No. 25-1784

United States Court of Appeals for the Sixth Circuit

ANDREW HESS,

Plaintiff - Appellant,

v.

OAKLAND COUNTY, MI; **KAREN MCDONALD**, Oakland County Prosecutor, Oakland County, MI; **MICHAEL J. BOUCHARD**, Oakland County Sheriff, Oakland County, MI; **MATTHEW PESCHKE**, Sergeant, Oakland County Sheriff's Office, Oakland County, MI,

Defendants - Appellees.

On Appeal from the United States District Court
for the Eastern District of Michigan
Honorable Gershwin A. Drain
Civil Case No. 2:25-cv-10665-GAD-KGA

REPLY BRIEF

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ARGUMENT IN REPLY

I. Courts, and Not Juries, Are the Guardians of the First Amendment.

A core issue in this case is whether the courts are the first guardians of a private citizen's fundamental right to freedom of speech or whether that right must first be subject to the prejudices and whims of a jury, particularly when there is no genuine issue of material fact for the jury to decide, as in this case. Must Plaintiff-Appellant Andrew Hess ("Plaintiff") be forced to endure the punishment of a felony prosecution before vindicating his fundamental right to free speech? The difficulties, hardships, and stress associated with a felony prosecution (*i.e.*, arrest warrant, bond conditions that further restrict fundamental rights, missed work, court appearances, stress on a young family, uncertainty of your fate, social opprobrium associated with a felony charge, cost of a legal defense, *etc*. . .) often destroy lives well before a jury is empaneled. We either have "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials"[1] or we don't. This appeal will test that "commitment" and determine whether it is true for Plaintiff. The Oakland County Prosecutor is dismissive of this fundamental right to free speech in that she insists that Plaintiff first undergo the punishment of a felony prosecution as the means of testing

[1] *Watts v. United States*, 394 U.S. 705, 708 (1969) (citations and internal quotations omitted).

this right. Right now, unless this Court steps in and stops it, which it should, the prosecutor holds all the cards and gets to play with house money.[2]

In this case, there is no genuine issue of material fact. The Oakland County Prosecutor's main witnesses (Kaitlyn Howard and Joe Rozell) already testified at a preliminary examination. That testimony is before this Court. And what does that testimony reveal? It shows that the Oakland County Prosecutor is seeking to convict Plaintiff of a 20-year felony for making a "terrorist threat" (1) because of a political comment ("hang Joe for treason"), (2) made in a "normal conversational tone," (3) in a near-empty lobby, (4) outside of the presence of any election official (including the "Joe" referenced in the comment), (5) that was merely overheard by a secretary, (6) who was admittedly not part of the conversation, and (7) who believed there was no imminent threat of harm, (8) but who made the complaint because she doesn't "take kindly" to such language. None of this is disputed as it is the sworn testimony of the government's witnesses. (*See* Appellant's Br. at 4-10 [setting forth undisputed facts]). The district court (and Defendants) is clearly wrong to claim that this case involves "factual intricac[ies]." (*See* R.36, Op. & Order at 19 ["Given the factual intricacy of this case, the Court cannot conclude that Plaintiff is likely to prevail on his First Amendment claim."], PageID.891; *see* Defs.' Br. at 24-26 [echoing the false claim

[2] The hearing on the Oakland County Prosecutor's motion to reinstate the criminal charge against Plaintiff is now scheduled for **January 13, 2026**, in the 50th District Court in Pontiac, Michigan. On December 4, 2025, this Court granted Plaintiff's motion to expedite this appeal. (Doc. 28).

that the factual circumstances make it impossible to determine whether Plaintiff's speech is protected by the First Amendment]).

