

31. Acceptance of political- and public-issue advertisements, specifically including the MBTA's acceptance of the Anti-Israel Advertisement, demonstrates that the forum is suitable for the AFDI Advertisement.

32. On November 4, 2013, Defendant officially rejected the AFDI Advertisement. In an email from Scott Goldsmith, Defendant's advertising agent, to Plaintiff Geller, Mr. Goldsmith states, "Pamela: The MBTA has rejected your ad because it falls within the category (b)(i) 'Demeaning or disparaging'. I have attached the ad policy for your review. Thank you. Scott." A true and correct copy of this email containing Defendant's rejection of the AFDI Advertisement is attached to this Complaint as Exhibit 4 and incorporated herein by reference.

33. Attached to Defendant's rejection email was a copy of the MBTA's Advertising Guidelines. A true and correct copy of this email attachment (*i.e.*, the Advertising Guidelines) is attached to this Complaint as Exhibit 5 and incorporated herein by reference.

34. This November 4th email represents the final decision by Defendant to reject the AFDI Advertisement and thereby restrict Plaintiffs' speech. ("Speech Restriction").

35. Defendant's application of its Advertising Guidelines was a pretext to censor Plaintiffs' message because MBTA officials oppose Plaintiffs' view on the Israeli / Palestinian conflict. Moreover, Defendant's decision to restore the advertisements critical of Israel (the Anti-Israel Advertisement), but then deny the AFDI Advertisement, which supports Israel, was motivated by a discriminatory animus against those speakers who support Israel in this conflict. Defendant's decision to reject the AFDI Advertisement was further motivated by a discriminatory animus against Plaintiffs and the viewpoint they express about Islam in general.

36. Defendant's rejection of the AFDI Advertisement has caused and will continue to cause irreparable harm to Plaintiffs.

37. Pursuant to clearly established First Amendment jurisprudence, the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury sufficient to warrant injunctive relief.

**FIRST CLAIM FOR RELIEF**

**(Freedom of Speech—First Amendment)**

38. Plaintiffs hereby incorporate by reference all stated paragraphs.

39. By reason of the aforementioned Speech Restriction, which includes Defendant's Advertising Guidelines, created, adopted, and enforced under color of state law, Defendant has deprived Plaintiffs of their right to engage in protected speech in a public forum in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

40. Defendant's Speech Restriction, facially and as applied to Plaintiffs' speech, is content- and viewpoint-based in violation of the Free Speech Clause of the First Amendment.

41. Defendant's Speech Restriction operates as a prior restraint on Plaintiffs' speech; therefore, it comes to this court bearing a heavy presumption against its constitutional validity.

42. Defendant's Speech Restriction, facially and as applied to Plaintiffs' speech, is unreasonable and an effort to suppress expression merely because public officials oppose the speaker's view, including the view expressed by Plaintiffs in the AFDI Advertisement.

43. Defendant's Speech Restriction was motivated by a discriminatory animus against Plaintiffs and the viewpoints they express about the Israeli / Palestinian conflict and about Islam in general.

44. Defendant's Speech Restriction, facially and as applied to Plaintiffs' speech, offends the First Amendment by granting a public official unbridled discretion such that the official's decision to limit speech is not constrained by objective criteria, but may rest on ambiguous and subjective reasons.



45. Defendant's Speech Restriction, facially and as applied to Plaintiffs' speech, provides no objective guide for distinguishing between permissible and impermissible advertisements in a non-arbitrary, viewpoint-neutral fashion as required by the First Amendment.

46. As a direct and proximate result of Defendant's violation of the Free Speech Clause of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

## **SECOND CLAIM FOR RELIEF**

### **(Equal Protection—Fourteenth Amendment)**

47. Plaintiffs hereby incorporate by reference all stated paragraphs.

48. By reason of the aforementioned Speech Restriction, which includes Defendant's Advertising Guidelines, created, adopted, and enforced under color of state law, Defendant has unconstitutionally deprived Plaintiffs of the equal protection of the law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, in that Defendant is preventing Plaintiffs from expressing a message in a public forum based on the content and viewpoint of the message, thereby denying the use of this forum to those whose views Defendant finds unacceptable.

