

**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; and BEVERLY A. SCOTT,
individually and in her official capacity as Chief
Executive Officer / General Manager of the MBTA,

Defendants.

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 Defendants Massachusetts Bay Transportation Authority (“MBTA”) and Beverly A. Scott, Chief Executive Officer / General Manager of the MBTA, (hereinafter collectively referred to as “Defendants” or “MBTA”), their 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 Defendants’ restriction on Plaintiffs’ right to engage in protected speech in a public forum created by Defendants based on the content and viewpoint of Plaintiffs’ message. Defendants prohibited Plaintiffs from displaying an advertisement (hereinafter referred to as “AFDI Advertisement III”) on MBTA property based on Defendants’ assertion that Plaintiffs’ advertisement is “demeaning or disparaging” in

violation of Defendants' 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 Defendants violated their clearly established constitutional rights as set forth in this Complaint; a declaration that Defendants' 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 Defendants' 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 objectives 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.

DEFENDANTS

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.

13. At all relevant times herein, Defendant Beverly A. Scott was the Chief Executive Officer / General Manager of the MBTA. In that capacity, Defendant Scott is responsible for adopting, creating, and enforcing the policies and practices of the MBTA, including the MBTA’s Advertising Guidelines. Defendant Scott was the final decision maker responsible for rejecting AFDI Advertisement III and thus restricting Plaintiffs’ speech as set forth in this Complaint.

STATEMENT OF FACTS

14. 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.

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

16. 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.

17. 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 AFDI’s advertisements, on its advertising space.

18. Accordingly, Defendants permit, 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. As defined by the U.N. (and as referenced in the Anti-Israel Advertisement), a “refugee” is “someone who ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country.’” This definition of “refugee” is also consistent with federal law, which defines a “refugee” as someone who is unable to return to his or her national homeland “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” *See* 8 U.S.C. § 1101(a)(42).

24. Consequently, the Anti-Israel Advertisement conveys the unmistakable message that Israelis are “persecuting” Palestinians, and as a result of this persecution, are forcing the Palestinians “*outside the country of [their] nationality.*” In short, the advertisement conveys the unmistakable message that Israelis are war criminals (or violators of international law, at a minimum), thereby demeaning and disparaging Israelis, Israel as a nation, and Jews in general.

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

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

27. Pursuant to Defendants' 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.

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



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

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

31. 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.

32. The message of AFDI Advertisement I was timely when it was submitted, and it remains so today in light of the fact that the Anti-Israel Advertisement received substantial publicity, and the issues addressed by the two competing advertisements remain current. Indeed, the President of the United States made special mention of the Israel / Palestinian conflict during the recent 2014 State of the Union address.

33. 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 AFDI Advertisement I.

34. On November 4, 2013, Defendants officially rejected AFDI Advertisement I. In an email from Titan executive Scott E. Goldsmith 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 Defendants’ rejection of AFDI Advertisement I is attached to this Complaint as **Exhibit 4** and incorporated herein by reference.

35. Attached to Defendants’ rejection email was a copy of the MBTA’s Advertising Guidelines. A true and correct copy of this email attachment is attached to this Complaint as

Exhibit 5 and incorporated herein by reference.

36. As a result of Defendants' restriction on Plaintiffs' speech, Plaintiffs filed suit in this court pursuant to 42 U.S.C. § 1983, alleging violations of the First Amendment (freedom of speech) and Fourteenth Amendment (equal protection and due process). *See Am. Freedom Def. Initiative et al. v. Mass. Bay Transp. Auth.*, No. 1:13-cv-12803-NMG (D. Mass. filed Nov. 6, 2013) ("*MBTA I*").

37. *MBTA I* is currently on appeal to the United States Court of Appeals for the First Circuit following this court's denial of Plaintiffs' motion for preliminary injunction. *Am. Freedom Def. Initiative v. Mass. Bay Transp. Auth.*, No. 1:13-cv-12803-NMG, 2013 U.S. Dist. LEXIS 179729 (D. Mass. Dec. 20, 2013), *appeal docketed*, No. 14-1018 (1st Cir. Jan. 6, 2014).

38. Pending appeal, this court stayed all discovery and other pretrial deadlines in *MBTA I*.

39. After a careful review of this court's ruling in *MBTA I*, Plaintiffs submitted a new proposed advertisement to the MBTA ("*AFDI Advertisement II*"), which states, in relevant part: "In any war between the civilized man and those engaged in savage acts, support the civilized man. Defeat Violent Jihad. Support Israel." *AFDI Advertisement II* appears as follows:



40. A true and correct copy of *AFDI Advertisement II* is attached to this Complaint as **Exhibit 6** and incorporated herein by reference.

