

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SEATTLE MIDEAST AWARENESS  
CAMPAIGN, a Washington non-profit  
corporation,

Plaintiff,

vs.

KING COUNTY, a municipal corporation,

Defendant.

No. 2:11-cv-00094-RAJ

DECLARATION OF DOW  
CONSTANTINE IN SUPPORT OF  
KING COUNTY'S BRIEF IN  
OPPOSITION TO SEATTLE  
MIDEAST AWARENESS  
CAMPAIGN'S MOTION FOR  
PRELIMINARY INJUNCTION

Noted for February 11, 2011

I, Dow Constantine, declare that:

1. I am the King County Executive, am competent to testify and base this declaration on personal knowledge.

2. King County is located on Puget Sound in Washington State, and covers about 2,134 square miles. It is nearly twice as large as the average county in the United States. With more than 1.9 million people, it ranks as the 14th most populous among the nation's 3,068

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KING COUNTY'S BRIEF IN OPPOSITION TO SEATTLE  
MIDEAST AWARENESS CAMPAIGN'S MOTION FOR  
PRELIMINARY INJUNCTION - 1 (11-00094 RAJ)

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1 counties. King County government provides regional services to all residents of the county,  
2 including people who live in cities. These include the superior and district courts and related  
3 legal services, public health services, the county jail system, records and elections, property tax  
4 appraisals and regional parks and facilities, including the King County International Airport  
5 (Boeing Field). With the voter-approved merger of Metro and King County in 1992, county  
6 government also assumed the responsibility for the Metro transit system and sewage disposal.

7       3. The King County Executive is the elected executive officer of King County  
8 government and has all the executive powers of the county that are not expressly vested in other  
9 elective officers by the County Charter. I was sworn in as Executive on November 24, 2009.  
10 Prior to being elected to this position, I served in elected office on the King County Council and  
11 in state government.

12       4. In this growing region, public transportation solutions are a priority for my  
13 administration. The Director of the King County Department of Transportation ("KCDOT"),  
14 which includes the Metro Transit Division ("Metro"), reports to me. One of my primary  
15 responsibilities is to provide essential regional services to the people of King County, including  
16 transit service. Metro's bus system is the backbone of the public transportation system in the  
17 Seattle-King County area.

18       5. On November 9, 2010, I was first made aware of the transit advertisement  
19 ("SeaMAC Ad") proposed by the Seattle Mideast Awareness Campaign (SeaMAC). The  
20 SeaMAC Ad was initially flagged as controversial but was not, at that time, viewed by Metro  
21 staff or me as violating the content restrictions that are part of King County's Transit Advertising  
22 Program. I did not, at that time, have sufficient information that would have caused me to  
23 conclude the SeaMAC Ad would create a situation where it was reasonably foreseeable that it

1 would result in harm to, or disruption of, the Metro transit system, or that it would produce  
 2 lawless action in the form of retaliation, vandalism or some other breach of public safety. Based  
 3 on the information available to me at that time, I felt that it was appropriate to allow the ad to  
 4 proceed to run on Metro buses. Information I learned later, however, caused me to change my  
 5 assessment.

6 6. On December 17, 2010, a television news report aired locally about the SeaMAC  
 7 Ad which was set to begin being displayed on 12 King County Metro buses on December 27,  
 8 2010, the first weekday after the Christmas holiday. On Monday, December 20, 2010, I began  
 9 receiving reports from my staff and KCDOT Deputy Director Laurie Brown that large, indeed  
 10 unprecedented numbers of people were calling and emailing employees of King County  
 11 government to express a variety of views about the SeaMAC Ad, mostly negative.

12 7. I spent a significant amount of time from December 20-23, 2010, assessing the  
 13 unfolding situation, meeting with my Executive Leadership Team ("Leadership Team"), staff and  
 14 managers from KCDOT and Metro. I rely on information and recommendations from my  
 15 Executive Leadership Team, staff and managers in making many of my decisions as Executive,  
 16 and I did so when it came to decisions surrounding the SeaMAC Ad. The King County  
 17 employees I consulted with during this time period included, without limitation, Rhonda Berry  
 18 (Assistant Deputy King County Executive), Gail Stone (Law & Justice Policy Advisor), Frank  
 19 Abe (Director of Communications), Harold Taniguchi (KCDOT Director), Laurie Brown  
 20 (Deputy KCDOT Director), and Kevin Desmond (Metro Transit General Manager).

21 8. My understanding from the information reported to me by my Leadership Team,  
 22 staff and managers was that the overwhelming majority of calls and emails were negative toward  
 23 the proposed SeaMAC Ad. More importantly, they expressed grave concerns to me that several

1 of the calls and emails conveyed an intent or threat to block or vandalize Metro buses, and that  
2 there were some communications that could be interpreted as expressing more violent, if less  
3 specific, intentions. It was also reported to me that some messages from our customers  
4 expressed fear about riding Metro buses in light of the SeaMAC Ad.

