NO. 18-1874

UNITED STATES COURT OF APPEALS
FOR THE
SIXTH CIRCUIT

KAMAL ANWIYA YOUKHANNA; WAFA CATCHO; MARY JABBO; DEBI RRASI; JEFFREY NORGROVE; MEGAN MCHUGH,
Plaintiffs-Appellants,

V.

CITY OF STERLING HEIGHTS; MICHAEL C. TAYLOR, individually and in his official capacity as Mayor, City of Sterling Heights, Michigan,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
HONORABLE GERSHWIN A. DRAIN
CASE NO. 2:17-cv-10787-GAD-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

DAVID YERUSHALMI, ESQ.
AMERICAN FREEDOM LAW CENTER
2020 PENNSYLVANIA AVENUE NW
SUITE 189
WASHINGTON, D.C. 20006
(646) 262-0500

Attorneys for Plaintiffs-Appellants

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

REASONS FOR GRANTING *EN BANC* REVIEW 1

ARGUMENT 3

A. The Mosque Construction Does Not Comply with the Zoning Laws, Rendering the Federal Court Consent Judgment Invalid 5

B. Defendants' Content- and Viewpoint-Based Speech Restriction at the City Council Meeting Violated the First and Fourteenth Amendments 9

CONCLUSION 14

CERTIFICATE OF COMPLIANCE 15

CERTIFICATE OF SERVICE 16

TABLE OF AUTHORITIES

Cases **Page**

Am. Freedom Def. Initiative v. King Cnty.,
136 S. Ct. 1022 (2016) 1

Am. Freedom Def. Initiative v. King Cnty.,
904 F.3d 1126 (9th Cir. 2018) 13

Bible Believers v. Wayne Cnty.,
805 F.3d 228 (6th Cir. 2015) 3, 11

Cleveland Cnty. Ass'n for Gov't by the People v. Cleveland Cnty. Bd. of Comm'rs,
142 F.3d 468 (D.C. Cir. 1998) 9

Glendale Assocs., Ltd. v. N.L.R.B.,
347 F.3d 1145 (9th Cir. 2003) 2

Jobe v. City of Catlettsburg,
409 F. 3d 261 (6th Cir. 2005) 2, 3

Kasper v. Bd. of Election Comm'rs,
814 F.2d 332 (7th Cir. 1987) 9

Keith v. Volpe,
118 F.3d 1386 (9th Cir. 1997) 9

League of Residential Neighborhood Advocates v. City of L.A.,
498 F.3d 1052 (9th Cir. 2007) 1-2, 5, 9

Lowery v. Jefferson Cnty. Bd. of Educ.,
586 F.3d 427 (6th Cir. 2009) 2

Madison Joint Sch. Dist. v. Wis. Emp't Relations Comm'n,
429 U.S. 167 (1976) 14

Matal v. Tam,
137 S. Ct. 1744 (2017) 2, 13

Perkins v. City of Chi. Heights,
47 F.3d 212 (7th Cir. 1995) 9

Police Dep't of the City of Chi. v. Mosley,
408 U.S. 92 (1972).....14

St. Charles Tower, Inc. v. Kurtz,
643 F.3d 264 (8th Cir. 2011) 9

Vestevich v. W. Bloomfield Twp.,
245 Mich. App. 759 (Mich. Ct. App. 2001) 9

Wandering Dago, Inc. v. Destito,
879 F.3d 20 (2d Cir. 2018).....13

Whitman v. Galien Twp.,
288 Mich. App. 672 (Mich. Ct. App. 2010) 4

Statutes

Mich. Comp. Laws § 125.3502.....5

Rules

6 Cir. I.O.P. 35(a).....1

6 Cir. R. 35.....1

Fed. R. App. P. 35(a) 1

REASONS FOR GRANTING *EN BANC* REVIEW

This case involves a politically charged subject: a challenge to the City Council's approval *via a Consent Judgment* of the construction of a large mosque in a largely Chaldean Christian neighborhood in the City of Sterling Heights, Michigan. But the controversial nature of this case should not be the basis for this Court to deny *en banc* review. Rather, it is all the more reason to grant review. *See Am. Freedom Def. Initiative v. King Cnty.*, 136 S. Ct. 1022, 1025 (2016) (Thomas, J., joined by Alito, J., dissenting) ("To be sure, this case involves speech that some may consider offensive, on a politically charged subject. That is all the more reason to grant review.").