According to the district court, the "compelling" arguments of the Oakland County Prosecutor are apparently: (1) that Joe Rozell was frightened when he heard *from a third-person* what Plaintiff allegedly said in the lobby (even though it wasn't what was actually said and Rozell's subjective reaction is not a basis for restricting Plaintiff's speech in the first instance, *see infra* § III.); (2) that it was in a normal conversational tone made in private although in a public place, which, contrary to the district court's conclusion, does *not* weigh in favor of the prosecutor; (3) that the secretary was apparently sufficiently "alarmed" to make the report, but the evidence shows that there was a significant delay from when she heard the alleged threat to when she reported it because her duties as a receptionist were more important to her, and when asked why she made the report, she said that she "doesn't take kindly to that kind of . . . language"[3]—hardly a compelling basis for prosecuting the speech; and finally (4) Plaintiff had made prior comments that Joe Rozell *should be arrested* for his actions as an election official, which only support Plaintiff's claim that he wasn't threatening Joe Rozell; he was accusing him of a crime (as he further confirmed in his written statement made at the scene and in his subsequent public speech made during

[3] (R.12-2, Prelim. Exam. Hr'g Tr. (Vol. I) at 75, PageID.178)

the public comment period).[4] (*See* R.36, Op. & Order at 19-21, PageID.891-93). How is any of this "compelling" let alone sufficient to overcome the strong protections afforded private citizens under the First Amendment? It's not, and it doesn't.[5]

In *Watts v. United States*, 394 U.S. 705 (1969), the Court *reversed a jury conviction* (*i.e.*, it wasn't a question for the jury, and, indeed, the jury got it wrong) for making a threat against the President (*i.e.*, this was a "threat" case). The Court noted that communications which convey political hyperbole (even if they mention the use of weapons or other acts of violence) are protected by the First Amendment. *Id*. at 707-08. Thus, the Court held that Watt's alleged "threat" in its factual context (*i.e.*, Watts was engaging in a political protest, not unlike the fact that Plaintiff was protesting the conduct of an election recount) was not a "true threat," but instead was

[4] (R.12-2, Ex. F [Pl.'s Written Statement to Oakland Cnty. Deputy], PageID.194-95).

[5] Unfortunately, the district court played fast and loose with the facts to fit this within the prosecutor's false narrative. Per the district court: "It also cannot be doubted that Plaintiff voiced a desire to see that Rozell is killed, a sentiment that has the potential to be highly threatening." (Op. & Order at 20, PageID.892). That's false. Plaintiff wanted to see Rozell prosecuted for treason—a federal crime. When confronted by the Oakland County deputy at the scene, that is precisely what Plaintiff told the deputy and what he put in his written statement to the deputy. In fact, Plaintiff included a citation to the federal treason statute (18 U.S.C. § 2381) in his statement. (R.12-2, Ex. F [Pl.'s Written Statement to Oakland Cnty. Deputy], PageID.194-95). Plaintiff further echoed that sentiment in his public comments immediately following. The deputy wrongly conveyed to Rozell what was actually stated in the lobby and what was actually intended by the statement. Yet, by the district court's account, Plaintiff now faces a 20-year felony prosecution not based on the undisputed account of what he *actually* said but based on an inaccurate retelling of it to the supposed victim.

mere "political hyperbole" immunized by the First Amendment. *Id*. at 706-08. Per the Court:

> [T]he statute initially requires the Government to prove a true 'threat.' We do not believe that the kind of political hyperbole indulged in by petitioner fits within that statutory term. For we must interpret the language . . . against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.

Id. at 708 (citations and internal quotations omitted). *Watts* is controlling (and *Thames v. City of Westland*, 796 F. App'x 251 (6th Cir. 2019), is not, *see infra* § III.), and it compels the Court to grant the requested injunction. Indeed, under the facts of this case, it is impossible (if not absurd) for Plaintiff's statement to constitute a "terrorist threat"—it is political hyperbole as a matter of law—similar to how it was impossible for Watt's statement to constitute a threat to the President as a matter of law.

