

**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' Post-Trial Brief

Introduction

Like the Plaintiffs in the recent Supreme Court case *Fulton v. City of Philadelphia*, Steve and Bridget Tennes want nothing more than to live their lives and do their work in accord with their religious beliefs. 141 S. Ct. 1868 (2021). The state and federal constitutions guarantee them this freedom. But not East Lansing.

East Lansing officials disagree with Tennes's¹ Catholic marriage beliefs and the speech and conduct that flow from them. So, they targeted Country Mill for removal from the farmers market, changing the Market Guidelines for that purpose, singling the farm out during the application process, and using a discretionary system of individualized assessments to ban only Tennes from future market participation. These officials did this all while publicly denigrating Tennes's

¹ Unless context clearly dictates otherwise, the terms "Tennes" and "Country Mill" as used in this document are intended to refer to both Plaintiffs.

religious beliefs and practices through their individual Facebook posts, media responses, and public debates.

The City's actions violate the Constitution for multiple reasons. First, like Philadelphia, East Lansing punished Country Mill using a system of individualized assessments (the Vendor Guidelines) and an ordinance (the Human Relations Ordinance) that grants secular exemptions but not religious ones. *Compare Fulton*, 141 S. Ct. at 1877-78 *with* Ex. 24 (Appendix B), ECF No. 137-24, PageID.3611-3619; *see also* Daily Trial Transcript ("Tr."), Tr. 290:23-292:12, ECF No. 134-2, PageID.3205-3207. Such a discretionary system violates the Free Exercise Clause as a matter of law. *Fulton*, 141 S. Ct. at 1878; Memorandum in Support of Plaintiffs Country Mill Farms, LLC, and Stephen Tennes's Motion for Partial Directed Verdict ("Pls.' Mot. for Directed Verdict"), ECF No. 134, PageID.2841-2855.

Second, the City's targeting violated its "high duty" of religious neutrality. Officials banned Tennes for religious speech and practice. And then they publicly ridiculed his Catholic faith, calling him a "bigot," his beliefs "ridiculous, horrible, hateful things," his religious statements a "problem," and his religious practices akin to racism. Ex. 8, ECF No. 137-8, PageID.3566; Ex. 29, ECF No. 137-29, PageID.3627; Ex. 38, ECF No. 137-37, PageID.3664; Ex. 39, ECF No. 137-38, PageID.3665; Ex. 40, ECF No. 137-39, PageID.3667; Ex. 42, ECF No. 137-40, PageID.3670; Ex. 87, ECF No. 137-66, PageID.3801-3802; Ex. 123, ECF No. 137-85, PageID.3925; Tr. 310:19-311:12, PageID.3228-3229. The Free Exercise Clause bans

government action that gives rise to even a “slight suspicion” of hostility. Much more than slight suspicion exists here.

Third, the City’s actions were triggered solely by Tennes’s Facebook statements—statements that discussed Tennes’s religious beliefs and identified his related religious conduct. Since all of this speech is protected—indeed no law requires Tennes to violate his Catholic faith by participating in ceremonies that contradict it—the City’s actions violate the Free Speech Clause. *Bigelow v. Virginia*, 421 U.S. 809, 822-25 (1975).

The City’s actions also violate the Establishment Clause, the Unconstitutional Conditions Doctrine, and the Michigan State Constitution, which offers greater protection for religion than its federal counterpart. The City cannot act with hostility towards religion or pressure Tennes to surrender constitutional freedoms for the public benefit of farmers market participation. Yet, that is exactly what it did here.

