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January 8, 2013

Fernando Ferrer
Acting Chairman and Vice-Chair
Metropolitan Transit Authority
347 Madison Ave.
New York, NY 10017

Dear Chairman Ferrer:

A handwritten signature in black ink that reads "Freddy" followed by a horizontal line.

I write to express my grave concern regarding the Metropolitan Transit Authority's (MTA) decision to permit the display of patently offensive advertisements by the American Freedom Defense Initiative (AFDI) that depict the Twin Towers burning alongside verses from the Quran. These ads are not only offensive, they continue AFDI's ongoing efforts to create a hostile environment against Muslim Americans in New York, wherein violence against Muslim Americans is no longer unthinkable, it is probable.¹ I ask that the ads be removed and that the MTA adopt a viewpoint-neutral advertisement policy.

I represent the largest number of Pakistani-Americans of any elected official in the nation, the overwhelming majority of whom are Muslim. These incitements to violence are of grave concern to my constituents and me. Indeed, this past November elderly Muslim men in New York City were savagely attacked in two separate incidents.² In another tragedy, a woman shoved a man who appeared to be Muslim off a subway

¹ See Anti-Defamation League description of AFDI founder Pamela Geller, Dec. 19, 2012, *available at*, <http://www.adl.org/main/Extremism/pamela-geller-stop-islamization-of-america.htm>; See report by Center for American Progress, *Fear Inc., The Roots of the Islamophobia Network in America*, Wajahat Ali, Eli Clifton, Matthew Duss, Lee Fang, Scott Keyes, and Faiz Shakir, *available at*, <http://www.americanprogress.org/wp-content/uploads/issues/2011/08/pdf/islamophobia.pdf>.

² *Hate Crime Suspected in Stabbing at Queens Mosque*, CBS News, Nov. 18, 2012, *available at*, <http://newyork.cbslocal.com/2012/11/18/hate-crime-suspected-in-stabbing-outside-queens-mosque/>; *Queens Man, 70, Beaten Asked if Hindu or Muslim*, NY Daily News, Nov. 30, 2012, *available at*, <http://www.nydailynews.com/news/crime/queens-man-70-beaten-apparent-hate-attack-article-1.1210944>.

platform to his death.³ The alleged perpetrator declared, “I pushed a Muslim off the train tracks because I hate Hindus and Muslims ever since 2001 when they put down the twin towers...”⁴ The MTA should not serve as platform for AFDI’s violence inciting advertisements. I strongly urge you to use your legal authority to remove these advertisements from the MTA’s property.

The MTA has the legal authority to choose which advertisements it displays on its properties.⁵ Although courts have placed some limitations upon the MTA’s authority to reject offensive advertisements,⁶ the MTA’s underlying authority to bar incitements to violence from its property is unimpaired.⁷ Thus, the MTA has the power to reject or remove advertisements inciting violence from its property, including the ads sponsored by AFDI.⁸ In fact, the MTA may reject or remove incitements to violence from the internal space on buses and subway cars, as well as the “stairs, escalators, elevators, and numerous passageways leading to narrow subway platforms.”⁹

I commend the MTA’s decision to adopt new rules after the *AFDI* decision that prohibit ads endangering public safety. Now I call upon the MTA to adopt a viewpoint-neutral ad policy akin to the policies adopted by the Massachusetts Bay Transportation Authority (MBTA)¹⁰ and San Francisco’s Bay Area Rapid Transit (BART).¹¹ Such a policy would

³ *Woman is Charged with Murder as a Hate Crime in a Fatal Subway Push*, Marc Santora, NY Times, Dec. 29, 2012, available at, http://www.nytimes.com/2012/12/30/nyregion/woman-is-held-in-death-of-man-pushed-onto-subway-tracks-in-queens.html?_r=0.

⁴ *Id.*

⁵ See *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974) (permitting a municipal transit system to develop and determine the type of advertising displayed on its property).

⁶ The primary encumbrance to this authority falls upon the ability to restrict content-based advertisements in areas that the courts conclude are a public forum for First Amendment purposes. Yet even in these spaces ads may be rejected if the MTA’s rationale overcomes a strict scrutiny analysis, which it could based upon a viewpoint-neutral policy against demeaning or disparaging advertisements.

Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37 (1983) (requiring content-based restrictions in a designated public forum to serve a compelling state interest and be narrowly drawn to achieve that purpose).

⁷ *New York Magazine v. Metropolitan Transit Authority*, 136 F.3d 123 (2d Cir. 1998); *American Freedom Defense Initiative v. Metropolitan Transit Authority*, No.11 Civ. 6774, 2012 WL 2958178, (S.D.N.Y. July 20, 2012).

⁸ *People v. Schrader*, 162 Misc. 2d 789,798, 617 N.Y.S.2d 429, 437 (1994) (concluding that most components of the New York City Transit system whose primary modality is to provide transportation to individuals who pay a fare is a nonpublic forum).

⁹ *Id.*

¹⁰ *Ridley v. Massachusetts Bay Transp. Authority*, 390 F.3d 65, 75 (1st Cir. 2004) (quoting the MBTA’s viewpoint-neutral policy against demeaning or disparaging advertisements;

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.)

¹¹ BART’s viewpoint-neutral advertising policy standards, available at, www.bart.gov/docs/adpolicy.pdf.

be a major step in protecting public safety in New York by permitting courts to apply a more deferential analysis to the MTA's ad selection.¹²

I thank you for your commitment to the safety and well-being of the millions who ride the MTA's buses, subways, and trains daily. If you have any questions, please do not hesitate to contact me at 518-455-2580.

Yours in Partnership,



KEVIN PARKER

cc: Thomas Prendergast
Muneer Awad
Naji Almontaser

¹² *Ridley*, 390 F.3d at 91 (1st Cir. 2004) (citing then-Professor Elena Kagan on the proposition that the issue in *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) may have been resolved if the City did not provide protected status to specific groups).