

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN FREEDOM DEFENSE INITIATIVE et al.,	:	
	:	
Plaintiffs,	:	11 Civ. 6774 (PAE)
	:	
-v-	:	<u>ORDER</u>
	:	
METROPOLITAN TRANSIT AUTHORITY et al.,	:	
	:	
Defendants.	:	
	:	
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PAUL A. ENGELMAYER, District Judge:

The Court has received a letter, dated August 6, 2012, from the defendants, asking that the Court’s order invalidating MTA’s no-demeaning standard be stayed pending appeal or, alternatively, pending MTA’s Board meeting, scheduled for Thursday, September 27, 2012.

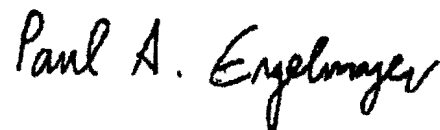
The stay that is currently in place—which lasts for 30 days after the Court’s July 20, 2012 ruling—expires on August 19, 2012. A conference in this case is presently scheduled for Wednesday, August 29, 2012, at 11:00 a.m. The Court hereby extends the stay through and including August 29, 2012, to permit the Court to use the upcoming conference to discuss with counsel MTA’s request for an extended stay. The Court invites plaintiffs to submit a letter, before the conference, setting forth their views as to this request. Such a letter is due Thursday, August 16, 2012.

The Court’s present view is that a stay pending appeal is not merited, for two reasons. First, the Court does not believe that, as long as the no-demeaning standard continues to facially discriminate based on content, including within the category of political speech, MTA can credibly claim a substantial possibility of success on appeal. *See Hirschfield v. Bd. of Elections*

in City of N.Y., 984 F.2d 35, 39 (2d Cir. 1993) (in deciding propriety of stay, courts consider, *inter alia*, whether party requesting stay can demonstrate a substantial possibility of success on appeal). Second, a protracted stay prolongs the First Amendment injury visited on plaintiffs. *See N.Y. Magazine v. Metro. Transp. Auth.*, 136 F.3d 123, 127 (2d Cir. 1998) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”) (internal quotation marks and citations omitted).

The Court is open to considering a more limited extension of the current stay to permit MTA to consider alternative regulations. However, the Court’s present view is that if MTA’s Board is seeking a stay to permit such consideration, it is not reasonable for the Board to propose to wait 69 days after the Court’s ruling (*i.e.*, September 27) to meet to address this subject. That is particularly so given that the Court’s questions and observations at the April 3, 2012 hearing in this case should have put MTA amply on notice that its current regulation was potentially deficient, including on the ground that it was impermissibly content-based; and given that the Court specifically asked MTA at that hearing how much time it would need to consider its options in the event the Court ruled against it, and MTA responded by proposing, at the outside, 30 days. Hr’g Tr. 123, Apr. 3, 2012. The Court encourages MTA, in advance of the August 29, 2012 conference, to expedite substantially its Board meeting on this subject.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: August 6, 2012
New York, New York