5 9. My managers reported to me that the volume and content of complaints about the  
6 SeaMAC Ad exceeded the scope of any prior response to advertisements run on Metro buses. In  
7 addition to the reports I was getting about the content of the emails and messages, I was  
8 informed that, given the sheer volume of messages and the multiplicity of methods for their  
9 delivery – via any of the county’s thousands of email addresses or telephones, or even through  
10 social media --I could not be assured that all threatening messages had been discovered, read,  
11 and assessed. While we initially defended the decision to run the SeaMAC Ad in the name of  
12 free speech, it soon became clear that a reassessment of that decision was needed due to the  
13 emerging potential for disruptions to transit service.

14 10. On December 21, 2010, I became aware that two other groups, the Horowitz  
15 Freedom Center and the American Freedom Defense Initiative were proposing to run their own  
16 advertisements ("Counter-Ads") in response to the SeaMAC Ad. When I saw the text and  
17 graphics of the Counter-Ads it became apparent to me that the Counter-Ads would almost  
18 certainly intensify public unease. It also appeared to me that members of the Palestinian or  
19 Muslim communities, among others, could perceive the Counter-Ads to be insulting, degrading  
20 or offensive.

21 11. On December 22, 2010, representatives from my Leadership Team met with  
22 representatives from the American Jewish Committee of Seattle, the Jewish Federation of Seattle  
23 and the Anti-Defamation League. My Leadership Team reported to me that it was apparent from

1 the meeting that the advertisements would be perceived as insulting, degrading or offensive by  
 2 many members of the local Jewish community, although at that meeting no one requested that  
 3 the SeaMAC Ad be pulled. In particular, there were points of sensitivity regarding the assertion  
 4 in the SeaMAC Ad that Israel had committed war crimes, in light of the Holocaust and war  
 5 crimes committed against the Jewish population of Europe during the Second World War. In  
 6 addition, it was reported to me that several of the representatives from the Jewish community  
 7 mentioned the 2006 shooting at the Jewish Federation of Seattle, where a gunman with professed  
 8 anti-Israeli sentiments targeted un-armed Jewish-American employees working at the  
 9 Federation's offices in downtown Seattle. As a result of the information that was reported to me,  
 10 I was concerned about how the SeaMAC Ad would be perceived by members of the Jewish  
 11 community and also how the Counter-Ads would be perceived by members of the Palestinian  
 12 and Muslim communities, especially since both would be displayed on government-owned  
 13 buses.

14 12. On December 22, 2010, I became aware that the President of the Amalgamated  
 15 Transit Union, Local 587, Paul Bachtel, had urged Metro not to run the SeaMAC Ad because  
 16 numerous transit operators had expressed concern to him about their personal safety, and that  
 17 some operators might refuse to drive the buses with the SeaMAC Ad. As a result of this  
 18 information, I was concerned that the SeaMAC Ad would cause a perceived safety risk for some  
 19 of our operators and create another source of disruption of service to our customers.

20 13. On December 22, 2010, I spoke with King County Sheriff Sue Rahr, who  
 21 encouraged me from a law enforcement perspective not to run the SeaMAC Ad because it would  
 22 create a potential security risk for the Metro transit system. In particular, the Sheriff mentioned  
 23

1 that buses are vulnerable potential targets and that even rocks or bricks thrown at a passing bus  
2 would put our bus passengers at risk.

3 14. On December 22, 2010, I also spoke with United States Attorney for the Western  
4 District of Washington, Jenny Durkan, by telephone. Ms. Durkan told me that she could not  
5 formally advise whether or not to run the SeaMAC Ad. She did say that, in the experience of  
6 law enforcement, public transportation systems were what she called "targets of choice" for  
7 terrorists and extremists because they were so spread out and difficult to secure, and she  
8 referenced the Madrid commuter train bombings and the London subway and bus bombings.  
9 She did advise "extreme caution around transportation systems," that "our systems of  
10 transportation are always a vulnerable target," and that, from her perspective as the chief federal  
11 law enforcement officer in western Washington State, "anything that inches up the dial" and  
12 draws the international attention of extremists to the Metro transit system "is not a good idea"  
13 and could lead to civil disruption "or more serious effects." I interpreted her comments to  
14 indicate that running the SeaMAC Ad and the Counter-Ads would increase the risk of a public  
15 safety and security threat to the Metro transit system.

16 15. Around this time, it was brought to my attention at a staff meeting about the  
17 SeaMAC Ad that a news story about the Ad had been posted on a website affiliated with the  
18 terrorist group Hamas. I also received news alerts indicating that stories about the SeaMAC Ad  
19 were appearing in the Jerusalem Post and other international press. As a result of these articles, I  
20 concluded that allowing the SeaMAC Ad and Counter-Ads to run on Metro buses would  
21 continue to expose the Metro transit system and our customers to unwanted international  
22 attention going forward.