41. On January 7, 2014, Defendants accepted *AFDI Advertisement II*. In an email from Titan executive Scott E. Goldsmith to Plaintiff Geller, Mr. Goldsmith states, in relevant

part, “Pamela: Your ad has been approved by the MBTA. . . . Thank you. Scott.” A true and correct copy of this email containing Defendants’ acceptance of AFDI Advertisement II is attached to this Complaint as **Exhibit 7** and incorporated herein by reference

42. On January 8, 2014, Plaintiff Geller submitted a slightly revised version of AFDI Advertisement II to the MBTA for approval (“AFDI Advertisement III”). This advertisement states, in relevant part: “In any war between the civilized man and the savage, support the civilized man. Defeat violent jihad. Support Israel.” AFDI Advertisement III appears as follows:



43. A true and correct copy of AFDI Advertisement III is attached to this Complaint as **Exhibit 8** and incorporated herein by reference.

44. On January 17, 2014, Defendants MBTA rejected AFDI Advertisement III. In an email to Plaintiffs’ counsel, David Yerushalmi, from Titan’s Mr. Goldsmith, he writes, “David: The MBTA has formally rejected your (sic) revised ad pursuant to Article b(I) of the MBTA Advertising Standards. I have attached a copy of the Advertising Standards for your convenience. Please feel free to call me with any questions. Thank you. Scott.” The MBTA Advertising Guidelines attached to the January 17 email and referred to by Mr. Goldsmith as “Advertising Standards” are the same standards set forth in **Exhibit 5**. A true and correct copy of the January 17 email containing Defendants’ rejection of AFDI Advertisement III is attached to this Complaint as **Exhibit 9** and incorporated herein by reference.

45. That same day, Plaintiffs’ counsel emailed Mr. Goldsmith requesting a written

“Formal Determination” from Defendants pursuant to the MBTA’s Advertising Standards c(vi). A true and correct copy of this email requesting a Formal Determination of the MBTA’s rejection of AFDI Advertisement III is attached to this Complaint as **Exhibit 10** and incorporated herein by reference.

46. On January 29, 2014, Plaintiffs’ counsel received by email the written MBTA Formal Determination rejecting AFDI Advertisement III in the form of a letter from Paige Scott Reed, General Counsel, MBTA and MassDOT. Upon information and belief, this Formal Determination was approved by Defendant Scott. A true and correct copy of the MBTA Formal Determination rejecting AFDI Advertisement III is attached to this Complaint as **Exhibit 11** and incorporated herein by reference.

47. Defendants’ application of its Advertising Guidelines as a basis to reject AFDI Advertisement III is a pretext to censor Plaintiffs’ message because MBTA officials oppose Plaintiffs’ view on the Israeli / Palestinian conflict. Moreover, Defendants’ decision to restore the advertisements critical of Israel (the Anti-Israel Advertisement), but then deny AFDI Advertisement III, which supports Israel, was motivated by a discriminatory animus against those speakers who support Israel in this conflict and who believe that Islamic terrorists who murder innocent men, women, and children in Israel in the name of jihad are savages and deserve to be publicly labeled as such. Defendants’ decision to reject AFDI Advertisement III was further motivated by a discriminatory animus against Plaintiffs and the viewpoint they express about Islam in general.

48. Defendants’ rejection of AFDI Advertisement III has caused and will continue to cause irreparable harm to Plaintiffs.

49. 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)

50. Plaintiffs hereby incorporate by reference all stated paragraphs.

51. By reason of the aforementioned Speech Restriction, which includes Defendants' Advertising Guidelines, created, adopted, and enforced under color of state law, Defendants have 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.

52. Defendants' 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.

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

54. Defendants' 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 AFDI Advertisement III.

55. Defendants' 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.

56. Defendants' 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.

57. Defendants' 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.

58. As a direct and proximate result of Defendants' 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)

59. Plaintiffs hereby incorporate by reference all stated paragraphs.

60. By reason of the aforementioned Speech Restriction, which includes Defendants' Advertising Guidelines, created, adopted, and enforced under color of state law, Defendants have 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 Defendants are 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 Defendants find unacceptable.

61. Defendants' 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.

62. As a direct and proximate result of Defendants' 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)

63. Plaintiffs hereby incorporate by reference all stated paragraphs.

64. By reason of the aforementioned Speech Restriction, which includes Defendants' Advertising Guidelines, created, adopted, and enforced under color of state law, Defendants have 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.

