NO. 13-1635

UNITED STATES COURT OF APPEALS
FOR THE
SIXTH CIRCUIT

BIBLE BELIEVERS; **RUBEN CHAVEZ**, aka RUBEN ISRAEL; **ARTHUR FISHER**; **JOSHUA DELOSSANTOS**,
Plaintiffs-Appellants,

V.

WAYNE, COUNTY OF; **BENNY N. NAPOLEON**, in his official capacity as Sheriff, Wayne County Sheriff's Office; **DENNIS RICHARDSON**, individually and in his official capacity as Deputy Chief, Wayne County Sheriff's Office; **MIKE JAAFAR**, individually and in his official capacity as Deputy Chief, Wayne County Sheriff's Office,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
HONORABLE PATRICK J. DUGGAN
CASE NO. 2:12-cv-14236-PJD-DRG

PETITION FOR REHEARING EN BANC

ROBERT JOSEPH MUISE, ESQ.
AMERICAN FREEDOM LAW CENTER
P.O. BOX 131098
ANN ARBOR, MICHIGAN 48113
(734) 635-3756

Attorneys for Plaintiffs-Appellants

DAVID YERUSHALMI, ESQ.
AMERICAN FREEDOM LAW CENTER
1901 PENNSYLVANIA AVENUE NW
SUITE 201
WASHINGTON, D.C. 20006
(646) 262-0500

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INTRODUCTION

> [L]iberty is at an end if a police officer may without warrant arrest, not the person threatening violence, but those who are its likely victims merely because the person arrested is engaging in conduct which, though peaceful and legally and constitutionally protected, is deemed offensive and provocative to settled social customs and practices. When that day comes, freedom of the press, freedom of assembly, freedom of speech, freedom of religion will all be imperiled.

Nesmith v. Alford, 318 F.2d 110, 121 (5th Cir. 1963). Unfortunately, that day has come, unless the full court reverses the patently erroneous panel decision—a decision which imperils our First Amendment freedoms. As Circuit Judge Clay stated in his trenchant and superb dissent, "The majority's first error is its conclusion that the First Amendment did not protect Plaintiffs' speech. This is not only wrong, ***it is dangerously wrong***." (Op. at 23) (Clay, J., dissenting) (emphasis added). Indeed, the majority's ruling effectively "incentivize[s]" "hecklers" who oppose an unpopular message "to get *really* rowdy, because at that point the target of their ire could be silenced."[1] (Op. at 21) (Clay, J., dissenting).

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[1] This concern was also recently echoed by UCLA law professor and often-cited commentator on First Amendment issues Eugene Volokh, who was commenting on this very decision:

> Behavior that gets rewarded gets repeated. People who are willing to use violence to suppress speech will learn that such behavior is effective, at least when the police don't come down particularly hard on the thuggery. Indeed, they may find at times that even merely threatening violence might suffice to suppress speech they dislike. And of course this message will be easily learned by the potentially violent of all religious and political stripes (again, so long as they suspect that the police won't make the thuggery too costly). [*Continued next page*.]

In his conclusion, Judge Clay provides a compelling argument for *en banc* review:

> The majority misstates the law and misconstrues the facts to hand this case to Defendants. The First Amendment protects Plaintiffs' speech, however bilious it was. As for the good faith defense, there are too many issues of fact to be resolved on summary judgment—especially on Defendants' motion for summary judgment. The majority retreats from our commitment in *Saieg* [*v. City of Dearborn*, 641 F.3d 727 (6th Cir. 2011)] to the principle that the First Amendment cannot be shut out of the Festival, and by so doing provides a blueprint for the next police force that wants to silence speech without having to go through the burdensome process of law enforcement. I expect we will see this case again.

(Op. at 29) (Clay, J., dissenting).

In Plaintiffs' judgment—a judgment that is evidently shared by Judge Clay—this case warrants the extraordinary procedure of *en banc* review because the majority committed precedent-setting errors of exceptional public importance in this First

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> But the "heckler's veto" gives the violent hecklers extra bonuses. They get to see the speakers suppressed by the government itself. They get to feel the extra pleasure and validation of feeling that the government has stepped in on [their] side. And they get to block speech even by those who don't fear physical attack, but who understandably don't want to be arrested and prosecuted.
>
> The society we live in stems from the incentives we create. Incentives for violent speech suppression mean more violent speech suppression. That, I think, will be the consequence of the Sixth Circuit panel decision, if it is not reversed by the en banc Sixth Circuit or by the Supreme Court.

