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Press Release

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*For Immediate Release*

## **SECOND CIRCUIT UPHOLDS TERMINATION OF COP AND FIREFIGHTERS WHO PARTICIPATED IN RACIST LABOR DAY FLOAT**

### ***UNANIMOUS DECISION REVERSES LOWER COURT***

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New York, NY, April 27, 2006 – This afternoon, a three-judge panel of the Second Circuit handed down a unanimous decision reversing the District Court and finding that it was constitutionally permissible for the City to fire a police officer and two firefighters who participated in a racist float on Labor Day, 1998. In reversing a lower court decision against the City, the Second Circuit held that it was “clearly erroneous” for Federal District Judge John E. Sprizzo to have faulted former Mayor Giuliani for expressing his outrage and disgust at the racism displayed during the parade, in which one of the plaintiffs, in blackface, dragged himself behind the float in a parody of the then-recent torture and murder of James Byrd, Jr., an African-American man, in Texas. The Mayor made his comments to the press after videotape of the incident had been widely broadcast in local and national news outlets and while the incident was gaining notoriety, but before the officers were afforded disciplinary hearings.

While the trial judge questioned the Mayor’s motive in making the statements, the three-judge appeals panel unanimously reversed the lower court, finding that the evidence of legitimate concern was ‘overwhelming’ – specifically, a concern that the public, and members of minority communities, would regard the NYPD and FDNY as racist. The Second Circuit further ruled that in light of substantial evidence to the contrary, the District Court’s conclusion that Mayor Giuliani ordered the plaintiffs’ dismissals for improper motives was “clear error.” The Second Circuit also concluded that defendants had an altogether reasonable concern for disruption, noting that “effective police and fire service presumes respect for members of minority communities, and defendants were permitted to take that into account in appropriately disciplining plaintiffs.” Finally, the Court concluded that defendants’ interest in maintaining a relationship of trust between the police and fire departments and the communities they serve outweigh plaintiffs’ interests in expressing themselves in this case. ‘The First Amendment does not require a Government employer to sit idly by while its employees insult those they are hired to serve and protect.’

Assistant Corporation Counsel Elizabeth I. Freedman, who handled the case on appeal, stated, “We are extremely gratified with the Second Circuit’s unanimous endorsement of the actions of the defendants in this case. The decision properly balances the competing interests of public employees and public employers. In this case, the Second Circuit properly balanced those interests, finding that where the employees’ conduct threatened “to bring discredit upon the Police and Fire Departments in the minority community,” it was constitutionally permissible for the City to fire them.”

The lawsuit was commenced in 1998 by Police Officer Joseph Locurto, and Firefighters Jonathan Walters and Robert Steiner, after they were brought up on disciplinary charges for participating in a racist float in a 1998 Labor Day Parade in Broad Channel, Queens. The plaintiffs, who were ultimately fired following

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their disciplinary hearings, sued Mayor Giuliani, Police Commissioner Howard Safir, and Fire Commissioner Thomas Von Essen, claiming that Mayor Giuliani's public expressions of outrage, as news of the incident was breaking, suggested that he had pre-judged their guilt before the hearings. Plaintiffs also claimed that Mayor Giuliani acted out of concern for his own political image, and not out of genuine concern for the discredit that the officers' conduct might bring upon the Police and Fire Departments. While the trial court largely credited the plaintiffs' claims and found the defendants liable, the Second Circuit panel, in today's decision, unanimously overruled the lower court and upheld the City in firing the plaintiffs.

In addition to Elizabeth Freedman, the case was handled in the Second Circuit by Appeals Division Deputy Chief Francis F. Caputo. Jonathan Pines, a Deputy Chief in the Law Department's General Litigation Division, represented the defendants in the lower court, also called the District Court.

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