49. Defendant's Speech Restriction was motivated by a discriminatory animus against Plaintiffs and the viewpoints they express about the Israeli / Palestinian conflict and about Islam in general.

50. As a direct and proximate result of Defendant's violation of the Equal Protection Clause of the Fourteenth Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

### **THIRD CLAIM FOR RELIEF**

#### **(Due Process—Fourteenth Amendment)**

51. Plaintiffs hereby incorporate by reference all stated paragraphs.

52. By reason of the aforementioned Speech Restriction, which includes Defendant's Advertising Guidelines, created, adopted, and enforced under color of state law, Defendant has unconstitutionally deprived Plaintiffs of the due process of law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

53. It is a basic principle of due process that a regulation is void for vagueness if its prohibitions are not clearly defined.

54. Defendant's Speech Restriction, facially and as applied to Plaintiffs' speech, offends the Fourteenth Amendment's guarantee of due process by granting a public official unbridled discretion such that the official's decision to limit speech is not constrained by objective criteria, but may rest on ambiguous and subjective reasons.

55. Defendant's Speech Restriction, facially and as applied to Plaintiffs' speech, is unconstitutionally vague in violation of the Fourteenth Amendment.

56. As a direct and proximate result of Defendant's violation of the Due Process Clause of the Fourteenth Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask this court:

A) to declare that Defendant violated the First and Fourteenth Amendments to the United States Constitution as set forth in this Complaint;

B) to preliminarily and permanently enjoin Defendant's Speech Restriction, which includes Defendant's Advertising Guidelines, as set forth in this Complaint;

- C) to award Plaintiffs nominal damages for the past loss of their constitutional rights as set forth in this Complaint;
- D) to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and
- E) to grant such other and further relief as this court should find just and proper.

Respectfully submitted,

/s/ Robert Snider  
Robert Snider, Esq. (BBO#471000)  
11 Cahill Park Drive  
Framingham, Massachusetts 01702  
robert.snider20@gmail.com  
Tel/Fax: (508) 875-0003

AMERICAN FREEDOM LAW CENTER

Robert J. Muise, Esq.\* (MI P62849)  
P.O. Box 131098  
Ann Arbor, Michigan 48113  
rmuise@americanfreedomlawcenter.org  
Tel: (734) 635-3756; Fax: (801) 760-3901

David Yerushalmi, Esq.\* (DC # 978179)  
1901 Pennsylvania Avenue NW, Suite 201  
Washington, D.C. 20001  
david.yerushalmi@verizon.net  
Tel: (646) 262-0500; Fax: (801) 760-3901

\*Subject to admission *pro hac vice*

# EXHIBIT 1



# EXHIBIT 2

----- Forwarded message -----

From: **Pamela Geller** <[pamelageller@gmail.com](mailto:pamelageller@gmail.com)>

Date: Sat, Oct 26, 2013 at 4:23 PM

Subject: Boston ad buy: Pro-Israel ad campaign

To: Scott Goldsmith <[Scott.Goldsmith@titan360.com](mailto:Scott.Goldsmith@titan360.com)>, Greg Wolinsky <[Greg.Wolinsky@titan360.com](mailto:Greg.Wolinsky@titan360.com)>

Scott,

We wish to run our pro-Israel ads in 10 of the Boston T stations where the anti-Israel campaign is running. We want 10 of the busiest transit hubs ([http://www.bostonglobe.com/metro/2013/10/25/mbta-restores-ads-critical-israel/61EuEtlckODpYHKd08JEqM/story.html?s\\_campaign=email\\_BG\\_TodaysHeadline](http://www.bostonglobe.com/metro/2013/10/25/mbta-restores-ads-critical-israel/61EuEtlckODpYHKd08JEqM/story.html?s_campaign=email_BG_TodaysHeadline))

You know the ad. You've run it before. **We wish to begin ASAP** - same ad placement as the anti-Israels ads in the Globe article.

Please send specs.