As set forth below and in greater detail in the briefs filed with this Court, review by the entire Court is necessary because the panel committed precedent-setting errors of exceptional public importance and issued an opinion that directly conflicts with Supreme Court, Sixth Circuit, and well-established precedent of other federal courts. *See* Fed. R. App. P. 35(a); 6 Cir. R. 35; 6 Cir. I.O.P. 35(a).

There are at least two primary reasons justifying *en banc* review. First, it is well established that "[a] federal consent decree or settlement agreement cannot be a means for state officials to evade state law. . . . Municipalities may not waive or consent to a violation of their zoning laws, which are enacted for the benefit of the public." *League of Residential Neighborhood Advocates v. City of L.A.*, 498 F.3d

1052, 1058 (9th Cir. 2007) (declaring invalid a settlement agreement approved by a federal district court that granted an Orthodox Jewish congregation approval to operate a synagogue in a residential-zoned area contrary to the local zoning laws and stating, "[b]y placing its imprimatur on the Settlement Agreement, the district court effectively authorized the City to disregard its local ordinances in the name of RLUIPA"). The Consent Judgment does not comply with local and state zoning laws, and it was not necessary to rectify the violation of federal law. It is, therefore, invalid, contrary to the panel's opinion. (Op. at 7-9).

And second, the City's prior restraint on Plaintiffs' speech at the City Council meeting, which was convened in part to discuss whether the City should enter into the challenged Consent Judgment, operated as an unlawful content- and viewpoint-based restriction in a public forum. The panel's contrary conclusion conflicts with *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) (stating that "[g]iving offense is a viewpoint"), and with this Circuit's precedent which holds that when the government designates a particular forum for speech, such as a city council meeting, speech restrictions must be *content-neutral*.[1] *Lowery v. Jefferson Cnty. Bd. of Educ.*, 586 F.3d 427, 432 (6th Cir. 2009); *Jobe v. City of Catlettsburg*, 409 F. 3d 261, 266 (6th Cir. 2005). Accordingly, the panel was wrong on the viewpoint issue, and it was wrong with

[1] "A rule is defined as a content-based restriction on speech when the regulating party must examine the speech to determine if it is acceptable." *Glendale Assocs., Ltd. v. N.L.R.B.*, 347 F.3d 1145, 1155 (9th Cir. 2003).

regard to the applicable standard.[2] (Op. at 9-14).

En banc review is warranted and necessary.

ARGUMENT[3]

When this litigation commenced, the City's attorneys argued that the City Council need only "consider" the zoning standards (*i.e.*, the Council was not required to make any record demonstrating *compliance* with the standards), and thus it was Plaintiffs' burden to prove a negative (*i.e.*, that the Council did not simply "consider" the standards). (*See* Defs.' Br. in Opp'n to Pls.' Mot. for Prelim. Inj. at 12) [arguing that the "standards" need only be "considered" by the Council], R.14, PgID 520).

Following the close of discovery, the City's argument changed to the one it presented on appeal: when "approving" a special approval land use via a consent decree, the City Council is not required to *comply* with *any* zoning standards. (Defs.' Br. at 20 ["Since Council is only the approving authority, it is not required to consider the § 25.02 standards or find that a consent judgment complies with those standards

[2] The district court and Defendants agreed that content-based restrictions were impermissible in this forum. (District Court Order. at 17 [citing standard in *Jobe*, 409 F. 3d at 266], Pg. ID 4459); Answer ¶ 38 [admitting that the City Council meeting is a public forum and that the City "may apply restrictions to the time, place, and manner of speech so long as those restrictions are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communications"] R.29, Pg. ID 1147).

[3] The panel affirmed the district court's grant of Defendants' motion for summary judgment. Consequently, the facts, and all reasonable inferences drawn from those facts, must be viewed in Plaintiffs' favor. *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 242 (6th Cir. 2015).

before approval . . . .”). This position was necessitated by the fact that nothing in the Consent Judgment, the City Council meeting, or the minutes of that meeting sets forth *facts* demonstrating that the mosque construction *complies* with the zoning regulations. This untenable position forced the City’s Rule 30(b)(6) witness to concede during his deposition that the City Council could theoretically approve the construction of a nuclear power plant in a residential district to resolve litigation via a consent decree. (McLeod Dep. at 43:14-25 to 44:1-11, R.67-4, PgID 1644).

