



For Immediate Release

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**WLF URGES COURT TO UPHOLD
NEW YORK SUBWAY BAG INSPECTION
PROGRAM TO DETER TERRORIST ATTACKS**
(MacWade v. Kelly)

The Washington Legal Foundation (WLF) filed a brief late 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.

A three-day trial in the case is scheduled to begin at noon on October 31, 2005, before federal judge Richard Berman in a lawsuit filed earlier this summer by the New York Civil Liberties Union (NYCLU) against Raymond Kelly, Commissioner of the New York City Police Department (NYPD), and the City of New York, that challenges the random inspection program on constitutional grounds. The original hearing date had been set for October 18, but was postponed upon the request of the NYCLU shortly after the city officials received information on October 6, that the NYC subways had been specifically targeted by terrorists.

In its 25-page brief, 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 carries 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.

The NYCLU does not argue that there is racial profiling of any kind, but claim that the police need individualized suspicion before they can inspect a bag, even if the passenger is free to refuse and leave the station. "We're confident the court will reject the NYCLU's unwarranted attack on this anti-terrorism measure which enjoys the strong support of New York City subway riders," said Paul Kamenar, WLF's Senior Executive Counsel upon the

filing of the brief. "The NYCLU's clients who claim they are 'extremely anxious' at just the thought that their bag *might* be subject to inspection should consider the absolute horror suffered by those who were innocent victims on London's subways this summer," Kamenar added.

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

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. Finally, WLF represents **Stephen M. Flatow** of New Jersey. In 1996, 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.

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, and associates Bryce L. Friedman and Seth M. Kruglak. WLF has been a strong advocate in the courts over the last 28 years supporting a strong national security and defense, and effective law enforcement measures that satisfy constitutional requirements.

For further information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302. WLF's brief is available on its website at <http://www.wlf.org>.