--

Yours in liberty,  
Pamela Geller  
Editor, Publisher Atlas Shrugs  
President, AFDI, SIOA and SION

[Pamela Geller](#) on Facebook  
[@AtlasShrugs](#) in Twitter  
[@PamelaGeller](#) on Twitter

Author: Freedom or Submission: On the Dangers of Islamic Extremism & American Complacency  
Author The Post-American Presidency: The Obama Administration's War on America  
Author: Stop the Islamization of America: A Practical Guide for the Resistance

--

Yours in liberty,  
Pamela Geller

# EXHIBIT 3



**IN ANY WAR  
BETWEEN THE  
CIVILIZED MAN  
AND THE SAVAGE,  
SUPPORT THE  
CIVILIZED MAN.**

 **SUPPORT ISRAEL**   
**DEFEAT JIHAD**

PAID FOR BY THE AMERICAN FREEDOM DEFENSE INITIATIVE

[ATLASSHROGS.COM](http://ATLASSHROGS.COM)

[SPOA.US](http://SPOA.US)

[JIHADWATCH.COM](http://JIHADWATCH.COM)

# EXHIBIT 4

**From:** Scott Goldsmith <Scott.Goldsmith@titan360.com>  
**Sent:** Monday, November 04, 2013 4:38 PM  
**To:** Pamela Geller  
**Cc:** david.yerushalmi@verizon.net; <rmuise@aflc.us>; spencercg1@yahoo.com  
**Subject:** Proposed Ad - MBTA  
**Attachments:** MBTA - Ad guidelines .pdf

Pamela: The MBTA has rejected your ad because it falls within the category (b)(i) "Demeaning or disparaging". I have attached the ad policy for your review. Thank you. Scott.

*Scott E. Goldsmith, Esq.*  
EVP & Chief Commercial Officer  
100 Park Avenue  
New York, NY 10017

T (212) 891-5688  
F (212) 418-1082  
[scott.goldsmith@titan360.com](mailto:scott.goldsmith@titan360.com)

**TITAN**  
titan360.com

---

**From:** Pamela Geller <[pamelageller@gmail.com](mailto:pamelageller@gmail.com)>  
**Date:** Friday, November 1, 2013 4:02 PM  
**To:** Scott Goldsmith <[Scott.Goldsmith@titan360.com](mailto:Scott.Goldsmith@titan360.com)>  
**Cc:** "[david.yerushalmi@verizon.net](mailto:david.yerushalmi@verizon.net)" <[david.yerushalmi@verizon.net](mailto:david.yerushalmi@verizon.net)>, "<[rmuise@aflc.us](mailto:rmuise@aflc.us)>" <[rmuise@aflc.us](mailto:rmuise@aflc.us)>, "[spencercg1@yahoo.com](mailto:spencercg1@yahoo.com)" <[spencercg1@yahoo.com](mailto:spencercg1@yahoo.com)>  
**Subject:** Re:

Scott, What's the hold-up? These delays hurt my message. I want to counter the blood libel currently running. I need a a yes or no answer ASAP.

On Mon, Oct 28, 2013 at 10:39 AM, Pamela Geller <[pamelageller@gmail.com](mailto:pamelageller@gmail.com)> wrote:  
10  
We need specs

Yours in liberty,  
Pamela Geller

Sent from my iPhone

On Oct 28, 2013, at 9:39 AM, Scott Goldsmith <[Scott.Goldsmith@titan360.com](mailto:Scott.Goldsmith@titan360.com)> wrote:

Pamela: We will submit. How many posters do you want to do? Thanks. Scott

***Scott E. Goldsmith, Esq.***  
EVP & Chief Commercial Officer  
100 Park Avenue  
New York, NY 10017

T (212) 891-5688  
F (212) 418-1082  
[scott.goldsmith@titan360.com](mailto:scott.goldsmith@titan360.com)

**TITAN**  
[titan360.com](http://titan360.com)

--

Yours in liberty,  
Pamela Geller  
Editor, Publisher Atlas Shrugs  
President, AFDI, SIOA and SION