A permanent injunction, declaratory relief, and damages are warranted.²

Summary of the Facts

Tennes operates his farm and life with a mission: “[T]o glorify God by facilitating family fun on the farm and feeding families.” Tr. 50:7-51:9, ECF No. 134-1, PageID.2915-2917. He takes that mission seriously. That’s why he invites all

² To aid the Court, Plaintiffs are attaching an updated version of Plaintiffs’ [Proposed] Findings of Fact and Conclusions of Law to include citations to the trial record and some additional facts from trial that were not part of Plaintiffs’ [Proposed] Findings of Fact and Conclusions of Law, ECF No. 130, PageID.2786, filed prior to the trial.

comers onto his farm for fall events, an on-farm Market, and UPick produce. Tr. 54:13-20, PageID.2921. It's why he takes his fresh produce 22 miles into East Lansing to feed families through the farmers markets. Tr. 56:21-57:14, PageID.2923-2924. And it's why he hosts an annual benefit event for the local food bank so that families that cannot afford fresh produce can enjoy his farm's fruit anyway. Tr. 51:13-52:5, PageID.2917-2918; Tr. 448:2, PageID.3393.

Tennes's Christian faith impacts every aspect of his life and work. Tr. 132:22-133:2, PageID.3014-3015; Tr. 446:21-447:7, PageID.3391-3392. It is the governing principle whenever he interacts with a customer or employee and it's the backbone to each of his business decisions. Tr. 59:15-61:8, PageID.2927-2929. So, when customers began asking Steve and Bridget Tennes to celebrate weddings on their farm, they prayerfully decided to do so. Tr. 61:9-63:16, PageID.2929-2931; Tr. 448:5-12, PageID.3393. They saw in these requests an opportunity to celebrate the gift of marriage and take part in a ceremony that they believe is sacred. Tr. 58:8, PageID.2925; Tr. 110:22-111:2, PageID.2988; Tr. 127:9-14, PageID.3008. After learning that many couples in their area could not afford the larger local venues, the Tenneses committed to make their farm affordable and flexible, so couples could get married surrounded by all of their friends and family. Tr 62:8-63:16, PageID.2930- 2931.

They also committed to serve the couples by actively participating in making the wedding successful. With their kids, this includes things like ushering guests to the ceremony, managing the live-stream, handling wardrobe concerns for the bridal

party, and addressing technical issues for the minister. Tr. 64:5-65:24, PageID.2932-2934; Tr. 448:13-450:2, PageID.3393-3395. They also promised to pray for each couple. They do this with their children on the day of the wedding and leading up to it. And the couples they work with know that the Tennes Family is praying for them. Tr. 448:17-19, PageID.3393. As a person of faith, Tennes bows his head and prays during these weddings, teaching his children to do the same as they sit in the back during the ceremonies. Tr. 64:19-24, PageID.2933; Tr. 65:12-19, PageID.2934.

As Christians, Steve and Bridget Tennes sincerely believe—as have millions for millennia—that marriage is a God-ordained covenant between one man and one woman. And that the ceremony that creates it is sacred. Tr. 63:17-64:4, PageID.2931-2932; Tr. 110:25-111:2, PageID.2988.

This belief does not exist in a vacuum. It is something that the Tenneses practice every time they celebrate and participate in a wedding on their farm. So when someone asked them on Facebook about same-sex marriage, they answered truthfully and in accord with the Catholic Church’s teaching on marriage. Ex. 5, ECF No. 137-5, PageID.3563.

East Lansing City officials saw that explanation and less than 24 hours after it was posted, then-Mayor Mark Meadows wrote to a city employee—“Does Country Mill in Charlotte have a space at the farmers market?” Ex. 7, ECF No. 137-7, PageID.3565; *see also* Ex. 87, PageID.3801- 3802. When he heard that they did, he wrote, “We need to find out if our ordinance is implicated.” Ex. 7, PageID.3565.

But their Human Relations Ordinance was not implicated. Neither were the Market Vendor Guidelines, the rules that govern vendors' activities at the market. Nothing in either document prohibited Tennes from living by his religious beliefs when he celebrates weddings on his farm, 22 miles outside East Lansing. Ex. 2, ECF No. 137-2, PageID.3551-3555. Yet, Meadows's email set off a number of events that started with the City pressuring Tennes to leave the Market. Ex. 15, ECF No. 137-15, PageID.3581-3583; Tr. 75:17-78:12, PageID.2946-2949; Tr. 78:7-12, PageID.2949. What followed was a change to the 2017 guidelines to ban Tennes's religious wedding practices, singling Tennes out during the 2017 Market application process, and rejecting his application based on the brand-new policy created for that specific exclusionary purpose.

