IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Country Mill Farms, LLC and **Stephen Tennes**,

Plaintiffs,

v.

City of East Lansing,

Defendant.

Case No. 1:17-cv-00487-PLM-RSK

Honorable Paul L. Maloney

Plaintiffs' Reply in Support of Plaintiffs Country Mill Farms, LLC's and Stephen Tennes's Motion for Summary Judgment

Oral Argument Requested

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INTRODUCTION

The record establishes that East Lansing's decision to exclude Country Mill from the City's Farmer's Market was based exclusively on the City's intense dislike for Steve Tennes's Catholic religious beliefs. *See* Mem. in Supp. of Pls. Country Mill Farms, LLC's and Stephen Tennes's Mot. for Summ. J., ECF No. 71; Pls. Country Mill Farms, LLC's and Stephen Tennes's Resp. to Def.'s Mot. for Summ. J., ECF No. 80. The City has only two responses. Neither is sufficient to withstand summary judgment.

First, the City says this case is about preventing sexual orientation discrimination. Def.'s Resp. in Opp'n to Pls.' Mot. for Summ. J. 2, ECF No. 78, PageID.1636. It is not. Consistent with his Catholic faith, Steve believes every person is made in the image and likeness of God, has inherent dignity and worth, and deserves love and respect. Decl. of Stephen Tennes in Supp. of Pls.' Mot. for Summ. J. ¶¶ 6-10, ECF No. 71-1, PageID.827-828. That is why Steve welcomes LGBT customers to his orchard and to his stand at the City's Farmer's Market. *Id.* ¶¶ 8, 23, PageID.828, 831-832. The only issue is whether Steve is entitled to respectfully decline to participate in a ceremony that he considers sacred and in violation of his religious beliefs.

Second, the City says that there is a "lack of any evidence of religious animus" by City officials. City Resp. 3, PageID.1637. Not so. As detailed in Steve's summary judgment brief, the record is replete with hostility and ridicule toward Steve's Catholic beliefs, beliefs that the City considers "ridiculous, horrible,

hateful," and akin to Jim Crow racism. Ex. 38, PageID.971, Pls.' Mem. 9-18, PageID.794-803. What's more, the City officials who expressed these sentiments were intimately involved in the decision-making, and it cannot be disputed that Steve's beliefs on marriage were the *sole* basis for his expulsion from the Farmer's Market. Pls.' Resp. 4-7, 15-16, PageID.1719-1722, 1730-1731, Ex. 24-26, 34, PageID.924-943, 963.

The City's actions and statements demonstrate a pattern of "impermissible hostility" and religious identity discrimination that violate the Free Exercise Clause per se. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1721 (2018); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2014 (2017). Plaintiffs respectfully request that the Court grant their motion for summary judgment, deny the City's cross motion, and enter a permanent injunction so that Steve will be able to continue serving his customers when the Market opens this June.

ARGUMENT

I. Tennes is entitled to summary judgment to stop the City from violating his constitutional freedoms of religion and speech.

The City does not dispute any material facts. At times it asks the Court to ignore facts, but it never disputes them. City Resp. 3-14, PageID.1637-1648. Both parties agree that this case should be decided as a matter of law. On the law and undisputed facts, Plaintiffs ask the Court to grant summary judgment in Plaintiffs' favor and grant all of Plaintiffs' requested relief.

A. The City's actions and statements demonstrate a pattern of targeting and "impermissible hostility" toward religion that violates the Free Exercise Clause.

As the Supreme Court stated 25 years ago, and repeated last term, the government has a duty under the Free Exercise Clause to act with neutrality towards religion. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533-34 (1993); *Masterpiece*, 138 S. Ct. at 1731. Religious targeting "is never permissible," so courts must carefully review laws for both "overt" and "covert suppression of particular religious beliefs." *Lukumi*, 508 U.S. at 533-34 (cleaned up). Even "subtle departures from neutrality" must be rejected absent strict scrutiny. *Masterpiece*, 138 S. Ct. at 1731 (cleaned up).

The City's actions violate these principles. City officials targeted Steve *because of* his Catholic faith. He was the "catalyst" for the new Policy, Ex. 56, PageID.1505 (Surface 79:1-5), which was "specifically written" for him, Ex. 34, PageID.963, and applied *only* to Country Mill, Ex. 57, PageID.1114 (McCaffrey 48:4-5), *only* because of Steve's religious words on Facebook. Ex. 56, PageID.1520-1521 (Surface 120:16-121:11). This targeting of "religious beliefs" and "religiously-motivated conduct" violates the Free Exercise Clause and this Court agreed in its preliminary injunction order. Op. and Order 12-15, PageID.370-373.