[Pamela Geller](#) on Facebook  
[@AtlasShrugs](#) in Twitter  
[@PamelaGeller](#) on Twitter

Author: Freedom or Submission: On the Dangers of Islamic Extremism & American Complacency  
Author The Post-American Presidency: The Obama Administration's War on America  
Author: Stop the Islamization of America: A Practical Guide for the Resistance

# EXHIBIT 5

Guidelines Regulating MBTA Advertising  
Adopted July 1, 2012

Purpose

Through these Guidelines the MBTA intends to establish uniform, viewpoint-neutral standards for the display of advertising. In setting its advertising standards, the MBTA seeks to fulfill the following goals and objectives:

- (a) maximization of revenue generated by advertising;
- (b) maximization of revenue generated by attracting, maintaining, and increasing ridership;
- (c) maintaining the safe and orderly operation of the MBTA;
- (d) maintaining a safe and welcoming environment for all MBTA passengers, including minors who travel on or come in contact with the MBTA system; and
- (e) avoiding the identification of the MBTA or the Commonwealth of Massachusetts with advertisements or the viewpoints of the advertisers.

The MBTA reserves the right, from time to time, to suspend, modify or revoke the application of any or all of these Guidelines as it deems necessary to comply with legal mandates, to accommodate its primary transportation function and to fulfill the goals and objectives referred to herein. All the provisions of these Guidelines shall be deemed severable.

Advertising Program and Administration

- (a) These guidelines shall apply to advertising on or in all MBTA equipment and facilities (including but not limited to land, terminals, stations, garages, yards, shops, structures, rolling stock, vehicles, fences, equipment, electronic and hard copy media, websites and other personal property) unless otherwise expressly provided by contract regarding a premise covered by an alcoholic beverages license.
- (b) The MBTA shall, from time to time, select an “Advertising Contractor” who shall be responsible for the daily administration of the MBTA’s advertising program in a manner consistent with these Guidelines and the terms of its agreement with the MBTA. The advertising program shall include, but not be limited to, promotion, solicitation, sales, accounting, billing, collections and posting of advertising displays on or in all MBTA equipment and facilities.
- (c) The Advertising Contractor shall provide, or shall subcontract for, all employees and equipment necessary to perform the work and provide the services required by the MBTA.
- (d) The MBTA shall designate an employee (typically, the Director of Marketing Communications) as its “Contract Administrator” to be the primary contact for the Advertising Contractor. Questions regarding the terms, provisions and requirements of these Guidelines shall be addressed initially to the Contract Administrator.

### MBTA Operations and Promotions

The MBTA has the unqualified right to display, on or in its equipment and facilities, advertisements and notices that pertain to MBTA operations and promotions, consistent with the provisions of its agreement with the Advertising Contractor.

### Disclaimer

The MBTA reserves the right, in all circumstances, to require that an advertisement on or in its equipment and facilities include a disclaimer indicating that it is not sponsored by, and does not necessarily reflect the views of, the MBTA.

### Advertising Standards

- (a) The MBTA intends that its equipment and facilities constitute nonpublic forums that are subject to the viewpoint-neutral restrictions set forth below. Certain forms of paid and unpaid advertising will not be permitted for placement or display on or in MBTA equipment and facilities.
- (b) The MBTA shall not display or maintain any advertisement that falls within one or more of the following categories:
  - (i) Demeaning or disparaging. The advertisement contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, the MBTA will determine whether a reasonably prudent person, knowledgeable of the MBTA's ridership and using prevailing community standards, would believe that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group of individuals.
  - (ii) Tobacco. The advertisement promotes the sale or use of tobacco or tobacco-related products, including but not limited to depicting such products.
  - (iii) Alcohol. The advertisement advertises an alcohol product or a brand of alcohol products.
  - (iv) Profanity. The advertisement contains profane language.
  - (v) Firearms. The advertisement either (a) advertises a firearm or a brand of firearms, (b) contains an image of a firearm in the foreground of the

main visual or (c) contains image(s) of firearm(s) that occupy 15% or more of the overall advertisement.