Eugene Volokh, *Thuggery wins, free speech rights lose*, The Volokh Conspiracy (Aug. 27, 2014, 2:14 PM), http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/08/27/thuggery-wins-free-speech-rights-lose/.

Amendment case, and its opinion directly conflicts with U.S. Supreme Court and Sixth Circuit precedent. *See* Fed. R. App. P. 35(a); 6 Cir. R. 35; 6 Cir. I.O.P. 35(a).

In sum, *en banc* review is warranted and necessary.

SUMMARY OF RELEVANT FACTS[2]

Plaintiffs are members of Bible Believers, which is an unincorporated association of individuals who share and express their Christian faith with others, including Muslims, through religious speech activities, including street preaching and displaying signs, banners, and t-shirts with various messages. Bible Believers has over 60 chapters nationwide.[3] Plaintiff Israel is the leader and spokesperson for this group of Christian evangelists, who attended the Arab Festival held in the City of Dearborn, Michigan in June 2011 and again in June 2012.[4] (*See* Op. at 3).

On or about June 15, 2012, Plaintiffs went to the Warren Avenue area where the Arab Festival was taking place and wore t-shirts and carried signs and banners expressing their Christian message. Plaintiffs peacefully engaged in their expressive

[2] Because this case was before the panel on the district court's grant of summary judgment, its review was *de novo*. *Watkins v. City of Battle Creek*, 273 F.3d 682, 685 (6th Cir. 2001). Thus, it could only affirm if the record, read in the light most favorable to Plaintiffs, revealed no genuine issues of material fact and showed that Defendants were entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Upon its review of the record, the panel was required to consider the evidence and draw all reasonable inferences in Plaintiffs' favor. *Siggers-El v. Barlow*, 412 F.3d 693, 699 (6th Cir. 2005); (*see* Op. at 18) (Clay, J., dissenting) ("The majority reaches the [wrong] result by misstating the law and slanting the factual record in favor of Defendants, the very parties who moved for summary judgment.").

[3] (R: 20-2: Israel Decl. at ¶ 3, Pg ID 174).

[4] (R: 20-2: Israel Decl. at ¶¶ 1-4, Pg ID 173-74).

activity along the public sidewalks and other public areas where pedestrian traffic was permitted.[5]

Plaintiff Israel wore a t-shirt with the message, "Fear God" on the front and "Trust Jesus, Repent and Believe in Jesus" on the back. Plaintiff Fisher wore a t-shirt with the message, "Trust Jesus" on the front and "Fear God and Give Him Glory" on the back, and he carried a banner that said on one side, "Only Jesus Christ Can Save You From Sin and Hell," and on the other side it said, "Jesus Is the Judge, Therefore, Repent, Be Converted That Your Sins May Be Blotted Out." Plaintiff Fisher also carried a small, hand-held camera to record the event. Plaintiff DeLosSantos accompanied Plaintiffs and joined in their free speech activity.[6] (Op. at 5).

While Plaintiffs were expressing their message, they were confronted by a group of "hecklers," consisting mostly of teenagers, who began throwing water bottles, rocks, and other debris at the Christians. The hecklers were also shouting and blowing horns. Some of them spat at the Christians, shouted profanities, and mocked

[5] (R-20-2: Israel Decl. at ¶¶ 14-17, Pg ID 176-77).

[6] (R-20-2: Israel Decl. at ¶ 16, Pg ID 176-77). Other messages conveyed on t-shirts, signs, or banners that accompanied Plaintiffs included, among others, "Prepare to Meet Thy God – Amos 4:12," "Obey God, Repent," "Turn or Burn," "Jesus Is the Way, the Truth and the Life. All Others Are Thieves and Robbers," and "Islam Is A Religion of Blood and Murder." (R-20-2: Israel Decl. at ¶ 17, Pg ID 177; *see* Op. at 5).

the Christians' faith. Plaintiffs responded by simply holding up their hands to avoid being accused of acting aggressively toward the hecklers.[7]