To find a person liable under Michigan's "terrorist threat" statute (Mich. Comp. Laws § 750.543m), the prosecutor must prove that the alleged threat was "a serious expression of intent to commit *an act of terrorism*." *People v. Osantowski*, 274 Mich. App. 593, 606 (2007) (emphasis added). An "act of terrorism" is a "willful and deliberate act" that would comprise a "violent felony," known to be "dangerous to human life," and which is "*intended to intimidate* or coerce a civilian population or *influence or affect the conduct of government* or a unit of government *through*

intimidation or coercion." Mich. Comp. Laws § 750.543b(a) (emphasis added). Why do Defendants continue to ignore the plain language of the statute they are seeking to enforce? A prosecutor must also prove that the defendant "*consciously disregarded a substantial risk* that his [or her] communications would be viewed as threatening violence." *People v. Kvasnicka*, No. 371542, 2025 Mich. App. LEXIS 5764, at *16 (Ct. App. July 21, 2025) (emphasis added); *see also Counterman v. Colo.*, 600 U.S. 66 (2023). How can an offhand comment stated in "normal conversational tone" that was overheard by a secretary who was not an intended party to the conversation and that was made outside the presence of any election official be made with the intent to "influence or affect the conduct of government . . . through intimidation or coercion" or constitute a conscious disregard of a substantial risk that this communication would be viewed as conveying such a threat? It is not possible. This prosecution is unlawful. Period.

The other piece of this statutory framework that the Oakland County Prosecutor and the district court completely ignore, and which further compels the Court to conduct an initial determination as to whether the statement at issue is protected by the First Amendment, is Michigan Compiled Laws § 750.543z, which expressly provides that "a prosecuting agency shall *not* prosecute any person or seize any property for conduct *presumptively protected by the first amendment* to the constitution of the United States in a manner that violates any constitutional provision." Mich. Comp.

Laws § 750.543z (emphasis added). This provision of the statutory framework is clearly an indication that the Michigan Legislature did not want the "terrorist threat" statute to be used in the manner it is being used here against Plaintiff. Even if it is arguably a close call (which it isn't here), the presumption is that the speech (and this is a pure speech case; there are no alleged acts of violence) is protected by the First Amendment. The district court claimed that "[b]oth parties raise good arguments on this issue" (R.36, Op. & Order at 19, PageID.891), and yet ignored the command of § 750.543z. Indeed, the district court further acknowledged that "It *cannot be doubted* that Plaintiff's speech in this case regarded a political issue of public concern—he was voicing his anger over his belief that Rozell, a public official, may have been tampering with the votes in the recount." (*Id*. [emphasis added]). But yet, the district court denied Plaintiff's request for an injunction, and in this process, the court abdicated its fundamental duty to protect the right to freedom of speech from being punished by an unlawful prosecution.[6] This injustice must be corrected by this Court.

II. Defendants and the District Court Misapprehend the Holding and Lesson of *Brandenburg*.

Defendants and the district court plainly misapprehend the holding and lesson of *Brandenburg v. Ohio*, 395 U.S. 444 (1969). Plaintiff acknowledges that his

[6] The likelihood of success factor is the determinative factor at issue. *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("When a party seeks a preliminary injunction on the basis of a potential constitutional violation, 'the likelihood of success on the merits often will be the determinative factor.'") (quoting *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009)).

speech did not cause any incitement and that he was advocating for the enforcement of the law of treason against an election official whom he believed was betraying his office by allowing cheating to take place at an election recount.[7]

However, Defendants and the district court (wrongly) contend that the statement "hang Joe for treason" was "voic[ing] a desire to see that Rozell is killed." (*See* Op. & Order at 20, PageID.892; Defs.' Br. at 10). Under this view, the speech would be *advocating for the use of violence or lawlessness* to "influence or affect the conduct of government or a unit of government through intimidation or coercion."[8] However, pursuant to *Brandenburg*, such advocacy cannot be proscribed under the First Amendment *unless* the speech is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. Thus, in *Brandenburg*, the Court held that "the 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

[7] Plaintiff made this point contemporaneously and explicitly when he was interviewed at the scene by an Oakland County deputy, and Plaintiff put it in his written statement. (*See* R.12-2, Ex. F [Pl.'s Written Statement to Oakland Cnty. Deputy], PageID.194-95). Plaintiff also echoed this point during the speech he made during the public comment period. Plaintiff was permitted to return into the election recount room *with Joe Rozell after the alleged threat*, which is when he made his speech.