The district court agreed with the City, and it did so by concluding that the “Zoning Code is silent” as to whether the City Council must *apply* the zoning standards when it is “designated the ‘approving authority’ only.” (Order at 11, R.89, PgID 4453). The panel claimed that it was not going to resolve this conflict regarding the application of the Zoning Ordinance (Op. at 7), but it nonetheless resolved the matter *de facto* in the City’s favor by upholding the City Council’s approval of the mosque construction. (Op. at 7-9).

The panel’s opinion is wrong. Not only does the Zoning Ordinance not support this position, the Michigan Zoning Enabling Act (“MZEA”), which trumps the Zoning Ordinance, *see Whitman v. Galien Twp.*, 288 Mich. App. 672, 687 (Mich. Ct. App. 2010) (“Because the zoning ordinance does not comply with the MZEA, the zoning board’s decision to grant a special-use permit did not comport with the law . . . .”),

expressly rejects it,[4] and for good reason: zoning laws "are enacted for the benefit of the public," *League of Residential Neighborhood Advocates*, 498 F.3d at 1055-56, not for the benefit of politicians or city lawyers who want to avoid controversial litigation.

In the final analysis, there are serious and harmful policy implications created by the panel's opinion. If an application for special zoning couldn't get approval through the Planning Commission, the party seeking the special zoning could simply "sue and settle," relying on the fact that potentially costly and controversial litigation would force the City Council to exercise this super-zoning-authority the City claims it possesses. That theoretical nuclear power plant could become a reality. But the Zoning Ordinance and the MZEA do not permit such an abuse of power. And only a rehearing by the full Court can remedy this error and halt this harmful practice.

A. The Mosque Construction Does Not Comply with the Zoning Laws, Rendering the Federal Court Consent Judgment Invalid.

The Planning Commission held a hearing on August 13, 2015, to review the application of the American Islamic Community Center, Inc. ("AICC") to build the controversial mosque. No final decision was rendered. Rather, the Commission voted to continue the matter to the September 10, 2015 Planning Commission meeting so that it could consider additional information it had requested from AICC and so that a full commission would be present to hear and decide the matter. (Tr. of 8/13/15 Hr'g

[4] Mich. Comp. Laws § 125.3502 (mandating "a statement of findings and conclusions . . . which specifies the basis for the decision" for all special land use approvals).

at 178-82, R.67-9, Pg. ID 1753-54).

Following the September meeting, the Planning Commission voted *unanimously* to disapprove AICC's permit application. Based on the *factual* record, the Commission concluded that the proposed construction does not comply with the Zoning Ordinance, and it made the following specific findings based on the *mandatory* zoning requirements:

- The location and height of the proposed building interferes with and discourages the appropriate development and use of adjacent land and buildings, with the height exceeding that of other structures in the immediate areas by more than 30' at some points of the proposed building . . . ; [***Editorial note***: the Consent Judgment only marginally reduced the height. The approved height still *far exceeds* other structures in the immediate areas as a matter of fact.]

- The square footage of the proposed building in comparison to the size of the parcel is excessive and not compatible with the established long-term development patterns in this R-60 zoning district . . . ; [***Editorial note***: the Consent Judgment did not reduce the building size, and this is particularly troubling in light of the postage-stamp size of the parcel (4.3 acres).]

- Given the approximately 20,500 square foot[5] size of the proposed building and the allocation of floor space to ancillary uses, there is a likely shortage of off-street parking when the principal and ancillary uses of the building are combined, especially on busy prayer hall days. Section 23.02 B.1 of the Ordinance requires additional parking spaces for ancillary uses, which are not addressed in the architectural plans . . . [***Editorial note***: the Consent Judgment did *not* consider ancillary uses of the building, *it provides parking for only 3,205 square feet of the space*, and it does not require any definitive overflow parking plan—at best, it only requires a vague "reasonable effort."]; and

[5] When you include the basement, the square footage of the building is approximately 28,000 square feet. (McLeod Dep. at 86:8-10, R.67-4, Pg. ID 1649).

