



November 18, 2005

## **WLF FILES POST-TRIAL BRIEF SUPPORTING NEW YORK CITY SUBWAY BAG INSPECTION PROGRAM TO DETER TERRORIST ATTACKS**

*(MacWade v. Kelly)*

At the request of the federal judge hearing the case, the Washington Legal Foundation (WLF) filed a post-trial brief today in the United States District Court for the Southern District of New York in Manhattan on behalf of itself and a group of prominent federal, state, and local elected officials, organizations, and individuals, including **U.S. Representative Peter T. King** of New York (Chairman of the Committee on Homeland Security) and **Families of September 11, Inc.**, supporting New York City's subway bag inspection program. The security program, implemented shortly after the London terrorist subway bombings this summer, is designed to detect and deter would-be terrorists who would bring explosive devices aboard the subway system to kill or injure innocent passengers. This brief was a follow-up to WLF's pre-trial brief filed two weeks ago. Closing arguments in the case will be made on December 2, 2005.

The lawsuit was filed by the New York Civil Liberties Union (NYCLU) earlier this summer against Raymond Kelly, Commissioner of the New York City Police Department (NYPD), and the City of New York, challenging the random inspection program on constitutional grounds. On October 26, 2005, WLF filed a 25-page pre-trial brief with numerous exhibits with the court. WLF argued that the inspection program clearly satisfies constitutional standards that balance the strong governmental interest in deterring serious threats to public safety with the minimally intrusive aspects of the searches that are conducted by NYPD. WLF's brief recounted numerous incidents worldwide where urban mass transit has become an attractive target for terrorists. Under the inspection program, NYPD officers are assigned to some of the 468 subway stations in New York which carry approximately 4.5 million passengers each weekday. Passengers carrying backpacks or cases are randomly requested to allow a brief search of their bag lasting a few seconds and may even refuse and exit the subway system.

At the start of the two-day trial on October 31, the NYCLU attorney vigorously objected to WLF's participation in the case. Not only did the Court rebuff the attorney, but in a rare move, federal Judge Richard Berman subsequently issued an order on November 3, 2005, expressly requesting that WLF file a post-hearing brief to supplement its original brief. In its second brief, WLF cited to specific testimony from the various expert witnesses during the two-day hearing to bolster its original arguments that the bag inspection program serves governmental interests in protecting the safety of subway riders and is not an unconstitutional search.

"We're certainly pleased and honored that Judge Berman so valued our pre-trial brief that he requested we file another one after the hearing," said Paul Kamenar, WLF's Senior Executive Counsel upon the filing of the brief. "We're hopeful that the court will reject the NYCLU's legal assault on reasonable measures taken to protect the safety of innocent passengers who use New York City's subway system," Kamenar added.

WLF's organizational clients include **Families of September 11, Inc.**, (FOS11) a nonprofit organization founded in October 2001 by families of those who died in the September 11 terrorist attacks. Members include survivors, responders, and others who support FOS11's mission to champion policies that prevent, protect against, and respond to terrorist attacks. The **Allied Educational Foundation**, a nonprofit foundation based in New Jersey that has appeared with WLF in other security cases, is also a WLF client.

WLF's federal legislator clients include **U.S. Representative Peter T. King** who represents New York's 3d Congressional District, including parts of Nassau and Suffolk Counties, and is Chairman of the House Committee on Homeland Security, and **U.S. Representative Ginny Brown-Waite**, who represents Florida's 5th Congressional District and is a member of the Homeland Security Committee.

WLF's New York State legislator clients include **New York Senator Martin J. Golden**, a former New York City policeman who represents the 22d Senate District in Brooklyn and is a member of the New York Senate Homeland Security Committee; **New York Assemblyman Vincent M. Ignizio** who represents the 62d Assembly District which includes the South Shore of Staten Island; and **New York Assemblyman Matthew Mirones** who represents the 60th Assembly District in Staten Island and Brooklyn and is a member of the Assembly's Transportation Committee, and whose constituents regularly use the New York subway system.

WLF's New York City legislator client is **New York City Council Member James S. Oddo**, Minority Leader of the City Council who represents the City's 50th District encompassing Staten Island and Brooklyn, whose father worked for the New York City Transit Authority and whose two brothers worked as an NYPD Officer and FDNY lieutenant. WLF also represents **Stephen M. Flatow** of New Jersey whose daughter, Alisa Flatow, a 20-year old Brandeis University student, was killed in 1995 by the Palestinian Islamic Jihad in a bus bombing while studying abroad in Israel.

WLF's briefs were drafted with the *pro bono* assistance of Andrew T. Frankel, partner in the New York office of Simpson Thacher & Bartlett LLP, and associates Bryce L. Friedman and Seth M. Kruglak.

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For further information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302. WLF's briefs are available on its website at [www.wlf.org](http://www.wlf.org).