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New “Savage Acts” and “Violent Jihad” Advertisement Tests “Reasonableness” of MBTA’s Rejection of Pro-Israel Message

Boston, Massachusetts (January 6, 2014) — On January 3, 2014, the American Freedom Defense Initiative (AFDI), through its executive director, Pamela Geller, proposed a new advertisement to run on Massachusetts Bay Transportation Authority (MBTA) buses. This advertisement, which states, “In any war between the civilized man and *those engaged in savage acts*, support the civilized man. Defeat *violent jihad*. Support Israel,” is in response to a recent ruling by Federal Judge Nathaniel M. Gorton, sitting in the United States District Court for the District of Massachusetts, in which the judge upheld the MBTA’s censorship of a pro-Israel advertisement as “reasonable” based on the MBTA’s conclusion that the advertisement was demeaning toward Muslims.

The prior advertisement, which is now the subject of an appeal to the U.S. Court of Appeals for the First Circuit, stated: “In any war between the civilized man and the savage, support the civilized man. Support Israel. Defeat jihad.” The MBTA rejected the advertisement because it believed that the use of the word “savage” as a noun refers to all Muslims and that “jihad,” even in the context of war, might “possibly” refer to a Muslim’s duty of introspection and self-improvement rather than violent acts of terrorism. In its ruling upholding the “reasonableness” of the MBTA’s rejection of the prior advertisement, the court concluded that the advertisement was “ambiguous in several respects” and stated:

“[L]abeling a member of a group ‘a savage’, as [the MBTA] not unreasonably believes is done by [AFDI’s] advertisement, directly debases that person’s dignity. The quote [AFDI] selected to express [its] message does not criticize ‘savage’ acts but instead contrasts the state of Israel with ‘savages’ who oppose or fight against it. When used as a noun and in contrast with ‘the civilized man’, ‘savage’ is best understood to refer to an uncivilized or barbaric person and not

merely someone who is brutal, cruel or fierce. . . . In light of the several divergent interpretations, it was plausible for the [MBTA] to conclude that the AFDI Pro-Israel Advertisement demeans or disparages Muslims or Palestinians.”

David Yerushalmi, Co-Founder and Senior Counsel of the American Freedom Law Center (AFLC), the law firm representing AFDI in its legal challenge to the MBTA’s rejection of the prior advertisement, commented: “It is sad commentary on these times that our precious First Amendment freedoms should be subject to the *ad hoc* ‘reasonableness’ of a government bureaucrat who is willfully blind to the threat of Islamic terrorism—even in a city that was victimized by such terrorists last April during the Boston Marathon bombing. In light of the court’s ruling, the MBTA will have no choice but to accept this revised advertisement, which will plainly demonstrate the absurdity of the MBTA’s position.”

Robert Muise, Co-Founder and Senior Counsel of AFLC, added: “While the MBTA claimed that it was not engaging in impermissible viewpoint discrimination when it rejected the first advertisement, if it censors this advertisement its illicit motive for censoring our clients’ speech will be exposed for all to see. In short, we expect an immediate approval by the MBTA. Otherwise, we will be back in the district court.”

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