In response, the City accuses Steve of seeking a religious exemption from a neutral and generally applicable policy that regulates conduct. City Resp. 3, PageID.1637. The Court already rejected that argument. Op. and Order 12-15, PageID.370-373. It was right for at least three reasons.

First, the Policy was "specifically written to respond to" Country Mill's Facebook post. Ex. 34, PageID.963. It is absurd to now claim Steve needs an exemption from a Policy designed *only for him*. *Id.* Second, the Policy's "[f]acial neutrality is not determinative." *Lukumi*, 508 U.S. at 534; Pls.' Resp. 10-12, PageID.1725-1727. When, as here, "[o]fficial action … targets religious conduct for distinctive treatment," it "cannot be shielded by mere compliance with the requirement of facial neutrality." *Lukumi*, 508 U.S. at 534. Third, the Policy regulates more than secular conduct. Here, it was applied to speech (Steve's Facebook post), his religious beliefs (stated in that Facebook post), and his religiously-motivated conduct (his stated intent to follow his beliefs when he participates in weddings at his farm). Ex. 17, PageID.892. The Free Exercise Clause protects all three. *Prater v. City of Burnside*, 289 F.3d 417, 427 (6th Cir. 2002) ("This Clause protects not only the right to hold a particular religious belief, but also the right to engage in conduct motivated by that belief.") (cleaned up).

The error of the City's argument is underscored by its officials' own words. While expelling Steve from the Market based on his Facebook post, the City publicly castigated him for his religious beliefs and practices. The Mayor mocked Steve for carrying his "Catholic views" into his business and then debated on Facebook the validity of Steve's beliefs. Ex. 29, PageID.947-950. Councilmember Ruth Beier called Steve's religious statements about marriage "bigot[ed]," "ridiculous, horrible [and] hateful" during a public forum. Ex. 38, PageID.970-974. And City Manager Lahanas (and other city officials) repeatedly stated that Steve's Catholic beliefs

about marriage are akin to those that justified racism in the Jim Crow south. Ex. 58, PageID.1608-1611 (Lahanas 112:1-13, 109:18-110:5, 111:19-25), Ex. 34-36, PageID.963-966, Ex. 60, PageID.1236 (Beier 39:19-22).

These statements, and others, not only demonstrate the City's opposition to Steve's religious *beliefs* and practices, but they constitute a per se Free Exercise violation under *Masterpiece*, 138 S. Ct. at 1729-31 (combination of unfair treatment and hostile statements violates the Free Exercise Clause with no need for strict-scrutiny analysis). The City doubles down on its mistreatment by accusing Plaintiffs of mischaracterizing the facts. City Resp. 3, 6-8, PageID.1637, 1640-1642. But the City officials' words speak for themselves and are fully documented in the record.

So the City pivots and asks this Court to disregard that record because: (1) the statements were allegedly not as bad as in *Masterpiece*, (2) the declarants were apparently not decision-makers, and (3) the officials supposedly do not care about Steve's beliefs. City Resp. 3-14, 18-20, PageID.1637-1648, 1652-1654. The Court should reject these excuses.

The City's hostility is worse than that in Masterpiece. In *Masterpiece*, the Supreme Court ruled that the Colorado Commission acted with "impermissible hostility" when it reviewed a complaint against cake-artist Jack Phillips for declining to create a custom same-sex wedding cake. *Masterpiece*, 138 S. Ct. at 1729-1731. That ruling rested in part on the Commissioners' hostile public

statements about Phillips's religious beliefs and practices. *Id.* The City's hostile statements track closely with the Commission's.

For example:

- Both the *Masterpiece* commissioners and City officials demeaned the religious belief that marriage is between one man and one woman. *Compare Masterpiece*, 138 S. Ct. at 1729 (calling Phillips's faith "despicable") *with* Ex. 38, PageID.971 (calling Steve's faith "bigot[ed]," "ridiculous, horrible, [and] hateful").

