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AFLC Victory: New York Federal Court Strikes Down “Demeaning” Speech Restriction; MTA Must Run Advertisement Opposing Jihad and Supporting Israel

New York, New York (July 20, 2012) — Earlier today, Federal Judge Paul A. Engelmayer, sitting in the U.S. District Court for the Southern District of New York, ruled that the New York Metropolitan Transportation Authority’s (MTA) restriction on “demeaning” speech was unconstitutional. The MTA had refused to run an anti-jihad advertisement that, according to the MTA, referred to Israel’s enemies as savages who engaged in jihad. The MTA flagged the advertisement that was set to run on the exterior of its buses, claiming 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.”

The court struck down the MTA’s speech restriction as a violation of the First Amendment because the MTA, as a governmental agency, was permitting politically controversial speech, even demeaning speech, but not speech that demeaned specific groups or individuals that fit within the MTA’s protected classes (in this case, Muslims embracing savage jihad).

This ruling came as a result of a lawsuit filed by the American Freedom Law Center (AFLC) on behalf of the American Freedom Defense Initiative (AFDI), Pamela Geller, and Robert Spencer, challenging the speech restriction and requesting that the court strike it down and order the MTA to run the advertisement.

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



This advertisement was offered as a direct response to an anti-Israel advertisement that was displayed on MTA property by a pro-Palestine group. The MTA approved the anti-Israel advertisement, which portrayed the Palestinians as being on the side of “peace and justice.” However, the MTA rejected AFDI’s advertisement, claiming that it violated its “demeaning” speech restriction.

Robert Muise, Co-Founder and Senior Counsel of AFLC, commented: “The court’s ruling is exactly right. As a governmental agency that is subject to the requirements of the Constitution, the MTA cannot allow speech on the controversial subject of the Palestinian/Israeli conflict and then pick and choose which messages are acceptable and which are not based on the content of the message or the viewpoint of the speaker. By doing so, the MTA is violating a fundamental principle of the First Amendment.”

As argued in the lawsuit, the MTA is mandated as a governmental agency to comply with federal and state laws, including the First and Fourteenth Amendments to the United States Constitution, which prohibit the government from making content- and viewpoint-based restrictions on speech.

David Yerushalmi, Co-Founder and Senior Counsel of AFLC, noted: “The court found that our client’s advertisement attacking savages who engage in jihad against Israel could be understood to be demeaning to those Muslims who support violent jihad against Israel. But the response to that is – so what? And that is effectively what the court said. The First Amendment is not designed to protect just polite, politically correct speech that offends no one. The First Amendment was specifically designed to protect those who dare challenge the political orthodoxy by quite rationally linking Islam’s sharia-mandated jihad against the ‘infidel’ Christians and Jews who dare occupy any part of the world that Islam claims as its own.”

Yerushalmi added, “Indeed, we have just recently learned how even the FBI and the military are afraid to investigate connections between Islam's jihad and violence, and it was this fear and politically correct censorship by FBI agents that permitted Major Hasan to carry-on a dialogue about jihad against infidels with the known terrorist Anwar al-Awlaki until Hasan ultimately acted on his sharia-mandated jihad and murdered 13 Americans and wounded 29 others.”

Prior to the court’s ruling, there was an evidentiary hearing where Yerushalmi conducted a two-hour cross-examination of the MTA official in charge of advertisements and Muise presented oral argument, explaining why the speech restriction violated the First Amendment. As Muise responded at the time, “There is no question that Judge Engelmayer considered this an important case with serious constitutional ramifications for free speech not only in New York, but across the country.” Today, Muise was quick to add: “This opinion is extremely well-written, well-considered and will go down as an important decision protecting Free Speech on government property.”

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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