

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

BIBLE BELIEVERS; RUBEN CHAVEZ (a.k.a.
RUBEN ISRAEL); ARTHUR FISHER; and
JOSHUA DELOSSANTOS,

Plaintiffs,

v.

WAYNE COUNTY; 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; and MIKE
JAAFAR, individually and in his official capacity as
Deputy Chief, Wayne County Sheriff's Office,

Defendants.

No. 2:12-cv-14236-PJD-DRG

**PLAINTIFFS' NOTICE OF
OBJECTIONS TO
DEFENDANTS' EXHIBIT B
FILED IN SUPPORT OF
DEFENDANTS' REPLY BRIEF**

Hon. Patrick J. Duggan

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Defendants filed as Exhibit B in support of their Reply Brief in Support of Defendants' Motion for Summary Judgment, or in the alternative, Motion to Dismiss (Doc. No. 25), a video entitled "Arab American Chamber of Commerce 'Responding to Bible Believers.'"

It is evident that the purpose of the edited video is to criticize Plaintiffs' message and express the American Arab Chamber of Commerce's ("Arab Chamber") objection to its content (while implicitly condoning the violence directed against Plaintiffs for expressing the message).¹ However, the fact that Plaintiffs' speech may actually offend some persons does not lessen its constitutionally protected status; it enhances it. "The fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection." *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 118 (1991).

Nonetheless, Plaintiffs object to the court's consideration of this video for two principal reasons. First, the editorial comments associated with the video are inadmissible hearsay.² Fed. R. Evid. 801 & 802. And second, Fay Beydoun, the "custodian of records" for the Arab Chamber does not set forth any facts in her affidavit to establish that she has personal knowledge to authenticate the video. Fed. R. Evid. 901 (requiring authentication).

In conclusion, Exhibit B contains inadmissible hearsay, and it has not been properly authenticated. Therefore, it would be improper for this court to consider this exhibit in support of Defendants' motion. *See Ragsdale v. Holder*, 668 F. Supp. 2d 7, 16 (D.D.C. 2009) ("[T]o be considered for or against summary judgment, a document must be authenticated, either by an

¹ Indeed, the Arab Chamber expresses no condemnation of the criminal violence directed against Plaintiffs by the hostile Muslim mob (and despite Defendants' claims to the contrary, it is evident to any reasonable observer that the counter-protestors were largely Muslims)—only condemnation of the content of Plaintiffs' constitutionally protected speech.

² Moreover, there is no basis for claiming that the video qualifies as a business record for purposes of Rule 803 of the Federal Rules of Evidence. Indeed, Defendants have presented no evidence to establish the foundation for asserting this exception to the hearsay rule, nor could they since it is implausible to argue that this video is a "record . . . kept in the course of a regularly conducted activity of a business" and that "making the record was a regular practice of that activity." *See* Fed. R. Evid. 803(6)(B)&(C).

affidavit that meets the requirements of Rule 56(e) [of the] Federal Rules of Civil Procedure, or in accord with the Federal Rules of Evidence.”).

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

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/s/ David Yerushalmi

David Yerushalmi, Esq.

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system.

AMERICAN FREEDOM LAW CENTER

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