[8] This is not a simple "threat" statute. The statute is a "terrorism" threat statute, and this additional element of the statute (for the purpose of "influenc[ing] or affect[ing] the conduct of government or a unit of government through intimidation or coercion") makes it similar to the syndicalism statute at issue in *Brandenburg,* which punished "'advocating' violent means to effect political and economic change." *Brandenburg*, 395 U.S. at 447-48.

action and is likely to incite or produce such action." *Id*. at 447 (emphasis added). That is the lesson of *Brandenburg*, and it applies here, particularly in light of the arguments pressed by Defendants and the district court. *See also NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 928 (1982) ("[T]he mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action." (citation omitted)). Consequently, expressing the sentiment that Joe Rozell, the director of elections, should hang for treason for his actions related to the election recount without "preparing a group for [such] violent action and steeling it to such action" cannot be punished under the First Amendment pursuant to *Brandenburg*. In *NAACP v. Claiborne Hardware Company*, 458 U.S. 886 (1982), the Supreme Court applied these same principles to threatening rhetoric employed to ensure compliance with a boycott against racial discrimination and held those statements were protected by the First Amendment. In that case, Charles Evers very publicly told members of the community that "blacks who traded with white merchants would be answerable to him" *id.* at 900 n.28, and they would "have their necks broken," *id.* Applying *Brandenburg*, the Court held that Evers' comments "did not transcend the bounds of protected speech." *Id*. at 928. The same is true here. And even more so as Plaintiff was making a political point (*i.e.*, engaging in political hyperbole and rhetoric) that government officials who cheat on election should be punished for treason. The

combination of *Watts* and *Brandenburg* compels the granting of the requested injunction.

III. This Case Is *Watts*; It Is Not *Thames*.

This case is *Watts*, it is not *Thames*, an unpublished decision from this Court. More to the point, in *Thames* this Court stated:

> In this case and this appeal, we proceed on the understanding that Thames made certain statements to Parsley, something like: "I prophesy bombs are going to fall, they're going to fall in the near future, they're going to fall on you people, and on America, and bombs will blow up this building." Thames does not dispute the content of these statements but contends that, even if she said that, it does not rise to the level of a "true threat." Nor does Thames dispute that Parsley was both *alarmed enough* that he reported this *immediately* to Guilbernat, who *immediately* called 911, and *sincere enough* that he repeated his accusations to the responding officers, identified Thames at the scene (and directed the officers to her), and swore out a written statement. *While Thames is correct that a listener's subjective fear alone is not enough to turn an innocuous statement into a true threat* (via a "heckler's veto"), Parsley's response is still meaningful. Four other facts bear mention. One, Thames said "bombs." She did not threaten brimstone, or God's fiery wrath, or something that might be considered overzealous proselytizing—she said "bomb." Two, she approached and said it, discreetly, *to the security guard*—she did not say it to staff passing by, or patients, or bystanders—and she did not say it where anyone else could hear her. Three, following this conversation, *Thames refused to let Parsley photograph her and, without explanation to Parsley, immediately got into her car and drove off*. She did return, but not until after the police had arrived. And, finally, *when questioned, Thames emphatically denied making any bomb threat, but she was actively evasive and unwilling to tell Officer Soulliere what she had said to Parsley, even though Soulliere asked multiple times and stressed to her the importance of her answer*.