23  
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1           16.     On December 22, 2010, representatives from my Leadership Team, and managers  
 2 Harold Taniguchi, Laurie Brown and Kevin Desmond, met with representatives from SeaMAC  
 3 to discuss the unfolding situation. It was reported to me that the representatives from King  
 4 County expressed concern that running the SeaMAC Ad would lead to a disruption of the Metro  
 5 transit system and the possibility of harm to our customers and operators. I was informed that  
 6 the SeaMAC representatives explained that it was really important for them to get their message  
 7 out and that they wanted the SeaMAC Ad to run. It was reported to me that Harold Taniguchi  
 8 asked SeaMAC's representatives to consider voluntarily withdrawing the SeaMAC Ad. I was  
 9 informed the next day that they had declined to do so.

10           17.     On December 23, 2010, I decided to withdraw approval of the SeaMAC Ad and  
 11 reject the request to run the Counter-Ads under Sections 6.4 D&E of the contract King County  
 12 had with Titan Outdoor, LLC. While the SeaMAC Ad had not changed, the context had changed  
 13 dramatically in the course of a few days, and it was my opinion that by December 23, 2010 it had  
 14 become (1) reasonably foreseeable that the content of the SeaMAC Ad and the Counter-Ads  
 15 were so objectionable to our local community as to make it reasonably foreseeable that it would  
 16 lead to disruption of or interference with our transit system; and (2) that the material in the  
 17 SeaMAC Ad and the Counter-Ads was so insulting or offensive as to make it reasonably  
 18 foreseeable that running the advertisements would lead to retaliation, vandalism, civil  
 19 disobedience, or other unlawful action directed at the Metro transit system and our riders.

20           18.     My decision was based on the best information available to me at time and led me  
 21 to conclude that the SeaMAC Ad and the Counter-Ads would likely cause some people to  
 22 engage in illegal acts, such as blocking or vandalizing buses, or worse. I was informed by Kevin  
 23

1 Desmond that Metro Transit Police and Metro Operations were already engaged in contingency  
2 planning to deal with such actions.

3 19. In addition, I came to believe that significant portions of the riding public and  
4 some of our transit operators would feel unsafe on buses displaying the SeaMAC Ad or the  
5 Counter-Ads and that this situation would undermine King County Metro's core mission of  
6 providing safe public transportation and increasing ridership. I did not want either drivers or  
7 riders to avoid buses because of the SeaMAC Ad or the Counter-Ads.

8 20. Other than threats to interfere with Metro bus service or vandalize buses and some  
9 of the communications that could be interpreted as expressing more violent, if less specific  
10 intentions, I was not aware of any specific threat of terrorist attack against the Metro transit  
11 system. I was, however, concerned that running the SeaMAC Ad and the Counter-Ads would  
12 increase the exposure and vulnerability of the Metro transit system internationally, including to  
13 terrorist organizations, and that it could lead to an increased risk of terrorist attack. I was  
14 concerned that if we ran the SeaMAC Ad, we would also be forced to run the Counter-Ads.  
15 With respect to the Counter-Ads, I was concerned that they would be perceived as offensive by  
16 members of the local Palestinian and Muslim communities, or by persons overseas. This  
17 situation, in turn, could provoke a violent response against the Metro transit system and our  
18 riders.

19 21. I was also concerned about how the SeaMAC Ad and Counter-Ads would make  
20 our customers feel about the Metro transit system and that they might find the ads offensive and  
21 insulting and therefore chose not to ride Metro. The purpose of Metro transit is to safely and  
22 reliably transport large numbers of people and increase ridership, not to serve as a forum for ads  
23 with images and text that are calculated to provoke and anger, regardless of the cost to safety and



ridership. I strongly believe in, and have always been a staunch defender of, free expression and the right of SeaMAC, the pro-Israeli groups, and anyone else to express their views in traditional public forums such as the sidewalk, public plazas, or the courthouse steps. The side of a bus -- full of passengers -- is a different matter.

22. An additional concern I had was economic, especially in these challenging times for government budgets. The purpose of the Transit Advertising Program is to generate revenue to support Metro transit operations. The cost of responding to the SeaMAC Ad controversy had already far exceeded the financial benefit to King County. If the SeaMAC Ad had run, additional costs would have been incurred to deal with increased security and arranging coverage for transit operators who refused to drive their buses.

23. Given the information available to me, I determined that the most responsible decision was to pursue the county's mission of providing safe and reliable public transportation, and not take actions that could reasonably be expected to endanger our service, fleet, drivers, passengers, or King County residents. Therefore, on December 23, 2010, I directed that the SeaMAC Ad and the Counter-Ads not be displayed on Metro buses.

I hereby declare under penalty of perjury of the laws of the United States and the State of Washington that, to the best of my knowledge, the foregoing is true and correct.

SIGNED and DATED at Seattle, Washington, this 7th day of February, 2011.

  
DOW CONSTANTINE

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