Within hours of Meadows's email, Parks and Recreation Director Tim McCaffrey began calling and emailing Country Mill pushing them to agree not to come to the market that Sunday. Ex. 11, ECF No. 137-11, PageID.3570-3573; Ex 12 ECF No. 137-12, PageID.3574-3578; Ex. 14, ECF No. 137-14, PageID.2480; Ex. 15, PageID.3581-3583; Tr. 221:1-12, PageID.3120. One email said Country Mill's position on marriage "would appear to conflict with the City's own ordinance ... [r]eferring to the City's Human Relations Ordinance..." and added that while McCaffrey was not the appropriate person to "represent the City ... in a legal capacity on this matter[,] ... agree[ing] not to vend" would give the City time to "involve our appropriate City officials in any longer term determinations regarding this matter." Ex. 15, PageID.3581-3583.

The Human Relations Ordinance carries jail time penalties and heavy fines. *See* Ex. 24 (Appendix B), PageID.3611-3619. So with threats of law violations and perishable produce ready to go to market, Steve and Bridget Tennes made the difficult decision to temporarily stop booking weddings on the farm. They announced that decision on Facebook and planned for the upcoming Market. Ex. 6, ECF No. 137-6, PageID.3564.

Tim McCaffrey and City Manager George Lahanas saw that second post as well. Ex. 8, PageID.3566-3567. And they too thought that the issue was resolved. *Id.* So they jointly reported to city council that they would withdraw the request not to vend, “unless [Lahanas] hear[d] otherwise from Council.” *Id.* He did hear otherwise. And predictably, hearing from his boss did change his course of action.

Meadows put it plainly. Not hosting weddings did not solve the problem because the problem was Tennes’s public *statement* about his *religious beliefs*:

As Tim knows, DuPuis was not the only inquiry about this. I am not sure whether not hosting any weddings actually addresses the issue which is a *public statement* that their *religion* does not permit them to allow same sex couples to be married at their farm. Do their religious beliefs permit them to sell apples to a same sex couple at the farmers market? Can they sign an assurance that they will provide service to all persons, regardless of sexual orientation? I think we can expect a demonstration at the farmers market and we should get some guidance from Tom [Yeadon, the City Attorney,] on what our options are.

Id. (emphasis added). Councilmember Erik Altmann emailed a few minutes later writing, “I’d prefer maintaining the request not to vend until we get more direct assurances.” Ex. 9, ECF No. 137-9, PageID.3568. Councilmember Ruth Beier

received these emails and at that time met regularly with Lahanas. Tr. 380:9-19, PageID.3312.

Following Meadows's and Altmann's direction, Lahanas and McCaffrey spoke with Yeadon. Lahanas reversed his earlier decision and instead directed McCaffrey to maintain the request that Country Mill not vend despite Country Mill no longer booking weddings. And less than four hours after the email exchange with council, McCaffrey told Country Mill "we are still requesting that the Country Mill voluntarily agree to not vend this Sunday August 28, at the East Lansing Farmer's Market." Ex. 15, PageID.3582. He made no promises that this request would *ever* be lifted. *Id*; *see also* Ex. 11, PageID.3570-3573; Ex. 12, PageID.3574-3578.

That evening, Lahanas dutifully reported back to council that he had consulted Yeadon and maintained the request not to vend—exactly what city council members had directed him to do. Ex. 10, ECF No. 137-10, PageID.3569. McCaffrey then emailed the market vendors to alert them to the "controversy" surrounding Country Mill, warn them that "it is likely that we will have protesters at the Market tomorrow," and assure them that there would be a police presence throughout the August 28 market day. Ex. 16, ECF No. 137-16, PageID.3584-3585.

