No. 21-1552

United States Court of Appeals for the Sixth Circuit

REFORM AMERICA DBA CREATED EQUAL; MARK HARRINGTON,

PLAINTIFFS-APPELLANTS,

v.

CITY OF DETROIT, MI; DARIN SZILAGY, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A POLICE COMMANDER, CITY OF DETROIT POLICE DEPARTMENT; **KURT WORBOYS,** INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A POLICE CAPTAIN, CITY OF DETROIT POLICE DEPARTMENT; AND **R. LACH,** INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A POLICE OFFICER, CITY OF DETROIT, MI, POLICE DEPARTMENT

DEFENDANTS-APPELLEES,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
HONORABLE LAURIE J. MICHELSON

Civil Case No. 19-12728

APPELLANTS' REPLY BRIEF

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ARGUMENT IN REPLY

I. The Speech Restrictions Violate the First and Fourteenth Amendments.

Defendants-Appellees ("Defendants") assert that "the facts of this case must be evaluated not in a vacuum, but in the context of the political climate in which they arose." (Defs.' Br. at 3). What Defendants are really asking is for the Court to ignore the facts of *this* case—facts which demonstrate that there were no security threats[1] warranting the draconian restrictions at issue—and instead to rule based on a hypothetical set of facts based on hearsay statements and other inadmissible news reports. (*See* Defs.' Br. at 3-4 [citing hearsay statements from news reports related to events other than the one at issue]). Accepting Defendants' invitation would be error, as "the reaches of the First Amendment are ultimately defined by the facts it is held to embrace." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Bos.*, 515 U.S. 557, 567 (1995).

[1] As the record demonstrates, Defendants had no specific, security-based justification for the speech restrictions. (City Dep. at 138:22-25 to 139:1-7, R.20-3, Pg.ID 202; *see also* Defs.' Br. at 33 [admitting that "DPD was unaware of any specific threats of violence"]). According to the FBI: "***We have no information to indicate a specific credible threat to or associated with a 2019 Democratic Presidential primary debate***." (City Dep. at 88:4-25, Dep. Ex. 6 [emphasis added], R.20-3, Pg.ID 191, 237-41). The Detroit Crime Commission concluded: "***Analysts did not see any items to indicate there were any plans for violent actions targeting the debates or protests***." (City Dep. at 89:7-25 to 90:1-5, Dep. Ex. 7, [emphasis added] R.20-3, Pg.ID 192, 242-47). This was also the City's understanding. (City Dep. at 88:24-25, 90:4-5, R.20-3, Pg.ID 191-92). And as the facts on the ground demonstrate, protestors on all sides of the issues were peaceful throughout the two debate days. (Harrington Decl. ¶ 57, R.20-2, Pg.ID 172-73; *see also* City Dep. at 28:8-11, 19-22; 95:14-23; 124:5-7, R.20-3, Pg.ID 184, 193, 199).

Moreover, the examples Defendants provide involved rival, competing, and opposing demonstrations or situations involving individuals who made direct threats to a particular candidate. None of these are this case. Indeed, someone who is "left-leaning" on "immigration rights [or] environmental cases" (Defs.' Br. at 10) may, in fact, be pro-life. The situation presented here was a debate amongst candidates running for President of the United States. It was not a "white nationalist" rally or anything of the sort. The extraneous "facts" Defendants rely upon are irrelevant.

At its core, this case involves quintessential First Amendment activity in a traditional public forum. Far from being a First Amendment orphan, Plaintiffs' pro-life speech "occupies the 'highest rung of the hierarchy of First Amendment values,' and is entitled to *special protection*." *Connick v. Myers*, 461 U.S. 138, 145 (1983) (citations omitted) (emphasis added). Additionally, "[c]onstitutional concerns are heightened further where, as here, the [challenged restrictions] restrict[] the public's use of streets and sidewalks for political speech." *Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 605 (6th Cir. 2005).