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

66. Defendants' 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.

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

68. As a direct and proximate result of Defendants' 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 Defendants violated the First and Fourteenth Amendments to the United States Constitution as set forth in this Complaint;
- B) to preliminarily and permanently enjoin Defendants' Speech Restriction, which includes Defendants' 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

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*Application for *pro hac vice* admission pending

EXHIBIT 1



EXHIBIT 2

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

From: **Pamela Geller** <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>, Greg Wolinsky <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)

You know the ad. You've run it before. **We wish to begin ASAP** - same ad placement as the anti-Israel 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

SPOA.US

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

TITAN
titan360.com

From: Pamela Geller <pamelageller@gmail.com>
Date: Friday, November 1, 2013 4:02 PM
To: Scott Goldsmith <Scott.Goldsmith@titan360.com>
Cc: "david.yerushalmi@verizon.net" <david.yerushalmi@verizon.net>, "<rmuise@aflc.us>" <rmuise@aflc.us>, "spencercg1@yahoo.com" <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> 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> 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](tel:(212)418-1082)

scott.goldsmith@titan360.com

TITAN

titan360.com

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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, §31.¹
- (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, §31.²
- (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.

¹ 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.”³

² 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 _____".

EXHIBIT 6

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

DEFEAT VIOLENT JIHAD

☆ SUPPORT ISRAEL ☆

ATLASSHRUGS.COM

AFDL.US

JIHADWATCH.COM

EXHIBIT 7

David Yerushalmi

Subject: FW: Revised ad

From: Scott Goldsmith [<mailto:Scott.Goldsmith@titan360.com>]
Sent: Tuesday, January 07, 2014 4:19 PM
To: Pamela Geller
Cc: david.yerushalmi@verizon.net; <rmuise@aflc.us>; JihadWatchVideo .
Subject: Re: Revised ad

Pamela: Your ad has been approved by the MBTA. What size ad would you like to purchase? King or Queen size ads? Once I have the media format, I can give you a price and a contract for the 20-bus campaign. 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

TITAN
titan360.com

From: Pamela Geller <pamelageller@gmail.com>
Date: Friday, January 3, 2014 6:39 PM
To: Scott Goldsmith <Scott.Goldsmith@titan360.com>
Cc: "david.yerushalmi@verizon.net" <david.yerushalmi@verizon.net>, "<rmuise@aflc.us>" <rmuise@aflc.us>, "JihadWatchVideo ." <director@jihadwatch.org>
Subject: Revised ad

Scott, I have revised the ad in keeping with MBTA guidelines and Judge Gorton's ruling. Please submit the new artwork to the MBTA for a 20 bus run.

--

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 8

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

DEFEAT VIOLENT JIHAD
★ SUPPORT ISRAEL ★

ATLASSHRUGS.COM

AFDI.US

JIHADWATCH.COM

EXHIBIT 9

David Yerushalmi

Subject: FW: Revised ad
Attachments: MBTA - Ad guidelines .pdf

From: Scott Goldsmith [<mailto:Scott.Goldsmith@titan360.com>]
Sent: Friday, January 17, 2014 1:35 PM
To: dyerushalmi@americanfreedomlawcenter.org
Cc: 'Pamela Geller'; director@jihadwatch.org; 'Robert Muise'
Subject: Re: Revised ad

David: The MBTA has formally rejected your revised ad pursuant to Article b(l) of the MBTA Advertising Standards. I have attached a copy of the Advertising Standards for your convenience. Please feel free to call me with any questions. 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

TITAN
titan360.com

From: David Yerushalmi <dyerushalmi@americanfreedomlawcenter.org>
Organization: Law Offices of David Yerushalmi, P.C.
Reply-To: "dyerushalmi@americanfreedomlawcenter.org" <dyerushalmi@americanfreedomlawcenter.org>
Date: Wednesday, January 15, 2014 4:28 PM
To: Scott Goldsmith <Scott.Goldsmith@titan360.com>
Cc: Pamela Geller <writeatlas@aol.com>, "director@jihadwatch.org" <director@jihadwatch.org>, 'Robert Muise' <rmuise@americanfreedomlawcenter.org>
Subject: FW: Revised ad

Dear Scott: We need to get a determination by MBTA. Please update me directly on the estimated response date.

Sent from my BlackBerry® wireless handheld

David Yerushalmi*
American Freedom Law Center®
Washington, D.C., Michigan, New York, California & Arizona
*Licensed in D.C., N.Y., Cal., Ariz.
T: 855.835.2352 (toll free)
T: 646.262.0500 (direct)
F: 801.760.3901
E: dyerushalmi@americanfreedomlawcenter.org
W: www.americanfreedomlawcenter.org

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From: Pamela Geller [<mailto:pamelageller@gmail.com>]
Sent: Wednesday, January 15, 2014 3:59 PM
To: david.yerushalmi@verizon.net; <rmuise@aflc.us>; JihadWatchVideo .
Subject: Fwd: Revised ad

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

From: **Scott Goldsmith** <Scott.Goldsmith@titan360.com>
Date: Wed, Jan 8, 2014 at 12:26 PM
Subject: Re: Revised ad
To: Pamela Geller <pamelageller@gmail.com>
Cc: "david.yerushalmi@verizon.net" <david.yerushalmi@verizon.net>, "<rmuise@aflc.us>" <rmuise@aflc.us>, "JihadWatchVideo ." <director@jihadwatch.org>

Pamela: Your revised ad has been submitted to the MBTA. Attached please find the pricing for 10 and 20 queen sized ads. 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

TITAN
titan360.com

EXHIBIT 10

David Yerushalmi

From: David Yerushalmi [dyerushalmi@americanfreedomlawcenter.org]
Sent: Friday, January 17, 2014 1:48 PM
To: 'Scott Goldsmith'
Cc: 'Pamela Geller'; 'director@jihadwatch.org'; 'Robert Muisse'
Subject: RE: Revised ad

Scott: under the Advertising Guidelines c(vi), we hereby request a Formal Determination in writing. Thank you.

