

Statement Before the Transportation Committee of the City of New York

September 11, 1995

The Catholic League for Religious and Civil Rights, the nation's largest Catholic civil rights organization, is grateful for the opportunity to testify on the need for a revised MTA policy on advertisements. The Catholic League is proud of its track record in opposing offensive ads placed by the MTA. In September 1993, we ignited a storm of protest aimed at the VH-1 "Madonna" ad. This ad, which was displayed on buses and phone booths throughout the city, featured a picture of the pop star Madonna on one side and a picture of Our Blessed Lady and Infant Jesus on the other; the inscription "The Difference Between You and Your Parents" was placed squarely in the middle. As a result of the Catholic League's protest, VH-1 pulled the ads and issued an apology.

In August 1995, the Catholic League joined with Councilman Noach Dear in calling for a boycott of Calvin Klein in response to the company's "kiddie porn" jeans ads, some of which were placed by the MTA. As with the "Madonna" ad, the Catholic League was successful in getting the offending advertiser to withdraw the ads.

The Catholic League is pleased that in both instances it was able to mobilize sufficient public pressure that it proved victorious in the end. But it is not pleased with the MTA's intransigence on this matter: what we need is an ad policy that is reasonable and comprehensive. The proposed MTA policy that we are considering has the merit of being reasonable but falls short of being comprehensive.

The proposed policy seeks to protect minors from ads deemed

harmful. The definition of “harmful to minors” is in accord with the language of those U.S. Supreme Court decisions that have governed the obscenity rulings for the past four decades and is thus suitable for inclusion in the MTA policy. Determinations of what constitutes “harm to minors” might still be objected to on the grounds that such judgments are inevitably subjective, but much the same could be said about judgments governing sexual harassment, yet few seem prepared to make them. In short, the reality of making tough decisions is hardly a reason for not making them at all.

It is well known that commercial speech does not enjoy the same First Amendment protections as political discourse. As such, the MTA is not tied to a legal straightjacket, and we say this knowing that the MTA lost in 1984 in a suit brought by *Penthouse*. It is not certain what would have happened had that case been brought before the U.S. Supreme Court, but in light of the many cities that have successfully adopted restrictive ad policies since that time, it is not likely that the City of New York would lose today. And in any event, that loss did not stop the MTA from adopting a policy that bans the advertisement of cigarettes.

If the MTA has the right to ban some ads, it seems incongruous to maintain that it doesn't have the right to ban other ads as well. According to MTA spokesman Tito Davila, the ban on cigarette advertisement was passed because the MTA considers cigarettes a “health hazard.” Indeed they are, and that is why the MTA was acting responsibly by banning cigarette advertisement. But why is it that ads that are patently offensive to reasonable persons not considered a “social hazard”? Are not sexually explicit ads harmful to minors (if not to others as well), especially when the ads are thrust upon young people in the manner of a captive audience? And are not ads that appeal to the most debased and prurient appetites worthy of the same degree of public policing as cigarette advertisements?

The proposed MTA policy, while a dramatic improvement over current policy, does not go far enough. The Catholic League would like to see the MTA bar any ad that defames any race, ethnic group or religion. To give one example, it is simply indefensible for a government agency to make a profit off of Catholic bashing. Those who think otherwise ought to defend their case in public. Our society already suffers from too much strife and incivility without government agencies adding to the problem by acceding to the demands of bigots.

The Catholic League would like to recommend that the MTA review the ad policies that currently govern other municipalities. Washington, D.C., for example, has been able to establish restrictive transportation ad policies that do not contravene the First Amendment. No doubt the New York City Council could do likewise.

On behalf of the Catholic League, I would like to thank the City Council for the opportunity to pre- sent our views. We stand ready to work with you in any capacity you request.

-William A. Donohue, Ph.D. President