- (vi) Violence. The advertisement contains an image or description of graphic violence, including but not limited to (1) the depiction of human or animal bodies, body parts or fetuses, in states of mutilation, dismemberment, decomposition or disfigurement, and (2) the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal.
- (vii) Unlawful goods or services. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.
- (viii) Unlawful conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities.
- (ix) Obscenity or nudity. The advertisement contains obscene material or images of nudity. For purposes of these Guidelines, the terms “obscene” and “nudity” shall have the meanings contained in Massachusetts General Laws ch. 272, §31.<sup>1</sup>
- (x) Prurient sexual suggestiveness. The advertisement contains material that describes, depicts or represents sexual activities or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults in sex. For purposes of these Guidelines, the term “minor” shall have the meaning contained in Massachusetts General Laws ch. 272, §31.<sup>2</sup>
- (xi) Political campaign speech. The advertisement contains political campaign speech. For purposes of these Guidelines, the term “political campaign speech” is speech that (1) refers to a specific ballot question, initiative petition, or referendum, (2) promotes or opposes a political party for local, state, or federal election, or (3) promotes or opposes a candidate or group of candidates. For purposes of these Guidelines, the term “candidate” shall include any person actively campaigning for office, any person who has filed their candidacy or declared their intent to run for office, or any person who has been reported in the mainstream media as likely to run for a particular public office.



- (xii) Endorsement. The advertisement, or any material contained in it, implies or declares an endorsement by the MBTA or the Commonwealth of any service, product or point of view, without prior written authorization of the MBTA (through its General Manager) or the Commonwealth (through the Secretary of the Executive Office of Transportation and Construction).
- (xiii) False, misleading, or deceptive commercial speech. The advertisement proposes a commercial transaction, and the advertisement, or any material contained in it, is false, misleading or deceptive.

<sup>1</sup> Mass. Gen. Laws ch. 272, §31, defines “obscene” as follows: “matter is obscene if taken as a whole it (1) appeals to the prurient interest of the average person applying the contemporary standards of the county where the offense was committed; (2) depicts or describes sexual conduct in a patently offensive way; and (3) lacks serious literary, artistic, political, or scientific value” Mass. Gen. Laws. ch. 272, §31, defines “nudity” as follows: “uncovered or less than opaquely covered human genitals, pubic areas, the human female breast below a point immediately above the top of the areola, or the covered male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple or areola only are covered.”<sup>3</sup>

<sup>2</sup> Mass. Gen. Laws ch. 272, §3 I, defines “minor” as “a person under eighteen years of age.

- (xiv) Libelous speech, copyright infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject the MBTA to litigation.
  - (xv) “Adult”-oriented goods or services. The advertisement promotes or encourages, or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or other materials which are identifiable with, films rated "X" or “NC-17,” **video games rated M or AO**, adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult Internet sites and escort services.
- (c) Review of advertisements. The Advertising Contractor shall review each advertisement submitted for display on or in MBTA equipment and facilities to determine whether the advertisement falls within, or may fall within, one or more of the categories set forth in (b) above. If the Advertising Contractor determines that an advertisement falls within, or may fall within, one or more of the categories set forth in (b) above, then:
- (i) Referral to Contract Administrator. The Advertising Contractor shall promptly send the advertisement - along with the name of the advertiser, the size and number of the advertisements and the dates and locations of display - to the Contract Administrator for review of the advertisement by the MBTA.
  - (ii) Initial Review by MBTA. Upon the Contractor Administrator’s receipt of the advertisement and supporting information, the Contract Administrator shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in (b) above. In reaching this determination, the Contract Administrator may consider any materials submitted by the advertiser and may consult with the Advertising Contractor. In the event that the Contract Administrator determines that the advertisement does not fall within any of the categories set forth in (b) above, the Contract Administrator shall advise the Advertising Contractor that the advertisement is in conformity with the MBTA’s Advertising Guidelines.
  - (iii) Subsequent Review by MBTA. In the event that the Contract Administrator determines that the advertisement falls within, or may fall within, one or more of the categories set forth in (b) above, then the Contract Administrator shall, in writing, specify which of the categories the advertisement falls within, or may fall within, and shall refer the advertisement and supporting information to the General Counsel. Likewise, the General Counsel shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in (b) above. In reaching this determination, the General Counsel may consider any materials submitted by the advertiser and may consult with the Contract Administrator. In the event that the General Counsel determines that the advertisement does not fall within any of the categories set forth in (b) above, the Contract Administrator shall advise the Advertising Contractor that the advertisement is in conformity with

the MBTA's Advertising Guidelines.