- Both compared this belief to views "justify[ing] all kinds of discrimination" including "slavery." *Masterpiece*, 138 S. Ct. at 1729, Ex. 34-36, PageID.963-966, Ex. 58, PageID.1611 (Lahanas 112:8-13) ("I would say it's the same thing if you would have talked 60 years ago against African Americans. People can say my religious belief makes me say that I can't provide service to African Americans and they can cite the Bible for it. It doesn't make it true. It doesn't make it right. It's still wrong. It's the same thing here.").

- Both declared that on this topic an individual can "believe 'what he wants to believe,' but cannot act on his religious beliefs 'if he decides to do business in the state" or city. *Masterpiece*, 138 S. Ct. at 1729 (cleaned up), Ex. 29, PageID.947 (the problem is that Steve's "firmly held 'Catholic views on marriage' were not just his views" but something he "translated… into [his] business").

- And in both cases, the officials' statements implied that certain "religious beliefs and persons are *less than fully welcome* in [the] business community" and that individuals of faith must be willing to "compromise" their religious beliefs and practices to continue to do business. *Masterpiece*, 138 S. Ct. at 1729 (emphasis added). In East Lansing's case, City officials were express about this demand. Ex. 38, PageID.971-972 ("[I]f you actually do… not allow[] same-sex couples to marry on your farm, then we don't want you in East Lansing" and "I don't think change happens unless cities take a firm stand and we have."), Ex. 58, PageID.1611 (Lahanas 112:4-5) ("If he wants to do business… with the City… he would need to do that, yes."), Ex. 29, PageID.950 ("[I]f you want to participate in our farmer's market your business must comply….). But such a decree is unconstitutional.

Because the City officials' statements were more frequent, more public, and more aggressive than those made by the Commissioners in *Masterpiece*, the City's

Free Exercise violation is all the more egregious. City officials' words underscore their failure to proceed with the "religious neutrality" required under the Free Exercise Clause. *Masterpiece*, 138 S. Ct. at 1723. On that basis, this Court should follow the Supreme Court's lead and find a per se constitutional violation. *Id.* at 1731-32.

City officials were decision-makers in this case. The City attempts to side-step this result by claiming City Manager Lahanas was the only decision-maker. City Resp. 4, 6, PageID.1638, 1640. To begin, *Masterpiece*'s ruling applies beyond "decision-makers." *See* Pls.' Resp. 15, PageID.1730. And even if decision-maker status mattered, the City's tactic is odd given that so much hostility came from Lahanas's mouth. *See above.* The argument also contradicts the City's prior briefing, which listed both Heather Surface and Tim McCaffrey as decision-makers. *Compare* Br. in Supp. of Def.'s Mot. for Summ. J. 21, ECF No. 68, PageID.678 ("The decision-makers…were…Heather Surface…Tim McCaffrey….") *with* City Resp. 8, PageID.1642 ("Ms. Surface was not a decisionmaker…."). And it ignores the Mayor's and City Council's involvement at *every* stage of this case. Ex. 5-7, 22-23, PageID.867-870, 921-923.

The Mayor and City Council drove Steve's expulsion from the Market, as the undisputed record shows. For example, the Mayor was the first to question Steve's Market participation. Ex. 5, PageID.867. He then specifically directed Lahanas regarding Country Mill's Market participation in August 2016 and March 2017. Ex. 6, PageID.868 ("[T]he issue ... is [Steve's] public statement that [his] religion does

not permit [him] to allow same sex couples to be married at their farm."), Ex. 22, PageID.921-922 ("Okay[ing]" the letter).

Councilmember Altmann similarly directed the process. Ex. 7, PageID.870 ("I'd prefer maintaining the request not to vend…."), Ex. 23, PageID.923 ("I think this is the right move."). The City's argument now that Altmann was "not aware that Country Mill applied for the 2017 Farmers' Market" is misplaced. City Resp. 5, PageID.1639.

Equally misplaced is the City's reliance on Councilmember Beier's suggestions that she was not a decision-maker. City Resp. 4-5, PageID.1638-1639. She received the same emailed updates as Meadows and Altmann. Ex. 5-7, 22-23, PageID.867-870, 921-923. She was kept informed by the City Manager. Ex. 58, PageID.1537-1538 (Lahanas 15:24-16:4). And she has fully defended the City's actions throughout this case as Steve has continually sought access to the Market. Ex. 34-36, PageID.963-966 (emails to constituents defending the City's position), Ex. 38, PageID.971-972 (public debate defending the City's position), Ex. 60, PageID.1251 (78:1-3) (Q: "[D]o you disagree with the way that the City of East Lansing handled the situation at Country Mill?" A: "No.").