In their opposition, Defendants argue that despite being prevented from demonstrating on the public streets and sidewalks inside the overly broad restricted area, Plaintiffs had multiple opportunities to protest within a block or less of the Fox Theatre, with a direct line of sight to the theatre and within the line-of-sight of CNN cameras. (Defs.' Br. at 25-30). This argument fails for at least two reasons. First, as

the Supreme Court has long held, "the streets are natural and proper places for the dissemination of information and opinion, and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. N.J.*, 308 U.S. 147, 163 (1939); *Perry Educ. Ass'n v. Perry Local Educators*, 460 U.S. 37, 55 (1983) ("In a public forum . . . all parties have a constitutional right of access. . . ."). And second, the fact that *other* places were available to Plaintiffs for their protest activity does not license Defendants to prevent Plaintiffs from being where *they wanted to protest*, particularly when the speech restrictions are unconstitutionally overbroad. Simply put, because the restrictions were not narrowly tailored, the availability of "ample alternatives" is irrelevant. *Am.-Arab Anti-Discrimination Comm.*, 418 F.3d at 607 ("[B]ecause we have already found that the Ordinance is not narrowly tailored, whether the City of Dearborn has provided ample alternatives of communication is now irrelevant in this case. . . .").

For example, the record is clear that Plaintiffs wanted to distribute literature during the debates. (Harrington Decl. ¶¶ 11 ["We also carried pro-life literature that we wanted to distribute."], R.20-2, Pg.ID 160; ¶ 15 ["[W]e wanted access to the candidates and attendees of the debates . . . to distribute to them our pro-life literature."], R.20-2, Pg.ID 161). The problem, of course, was that Defendants prevented Plaintiffs from reaching their intended audience for their literature

distribution. This is additional evidence of the fact that Defendants' "alternative" locations were inadequate. *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1229 (9th Cir. 1990) ("[A]lternative mode[s] of communication may be constitutionally inadequate if the speaker's 'ability to communicate effectively is threatened' [and a]n alternative is not ample if the speaker is not permitted to reach the 'intended audience.'"); *see also McCullen v. Coakley*, 573 U.S. 464 (2014) (noting that the challenged "buffer zones . . . made it substantially more difficult for petitioners to distribute literature" and to have close, personal conversations, thus "depriv[ing] petitioners of their two primary methods of communicating. . ."); *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 377 (1997) (invalidating a "floating" buffer zone around people entering an abortion clinic partly on the ground that it prevented protestors "from communicating a message from a normal conversational distance or handing leaflets to people entering or leaving the clinics who are walking on the public sidewalks").

Additionally, as noted by Defendants, the demonstrators "were allowed to briefly march down Woodward Avenue and express themselves near the Fox Theatre." (Defs.' Br. at 12). The alleged justification for allowing this march by the demonstrators in the "restricted zone" was to "dissipate their anger." (*Id.*). And what was the basis for the anger that this march would help dissipate? It was the demonstrators' anger over the inability to adequately express their message due to the

draconian restrictions at issue. Consequently, the restrictions were the very source of the anger that Defendants claim that they were trying to dissipate. In other words, the restrictions did not promote any legitimate safety issue. Rather, they were creating one. The fact that Defendants were able to permit this march without any security issues whatsoever proves that the challenged speech restrictions were not narrowly tailored as a matter of fact and law. The fact that Defendants were "able to pull additional manpower to line Woodward Avenue with more protective officers" (Defs.' Br. at 12-13) to allow this demonstration in front of the Fox Theatre while achieving their public safety interest is dispositive of the issue. "To meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *McCullen*, 573 U.S. at 495. In sum, the march down Woodward Avenue in front of the Fox Theatre is fatal to Defendants' arguments. *Saieg v. City of Dearborn*, 641 F.3d 727, 740-41 (6th Cir. 2011) (striking down leafletting restriction and concluding that "the restriction does not serve a substantial governmental interest, as evidenced by the defendants' willingness to permit sidewalk vendors and ordinary pedestrian traffic on the same sidewalks where they prohibited Saieg from leafleting"); *City of Ladue v. Gilleo,* 512 U.S. 43, 52 (1994) ("Exemptions from an otherwise legitimate regulation of a medium of speech may be noteworthy for a reason quite apart from the risks of viewpoint and content

discrimination: They may diminish the credibility of the government's rationale for restricting speech in the first place.").