- The scale and height of the proposed building on the site are not harmonious with the character of existing buildings in the vicinity of this R-60 zoning district . . . . [***Editorial note***: the Consent Judgment does nothing to remedy this defect. Nor could it. The proposed site is inappropriate for this large construction.]

(9/10/15 Staff Report at 4, R.67-5, Pg. ID 1657; Tr. of 9/10/15 Hr'g at 7:23-25 to 13:1-2, R.67-10, Pg. ID 1758-59; Consent J., R.67-20, Pg. ID 1828-41; Mende Dep. at 16:10-25 to 18:1-25 [reviewing hearing transcript where he explains why the mosque does not, *as a matter of fact*, comply with the zoning ordinance], R.67-11, Pg. ID 1769-70).

During his testimony, Defendant Taylor confirmed that he "support[ed] the planning commission's decision in this case," that "the planning commission arrived at the right decision" and that this decision was "based on legitimate planning and zoning issues." (Taylor Dep. at 69:2-25 to 76:1-4, R.67-12, Pg. ID 1781-82). Per Defendant Taylor:

> Q. So as you sit here today, was it your understanding the planning commission properly applied the zoning ordinance to deny the special approval land use application of the AICC?
> A. That is my belief, yes.

(Taylor Dep. at 75:25 to 76:1-4, R.67-12, Pg. ID 1782). Christopher McLeod, the City's designated Rule 30(b)(6) witness, testified that "the planning commission clearly outlined their rationale for denying the application. And their specific requirements in terms of their view, the specific requirements—general requirements of special land use were not met. So, from that standpoint, I agree with the planning

commission's determination."[6] (McLeod Dep. at 111:21-25 to 112:1-2, R.67-4, Pg. ID 1650).

Nothing in the Consent Judgment, stated during the City Council meeting, or drafted in the minutes of that meeting demonstrates that the mosque construction complies with the required zoning standards. And the panel did not, because it could not, identify such compliance with any specific facts.[7] Indeed, by its own terms, the Consent Judgment trumps local zoning regulations. (Consent J. at § 2.6 ["Except as modified by this Consent Judgment, AICC shall comply with all City codes . . . ."], Pg. ID 1837; § 3.4 ["To the extent that this Consent Judgment conflicts with any City Ordinance . . . , the terms of this Consent Judgment shall control."], Pg. ID 1838). The panel's opinion is wrong, and it establishes a dangerous precedent by permitting a "sue and settle" policy to the detriment of the general public.

Indeed, the law supports Plaintiffs' position and affirms that a *federal* court has authority to declare invalid a *federal* consent decree that violates state law and that is

---

[6] The *ad hominem* attacks and *allegations* against *one* member of the Planning Commission, Plaintiff Norgrove, do not change the fact that the mosque construction does not comply with the zoning laws. These personal attacks and allegations were simply a pretext for the litigation that produced the Consent Judgment challenged here. (*See* Op. at 3, n.1 [citing the allegations, which have never been proven in court nor shown to be material to a RLUIPA claim]).

[7] The panel claims that "[i]t is abundantly clear that the City Council *did* consider these and all other relevant criteria," offering generalizations about "noise, size and height of building, parking, and traffic." (Op. at 7-8). But the record is "abundantly clear" that the mosque does not *comply* with the zoning requirements, even when accepting the few minor and meaningless concessions made in the Consent Judgment.

not *necessary* to rectify the *violation of federal law*, as in this case (*i.e.*, the parties denied liability). In sum, the Consent Judgment is invalid, and the full Court should so declare. *See League of Residential Neighborhood Advocates*, 498 F.3d at 1058 (invalidating a consent decree that violated local zoning laws); *Perkins v. City of Chi. Heights*, 47 F.3d 212, 216 (7th Cir. 1995) (stating that without "properly supported findings that such a remedy is *necessary* to rectify a *violation of federal law*," the "parties can only agree to that which they have the power to do outside of litigation"); *St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264, 270 (8th Cir. 2011) (invalidating a consent decree and stating, "State actors cannot enter into an agreement allowing them to act outside their legal authority, even if that agreement is styled as a 'consent judgment' and approved by a court"); *Kasper v. Bd. of Election Comm'rs*, 814 F.2d 332, 341-42 (7th Cir. 1987) (same); *Cleveland Cnty. Ass'n for Gov't by the People v. Cleveland Cnty. Bd. of Comm'rs*, 142 F.3d 468, 477-79 (D.C. Cir. 1998) (same); *Keith v. Volpe*, 118 F.3d 1386, 1393 (9th Cir. 1997) (same); *see also Vestevich v. W. Bloomfield Twp.*, 245 Mich. App. 759, 764-65 (Mich. Ct. App. 2001) (same).