Thames, 796 F. App'x at 262 (emphasis added). *Thames* is clearly *not* this case.

Here, there was no "immediate report" nor did Plaintiff say anything "directly" to any election official. Per the testimony of Kaitlyn Howard, the government's only percipient witness:

> Q. When Mr. Hess made the statement, quote, "Hang Joe for treason," per your testimony, *he wasn't having a conversation with you, correct*?
> A. *Correct*.
> Q. *You simply overheard that statement, correct?*
> A. *Correct*.

(R.12-2, Prelim. Exam. Hr'g Tr. (Vol. I) at 78 [emphasis added], Ex. A, PageID.181).

* * * *

> Q. After hearing the statement and the response, what did you do?
> A. *Immediately, not much. I mean I couldn't leave my position at the front desk*. I was the only one guarding it, so I had to wait a little bit until I was able to go out into the lobby and find a deputy or someone I could report what I had heard to without disrupting the recount.

(*Id*. at 73-74 [emphasis added]. PageID.176-77).

* * *

> Q. You actually waited a period of time before you even made the report to the law enforcement, correct?
> A. Correct.
> Q. *So you didn't perceive any imminent harm at that point, correct?*
> A. *Correct*.

(*Id*. at 77 [emphasis added], PageID.180).

> Q. And why did you feel the need to tell him?
> A. Because personally from what I've experienced and what I've done, I – *I <u>don't take kindly</u> to that kind of behavior or language*.

(*Id*. at 75 [emphasis added], PageID.178).

Consequently, the reporting witness, who simply overheard the alleged "threat,"

did not perceive any threat of imminent harm, and she made the report because she didn't "take kindly" to that type of speech. Plaintiff remained at the recount (he did not flee); he was cooperative with the Oakland County deputies and provided a written statement (he was not evasive—he was precise about what message he was conveying); he was permitted to return into the recount room where Joe Rozell and the other election officials were located; and he was permitted to give a speech expressing his opinion that cheating on elections should be charged as treason, and he did so while the Oakland County deputies relaxed nearby with their arms casually folded, listening to Plaintiff (bear in mind that this speech was *after* the alleged threat that is now being prosecuted as a 20-year felony).

(*See* R.12-2, Exs. D [Photo of Public Comment], PageID. 191-21; *see also* Ex. C [Photo of Public Comment], PageID.189-90).

At the end of the recount, Plaintiff was permitted to go home. He was not arrested nor was there any other law enforcement action taken against him. Yet, *four months* later, Defendant McDonald charged Plaintiff with making a "terrorist threat,"

a 20-year felony, based on this off-hand comment in a near-empty lobby that was simply overheard by a secretary who didn't "take kindly" to Plaintiff's language. What sheriff or prosecutor would allow a *real* terrorist to walk freely for four months before deciding to make an arrest? Remarkably, *if* Kaitlyn Howard, the secretary who made the report, wasn't offended by Plaintiff's comment, then we would not be here today, and Plaintiff would not be suffering this painful experience. (*See* Appellant's Br. at 4-10 [setting forth undisputed facts]). In short, this is a tragic abuse of government authority and a tragic undermining of the First Amendment.

IV. Permitting this Prosecution to Proceed Does Violence to the First Amendment.

If *all* speech that a prosecutor (or law enforcement officer) sought to criminalize required the speaker to surrender his First Amendment rights to the whims of a jury, then the Supreme Court was wrong in *Watts* (as well as *NAACP v. Claiborne Hardware Company*, 458 U.S. 886 (1982), and *Brandenburg v. Ohio,* 395 U.S. 444 (1969)), and this Court was wrong multiple times, including when it ruled *en banc* in favor of the First Amendment in *Bible Believers v. Wayne County*, 805 F.3d 228, 243 (6th Cir. 2015). *See also United States v. Alkhabaz*, 104 F.3d 1492, 1493 (6th Cir. 1997) (concluding that the indictment failed "as a matter of law" to allege a violation of 18 U.S.C. § 875(c) in a case involving e-mails sent by the defendant to his online friend concerning a plan to torture, rape, and murder a third person); *United States v. Stock*, 728 F.3d 287, 298 (3d Cir. 2013) ("[W]e reaffirm that a court may properly