Sent from my BlackBerry® wireless handheld

David Yerushalmi*

American Freedom Law Center®

Washington, D.C., Michigan, New York, California & Arizona

**Licensed in D.C., N.Y., Cal., Ariz.*

T: 855.835.2352 (toll free)

T: 646.262.0500 (direct)

F: 801.760.3901

E: dyerushalmi@americanfreedomlawcenter.org

W: www.americanfreedomlawcenter.org

=====
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=====

From: Scott Goldsmith [mailto:Scott.Goldsmith@titan360.com]
Sent: Friday, January 17, 2014 1:35 PM
To: dyerushalmi@americanfreedomlawcenter.org
Cc: 'Pamela Geller'; director@jihadwatch.org; 'Robert Muisse'
Subject: Re: Revised ad

David: The MBTA has formally rejected your revised ad pursuant to Article b(I) of the MBTA Advertising Standards. I have attached a copy of the Advertising Standards for your convenience. Please feel free to call me with any questions. 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

TITAN
titan360.com

From: David Yerushalmi <dyerushalmi@americanfreedomlawcenter.org>
Organization: Law Offices of David Yerushalmi, P.C.
Reply-To: "dyerushalmi@americanfreedomlawcenter.org" <dyerushalmi@americanfreedomlawcenter.org>

EXHIBIT 11



Deval L. Patrick, Governor
Richard A. Davey, MassDOT Secretary & CEO
Beverly A. Scott, Ph.D., General Manager
and Rail & Transit Administrator



January 29, 2014

David Yerushalmi, Esq.
1901 Pennsylvania Avenue NW, Suite 201
Washington, D.C. 20006
dyerushalmi@americanfreedomlawcenter.org

VIA EMAIL AND REGULAR MAIL

Re: Final Written Notice of Determination

Dear Mr. Yerushalmi

This notice is sent in response to your email of January 17, 2014 to Scott Goldsmith of Titan Outdoor LLC ("Titan"), the MBTA's advertising contractor, requesting a Formal Determination pursuant to Section d(vi) of the MBTA's Advertising Standards.

As you know, American Freedom Defense Initiative (AFDI) submitted a proposed ad to Titan on October 26, 2013. Titan forwarded that ad to the MBTA which, pursuant to its Advertising Guidelines, determined that the proposed ad contained material that demeans or disparages an individual or group of individuals. As such, the ad did not comply with section (b)(1) of the Guidelines. The MBTA so informed AFDI.

Thereafter, AFDI filed a complaint with the Massachusetts federal district court seeking a preliminary injunction requiring the MBTA to accept the rejected ad. On December 20, 2013, the court issued its decision, rejecting AFDI's position that the MBTA acted unreasonably and denying its request.

By email dated January 3, 2014, AFDI's Pamela Geller submitted a revised ad (the "second ad"), stating that it was "in keeping with MBTA guidelines and Judge Gorton's ruling." The MBTA reviewed the second ad, and on January 7 at 4:19 PM, Mr. Goldsmith notified Ms. Geller that the MBTA had approved it. He asked her to provide specifications.

On January 8, 2014, at 12:10 AM Ms. Geller sent Mr. Goldsmith an email with a proposed "tweak" of the accepted ad (the "third ad"). Mr. Goldsmith replied that Titan was submitting the third ad to the MBTA for review.

The third ad is very similar to the rejected ad that was the subject of the preliminary injunction hearing. The third ad reverses the order of the two lines below "civilized man" and

January 29, 2014

Page 2 of 2

adds the word "violent" between "Defeat" and "Jihad." The MBTA undertook a review of the third ad and concluded that it was not in compliance with section (b)(i) of the MBTA's Advertising Standards. The MBTA's conclusion was based on the same considerations as its rejection of the first ad. On January 17, 2014, Mr. Goldsmith so informed you by email. You responded by requesting this Formal Determination.

The MBTA remains willing to display the second ad if AFDI so requests.

Sincerely,

A handwritten signature in blue ink that reads "Paige Scott Reed". The signature is written in a cursive, flowing style.

Paige Scott Reed
General Counsel, MBTA and MassDOT