

**FOR IMMEDIATE RELEASE****April 5, 2006****APPEALS COURT URGED TO UPHOLD
NYC SUBWAY BAG INSPECTION PROGRAM
TO DETER TERRORIST ATTACKS***(MacWade v. Kelly)*

The Washington Legal Foundation (WLF) filed a brief yesterday in the United States Court of Appeals for the Second Circuit in New York on behalf of itself and a group of federal, state, and local legislators and organizations seeking to uphold a district court ruling last December that rejected a constitutional challenge by the New York Civil Liberties Union to New York City's subway bag inspection program designed to detect and deter terrorist attacks. The security program, implemented shortly after the London terrorist subway bombings last 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. Passengers who enter the subway system are asked on a random basis to open their backpacks or other containers for a brief inspection by police officers.

WLF's organizational clients include **Families of September 11, Inc.**, (FOS11) a nonprofit organization founded in October 2001 by the families of those died in the September 11 terrorist attacks, and the **Allied Educational Foundation**, a nonprofit foundation based in New Jersey that has appeared with WLF in other national security cases. WLF's federal legislator clients include **U.S. Representative Peter T. King** of New York who is Chairman of the House Committee on Homeland Security, and **U.S. Representative Ginny Brown-Waite**, of Florida who 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 New York City's 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. Finally, WLF represents **Stephen M. Flatow** of New Jersey. In 1995, his daughter, Alisa Flatow, then a 20-year old Brandeis University student, was killed by the Palestinian Islamic Jihad in a bus bombing while studying in Israel. In 1996, Congress enacted the so-called "Flatow Amendment" to allow victims of torture or terrorist activity to sue countries or groups responsible for the torture.

In the district court proceedings last year, WLF filed two briefs in the case, the second one following the two-day trial that began on October 31, 2005, at the specific request of the presiding judge and over the objections of the NYCLU. In its recently filed brief in the court of appeals, WLF reiterated many of the arguments that the district court agreed with in its 41-page ruling last December. In particular, WLF argued that the inspection program clearly satisfies constitutional standards under the so-called "special needs doctrine" 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 also recounted numerous incidents worldwide where urban mass transit has become an attractive target for terrorists. WLF further noted that bags are subject to inspection at airports and government and private office buildings, *including the New York Civil Liberties Union's office*.

"We're confident that the court of appeals will uphold New York City's subway bag inspection program as a reasonable and constitutional measure to detect and deter terrorist activity," said Paul Kamenar, WLF's Senior Executive Counsel. "The NYCLU, which claims that their clients are 'extremely anxious' at just the thought that their bags *might* be subject to a request for a brief inspection, should consider the absolute horror suffered by the innocent victims on London's subways last summer, not to mention the terrorist attacks of September 11, 2001," Kamenar said. Oral argument in the case is expected sometime next month, with a ruling later this summer or fall.

WLF's brief was drafted with the *pro bono* assistance of Andrew T. Frankel, partner in the New York office of Simpson Thacher & Bartlett LLP, along with partner Bryce L. Friedman, and associate Seth M. Kruglak. WLF has been a strong advocate in the courts over the last 29 years supporting a strong national security and defense, and effective law enforcement measures that satisfy constitutional requirements.

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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 along with the district court's decision.