STATE OF MICHIGAN
IN THE 19TH JUDICIAL DISTRICT COURT

PEOPLE OF THE
CITY OF DEARBORN,

Plaintiff,

vs.

DAVID ANTHONY WOOD,
PAUL REZKALLA,
NABEEL QURESHI, and
NEGEEN MAYEL,

Defendants.
/

Case Nos.
10C1966OM
10C1967OM
10C1968OM
10C1969OM
10C1970OM

Hon. Mark W. Somers

THOMAS MORE LAW CENTER
By: ROBERT J. MUISE (P62849)
Attorneys for Defendants
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, Michigan 48106
(734) 827-2001

WILLIAM M. DEBIASI (P35892)
DEBRA A. WALLING (P37067)
Attorneys for Plaintiff
13615 Michigan Avenue
Dearborn, Michigan 48126
(313) 943-2035
/

JOINT REPLY IN SUPPORT OF MOTION FOR BILL OF PARTICULARS

NOW COMES, Defendants DAVID ANTHONY WOOD, PAUL REZKALLA, NABEEL QURESHI, and NEGEEN MAYEL, by and through their attorneys, THOMAS MORE LAW CENTER, by ROBERT J. MUISE, and hereby jointly reply to the government's opposition to their motions for a Bill of Particulars.[1]

To state it bluntly and succinctly: this is a political prosecution. The City of Dearborn ("City") and its officials do not seek justice; they seek a prosecution of four Christian missionaries who were doing nothing more than preaching their faith on City streets during the

[1] To avoid needless repetition, Defendants are filing this reply jointly, rather than filing four separate replies, since their interests and arguments are similar.

15th Annual Dearborn Arab International Festival ("Arab Festival"), which took place on Warren Avenue.

On June 18, 2010, the City, through its police department, violated Defendants' fundamental constitutional rights by illegally seizing them and their personal property in violation of the First, Fourth, and Fourteenth Amendments to the United States Constitution. These prosecutions (and concomitant charges of "breach of peace" and "failure to obey a police officer," which arise out of the illegal arrests) are merely prolonging the constitutional violations and, as a result, are an abuse of the judicial process.

Defendants moved this honorable court for a Bill of Particulars because there is no conduct that Defendants engaged in during the Arab Festival that is not protected by the First Amendment, and thus beyond the reach of the City's criminal laws. There was no lawful basis for arresting Defendants. There was no lawful basis for jailing Defendants. There was no lawful basis for seizing Defendants' video cameras and recordings. There was no lawful basis for charging Defendants with a criminal offense. And there is no lawful basis for punishing Defendants further by subjecting them to a costly and burdensome criminal trial. Consequently, *justice* demands that the City make a proffer by way of a Bill of Particulars to set forth the specific conduct that each Defendant engaged in that arises to a criminal offense under the City's ordinances. Indeed, this case is unique in that there is video footage that covers the entire period of time that Defendants were at the Arab Festival up to when they were unlawfully arrested and their cameras unlawfully seized by City police officers. This video footage provides the prosecutor with the ability to *explain* with detail to Defendants and this honorable court the *specific* conduct the City alleges violates the law *and* to actually *show* Defendants and this court *that* conduct. The reason why the City objects to making such a specific proffer is evident to

Defendants: the video footage clearly shows that the police reports relied upon by the City are replete with hyperbole, fabrications, and lies—and the City knows it.[2] Indeed, Defendants urge this court to review for itself the video evidence in question. If the court is so inclined, Defendants can provide access to the footage for the court's *in camera* review. (Note: This is the same footage that the City copied pursuant to a warrant issued by this court on or about June 21, 2010.)[3] And upon this review, Defendants are confident that the court will have grave concerns about whether the City is pursuing this prosecution in good faith. At a minimum, the video evidence will demonstrate further why it is necessary for the City to provide each Defendant with a Bill of Particulars.

In the final analysis, a court order directing the prosecutor to make such a showing by way of a Bill of Particulars will serve the interests of justice and help prevent the further deprivation of Defendants' fundamental rights. As the City concedes in its response, Defendants' request for a Bill of Particulars is appropriate if Defendants can show prejudice by a denial of their request. (City Resp. at 3) (citing *People v Weinberg*, 6 Mich App 345, 359; 149 NW2d 248 (1967)). Forcing Defendants to stand trial for exercising their First Amendment liberties is prejudicial, as demonstrated further below.

