

Transit Advertising Policy Prohibition on “Disparaging” Ads Ruled Unconstitutional

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A county’s advertising policy for bus exteriors has been ruled partially unconstitutional due to a prohibition on disparaging material. This Ninth Circuit Court of Appeals ruling does not impact transit advertising policies that limit eligibility to commercial advertising and do not discriminate based on viewpoint.

In *American Freedom Defense Initiative v. King County*, the Ninth Circuit considered a First Amendment challenge to a county’s transit advertising policy. Unlike the policies of many public transit operators, this policy did not limit eligibility to commercial advertising. Instead, the policy allowed all ads that did not contain certain types of content including false statements, disparaging material, and content likely to result in disruption of the transit system. A nonprofit organization challenged these three eligibility restrictions after the county rejected its two proposed ads concerning global terrorism. The rejected ads were modeled on a State Department ad that had been displayed on the county’s buses for nearly three weeks.

The Ninth Circuit ruled that one provision of the policy, the ban on disparaging content, violated First Amendment free speech rights. The court reasoned that rejecting an ad solely because it is offensive to an individual or group amounts to impermissible viewpoint discrimination. The court upheld the other provisions, although it did conclude that the county unreasonably applied the disruption standard to the second proposed ad. The decision serves as a reminder that government may not favor or disfavor speech based on viewpoint.

For more information on the *American Freedom Defense Initiative v. King County* case or any First Amendment matter, please contact **Terence Boga** or any of the members of the Firm’s **Public Law Department**.

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