

Statement Before the Transportation Committee of the City of New York

January 27, 1994

The Catholic League for Religious and Civil Rights, the nation's largest Catholic civil rights organization, is grateful to be given the opportunity to testify on the controversy over MTA ads.

Last fall the Catholic League protested the offensive VH-1 ad that pictured pop-singer Madonna alongside of our Blessed Lady and infant Jesus; the inscription between the two photos read, "The Difference Between You and Your Parents." We were delighted that immediately following our protest, the ad was pulled. We also appreciate the apology that VH-1 issued at the time.

We hasten to add, however, that unless a change in policy is forthcoming from the Metropolitan Transportation Authority, ads like the Madonna poster will continue to be accepted. Everyone here has seen ads from Hot 97, the Gay Men's Health Crisis and Calvin Klein that are vulgar, offensive and downright degrading. That there are always some who claim not to be offended is without significance. Morality is a social construct, and as such, it is not reducible to individual preferences.

Make no mistake about it, we at the Catholic League fully support the First Amendment rights of all Americans. But support for the First Amendment is not inconsistent with the need for government to balance free speech rights with its proprietary interest in upholding the moral order. There is absolutely nothing in case law, and certainly nothing in the original intent of the First Amendment, that demands impotence

on the part of the MTA. It is not political speech that is the gravamen of our concerns, it is commercial speech.

The courts have made clear that commercial speech does not enjoy the same level of protection afforded political speech. Indeed the MTA's decision not to run tobacco ads provides evidence that this is hardly news to MTA officials. Now if the MTA has shown that it has both the right and the willingness to reject tobacco ads, surely it can craft criteria that address the concerns of the Catholic League.

The MTA's hand is also strengthened because of the "captive audience" nature of the ads . As every New Yorker will concede, riding buses and subways leaves little opportunity to avoid seeing MTA ads. Children, to name one obvious segment of the population, cannot easily choose not to be offended by indecent and arguably obscene ads. It is not a persuasive democratic remedy to say that people can "avert their eyes," not when the ads are so ubiquitous. Furthermore, if subways are considered a captive audience for the purpose of evaluating the context in which begging takes place, then surely the MTA can invoke the captive audience rationale when it makes determinations on ad selection.

No one, including the court in its 1984 *Penthouse* decision, ever put a straightjacket on the MTA. Serving the common good is something all public officials should be expected to perform. It is not easy to understand how this verity can be actualized when the MTA displays more concern for the contrived rights of individuals than it does the real interests of the public weal.

The Catholic League is willing to work with members of this committee in developing criteria that would balance First Amendment rights with the legitimate governmental interest in protecting the moral order.

Thank you for your consideration.

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