On June 18, 2010, Defendants attended the Arab Festival to practice their religious freedom and to follow their religious duty based on the Great Commission, which, in Christian tradition, is the instruction of the resurrected Jesus Christ to His disciples that they spread His

---

[2] Despite requests for copies of the police reports on June 21, 2010, and again on June 25, 2010, Defendants' counsel did not receive copies of the reports until July 9, 2010, the last business day before the arraignment held on July 12, 2010. (*See* Def. Req. for Disc. at Ex. A; City Resp. Ltr. at Ex. B).

[3] Despite *repeated* requests for a copy of the search warrant and a copy of the accompanying affidavit, the City has not provided Defendants or their counsel with a copy of either document.

teachings to all the nations of the world.[4] Consequently, Defendants' activity is beyond the reach of the City's criminal laws by operation of the First Amendment as applied to the States and their political subdivisions through the Fourteenth Amendment. *Cantwell v Connecticut*, 310 US 296, 303 (1940). As the United States Supreme Court has long recognized, "[S]preading one's religious beliefs" and "preaching the Gospel" are activities protected by the First Amendment. *Murdock v Pennsylvania*, 319 US 105, 110 (1943). Supreme Court precedent "establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression." *Capitol Square Rev & Adv Bd v Pinette*, 515 US 753, 760 (1995). Accordingly, the First Amendment's Free Speech and Free Exercise clauses protect Defendants' "religious proselytizing." *Id.* Moreover, "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 New Jersey*, 308 US 147, 163 (1939). Warren Avenue is no exception.

While at the Arab Festival, Defendants were greeted on occasion by Muslim "hecklers," who were shouting at Defendants and at times using profanity. The police reports corroborate this, and in fact demonstrate that Defendants were arrested based on the hecklers' reaction to their speech. Consider the report of Sgt. Jeffrey Mrowka, the officer in charge at the Arab Festival and the one who "directed [the police] to have the four subjects arrested and transported

[4] The City acknowledges that Defendants attended the Arab Festival to engage in constitutionally protected activity. The City's police report states, "[Defendants'] intention for showing up at the Dearborn Arab Festival . . . is to observe the event and have conversations with different people at the festival regarding the topic of Christianity," (Sabo Police Rep. at Ex. C at 1), which is precisely what Defendants did (and why the City arrested them).

to the station." (Mrowka Police Rep. at Ex. D at 2). In the report, Sgt. Mrowka explains why Defendants were arrested as follows:

> Negeen Mayel, Nabeel Qureshi, David Wood and Paul Rezkalla's actions ***caused a crowd to gather and become agitated***. The weather conditions, hot and humid temperatures, ***fueled an already agitated crowd***. This was evident by the ***crowds (sic) yelling profanities*** and repeated calls to security and police on the behavior of Mayel, Qureshi, Woods and Rezkalla. When uniform officers were present Qureshi was yelling into the crowd ***further inciting the crowd***. Negeen Mayel ***had already*** failed to obey a police orders.[5] As a result of these behaviors all four subjects were handcuffed and detained.

(Ex. D at 2) (emphasis added). The "actions" and "behavior" complained of here, as the irrefutable video evidence shows, is speech activity that is protected by the First Amendment.[6]

---

[5] As Sgt. Mrowka unwittingly admits, Defendant Mayel, who was standing back videotaping her companions so as to protect them against false claims and complaints, *was the first target of the police officers* because they wanted her video camera shut down before they executed their unlawful arrest of her companions.

[6] The prosecutor's best attempt at describing the alleged misconduct fairs no better. In its response, the City claims that Defendants "began ***harassing*** vendors and patrons of the Festival by ***pestering them with questions*** and ***recording them*** with video cameras without their consent." (City Resp. at 1). Of course, the video footage utterly refutes this attempt to mischaracterize Defendants' activity. Nonetheless, how do you commit the *criminal* offense of "breach of peace" by asking questions in public? On what basis can the police legally prevent a private citizen from videotaping in public? In particular, on what basis can the police legally prevent such videotaping of police misconduct? And contrary to the City's implied assertion, there is no legal requirement to obtain the consent of everyone you videotape at a public event—that is utter nonsense. Further, in its response, the City claims that Defendant "Mayel *refused to answer the police officers' questions*, and instead shouted *things* in an attempt *to start a disturbance* in the crowd." (City Resp. at 1) (emphasis added). What were the "questions" that Defendant Mayel refused to answer? What was the legal basis for the police officers to interfere with and deprive her of her liberty—and actually grab her and her video camera—in the first instance? What were the "things" she was shouting? In contrast, how is it that "yelling profanities" at Defendants is not a "breach of peace" under the City's misguided and unconstitutional theory of the case? Furthermore, nowhere does the City in its response or in its police reports explain what Defendants Rezkalla or Wood were doing to warrant an arrest and criminal charges. Apparently, the City is prosecuting these Christian missionaries based on their expressive association (i.e., guilt by association), which is a direct violation of Defendants' constitutional rights. *Healy v James*, 408 US 169, 181 (1972) ("Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs. While the freedom of association is not explicitly set out in the Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition.") (citations omitted);