When Wayne County deputies appeared at the scene, the hecklers would halt their aggression, only to resume it once the deputies departed.[8] The hecklers did not attack the Wayne County deputies; they only attacked the Christians.[9]

Shortly upon Plaintiffs' arrival at the Arab Festival, Defendant Jaafar was observed telling Defendant Richardson that Plaintiffs had to be removed and that he (Defendant Richardson) needed to do something about it.[10]

Approximately 30 minutes later, Defendant Jaafar confronted Plaintiff Israel, and in an angry manner told him that the deputies were not going to protect him or his fellow Christians. Defendant Jaafar told Plaintiff Israel that he and his fellow Christians had "the option to leave." Plaintiff Israel responded to Defendant Jaafar, telling him that Defendants had the option "to stand with us." Defendant Jaafar did not respond. Instead, he abruptly departed.[11] (*See* Op. at 6).

Moments after Defendant Jaafar departed, Defendant Richardson took over and escorted Plaintiff Israel to the side to discuss the matter. During this discussion,

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[7] (R-20-2: Israel Decl. at ¶¶ 18-20, Ex. B [Video at Chapter 1], Pg ID 177, App.).
[8] (R-20-2: Israel Decl. at ¶ 21, Ex. B [Video at Chapter 2], Pg ID 177-78, App.).
[9] (R-20-2: Israel Decl., Ex. B [Video at Chapters 1 & 2], App.; R-28: Defs.' Ex. B [Video], App.).
[10] (R-20-2: Israel Decl. at ¶ 22, Pg ID 178). Defendants Jaafar and Richardson are Deputy Chiefs with the Wayne County Sheriff's Office.
[11] (R-20-2: Israel Decl. at ¶¶ 23-24, Ex. B [Video at Chapter 3], Pg ID 178, App.).

Plaintiff Israel pleaded with Defendant Richardson to assign just two Wayne County deputies to stand with the Christians during their speech activity, noting that when uniform officers are present, the hecklers stop their criminal assault. Defendant Richardson refused.[12] (Op. at 6).

While speaking with Plaintiff Israel, Defendant Richardson criticized Plaintiffs for their speech, motioning toward the Christians and stating, "Look at your people here. Look it, look it. This is crazy."[13] At one point, Defendant Richardson stepped away from the conversation and was seen consulting with Ursula Henry, Director of Legal Affairs for the Wayne County Sheriff's Office.[14] (Op. at 7).

After consulting with Ms. Henry, Defendant Richardson returned and gave Plaintiffs an ultimatum: Plaintiffs could either leave the Arab Festival or they would be criminally cited and arrested for disorderly conduct. Defendant Richardson stated, "If you don't leave we are going to cite you for disorderly." This conversation was captured on video.[15] (*See* Op. at 6-7).

To avoid being cited and arrested by Defendants, Plaintiffs ceased their free speech activity and departed the area. This drew cheers from the hecklers.[16]

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[12] (R-20-2: Israel Decl. at ¶¶ 25-26, Ex. B [Video at Chapter 4], Pg ID 178, App.).
[13] (R-20-2: Israel Decl. at ¶ 27, Ex. B [Video at Chapter 4], Pg ID 179, App.).
[14] (R-20-2: Israel Decl. at ¶ 28, Ex. B [Video at Chapter 4], Pg ID 179, App.).
[15] (R-20-2: Israel Decl. at ¶¶ 27-29, Ex. B [Video at Chapter 4], Pg ID 179, App.).
[16] (R-20-2: Israel Decl. at ¶ 30, Ex. B [Video at Chapter 4], Pg ID 179, 185).

While Defendants claim that they could not spare just two deputies to protect Plaintiffs, more than a dozen deputies arrived at the scene to ensure that Plaintiffs departed the area.[17] Moreover, at no time did Wayne County deputies arrest the violent hecklers and take them away in handcuffs—an action that would have quieted the crowd and permitted Plaintiffs to continue their free speech activity without interference.[18] (*See also* Op. at 28) (Clay, J., dissenting) (stating, "I saw no such police presence—apart from a few officers standing around doing next to nothing" and "the video tape shows that Defendants did just about nothing to control the crowd as it grew and became agitated . . . . This is not good faith—it is manufacturing a crisis as an excuse to crack down on those exercising their First Amendment rights").