Full Court review is warranted.

B. Defendants' Content- and Viewpoint-Based Speech Restriction at the City Council Meeting Violated the First and Fourteenth Amendments.

The City Council held a meeting to discuss whether the City should continue to defend the Planning Commission's decision by rejecting the proposed Consent Judgment or whether it should extricate itself from the controversial litigation by

capitulating to AICC's demand that it be permitted to construct the mosque via the proposed Consent Judgment. As expected, many City residents, including most of the Plaintiffs, had very strong opinions as to why they did not want the City to capitulate and permit the construction.[8] During his deposition, Defendant Taylor described these views as "good faith concerns."[9] Yet, during the City Council meeting, and prior to

---

[8] The record reveals that the decision to approve the Consent Judgment was a *fait accompli*. The City attorney prepared only *one* Agenda Statement for the City Council meeting, and the only "Suggested Action" was to *approve* the Consent Judgment. (Pls.' Opening Br. at 12 [citing Agenda Statement, R.67-13, PgID 1788-89; McLeod Dep. at 135:1-24, R.67-4, PgID 1652]). AICC was no doubt aware of this as none of its supporters showed up for the meeting—a glaring fact that was not lost on Plaintiffs. (Youkhanna Dep. at 35:20-25 to 36:1-11; 39:2-25 to 40:1-9 [describing the decision as "a baked deal ahead of time"], R.67-14, PgID 1793-94).

[9] As Defendant Taylor testified:

> A. I heard from a number of Chaldean people that they were upset with the mosque being built on 15 Mile Road, yes.
>
> Q. And what was your understanding of their objections to the mosque being built on 15 Mile Road?
>
> A. Well, I can't speak for every Chaldean person, but the general theme I heard was that when they lived in Iraq, and they would have a Christian community in Iraq, that Muslims would build a mosque or try to get a foothold near their community as a way to antagonize them and as a way to let them know that Christians could not escape Muslims, and that Muslims would follow them wherever they went. And so when the Chaldean community that lives in Sterling Heights—I think lives throughout the city but it's concentrated in the 15 mile and Ryan area, and this mosque was proposed in fairly close proximity to 15 Mile and Ryan, and so the Chaldeans that I talked to, a number of them expressed to me that this seemed to be similar to what would happen to them back at home; and as we talked about earlier, a number of Chaldeans—probably most of them were trying to escape religious persecution in Iraq and saw this as antagonistic, the AICC deciding to put their mosque on 15 Mile Road, and so that's generally what I got from talking with Chaldeans in Sterling Heights.
>
> Q. Are you dismissive of those concerns or do you think they're real concerns

anyone speaking on the subject of whether the City should or should not permit the mosque construction via the Consent Judgment, Defendant Taylor imposed a speech restriction that prohibited Plaintiffs from expressing their "good faith concerns" because the speech was deemed to be an attack on Islam. The panel incorrectly upheld this "content-based" restriction. (Op. at 9-14).

More specifically, Defendant Taylor warned the speakers prior to the public comment period that he would not permit "any comments about anybody's religion . . . . And any comments regarding other religions or disagreements with religions will be called out of order." (Taylor Dep. at 52:9-15, R.67-12, Pg. ID 1776). Defendant Taylor was enforcing a City Council rule. (*See* Taylor Dep. at 50:23-25 to 51:1-14, R.67-12, Pg. ID 1776; *id*. at 53:8-13 ["If somebody came up at any council meeting and started to talk about somebody else's religious beliefs or attacking them for their religious beliefs, they would be called out of order. I was just specifying it at this meeting."], Pg. ID 1777).

As a matter of fact and law, Defendant Taylor was imposing an unlawful viewpoint-based restriction,[10] and he was doing so through the enforcement of a single rule that operated as a prior restraint on Plaintiffs' speech. To begin, the panel is

---

that they have expressed to you?
A. I'm not dismissive of those concerns and I believe they're *good faith concerns from the Chaldean people* who expressed them to me.