When asked about this at trial, Lahanas explained that the City was concerned they would see a protest like the one that broke out against a beverage vendor at the City's Great Lakes Folk Festival. Tr. 318:1-7, PageID.3237. Apparently, the vendor had a Confederate flag and, as Lahanas testified, there was "a lot of stir" with "a lot of very upset people ... throwing water at each other,

screaming at each other, blocking the market area from getting up to the vendor, a lot of very heated interactions....” Tr. 318:8-13, PageID.3238. However, it also came to light during testimony that councilmember Ruth Beier organized and led that protest while she was on City Council. As she testified, she gathered protestors and passed out flyers opposing the vendor. Tr. 386:4-20, PageID.3319. She did not do the same thing here and Country Mill attended the market without incident. Tr. 79:22-23, PageID.2951; Tr. 164:21-165:12, PageID.3052-3053.

The next day Meadows emailed Lahanas, asking if he had gotten the assurances council requested. Ex. 17, ECF No. 137-17, PageID.3586. He had. *Id.* Lahanas reported that Country Mill “assured us that they will serve all customers regardless of sexual orientation” both at the market and on their farm. *Id.* And he added that to the City’s knowledge, “they have always served any customer at our farmer’s market.” *Id.* The Mayor then responded to media requests on Country Mill, fueling additional news coverage. *Id.* McCaffrey did the same. Ex. 18, ECF No. 137-18, PageID.3587-3588; Ex. 19, ECF No. 137-19, PageID.3589-3590.

Despite that adverse publicity, Country Mill finished out the 2016 Market season without incident. Tr. 79:22-23, PageID.2951; Tr. 229:17-20, PageID.3130. To appease East Lansing, they declined all new wedding requests for the remainder of the fall season. But the requests kept coming. Tr. 80:14-18, PageID.2952. So as the season ended, Steve and Bridget Tennes prayerfully considered how to proceed with weddings on their farm. Tr. 79:24-80:4, PageID.2951. As they explained in their testimony, they felt compelled by their faith to once again open their home and farm

to celebrate weddings. Tr. 80:2-4, PageID.2951; Tr. 448:5-12, PageID.3393. Doing so is an expression of their Catholic faith and a way they can steward their farm for God's glory. Tr. 50:15-25, PageID.2916; Tr. 448:5-12, PageID.3393.

They let their customers know their decision via Facebook around December 10, 2016. Ex. 20, ECF No. 137-20, PageID.3591. East Lansing heard about it and took immediate action. Ex. 21, ECF No. 137-21, PageID.3592.

First, the City changed the 2017 Vendor Guidelines, the rules that govern the activities of vendors at the market. Ex. 24, PageID.3597-3619; Tr. 173:1-174:4, PageID.3062-3064. Nothing in the 2016 Guidelines prohibited Country Mill from living by their religious beliefs when celebrating weddings on their farm, 22 miles outside the City. *See* Ex. 2, PageID.3551- 3555. So, the City added that prohibition.

The Guidelines specify that vendors will be invited back to the market each year if they “embody the spirit of the market” (whatever that means). Ex. 2, PageID.3552. The Market Planning Committee makes this discretionary determination based on factors that range from the quality, quantity, and appearance of produce, to “Having fun!” *Id.* In 2017, the City added a new factor (“the Policy”) involving vendors’ compliance with the City’s Human Relations Ordinance in all their “general business practice[s].” Ex. 24, PageID.3597-3619.

With this language, the City pulled into the Guidelines the very ordinance they had previously accused Tennes of violating and they made the policy change apply to activity like Tennes’s outside the city limits. *See* Ex. 15, PageID.3581-3583. Market Manager Heather Majano testified that Country Mill was the

“catalyst” for this change. Tr. 172:23-25, PageID.3062.³ Other city officials agreed. Tr. 336:15-337:16, PageID.3259-3261; Ex. 38, PageID.3664; Tr. 382:17-383:1, PageID.3314-3315.

The City wasn’t done. The City’s second hostile action was to bar the Market Planning Committee from sending Tennes an invitation for the 2017 Market. And the City’s third action was to instruct the Committee that if Tennes applied anyway, that application would be pulled from the normal process, sent to City officials, and reviewed by City officials, not the Market Planning Committee. Majano attended the committee meetings and gave these instructions. Ex. 22, ECF No. 137-22, PageID.3593-3594 (Majano’s meeting notes: “can’t invite, is welcome to apply but it would be a discussion for lawyer”); Ex. 63, ECF No. 137-56, PageID.3773-3775. In discussing the guideline changes, Majano warned the Committee: “Remember: we cannot specifically target one vendor in the guidelines.” Ex. 23, ECF No. 137-23, PageID.3595-3596.