Defendants repeatedly (and incorrectly) assert that all of the restrictions were content neutral. The facts (and law) demonstrate otherwise. To begin, a regulation is "content based if it required enforcement authorities to examine the content of the message that is conveyed to determine whether a violation has occurred." *McCullen*, 573 U.S. at 479 (internal quotations and citation omitted). Defendants admit in their brief that they were engaging in content-based discrimination (and then, in the same breath, assert that they weren't). In their own words: "It is true that the City did not permit Plaintiffs to cross Woodward Avenue to confront those on the other side, *based on the messages of those on each side*, but this does not necessarily render the actions content-based." (Defs.' Br. at 32 [emphasis added]). But, of course, it does render the actions content based. *McCullen*, 573 U.S. at 479. Indeed, it renders the actions viewpoint based as Defendants admit that they based their restrictions on whether the message was "left-wing" or "right-wing"—that is, the restriction was not based on the subject matter but the speaker's viewpoint on the subject. "[V]iewpoint discrimination is . . . an egregious form of content discrimination." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). And it is prohibited in all

forums, including nonpublic forums.[2] *See Am. Freedom Def. Initiative v. Suburban Mobility Auth.*, 978 F.3d 481, 491 (6th Cir. 2020) (striking down viewpoint-based restrictions on advertisements on transit authority property, a nonpublic forum).

Defendants further assert that "[t]he restricted zone was created to bar entry . . . to all engaged in demonstrative activities, regardless of the content of the individuals' desired message." (Defs.' Br. at 21). But, again, the facts show otherwise. The "Delaney sign" holder is just one example. This individual was obviously permitted to demonstrate within the restricted area, which was lined with barricades and police officers. (Harrington Decl. ¶¶ 22, 30, Ex. A ["Reform America v City of Detroit – Plaintiff Harrington Video"], R.20-2, Pg.ID 162-63, 65). Defendant Worboys confirms (per the video where he says it) that the sign holder's presence within the "restricted area" was permitted because he was a "supporter," (*id.* ¶ 30, Ex. A ["Reform America v City of Detroit – Arrest Video" at 04:02 to 04:10], R.20-2, Pg.ID 165, 175), and the demonstrator wasn't in the "corral." The presence of the deBlasio sign truck in the church parking lot is additional evidence of the City favoring supporters. (*Id.* ¶ 25, Ex. A ["Reform America v City of Detroit – Arrest Video" at 01:38 to 01:43], R.22-2, Pg.ID 163-64, 175). And the "candidate support corral," a

[2] The "free speech area" restriction and the "march" were clearly viewpoint based as they were enforced based on whether the speaker was "left-leaning" or "right wing." (*See, e.g.,* Defs.' Br. at 10, 13, 17, 21, 27, 32, 33, 39 [admitting that restrictions were based on the viewpoint of the speaker]; *see id.* at 32 ["It is true that the City did not permit Plaintiffs to cross Woodward Avenue to confront those on the other side, based on the messages of those on each side . . . .]).

restriction enforced by Defendants, was permitted within the "restricted area" so that "the candidates can have their chosen people in that area to be in the backdrop . . . of the venue, so they could be in front of Fox Theater." (City Dep. at 82:19-25 to 85:1-9, Dep. Ex. 3, R.20-3, Pg.ID 190-91, 207). Consequently, not all demonstrators were excluded from the "restricted area"—only those who expressed disfavored viewpoints.