The fact that certain "hecklers" may have objected to Defendants' speech does not license the police to arrest Defendants. *See Lewis v Wilson,* 253 F3d 1077, 1082 (CA 8, 2001) ("The First Amendment knows no heckler's veto.").

In *Glasson v Louisville*, 518 F2d 899, 906 (CA 6, 1975), for example, the U.S. Court of Appeals for the Sixth Circuit described the proper police response when faced with a similar situation: "A police officer has the duty not to ratify and effectuate a heckler's veto nor may he join a moiling mob intent on suppressing ideas. Instead, he must take reasonable action to protect . . . persons exercising their constitutional rights." A contrary response—such as the one by the City police officers here—violates Defendants' fundamental rights. *See id.*

"It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v Rector & Visitors of the Univ of Va*, 515 US 819, 828 (1995). "The First Amendment does not permit [the government] to impose special prohibitions on those speakers who express views on disfavored subjects." *RAV v City of St. Paul*, 505 US 377, 391 (1992). And the Supreme Court has held time and again that the mere fact that someone might take offense at the content of speech or the viewpoint of the speaker does not provide a basis for prohibiting the speech. *Texas v Johnson*, 491 US 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."); *Erznoznik v City of Jacksonville*, 422 US 205, 210 (1975) ("[T]he Constitution

---

Connection Distributing Co v Reno, 154 F3d 281, 295 (CA 6, 1998) ("Freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of freedom of speech."); *Roberts v United States Jaycees*, 468 US 609, 622 (1984) ("[I]mplicit in the right to engage in activities protected by the First Amendment" is "a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends."). Consequently, a Bill of Particulars is necessary to help Defendants decide whether to move for separate trials.

does not permit government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer."); *Street v New York*, 394 US 576, 592 (1969) ("It is firmly settled that . . . the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers."); *Edwards v South Carolina*, 372 US 229, 237 (1963) ("The Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views.").

Indeed, a listener's reaction to speech is not a legally sufficient basis for restricting the speech—or arresting and criminally charging the speaker. *See Forsyth County v Nationalist Movement*, 505 US 123, 134 (1992) (noting that speech cannot be "punished or banned, simply because it might offend a hostile mob"); *Boos v Barry*, 485 US 312, 321 (1988) (stating that "[t]he emotive impact of speech on its audience is not a 'secondary effect'" that would permit regulation) (opinion of O'Connor, J.); *see also Glasson*, *supra*, 518 F2d 906.

In sum, the proper and constitutional response to a complaint from an individual (or group of individuals) that dislikes a particular message (or messenger) is not to silence the speaker (i.e., empower the heckler) by arresting, jailing, and criminally charging him or her. *See, e.g., Hedges v Wauconda Cmty United Sch Dist No. 118*, 9 F3d 1295, 1299 (CA 7, 1993) (noting that the proper response to an objection to certain speech is to educate the audience regarding the First Amendment, not to "squelch the speaker"). Otherwise, the government "would effectively empower a majority to silence dissidents simply as a matter of personal predilections." *Cohen v California*, 403 US 15, 21 (1971).

And if there is any doubt that this is a political prosecution for engaging in protected speech activity, consider further the remarkable and impertinent public statement issued by the

Mayor of the City of Dearborn, John B. O'Reilly, Jr.[7] In this public statement, the *chief executive officer* for the City declares Defendants guilty of violating the law prior to any trial on the matter.[8] More important, however, is the fact that the Mayor claims that Defendants were arrested for "***aggressively engaging passers-by in confrontational debate.***"[9] (Mayor Ltr. at Ex. E). That is, the Mayor admits that Defendants were arrested ***for exercising their First Amendment rights***. Not surprisingly, this is consistent with the claims by the police and the prosecutor, who all work for the Mayor.