dismiss an indictment as a matter of law if it concludes that no reasonable jury could find that the alleged communication constitutes a threat or a true threat."); *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 criminal liability); *United States v. Superior Growers Supply, Inc.*, 982 F.2d 173, 177 (6th Cir. 1992) ("Whether an indictment adequately alleges the elements of the offense is a question of law subject to de novo review."); *United States v. Maney*, 226 F.3d 660, 663 (6th Cir. 2000) ("We review de novo a district court's determination that an indictment adequately alleges the elements of the offense charged.").

Plaintiff understands that *Bible Believers* was a case in which the Wayne County Sheriff was seeking to punish offensive speech as disorderly conduct (and a public safety threat based on actual violence occurring at the scene) and not as a true threat, but the point is the same.[9] *Id*. at 240-41. Would the outcome of *Bible Believers* be different if the county sheriff said that the speech was a true threat rather than disorderly conduct?[10] One would think (and hope) not.

One additional point that is worth illustrating. In his First Amended Complaint,

[9] Plaintiff's counsel was counsel for the plaintiffs in *Bible Believers,* and he was counsel for the plaintiff in *Thames*. (*See* Defs.' Br. at 24, n.3). Plaintiff's counsel is a staunch defender of the First Amendment, and he seeks to defend that fundamental right here as well.

[10] Some of the offending messages at issue in *Bible Believers* could be considered by some (such as the Kaitlyn Howards of this world) to be "threating." For example, one message stated, "Only Jesus Christ Can Save You From Sin and Hell" "Turn or Burn." *Bible Believers*, 805 F.3d at 238.

Plaintiff set forth allegations further demonstrating the political nature of his statement and the politicized nature of this prosecution:

> Prominent members of the Democratic Party in Michigan have publicly called for the hanging of Trump supporters without fear of prosecution or reprisals.

> No county prosecutor has threatened these members of the Democratic Party with prosecution under Michigan Compiled Laws § 750.543m, which is a state statute that should apply to all Michiganders, nor have Defendants McDonald or Bouchard publicly called for these members to be held criminally accountable for their speech.

* * *

> Protestors in Oakland County are permitted to very publicly display signs calling President Trump a "traitor" (*i.e.*, someone who commits treason, a capital offense) and calling for his assassination ("86 47"), and those individuals who made these "threats" have not been investigated, arrested, or prosecuted under Michigan Compiled Laws § 750.543m by

> Defendants Oakland County, McDonald, Bouchard, or Peschke because these protestors are expressing a message that Defendants agree with politically.

(R.23, First Am. Compl. ¶¶ 45, 46, 48, PageID.526-27).[11]

In conclusion, many of us were likely taken aback when comedian Kathy Griffin posted an image of her holding a severed Trump head[12] or when Madonna expressed thoughts of "blowing up the White House"[13] or when Senator Chuck Schumer directed threats toward Supreme Court Justices Kavanaugh and Gorsuch ("You won't know what hit you if you go forward with these awful decisions.").[14] Even today you can purchase online Trump "traitor"[15] or "Hang Biden for Treason"[16]

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[11] The district court was dismissive of these allegations, finding that they were not sufficient for Plaintiff to maintain an equal protection/selective prosecution claim against Defendants. (R.43, Op. & Order Granting in Part and Denying in Part Defs.' Mot. to Dismiss at 33-36, PageID.942-45).

[12] *See* https://www.cbsnews.com/philadelphia/news/kathy-griffin-trump-head/.

[13] *See* https://www.washingtonpost.com/local/2017/live-updates/politics/womens-march-on-washington/madonna-says-shes-thought-about-blowing-up-the-white-house/.