Additionally, even if the "candidate support corral" and the church parking lot were considered nonpublic or limited-public forums, the challenged restrictions still fail constitutional scrutiny because they were enforced by the City (and thus constitute state action), and they were viewpoint based. *See, e.g.*, *Am. Freedom Def. Initiative*, 978 F.3d at 491 (holding that restrictions in a nonpublic forum "must be reasonable and viewpoint neutral"). The First Amendment is implicated here because the City was enforcing these restrictions. Defendants do not confront *Bays v. City of Fairborn*, 668 F.3d 814 (6th Cir. 2012), in their brief. *Bays* is controlling. In *Bays*, similar to this case, the City of Fairborn argued that the enforcement by Fairborn officials of a solicitation policy created by private groups that organized the festival at issue did not transform the private policy into state action. This Court disagreed, concluding that "Fairborn officials engaged in state action by supporting and actively enforcing the solicitation policy in place at the [f]estival." *Id.*at 819-20. This conclusion, which is directly applicable to this case, did not hinge on a forum analysis.

Here, it is undisputed that the City and its police officers "engaged in state

action by supporting and actively enforcing" the "candidate support corral" and church parking lot restrictions (as well as the other restrictions at issue). Consequently, these restrictions must comport with the First and Fourteenth Amendments, and they do not. Indeed, because these restrictions are content and viewpoint based, they must satisfy strict scrutiny, which is the "most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). Accordingly, the challenged restrictions "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Strict scrutiny "requires the State to further 'interests of the highest order' by means 'narrowly tailored in pursuit of those interests.' . . . That standard 'is not watered down'; it 'really means what it says.'" *Tandon v. Newsom*, 141 S. Ct. 1294, 1298 (2021) (internal citation omitted).

The government's alleged "interest" for imposing the challenged restrictions is public safety. However, the record reveals that there was no credible threat to justify the broad restriction that prevented Plaintiffs and other peaceful protestors from accessing the public sidewalks in front of Fox Theatre. (*See supra* n.1). The fact that Defendants permitted the same protestors to "march" along Woodward Avenue directly in front of the Fox Theatre without requiring searches, restricting backpacks or other bags, using a metal detector, or employing other similar security measures

before allowing the march undermines Defendants' claim that the restrictions were necessary or narrowly tailored to support its public safety interests. *See McCullen*, 573 U.S. at 495; *City of Ladue*, 512 U.S. at 52; *Frisby v. Schultz*, 487 U.S. 474, 485 (1988) (concluding that a restriction "is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy"). As noted previously, Defendants' reliance on hearsay contained in news reports regarding threats associated with unrelated events is speculative and inadmissible. *See* Fed. R. Evid. 801 & 802. As stated by this Court, "[M]ere speculation about danger is not an adequate basis on which to justify a restriction of speech." *Saieg*, 641 F.3d at 739 (internal quotations omitted). Furthermore, the video shows that there were many pedestrians walking and roaming freely throughout the "restricted area" without having to undergo any particular security screening. (*See* Harrington Decl. ¶ 30, Ex. A ["Reform America v City of Detroit – Sign in Restricted Area"], R.20-2, Pg.ID 175; *see also id*. ¶¶ 30-34, Ex. A ["Reform America v City of Detroit – Arrest Video"], R.20-2, Pg.ID 175). In sum, there was no substantial, let alone compelling, government interest for the challenged restrictions. *See Saieg*, 641 F.3d at 640-41. The restrictions violate the Free Speech Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.[3]

[3] Because Defendants' restrictions were viewpoint-based and burdened Plaintiffs' fundamental right to freedom of speech, they also fail constitutional scrutiny under the Equal Protection Clause of the Fourteenth Amendment. *See Police Dep't of the City*

II. Plaintiff Harrington Was Unlawfully Seized.

There is no reasonable dispute that Plaintiff Harrington was seized by Defendants within the meaning of the Fourth Amendment when he was physically restrained and placed in flex cuffs. *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968) ("[W]hen the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen [we may] conclude that a 'seizure' has occurred."). Consequently, this seizure was unlawful "if there is not probable cause." *Dugan v. Brooks*, 818 F.2d 513, 516 (6th Cir. 1987).