Controlling precedent leaves no doubt that Defendants' activity cannot be prosecuted as a "breach of peace" as a matter of law.[10] In *Terminiello v City of Chicago*, 337 US 1 (1949), for example, the U.S. Supreme Court did not allow convictions to stand because the trial judge charged that the defendants' speech could be punished as a ***breach of the peace*** "if it stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance, or if it molests the inhabitants in the enjoyment of peace and quiet by arousing alarm." *Id.* at 3. In finding such a position unconstitutional, the Supreme Court stated,

---

[7] A copy of this statement is attached to this motion as Exhibit E and is available *to the public* at http://www.cityofdearborn.org/images/stories/PDF/Government/Mayor/mayorletter07-09-2010.pdf.

[8] While it is troubling that the City's chief executive officer would personally inject himself into an ongoing criminal proceedings in such a public way, including making false personal attacks against Defendants, it is equally troubling that the Mayor had access to Defendants' seized video footage and actually watched the footage (or at least claimed to have watched it in a television interview he gave) prior to the police returning the video footage to Defendants. This is further evidence of the political nature of these prosecutions.

[9] While not necessary for First Amendment purposes, the irrefutable video evidence shows that Defendants' "debate" was not "aggressive" nor was it "confrontational." Instead, the evidence shows that Defendants were exceedingly civil and polite when discussing their faith during the Arab Festival. Moreover, Defendants discussed their faith with persons who approached them.

[10] Similarly, the City cannot point to any "lawful order" that Defendant Mayel violated. An order by a police officer to turn off a video camera to prevent a private citizen from videotaping police misconduct is not a "lawful order" by any measure. *See generally Brown v Louisiana*, 383 US 131, 138 (1966) ("Petitioners cannot constitutionally be convicted merely because they did not comply with an order to leave the library.").

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

Id. at 4; *see also Sandul v Larion*, 119 F3d 1250 (CA 6, 1997) (holding that the plaintiff's conduct, which included shouting "f--k you" and extending his middle finger to a group of abortion protestors, was constitutionally protected speech and could not serve as a basis for a violation of the city's disorderly conduct ordinance); *People v Pouillon*, 254 Mich App 210; 657 NW2d 538 (2002) (reversing conviction on First Amendment grounds in a case involving a defendant who was yelling "They kill babies in that Church! Why are you going there?" to mothers who were dropping off their children at a day care operated by the church, thereby causing the children to become frightened and visibly upset); *see also People v Boomer*, 250 Mich App 534; 655 NW2d 255 (2002) (reversing conviction on constitutional grounds in a case involving a defendant who was making a "loud commotion" and using "vulgar language" while canoeing on a river that was crowded with families and children).

In sum, First Amendment protection in our free society is very expansive. Limited exceptions to this general principle apply to what is described as "fighting words," *see Chaplinsky v New Hampshire*, 315 US 568, 572 (1941),[11] and speech that "is directed to inciting

[11] "Fighting words" are defined as "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. . . . [S]uch utterances are no essential part of any exposition of ideas, and are of such slight social value . . . that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Chaplinsky*, 315 US at 572; *Texas v Johnson*, 491 US 397 (1989) (describing "fighting words" as words which an onlooker would consider a "direct personal insult or an invitation to exchange fisticuffs"); *Knight Riders v City of Cincinnati*, 72 F3d 43, 46 (CA 6, 1993) ("Fighting words is a small class of

or producing imminent lawless action and is likely to incite or produce such action," *Brandenburg v Ohio*, 395 US 444, 447 (1969). Neither of these limited exceptions remotely apply to the speech that the City seeks to condemn here. *See, e.g., NAACP v Claiborne Hardware, Co*, 458 US 886, 928 (1982) ("The emotionally charged rhetoric of Charles Evers' speeches did not transcend the bounds of protected speech set forth in *Brandenburg*.").

Texas v Johnson, 491 US 397 (1989), is instructive. In *Johnson,* a protestor who burned an American flag while fellow protestors chanted, "America, the red, white, and blue, we spit on you," was convicted in state court for violating a Texas criminal statute. "Texas claim[ed] that ***its interest in preventing breaches of the peace justifie[d] Johnson's conviction***." *Id.* at 407 (emphasis added). In reversing the conviction, the Court made the following relevant observations:

> The State's position, therefore, amounts to a claim that an audience that takes serious offense at particular expression is necessarily likely to disturb the peace and that the expression may be prohibited on this basis. ***Our precedents do not countenance such a presumption***. On the contrary, they recognize that a principal "function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." [citing *Terminiello v Chicago*, 337 US at 4; *Cox v Louisiana*, 379 US 536, 551 (1965); *Tinker v Des Moines Indep Cmty Sch Dist*, 393 US 503, 508-09 (1969); *Coates v Cincinnati*, 402 US 611, 615 (1971); and *Hustler Magazine, Inc. v Falwell*, 485 US 46, 55-56 (1988)]. It would be odd indeed to conclude both that "if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection," *FCC v. Pacifica Foundation*, 438 U.S. 726, 745 (1978) (opinion of Stevens, J.), and that the government may ban the expression of certain disagreeable ideas on the unsupported presumption that their very disagreeableness will provoke violence. Thus, we have not permitted the government to assume that every expression of a provocative idea will incite a riot, ***but have instead required careful consideration of the actual circumstances surrounding such expression, asking whether the expression "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."*** *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (reviewing

---

expressive conduct that is likely to provoke the average person to retaliate, and thereby cause a breach of the peace.").

