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AFLC Files Federal Lawsuit Against D.C. Transit Authority for Refusing to Run Pro-Israel/Anti-Jihad Advertisement

Washington, D.C. (September 20, 2012) — Citing concerns about “the situations happening around the world” and the “security and safety” of its passengers, the Washington Metropolitan Area Transit Authority (WMATA) has decided to delay running a pro-Israel/anti-jihad advertisement submitted by the Freedom Defense Initiative (FDI), a human rights organization, until some unknown “future date.” As a result, the American Freedom Law Center (AFLC), a national nonprofit Judeo-Christian law firm, filed a federal civil rights lawsuit today in the United States District Court for the District of Columbia on behalf of FDI and its executive directors, Pamela Geller and Robert Spencer. The lawsuit challenges the WMATA’s unconstitutional restriction on FDI’s right to engage in protected speech in a public forum. AFLC also filed a motion for a temporary restraining order, seeking a court order to permit the advertisement to run immediately as scheduled.

The planned advertisement states, “In Any War Between the Civilized Man and the Savage, Support the Civilized Man. Support Israel. Defeat Jihad.”



Robert Muise, Co-Founder and Senior Counsel of AFLC, commented: “The WMATA does not want to display a message that it deems to be critical of Islam, critical of jihad, or supportive of Israel in light of the current ‘world events.’ However, it is precisely because of the current political situation unfolding in Egypt, Libya, and elsewhere that FDI should be permitted to express its message, and any delay amounts to government censorship of speech. Because FDI’s speech is core political speech, it should be accorded the greatest protection under the First Amendment.”

By policy and practice, the WMATA has leased its advertising space for a wide variety of commercial, noncommercial, public-service, public-issue, political, and religious advertisements. As such, the WMATA has permitted political and social commentary advertisements covering a broad spectrum of political views and ideas. For example, the WMATA leased its advertising space for a pro-Palestine advertisement, which displayed the anti-Israel message: “End U.S. military aid to Israel.”

In response to the pro-Palestine advertisement, FDI entered into a contract with CBS Outdoor – the advertising agent for WMATA – on September 6, 2012 to place the pro-Israel advertisement on four dioramas in area subways from September 24, 2012 to October 21, 2012. At the time of the contract, the advertisement was approved for display, and it satisfied all of the WMATA’s guidelines.

Nevertheless, the WMATA – presumably intimidated by the ongoing violence perpetrated by Muslims who claim to be angered by a YouTube video critical of Islam – informed Geller on September 18, 2012 through its CBS Outdoor agent that they will not run the advertisement as scheduled. Geller requested that the WMATA change its position, but the transit authority confirmed its decision, citing “world events and a concern for the security of their passengers.” Consequently, AFLC promptly filed its federal lawsuit and a request for a temporary restraining order so as to allow the advertisements to run during the period of time agreed upon by the parties. The lawsuit argues that the WMATA’s speech restriction is censoring FDI’s core political speech on the basis of its content and viewpoint because the restriction is based on the perceived negative response that FDI’s message might receive from certain viewers, most likely Muslim viewers who might engage in violence as a result.

AFLC Co-Founder and Senior Counsel David Yerushalmi commented, “Under the First Amendment, speech cannot be punished or banned simply because it might offend a hostile mob. The WMATA’s speech restriction is based on the perceived negative response that FDI’s message

might receive from certain viewers based on its content and viewpoint. However, a viewer's reaction to speech is not a content-neutral basis for regulation. This is known as a 'heckler's veto,' which is impermissible under the First Amendment."

The present case is similar to AFLC's recent legal challenge in New York, where the Metropolitan Transit Authority (MTA) had initially refused to run the same advertisement in September 2011 because it claimed that it violated the MTA's policy against displaying "images or information that demean an individual or group of individuals on account of race, color, religion, national origin, ancestry, gender, age, disability or sexual orientation." As a result of the MTA's refusal to run the advertisement, AFLC filed a civil rights lawsuit in the U.S. District Court for the Southern District of New York, challenging the speech restriction. On August 29, 2012, Federal Judge Paul A. Engelmayer issued a final ruling striking down the MTA's "no-demeaning speech" restriction and ordering the MTA to display the bus advertisement. As a result of the court's order, those advertisements are currently scheduled to run in New York City beginning September 24, 2012.

The *American Freedom Law Center* is a Judeo-Christian law firm that fights for faith and freedom. It accomplishes its mission through litigation, public policy initiatives, and related activities. It does not charge for its services. The Law Center is supported by contributions from individuals, corporations, and foundations, and is recognized by the IRS as a section 501(c)(3) organization. Visit us at www.americanfreedomlawcenter.org.

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