According to Defendants' "Post-Operation Report," Defendants issued only one citation for disturbing the peace, gave only three verbal warnings, and briefly detained two other individuals.[19] Yet, Defendants had thirty-four (34) deputies and nineteen

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[17] (R-20-2: Israel Decl. at ¶ 31, Ex. B [Video at Chapter 5], Pg ID 179, App.). Moreover, shortly after departing the festival in their van, more than a dozen law enforcement officers were available to pull over Plaintiffs, conduct a traffic stop, and issue the driver a traffic citation. (R-20-2: Israel Decl. at ¶ 34, Ex. B [Video at Chapter 6], Pg ID 180, App.; *see also* Op. at 7 ["Several cars and multiple officers observed as the van's driver received a citation for driving without license plates."]).

[18] (R-20-2: Israel Decl. at ¶ 32, Pg ID 179-80; R-28: Defs.' Ex. A [Video], App.).

[19] (R-13-9: Defs.' Ex. I [Post-Operation Report], Pg ID 115-16). According to Defendants' report, only two of these individuals—the one who received the citation and one who was temporarily detained—were associated with Plaintiffs (*i.e.*, the report identifies them as related to "(Bible Believers)"). This is further corroborated by the video evidence in that none of the hecklers were arrested and taken away in handcuffs for engaging in their criminal activity. (*See also* R-28: Defs.' Ex. A

(19) reserve officers on the scene, and this force also included a mounted unit with six (6) horses. According to Defendants, this force was "larger than the Sheriff's Department contribution to the Word Series or the President of the United States when he visits Michigan."[20] (Op. at 4).

Plaintiffs want to return to the City of Dearborn to engage in their free speech activity. However, they fear that if they do, they will again be confronted by hecklers and forced to halt their speech activity under the threat of arrest.[21]

ARGUMENT

I. The Majority's "Dangerously Wrong" Decision Conflicts with Supreme Court and Circuit Precedent by Concluding that Plaintiffs' Speech Was Not Protected by the First Amendment.

Contrary to the majority's decision, Plaintiffs' speech is fully protected by the First Amendment and does not constitute "incitement" or "fighting words"[22] as a matter of law. (Op. at 23) (Clay, J., dissenting) ("The majority's first error is its conclusion that the First Amendment did not protect Plaintiffs' speech."); (*see also id.*

[Video], App.).

[20] (R-13: Defs.' Mot. at 3, Pg ID 68).

[21] (R-20-2: Israel Decl. at ¶ 36, Pg ID 180).

[22] As *Chaplinsky v. New Hampshire*, 315 U.S. 568, 573 (1942), makes clear, "fighting words" is a very narrow and limited category of speech, and it only encompasses "*face-to-face* words plainly likely to cause a breach of the peace by the addressee." (emphasis added); *Cohen v. California*, 403 U.S. 15, 20 (1971) (describing "fighting words" as "*personally abusive epithets* which, when *addressed to the ordinary citizen*, are, as a matter of common knowledge, inherently likely to provoke violent reaction") (emphasis added). Thus, this doctrine is inapplicable to the situation presented here (displaying signs and messages to a crowd on a public street).

at 25) ("[T]the First Amendment strongly counsels that we should not allow the state to criminalize speech on the grounds that it is blasphemous—even so blasphemous that the average adherent to the offended religion would react with violence.") (citing *Leonard v. Robinson*, 477 F.3d 347, 359–60 (6th Cir. 2007)).

In *Terminiello v. City of Chicago*, 337 U.S. 1 (1949), the Supreme Court did not allow convictions to stand because the trial judge charged that the defendants' speech could be punished as a breach of the peace "if it stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance, or if it molests the inhabitants in the enjoyment of peace and quiet by arousing alarm." *Id.* at 3. In finding such a position unconstitutional, the Supreme Court famously stated,

> [A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is . . . protected against censorship or punishment. . . . There is no room under our Constitution for a more restrictive view.