Adding to this is the fact that Lahanas works directly for and at the behest of City Council who made known their opposition to Steve's Market participation. Ex. 61, PageID.1255 (Altmann 13:3-18), Ex. 6-7, PageID.868-870. Lahanas would follow the Council's will. But he also agreed with their religious bias. Ex. 39-44, PageID.975-995, Ex. 58, PageID.1611 (Lahanas 112:1-13).

In sum, Lahanas Meadows, Altmann, and Beier were all involved in the decision to expel Steve from the Market. They have never disavowed the City's actions, but instead have vigorously defended them in this case and publicly. These officials' opposition to Steve's religious beliefs and practices drove their decision then, and it continues to drive the City's decisions now.

City officials attacked Steve's religious beliefs and the City's brief repeats that error. The City's last effort to avoid the consequences of its words is to claim its focus was Steve's secular conduct, not his religious beliefs. City Resp. 12-13, PageID.1646-1647. Their statements prove otherwise. *See above*; *see also* Ex. 6, PageID.868 ("religious beliefs"), Ex. 29, PageID.947 ("Catholic views"), Ex. 35, PageID.964 ("I disagree that the views held by people like this vendor [are] not likely to change."). Moreover the Free Exercise Clause protects both belief *and* practice so the distinction is without effect. *Prater*, 289 F.3d at 427.

The City then doubles down on its constitutional error by attacking Steve's religious beliefs in its response brief. City Resp. 16-18, PageID.1650-1652 (accusing Steve of selectively practicing his Catholic faith). But the testimony the City relies on only confirms Steve's dedication to his Catholic faith. For instance, Steve testified that he does not officiate weddings (he is neither a priest nor a deacon), that he has not hosted a non-compliant Catholic wedding (such as an outdoor wedding without dispensation from a Bishop), and that if he were asked to participate in a wedding that raised new or challenging theological questions—such as a wedding between divorced, but not annulled Catholics—he would pray and

seek spiritual guidance from his priest. City Ex. S, PageID.1701-1704 (Tennes 32:3, 32:23-33:23, 39:17-20, 46:15-47:20). These are consistent religious positions and confirm the religious motivation behind Steve's wedding business. That the City would attack Steve for these positions speaks volumes about its officials' feelings toward the Catholic faith and Steve's exercise of it.

The City cannot force Steve to change his beliefs about marriage or violate them by affirming, promoting, or participating in same-sex wedding ceremonies. The record speaks for itself, and its pattern of unfair treatment, targeting, and hostility towards Steve's religious beliefs are incompatible with the Free Exercise Clause and warrant summary judgment.

B. The City denied Tennes a public benefit based on his religious beliefs, practices, and identity and in so doing announced a boundless principle of religious discrimination.

The City further violates the Free Exercise clause by engaging in religious-identity discrimination. The City's response misunderstands Steve's argument on this point. City Resp. 20-23, PageID.1654-1657. Steve does not claim to be a religious institution. *Trinity Lutheran* is not so limited. Rather, *Trinity Lutheran* explains that where, as here, the City denies a public benefit "solely on account of religious identity," that denial violates the Free Exercise Clause. *Trinity Lutheran*, 137 S. Ct. at 2019. The City targeted Steve because of his Catholic identity and barred him from the public benefit of Market participation unless he surrendered his Catholic beliefs about marriage. Ex. 58, PageID.1611 (Lahanas 112:1-5), Ex. 38, PageID.971-972. That violates the Free Exercise principles in *Trinity Lutheran*.

In response, the City tries again to parse Steve's beliefs from his actions, City Resp. 20-22, PageID.1654-1656, even though the law recognizes no such distinction. *Trinity Lutheran*, 137 S. Ct. at 2025; *see also id.* at 2026 (Gorsuch, J., concurring) ("I don't see why it should matter whether we describe that benefit, say, as closed to Lutherans (status) or closed to people who do Lutheran things (use). It is free exercise either way.").

The City then accuses Steve of both violating the law and promoting a principle that would allow others to violate the law. City Resp. 23-25, PageID.1657-1659. Both accusations are false. Steve's claims track closely with binding Supreme Court precedent. *Masterpiece*, 138 S. Ct. 1719; *Trinity Lutheran*, 137 S. Ct. 2012; *Lukumi*, 508 U.S. 520. They do not support any illegal activity, by Steve or anyone else.