Plaintiff Harrington agrees with Defendants that "[t]his issue is governed by Michigan's criminal trespass statute,"[4] which provides that a trespass occurs when a person "[e]nter[s,] [or remains on,] the lands or premises of another without lawful authority after having been forbidden to do so[, or after being notified to depart,] by the owner or occupant or the agent of the owner or occupant." (Defs.' Br. at 41 [citing

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of Chi. v. Mosley, 408 U.S. 92, 96 (1972) ("[U]nder 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."); *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 256 (6th Cir. 2015) ("To state an equal protection claim, a plaintiff must adequately plead that the government treated the plaintiff disparately as compared to similarly situated persons and that such disparate treatment . . . burdens a fundamental right . . . . Freedom of speech is a fundamental right.").

[4] The church parking lot was not "fenced or posted farm property," and it is absurd to suggest otherwise. (*See* Defs.' Br. at 41 [incorrectly arguing that the property was "fenced" and thus no notice was required by the owner or occupant or the agent of the owner or occupant]). And nobody had to cut through or breach any fence to enter the parking lot. It was wide open.

Mich. Comp. L. 750.552]). As a matter of undisputed fact, no one from the church, including any occupant or agent of the church, was present. No such person (occupant or agent of the church) told Plaintiffs to depart from this area. (Harrington Decl. ¶ 26, Ex. A, R.20-2, Pg.ID 164, 175; *see* City Dep. at 64:8-16, R.20-3, Pg.ID 188).

Defendants cite to no Michigan case establishing that any City police officer was an agent of the owner or occupant of the church property during the debates. And the reason is clear: "[i]n Michigan, the test for a principal-agent relationship is whether the principal has the right to control the agent." *Little v. Howard Johnson Co.*, 183 Mich. App. 675, 680, 455 N.W.2d 390, 393 (1990). Defendants have failed to set forth any evidence demonstrating that such an agency relationship existed between the City police officers and any owner or occupant of the church property at the time of the seizure. Because the order to depart was unlawful, so was the seizure. *See generally Sandul v. Larion*, 119 F.3d 1250, 1256 (6th Cir. 1997) (finding that the officer did not have probable cause to arrest the individual because "protected speech cannot serve as the basis for a violation of any of the . . . ordinances at issue"). Consequently, the seizure violated the Fourth Amendment as a matter of fact and law.

III. The City Is Liable for the Constitutional Violations.

In *Monell v. New York City Department of Social Services*, 436 U.S. 658, 694-95 (1978), the Supreme Court affirmed that municipalities are liable under 42 U.S.C. § 1983 if municipal policy or custom was the "moving force" behind the alleged

unconstitutional action. And "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury . . . the government as an entity is responsible under § 1983." *Id*. at 694. At the end of the day, "*Monell* is a case about responsibility." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 478 (1986). Thus, acts "of the municipality" are "*acts which the municipality has officially sanctioned or ordered*." *Id*. at 480 (emphasis added).

The restrictions at issue were approved, endorsed, and sanctioned by the City. (City Dep. at 95:3-13; 100:14-25 to 102:1-9; 104:1-25 to 105:1-4, Dep. Ex. 10, R.20-3, Pg.ID 193-96, 248). They were enforced by the City. (City Dep. at 29:12-24; 46:2-21, R.20-3, Pg.ID 185-86; Harrington Decl., Ex. A [videos showing enforcement by City police officers], R.20-2, Pg.ID 175). All of the actions at issue were consistent with how the City trained its police officers, and they were consistent with the City's policies, practices and procedures. (City Dep. at 95:24-25 to 96:1-11; 124:8-20; 132:1-8, R.20-3, Pg.ID 193, 199). In short, the City's policies, practices, and procedures were the moving force for the actions and thus the moving force for the violation of Plaintiffs' rights. Accordingly, the City is liable for the violations. *See Saieg*, 641 F.3d at 742 ("The City may be held liable for the restriction of Saieg's free speech rights that the leafleting restriction caused.").

