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For Immediate Release: August 30, 2012

Federal Judge Issues Final Ruling Striking Down Speech Restriction and Ordering the New York MTA to Display Pro-Israel/Anti-Jihad Bus Advertisement

New York, New York (August 30, 2012) — Yesterday, Federal Judge Paul A. Engelmayer, sitting in the U.S. District Court for the Southern District of New York, issued a final ruling, striking down the Metropolitan Transportation Authority of New York’s (MTA) “no-demeaning speech” restriction and ordering the MTA to display a pro-Israel/anti-jihad bus advertisement submitted by the American Freedom Defense Initiative (AFDI). The federal judge’s order converted an earlier preliminary injunction into a permanent injunction, and it declared that the MTA speech regulation violated the First Amendment right to free speech. The judge also awarded AFDI nominal damages. The ruling was an unambiguous victory for AFDI, which won on every issue presented to the court.

In September 2011, the MTA had refused to run the advertisement 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, the American Freedom Law Center (AFLC), a national non-profit Judeo-Christian law firm, filed a civil rights lawsuit on behalf of the bus advertisement’s sponsors – AFDI, Pamela Geller, and Robert Spencer – challenging the speech restriction. On July 20, 2012, the court issued a preliminary injunction, ruling that the MTA’s speech restriction violated the First Amendment. However, the court granted the MTA 30 days to attempt to cure the violation by amending its “no-demeaning” regulation.

The ruling was a stinging rebuke to the MTA and its General Counsel, James Henly, who personally appeared in court yesterday, not only because the MTA had asked the judge not to

enter a final judgment until after the appellate court ruled on the preliminary injunction, but also because it had asked the judge to extend his stay of the injunction's enforcement until September 27, 2012 – the date of the MTA's next scheduled Board meeting – to allow the MTA additional time to decide what to do. While the judge granted the MTA an additional two-week stay until September 12 to appeal his rulings, the judge noted that the MTA had not made out a case that it deserves such a stay beyond that period because the MTA's General Counsel informed the court that the MTA Board had not met even once to discuss the judge's previous warnings that he would not extend the stay. The judge's frustration with the MTA's cavalier attitude about both the ongoing First Amendment violation and its failure to properly protect the "public interest" was evident in the court's opinion and order issued yesterday. The judge went so far as to order the MTA General Counsel to personally provide the MTA Board with the court's ruling "so as to ensure that the Board is fully informed of the potential consequences of MTA's decision" to do nothing, something the General Counsel would have had a duty to do without the judge's order.

David Yerushalmi, Co-Founder and Senior Counsel of AFLC, commented: "Judge Engelmayer deserves praise for his ruling, not only because he authored a 14-page opinion on the very day of the hearing, but also because he has consistently and in the highest traditions of his judicial office applied the law to the facts and preserved for all New Yorkers their liberty to speak on political issues, even when the government, in this case the MTA, wanted to suppress our clients' speech because it violates the PC-code that Israel may be publicly attacked but not the savages who murder innocent Jewish women and children."

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 “no-demeaning” speech restriction.

Robert Muise, Co-Founder and Senior Counsel of AFLC, commented: “The judge’s ruling illustrates why the American Freedom Law Center represents clients like AFDI, Pamela Geller, and Robert Spencer. There is an expression, ‘speaking truth to power.’ This is the intrinsic and extrinsic value of our Constitution, and indeed it is the bedrock of our unique and exceptional political system. Our clients spoke truth to power, and the MTA thought its power was unbridled. Even after the judge granted the MTA’s request for a 30-day stay to ‘cure’ its unconstitutional speech restriction, the MTA did nothing and walked into court yesterday asking the judge to allow it to continue to do nothing for some undetermined period of time while it continued to violate our clients’ free speech rights. Judge Engelmayer responded, in effect, ‘Enough is enough. The Constitution trumps your state power.’ That is what makes America what it is.”

The judge and the parties agreed that the court would entertain AFDI’s request for attorney’s fees, which the MTA must pay under the relevant federal statute, after the appeal process concludes.

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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