Id. at 4; *see also NAACP v. Claiborne Hardware, Co*., 458 U.S. 886, 928 (1982) ("The emotionally charged rhetoric of Charles Evers' speeches did not transcend the bounds of protected speech. . . ."); *Sandul v. Larion*, 119 F.3d 1250 (6th Cir. 1997) (shouting "f--k you" and extending middle finger to abortion protestors was protected speech and could not serve as a basis for disorderly conduct); *Edwards v. South*

Carolina, 372 U.S. 229, 237 (1963) ("The Fourteenth Amendment does not permit a state to make criminal the peaceful expression of unpopular views.").

In *Glasson v. Louisville*, 518 F.2d 899 (6th Cir. 1975), this court stated:

> The purpose of the First Amendment is to encourage discussion, and it is intended to protect the expression of unpopular as well as popular ideas. Accordingly, hostile public reaction does not cause the forfeiture of the constitutional protection afforded a speaker's message so long as the speaker does not go beyond mere persuasion and advocacy of ideas and attempts to incite to riot.

Id. at 905.

As the dissent highlights, the majority incorrectly concludes "that speech can constitute incitement even if the speaker does not intend to provoke violence," thus "waiv[ing] *Brandenburg* [*v. Ohio*, 395 U.S. 444 (1969)] out of existence and ignor[ing] subsequent Supreme Court cases." (Op. at 20 n.1) (Clay, J., dissenting).

Indeed, the majority's reliance upon *Feiner v. New York*, 340 U.S. 315 (1951),[23] is misplaced. A proper reading of *Feiner*, particularly in light of subsequent Supreme Court cases involving "incitement" speech, reveals that the majority is simply wrong. (Op. at 24) (Clay, J., dissenting) ("Anyone reading the majority's opinion . . . would think that the last word on the meaning of incitement can be found in *Feiner*. This could not be more wrong.").

[23] (*See* Op. at 21) (Clay, J., dissenting) ("Before being disinterred by the majority and the district court, we had confined *Feiner* to the truism that when a speaker incites a crowd to violence, his incitement does not receive constitutional protections. *See Glasson*, 518 F.2d at 905 n.3.").

In *Feiner*, the Court upheld the disorderly conduct conviction because the petitioner "was endeavoring to arouse the Negro people against the whites, *urging that they rise up in arms and fight* for equal rights." *Id*. at 305 (emphasis added). Indeed, the petitioner's *purpose*, according to the Court's finding, was to incite a riot. That is, *the petitioner's speech was calling for imminent lawless action.* As the Court observed, "It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes *incitement to riot*, they are powerless to prevent a breach of the peace."[24] *Id*. at 321 (emphasis added).

Indeed, compare *Feiner* (decided in 1951) with the Court's 1982 decision in *NAACP v. Claiborne Hardware, Co*., 458 U.S. 886 (1982), and the difference (which is undoubtedly a result of the times) is palpable. In *Clairborne Hardware*, the Court found that Charles Evers, a leader of a racially-motivated boycott that was the *cause of violence*, could not be held civilly liable for his speech, stating:

> Evers' addresses did not exceed the bounds of protected speech. If there were other evidence of *his authorization* of wrongful conduct, the references to discipline in the speeches could be used to corroborate that evidence. But any such theory fails for the simple reason that there is no evidence—*apart from the speeches themselves*—that *Evers authorized, ratified, or directly threatened acts of violence*. . . . The findings are

[24] Unlike the present case where there is ample evidence of Defendants' hostility toward Plaintiffs' message, in *Feiner*, the Court noted with importance that "there was no evidence which could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions." *Feiner*, 340 U.S. at 319.

> constitutionally inadequate to support the damages judgment against him.

Id. at 929 (emphasis added).

Here is the critical point that the majority failed to apprehend: in order for violence to be a basis for punishing or proscribing speech, the lawless action must, in the first instance, *be directed by the speaker*. "Incitement" speech is a very limited category of speech that is proscribable consistent with the First Amendment under very narrow circumstances. As the Supreme Court clearly stated in *Brandenburg v. Ohio*, 395 U.S. 444 (1969), which is the controlling case on "incitement" speech, "[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe *advocacy of the use of force or of law violation* except where such advocacy *is directed* to inciting or producing *imminent* lawless action *and is likely to incite or produce such action*." *Id*. at 447 (emphasis added). In other words and contrary to the majority's holding, the *speaker* must, in the first instance, be *advocating* for the "imminent" "use of force or of law violation" (*e.g.*, shouting "let's kill the President now") in order for the government to justify suppressing speech based on a theory of incitement. Speech which itself does not *call for violence* but is merely offensive to the listener (such as Plaintiffs' speech), does not lose its First Amendment protection based on the fact that the listener reacts to the speech with violence. This is known as a "heckler's veto," which is impermissible. (Op. at 18) (Clay, J., dissenting) (describing this as "an easy case" in that it is "a clear heckler's

veto"). Thus, contrary to the majority's ultimate conclusion, Plaintiff's unpopular speech is fully protected by the First Amendment, and Defendants were acting "as an instrument for the suppression of unpopular views" in violation of the Constitution.