IV. The City Police Officers Do Not Enjoy Qualified Immunity.

The defense of qualified immunity does not shield Defendants Szilagy, Worboys, or Lach from liability for violating Plaintiffs' clearly established rights. In *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the Court stated the applicable standard as follows: government officials are protected from personal liability and thus enjoy qualified immunity only "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 818. And "[t]his is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in light of pre-existing law the unlawfulness must be apparent." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987) (internal citation omitted). "The test focuses on the *objective* legal reasonableness of an official's acts, and the qualified immunity defense fails if the official violates a clearly established right because 'a reasonably competent public official should know the law governing his conduct.'" *Jones v. Coonce*, 7 F.3d 1359, 1362 (8th Cir. 1993) (quoting *Harlow*, 457 U.S. at 818-19) (emphasis added). "[O]fficials can still be on notice that their conduct violates established law even in novel factual circumstances." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002).

In *Saucier v. Katz*, 533 U.S. 194 (2001), the Court mandated a two-step sequence for resolving qualified immunity claims. First, a court must decide whether

the facts alleged or shown by a plaintiff make out a violation of a constitutional right. And second, if the plaintiff has satisfied this first step, the court must decide whether the right at issue was "clearly established" at the time of the defendant's alleged misconduct. *Id*. at 201; *see also Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (stating that courts have discretion to "decid[e] which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand").

Whether a right is "clearly established" is ultimately an *objective*, legal analysis. As stated by the Supreme Court, "By defining the limits of qualified immunity essentially in objective terms, *we provide no license to lawless conduct*." *Harlow*, 457 U.S. at 819 (emphasis added).

As set forth above, the Court should have little difficulty rejecting the officers' qualified immunity defense. Plaintiffs' rights under the First and Fourteenth Amendments to engage in their free speech activity free from overbroad and content/viewpoint-based restrictions in traditional public forums was clearly established by July 29, 2019. *See, e.g., Saieg*, 641 F.3d at 740-41; *Police Dep't of the City of Chi.*, 408 U.S. at 96; *Bible Believers*, 805 F.3d at 256; (Harrington Decl. ¶ 40 ["Officer Lach said that he was giving us a 'legal order' to move. One of the pro-lifers who was with me commented that the order was unconstitutional, and Officer Lach responded, '*let it be unconstitutional then*.'"], R.20-2, Pg.ID 168 [emphasis

added]). Similarly, Plaintiff Harrington's right to be free from unlawful seizures was clearly established. *Terry*, 392 U.S. at 19 n.16; *Dugan*, 818 F.2d at 516.

Additionally, case law clearly established prior to July 29, 2019, the right to be free from retaliation for protected speech, thereby negating any claim of qualified immunity. *See Ctr. for Bio-Ethical Reform, Inc. v. City of Springboro*, 477 F.3d 807, 821-25 (6th Cir. 2007) ("Because retaliatory intent proves dispositive of Defendants' claim to qualified immunity, summary judgment was inappropriate"); (*see also* Harrington Decl. ¶ 30 ["I responded to Commander Szilagy by pointing to an individual holding a political sign on the sidewalk right next to them, prompting Commander Szilagy to assert that he 'doesn't have time [for this].' Captain Worboys indicated that the individual with the sign was authorized to be in the 'restricted area' because he was a 'supporter.'"], R.20-2, Pg.ID 165). The officer Defendants do not enjoy qualified immunity.

CONCLUSION

Based on the foregoing, this Court should reverse the district court and grant summary judgment in Plaintiffs' favor on all claims.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 32(a), the foregoing Reply Brief is proportionally spaced, has a typeface of 14 points Times New Roman, and contains 4,181 words, excluding those sections identified in Fed. R. App. P. 32(f).

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/s/ *Robert J. Muise*
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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2021, I electronically filed the foregoing brief 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.

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