In making its arguments, the City claims Steve's legal theory supports race-discrimination. City Resp. 24-25, PageID.1658-1659. This is more evidence of hostility. Not only would Steve never object to participating in a marriage between individuals of different races, but the comparison lacks principle. There is simply no comparison between the Catholic view that marriage is between one man and one woman and invidious race-discrimination, as the Supreme Court has recognized. *Compare Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 868 (2017) ("The unmistakable principle underlying these precedents is that discrimination on the basis of race [is] odious in all aspects" and "[r]acial bias is distinct in a pragmatic sense….") (cleaned up) *with Masterpiece*, 138 S. Ct. at 1727 ("[T]he religious and

philosophical objections to gay marriage are protected views ….") and *Obergefell v. Hodges*, 135 S. Ct. 2584, 2602 (2015) ("Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here.").

In contrast, the City's principle is the one without bounds. Steve abides by all laws, guidelines, and rules—both at the Market and on his farm in Charlotte. Tennes Decl. ¶¶ 8, 23, PageID.828, 831-32. City officials have received no complaints that Steve actually declined any wedding, and they have never spoken to Steve about his religious beliefs or related business practices. Ex. 57, PageID.1115-1116 (McCaffrey 49:10-50:12), Ex. 58, PageID.1610 (Lahanas 111:8-9). Nor has the City ever similarly investigated anyone else who applied for the Market. Ex. 57, PageID.1114 (McCaffrey 48:4-5). Yet, the City investigated and expelled Steve based entirely on a Facebook post that the City took to *hypothetically violate* the City's ordinance if Steve's family farm were *hypothetically* located in the City. If Steve's farm were located in the City, and he had actually declined a wedding, he would be entitled to more process and opportunity to be heard than the City has afforded him here.

This underscores the dangerous nature of the City's legal principle. It announces a right to reserve public benefits to individuals who accept its ideology, punish individuals for disfavored, legal conduct outside the City, and roam the internet looking for potential violators. Under this theory, the government could deny public benefits to countless individuals—such as denying a business license to

those who send their children to Catholic schools out-of-state or denying a parade permit to those who donate to Catholic adoption agencies in nearby towns. In other words, the City could exclude Steve—and any one of the millions of people who agree with his beliefs on marriage—from full participation in public life. Such a casting out of any group of persons based on their religious practices per se violates the Free Exercise Clause.

C. The City retaliated against Tennes's religious speech and practice in violation of the First Amendment.

The City's retaliation response rests on its previously failed argument that Steve was not engaged in protected activity. City Resp. 27, PageID.1661. This Court rejected that argument when it issued the preliminary injunction. Op. and Order 10-12, PageID.368-370. It should do so again.

Steve was not removed from the Market for secular activity or for any *actual* law violation. He was expelled over a Facebook post—one that discussed his Catholic beliefs on marriage (protected speech) and his related religious actions (protected conduct). Ex. 17, 24-26, PageID.892, 924-943, Ex. 56, PageID.1520-1521 (Surface 120:15-121:11); *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981) ("[T]he oral and written dissemination of … religious views and doctrines is protected by the First Amendment."); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 639 (1943) (protecting the right of Jehovah's Witness students to not participate in what they viewed as a religious ritual). The City cannot constitutionally retaliate against this protected speech and conduct. *See* Pls.' Mem. 21-24, PageID.806-809, Pls.' Resp. 23-26, PageID.1738-1741.

D. The City has put Tennes to an unconstitutional choice that violates the unconstitutional conditions doctrine.

The City responds to Plaintiffs' unconstitutional conditions claim by critiquing Steve's participation in weddings and directing the Court to an irrelevant decision. City Resp. 27-28, PageID.1661-1662. Both are inapposite.

First, while Steve's First Amendment challenges are not dependent on his participation, the record establishes that he does participate in each wedding on his farm. He and his wife are involved from the first meeting with the couple until the last guest leaves the reception. Tennes Decl. ¶¶ 13-16, PageID.829-830. They work closely with couples to plan the day and then they (with their children) assist with numerous wedding needs from making signs, to greeting and welcoming guests, to preparing the wedding site and reception, to attending the wedding or reception with their children. *Id.*; *see also* City Ex. A, PageID.698 (Tennes 31:18-32:2). To force Steve and his family to engage at this level with a religious ceremony that violates his deepest conviction is a First Amendment problem that creates an unconstitutional condition here.