- (iv) Final Review by MBTA. In the event that the General Counsel determines that the advertisement falls within, or may fall within, one or more of the categories set forth in (b) above, then the General Counsel shall, in writing, specify which of the categories the advertisement falls within, or may fall within, and shall refer the advertisement and supporting information to the General Manager. Likewise, the General Manager shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in (b) above. In reaching this determination, the General Manager may consider any materials submitted by the advertiser and may consult with the Contract Administrator and the General Counsel. In the event that the General Manager determines that the advertisement does not fall within any of the categories set forth in (b) above, the Contract Administrator shall advise the Advertising Contractor that the advertisement is in conformity with the MBTA's Advertising Guidelines. In the event that the General Manager determines that the advertisement falls within one or more of the categories set forth in (b) above, then the General Manager shall, in writing, specify which of the categories the advertisement falls within and the Contract Administrator shall advise the Advertising Contractor that the MBTA has determined that the advertisement is not in conformity with its Advertising Guidelines.
- (v) Opportunity for Revision by Advertiser. In the event that the MBTA determines that the advertisement falls within one or more of the categories set forth in (b) above, the Advertising Contractor may, in consultation with the Contract Administrator, discuss with the advertiser one or more revisions to the advertisement, which, if undertaken, would bring the advertisement into conformity with the MBTA's Advertising Guidelines. The advertiser shall then have the option of submitting a revised advertisement for review by the MBTA.
- (vi) Formal Determination by MBTA. In the event that the MBTA and the advertiser do not reach agreement with regard to a revision of the advertisement, the advertiser may request that the MBTA memorialize its formal determination in the form of a final written notice of its decision, which shall then be relayed to the advertiser. The MBTA's formal determination shall be final.
- (vii) Removal of Non-Complying Advertisements. Notwithstanding the foregoing, if the Contract Administrator, the General Counsel, and the General Manager determine at any time that an advertisement already accepted for display by the Advertising Contractor falls within one or more of the categories set forth in (b) above, they shall (1) in writing, specify which of the categories the advertisement falls within, (2) notify the advertiser that the MBTA has determined that the advertisement is not in conformity with its Advertising Guidelines and that the advertisement shall be promptly removed and (3) instruct the Advertising Contractor to remove the advertisement. Upon such

instruction, the Advertising Contractor shall promptly remove the advertisement, shall provide the advertiser with a copy of these Guidelines, and may, with the Contract Administrator, discuss with the advertiser one or more revisions to the advertisement, which, if undertaken, would bring the advertisement into conformity with the MBTA's Advertising Guidelines. The advertiser shall then have the option of submitting a revised advertisement for review by the MBTA. In the event that the MBTA and the advertiser do not reach agreement with regard to a revision of the advertisement, the advertiser may request that the MBTA memorialize its formal determination in the form of a final written notice of its decision, which shall then be relayed to the advertiser. The MBTA's formal determination shall be final.

#### Public Service Announcements

The MBTA will, from time to time, make unsold advertising space available for public service announcements proposed by non-profit corporations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or by federal, state or local government agencies or subdivisions thereof. Each such non-profit corporation shall provide the Advertising Contractor or the MBTA with documentation demonstrating that it currently qualifies under the above-referenced provision of the Internal Revenue Code. A public service announcement cannot contain a message that is retail or commercial in nature and shall comply with the Advertising Standards set forth in these Guidelines. A public service announcement may be required to bear the following legend if the sponsor is not readily or easily identifiable from the content or copy of the proposed advertisement: "This message is sponsored by \_\_\_\_\_".