II. The Majority's "Dangerously Wrong" Decision Conflicts with Supreme Court and Circuit Precedent by Incorporating into the First Amendment a "Heckler's Veto."

"It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995); *R.A.V. v .City of St. Paul*, 505 U.S. 377, 391 (1992). And the Supreme Court has held time and again that the mere fact that someone might take offense to a speaker's message does not provide a basis for prohibiting it. *Snyder v. Phelps*, 131 S. Ct. 1207, 1219 (2011) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. Indeed, the point of all speech protection . . . is to shield just those choices of content that in someone's eyes are misguided, or even hurtful.") (citations and quotations omitted); *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (same); *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 210 (1975) ("[T]he Constitution does not permit government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer."); *Street v. New York*, 394 U.S. 576, 592 (1969) ("[T]he public expression of ideas may

not be prohibited merely because the ideas are themselves offensive to some of their hearers.").

Consequently, it is a clearly established principle of law that *a listener's reaction to speech is not a permissible basis for regulation*. *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134 (1992). "The First Amendment knows no heckler's veto." *Lewis v. Wilson*, 253 F.3d 1077, 1082 (8th Cir. 2001); *Ctr. for Bio-Ethical Reform, Inc. v. L.A. Cnty. Sheriff Dep't*, 533 F.3d 780, 790 (9th Cir. 2008) (noting that there is no "minors" exception to the heckler's veto). And while restrictions on speech because of the "secondary effects" that the speech creates are sometimes permissible, an effect from speech is not secondary if it arises from the content of the speech. Consequently, "[t]he emotive impact of speech on its audience is not a 'secondary effect.'" *Boos v. Barry*, 485 U.S. 312, 321 (1988) (O'Connor, J.).

Thus, in *Glasson v. Louisville*, 518 F.2d 899, 906 (6th Cir. 1975), this court described the proper police response when faced with a situation in which an angry mob of hecklers opposes a speaker's message: "A police officer has the duty not to ratify and effectuate a heckler's veto nor may he join a moiling mob intent on suppressing ideas. Instead, he must take reasonable action to protect . . . persons exercising their constitutional rights."

Glasson thus reinforces the clearly established principle that "[t]he state may not rely on community hostility and threats of violence to justify censorship" of

constitutionally protected speech. *Id*. at 906. As this court stated further,

> To permit police officers . . . to punish for incitement or breach of the peace the peaceful communication of . . . messages because other persons are provoked and seek to take violent action against the speaker would subvert the First Amendment, and would incorporate into that constitutional guarantee a 'heckler's veto' which would empower an audience to cut off expression of a speaker with whom it disagreed.

Id. at 905-06; *see also Smith v. Ross*, 482 F.2d 33, 37 (6th Cir. 1973) ("[T]he Supreme Court has often emphasized in related contexts [that] state officials are not entitled to rely on community hostility as an excuse not to protect, by inaction or affirmative conduct, the exercise of fundamental rights.").

By upholding and justifying Defendants' actions, the majority has effectively "incorporate[d] into [the First Amendment] a 'heckler's veto' which . . . empower[s] an audience to cut off expression of a speaker with whom it disagreed," thereby "subvert[ing] the First Amendment." This "dangerous" precedent must be reversed.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request *en banc* review.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq.

/s/ *David Yerushalmi*
David Yerushalmi, Esq.

CERTIFICATE OF COMPLIANCE

I certify that the attached petition is proportionally spaced, has a typeface of 14 points Times New Roman, and is 15 pages in length.

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq.

Attorney for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that all of the participants in this case are registered CM/ECF users.

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq.

Attorney for Plaintiffs-Appellants