Second, the City's reliance on *Benjamin ex rel. Rebekah C. Benjamin Trust v. Stemple*, 915 F.3d 1066 (6th Cir. 2019), is misplaced. *Benjamin* concerned a fact-specific Fourth Amendment challenge to a real estate contract where the Sixth Circuit found no "cognizable Fourth Amendment rights." *Id.* at 1068. Contrast that with the present case, in which the City threatens to withhold a public benefit until Steve surrenders his established First Amendment freedoms of speech and religion.

Steve should not have to choose between his faith and his ability to access a public benefit like the Farmer's Market.

E. The City does not separately respond to Tennes's other First Amendment and state constitutional claims.

The City never substantively addresses Plaintiffs' Free Exercise claim that the Policy fails because it is enforced through a series of individualized assessments. City Resp. 14-26, PageID.1648-1660. The City also rests on its prior briefing in response to Plaintiffs' Establishment Clause, Hybrid Rights, Overbreadth, Vagueness, and Unbridled Discretion claims. City Resp. 26-29, PageID.1660-1663. It merely repeats its prior arguments regarding the Michigan Constitution. City Resp. 30, PageID.1664. To avoid repetition, Plaintiffs' rest on their prior briefing on these claims, in addition to the arguments made elsewhere in this reply.

F. The Policy fails strict scrutiny.

The City's response does not separately address any scrutiny analysis, but instead reasserts throughout that the City has an interest in stopping discrimination. This point has been briefed at length before. Pls.' Mem. 28-30, PageID.813-815, Pls.' Resp. 32-35, PageID.1747-1750. Steve serves all customers—at the Market and at his farm—with no regard for their sexual orientation, marital status, or any other protected characteristic. This Court need not reach any scrutiny analysis under the Supreme Court precedent in *Masterpiece* and *Trinity Lutheran*, which found per se Free Exercise violations without any scrutiny analysis. *See above.*

In addition to the Policy's per se violation, strict scrutiny certainly applies and the City's generalized interest does not provide a legitimate, let alone

compelling, reason to force Steve to violate his religious beliefs. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006) (The Court must look "beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted harm" as it pertains "to particular religious claimants."). This Court should reject the City's claim to the contrary. The City has never justified its interest in punishing Steve for doing something completely legal and constitutionally protected outside the City.

II. Plaintiffs are entitled to a permanent injunction, damages, and attorney's fees and costs for the violation of constitutional freedoms.

The City does not respond to Plaintiffs' request for relief. Aside from the merits, the City did not contest the factors warranting a permanent injunction, and the City's only comment on damages is to suggest immunity from damages related to the state constitutional claims. City Resp. 30, PageID.1664; *Jones v. Powell*, 612 N.W.2d 423 (Mich. 2000). But *Jones* states the opposite. *Id.* at 427 (upholding a damage award against a municipality for violation of the Michigan Constitution). Immunity does not attach to municipalities, nor to damage claims brought under the Federal Constitution. *Id.*

What's more, the City has never contested Plaintiffs' damages. *See* City Br., PageID.658-690, City Resp., PageID.1635-1664. The City hired no expert and presented no evidence or argument to challenge Plaintiffs' expert report which is fully in the record before this Court. *Id.*; Pls.' Mem. 36-37, PageID.821-822, Ex. 64, ECF No. 73. Plaintiffs therefore ask this Court to issue the permanent injunction, declare the City's actions unconstitutional, and grant the Plaintiffs' damages—

$41,199 and ongoing per expert Rodney Crawford's report dated April 12, 2018, Ex. 64—plus costs and attorney fees, for the violation of Plaintiffs' civil rights.

CONCLUSION

This case falls squarely within the Supreme Court's Free Exercise precedent. And that is a good thing, because the principles presented in this case have far-reaching consequences. A City that can target one farmer's Catholic faith—denying him access to public benefits and disparaging his views—can attack the civil rights of *any* citizen.

Accordingly, Plaintiffs respectfully ask this Court for an injunction and damages to stop the City's intolerance.

Respectfully submitted this 7th day of March, 2019,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 4,299 words as defined by and in compliance with W.D. Mich. LCivR 7.2(b)(i), according to the word count of Microsoft Office Professional Plus 2013.

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