(Taylor Dep. at 22:17-25 to 24:1-6 [emphasis added], R.67-12, Pg. ID 1774).

[10] Viewpoint discrimination is an egregious form of content discrimination. *Bible Believers*, 805 F.3d at 248.

wrong to suggest that religion was not "relevant" to the discussion (and to treat this as a separate "relevance rule"). (Op. at 9-13). Per Defendant Taylor:

> Q. And you were specifying it [*i.e.*, the speech restriction] at this meeting because the subject of the consent judgment was the construction of a mosque; correct?
> A. I was specifying it at this meeting because *I anticipated that some speakers would want to talk about religion*.
> Q. In the context of the construction of this mosque on 15 Mile Road; correct?
> A. Yes, and the context of that agenda typically was to approve the consent judgment.
> Q. And the consent judgment was effectively the approval of the construction of the mosque on 15 Mile Road?
> * * *
> THE WITNESS: The consent judgment speaks for itself, obviously, but, yes, *the subject matter was a mosque*.
> BY MR. MUISE:
> Q. *And so a mosque is a religious place of worship*?
> A. *Yes, <u>of course</u>*.

(Taylor Dep. at 53:14-25 to 54:1-9, R.67-12, Pg. ID 1777) (emphasis added).

Further, the fact that this City Council rule was viewpoint based is evidenced by the fact that Defendant Taylor would not permit any speaker to make a comment that he deemed critical of (*i.e.*, an "attack" on) Islam.[11] Per Defendant Taylor:

> Q. With regard to the public comment period at the February 21, 2017, city council meeting, you previously testified that private citizens who were going to comment were not permitted to attack another person or institution in their comments; is that right?
> A. That's correct.
> Q. So, for example, the private citizen would not be permitted to oppose the construction of the mosque *based on the view* that Islam is a religion

[11] (*See* Answer ¶ 52 [admitting that the speaker was called out of order because her comment "was disparaging to Muslims"], R.29, Pg. ID 1149-50).

> of violence. That would be considered an attack on Islam?
> A. Yeah, I would view that as an attack on an institution, the institution of Islam, and also on the AICC.
> Q. Similarly, then, not to permit—wouldn't permit a private citizen to express opposition to the mosque *based on the speaker's view* that AICC was associated with terrorism in some way; correct?
> A. I would not have tolerated that.

(Taylor Dep. at 118:1-20, R.67-12, Pg. ID 1786) (emphasis added).

Under controlling law and contrary to the panel's opinion, the challenged speech restriction is not only an unlawful content-based restriction (as set forth above), the very basis for this restriction (*i.e.*, Defendants did not want any comments during the public hearing that might offend anyone's religion) demonstrates that it is also an unlawful viewpoint-based restriction. Supreme Court precedent compels this conclusion. *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) ("Giving offense is a viewpoint."); *see also Am. Freedom Def. Initiative v. King Cnty.*, 904 F.3d 1126, 1131-32 (9th Cir. 2018) (holding that the County's refusal to display an ad on its transit advertising space, a nonpublic forum, based on a claim that the ad was demeaning and disparaging toward Muslims was an unlawful viewpoint-based restriction and expressly relying upon *Matal*); *Wandering Dago, Inc. v. Destito*, 879 F.3d 20, 33 (2d Cir. 2018) (holding that "*Matal* compels the conclusion that defendants have unconstitutionally discriminated against WD's viewpoint by denying its Lunch Program application because WD branded itself and its products with ethnic slurs").

Additionally, "under the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views," which is precisely what Defendants have done. *Police Dep't of the City of Chi. v. Mosley*, 408 U.S. 92, 96 (1972). This principle of law is applicable here, *Madison Joint Sch. Dist. v. Wis. Emp't Relations Comm'n*, 429 U.S. 167, 176 (1976) (citing *Mosley*), and it compels the conclusion that Defendants also violated the Equal Protection Clause, contrary to the panel's opinion. (Op. at 13-14).

CONCLUSION

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 it contains 3,894 words.

AMERICAN FREEDOM LAW CENTER

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

Attorney for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2019, 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