> circumstances surrounding rally and speeches by Ku Klux Klan). To accept Texas' arguments that it need only demonstrate "the potential for a breach of the peace," and that every flag burning necessarily possesses that potential, would be to eviscerate our holding in *Brandenburg*. This we decline to do.
>
> Nor does Johnson's expressive conduct fall within that small class of "fighting words" that are "likely to provoke the average person to retaliation, and thereby cause a breach of the peace." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 574 (1942). No reasonable onlooker would have regarded Johnson's generalized expression of dissatisfaction with the policies of the Federal Government as a direct personal insult or an invitation to exchange fisticuffs.

Texas v Johnson, *supra*, 491 US 408-09 (record citations omitted).

Similarly, in *Edwards v South Carolina*, 372 US 229 (1963), the petitioners were convicted of the common-law crime of breach of the peace. The record showed that

> the police authorities advised the petitioners that they would be arrested if they did not disperse within 15 minutes. Instead of dispersing, the petitioners engaged in what the City Manager described as "boisterous," "loud," and "flamboyant" conduct, which, as his later testimony made clear, consisted of listening to a "religious harangue" by one of their leaders, and loudly singing "The Star Spangled Banner" and other patriotic and religious songs, while stamping their feet and clapping their hands. After 15 minutes had passed, the police arrested the petitioners and marched them off to jail.

Id. at 233. Upon this evidence, the petitioners were convicted. The Supreme Court reversed, stating, "[I]t is clear to us that in arresting, convicting, and punishing the petitioners under the circumstances disclosed by this record, South Carolina infringed the petitioners' constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of their grievances." *Id.* at 235. The Court stated further, "And they were convicted upon evidence which showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community ***to attract a crowd and necessitate police protection***." *Id.* at 237 (emphasis added). As the Court concluded, the Constitution "does not permit a State to make criminal the peaceful expression of unpopular views." *Id.*

In the present case, even assuming *arguendo* that the police reports are accurate and that Defendants' expressive conduct "caused a crowd to gather and become agitated," which the video evidence refutes, the Constitution prohibits the City from arresting Defendants and marching them off to jail for doing so. Consequently, the Constitution prohibits the City from charging and prosecuting Defendants for an alleged "breach of peace" as a result.

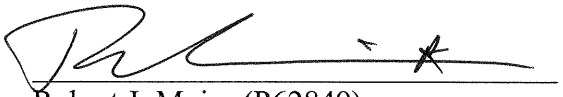
In conclusion, there is little doubt that the City opposes this motion because it cannot proffer any evidence (let alone evidence that is supported by the irrefutable video footage that is in the possession of the City) setting forth the *specific* conduct of *each* Defendant that the City is able to punish as a "breach of peace" consistent with the United States Constitution. Absent such a basic showing, the charges in this case should be dismissed. Indeed, Defendants should not have to stand a burdensome, costly, and unjust criminal trial for exercising constitutionally protected rights.

WHEREFORE, Defendants respectfully requests that the court grant their motions for a Bill of Particulars and/or summarily dismiss the criminal charges in these cases.

Dated: July 27, 2010

Respectfully submitted,

THOMAS MORE LAW CENTER



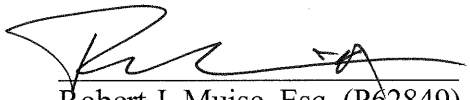
Robert J. Muise (P62849)
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2010, a copy of the foregoing **Joint Reply in Support of Motion for Bill of Particulars** with exhibits was served via U.S. Mail, postage prepaid, upon the following:

William M. DeBiasi (P35892)
Assistant Corporation Counsel
City of Dearborn
13615 Michigan Avenue
Dearborn, MI 48126
wdebiasi@ci.dearborn.mi.us
Fax: (313) 943-2469

THOMAS MORE LAW CENTER



Robert J. Muise, Esq. (P62849)