[14] *See* https://thehill.com/homenews/senate/486007-schumer-warns-kavanaugh-and-gorsuch-they-will-pay-the-price/.

[15] *See* shortened link to Amazon (https://tinyurl.com/3bseuv9a).

[16] *See* https://www.redbubble.com/shop/biden+treason+t-shirts.

t-shirts. Locally and recently, we saw reports of Muslims in Dearborn, Michigan shouting, "Death to America" and "Death to Israel" in public protest of the ongoing war in Israel.[17] This is all part of the rough and tumble world of politics that we live in. And it is all protected by the First Amendment, and for good reason—debate on public issues should be uninhibited, robust, and wide-open. The election recount in Oakland County in December 2023 was no different. It was not some special event that stripped Plaintiff (or anyone else) of his fundamental right to freedom of speech—including the right to engage in "caustic" and "unpleasantly sharp attacks" directed at the government officials involved. *See Watts*, 394 U.S. at 708 (observing that "[t]he language of the political arena . . . is often vituperative, abusive, and inexact"). The injunction should issue.

CONCLUSION

Plaintiff requests that the Court issue a preliminary injunction, enjoining § 750.543m facially and/or as applied against him. This injunction is necessary to avoid irreparable harm by preventing the Oakland County Prosecutor (Defendant McDonald) and Sheriff (Defendant Bouchard) from arresting and prosecuting Plaintiff, yet again, for engaging in political speech while this case proceeds.

[17] *See* https://www.detroitnews.com/story/news/politics/2024/04/08/death-to-america-chant-dearborn-jihad-rally-al-quds-day-draws-condemnation/73247053007/.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 32(a), the foregoing Brief is proportionally spaced, has a typeface of 14 points Times New Roman, and contains 4,504 words, excluding those sections identified in Fed. R. App. P. 32(f).

AMERICAN FREEDOM LAW CENTER

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

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2025, 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.

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise (P62849)

ADDENDUM: DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Record No.	PageID #	DESCRIPTION
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R.12	64-97	Motion for Preliminary Injunction with Exhibits
R.12-2	99-102	Exhibit 1: Declaration of Robert J. Muise w/Exhibits
R.12-2	103-87	Exhibit A: Preliminary Examination Hearing Transcript, Volume 1
R.12-2	189-90	Exhibit C: Defendant's Ex. C, Photograph of Public Comment (Photo of Public Comment)
R.12-2	191-92	Exhibit D: Defendant's Ex. D, Photograph of Public Comment (Photo of Public Comment)
R.12-2	194-95	Exhibit F: Plaintiff's Written Statement to Oakland County Deputy
R.12-2	196-97	Exhibit G: Arrest Warrant for Plaintiff
R.12-2	198-99	Exhibit H: Bond/Conditions for Plaintiff
R.12-2	200-01	Exhibit I: Letter from Wayne County Demanding that Plaintiff Surrender His CPL
R.12-2	202-04	Exhibit J: Michigan Supreme Court Order in *People v. Kvasnicka*, SC No. 168181 (Mar. 28, 2025)
R.19-2	324-26	Exhibit 1: Supplemental Declaration of Robert J. Muise with Exhibits A-C
R.19-2	327-28	Exhibit A: Email to County Prosecutor Demanding Dismissal of Criminal Charge
R.19-2	329-39	Exhibit B: Motion for Immediate Dismissal & Order of Dismissal filed by Andrew Hess
R.19-2	340-42	Exhibit C: People's Response to Defendant's Motion for Immediate Dismissal
R.23	511-63	First Amended Complaint with Exhibits 1 & 2
R.23-2	559-61	Exhibit 1: Letter to Oakland County Prosecutor
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R.36	873-95	Opinion & Order Denying Plaintiff's Motion for Temporary Restraining Order and Motion for Preliminary Injunction
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