When Tennes did not receive an invitation to the 2017 Market, he asked his sister-in-law Diana, the family member who most frequently attends the East Lansing Farmers Market on behalf of the farm, to reach out to a friend on the Market Planning Committee, Rebecca Titus. Tr. 87:18-88:4, PageID.2960-2961. Titus told Diana that the “[C]ity Council added rules to the farmers market guidelines.” Ex. 63, PageID.3773-3775. Those rules were “never discussed with the

³ Heather Surface changed her legal name to Heather Majano. Any reference to Surface in the Trial Exhibits refers to Majano.

farmers/Heather,” the Market Manager.” *Id.* Titus also revealed that the Market Planning Committee was told they were “not allowed to ‘invite’ [Country Mill] back because of the rule violation,” and that if Country Mill applied, the decision would go “directly to the City of East Lansing Council (or Board?).” *Id.*⁴

And that’s exactly what happened. Tennes applied to the Market through the normal process. Tr. 87:12-17, PageID.2960. As Majano testified, she pulled his application upon receipt and took it to her superiors. Tr. 185:16-19, PageID.3077. They prepared a letter that was reviewed and approved by multiple city officials including Lahanas, Yeadon, Meadows and other council members. Tr. 185:20-24, PageID.3077-3078. When Lahanas sent the letter to city council, Councilmember Altmann wrote back, “No concerns. I think this is the right move.” Ex. 27, ECF No. 137-27, PageID.3625. Meadows also signed off: “Ok.” Ex. 26, ECF No. 137-26, PageID.3623-3624. Neither questioned the basis for rejecting Country Mill’s application. *Id.* Indeed they already knew the answer to that question. *See* Ex. 8, PageID.3566-3567; Ex. 9, PageID.3568. As the letter explained, Country Mill was found in violation of the new provision to the vendor guidelines. Ex. 28, ECF No. 137-28, PageID.3626.

When Tennes received the letter, he emailed Majano for clarification. Ex. 29, PageID.3627-3628. She did not contact him to discuss it. No one from the City did.

⁴ Majano disagreed with some of Titus’s testimony. But the text illustrates that at least Titus, a member of the Market Planning Committee intimately involved with the City’s treatment of Country Mill at the time it was occurring, believed that these instructions came straight from City Council.

Majano simply sent a second letter reiterating the same denial, for the same basis, and attaching a copy of the Tenneses' December 2016 Facebook post as the sole basis for the City's actions. Ex. 30, ECF No. 137-30, PageID.3629-3645.

This lawsuit followed. And this Court held that Tennes was likely to prevail on the merits of his claims under his Free Exercise Clause and Speech Retaliation theories. Op. and Order Granting Mot. for Prelim. Inj., ECF No. 27, PageID.359-374. This Court issued a preliminary injunction, which has been the only reason Country Mill has been able to serve its customers in East Lansing during the pendency of this case.

Each year since 2017, the City has refused to invite Country Mill back to the Market. Tr. 107:5-11, PageID.2984. Each year, Tennes has submitted an application for one of the remaining, noninvitational spots, and each year from 2018 to 2021, he's received a letter that explains that but for his religious practices related to weddings, he is in compliance with all Ordinance and Guidelines for the Market. *See* Ex. 50, ECF No. 137-43, PageID.3681. But if he adheres to the Catholic Church's marriage teachings, he will only be permitted to participate in the Market while this Court's order stands.

All city witnesses testified in accord with this letter. Tr. 243:6-13, PageID.3146- 3147. They also agreed that prior to August 2016, Country Mill was a praised and valued vendor, Ex. 1, PageID.3550; that Country Mill has always abided by the City Ordinances and Market Guidelines while serving all customers at the Market, Tr. 164:25-165:12, PageID.3053; and that the City's only objection to

Country Mill is the way Tennes celebrates weddings on his farm 22 miles outside the City limits. Tr. 311:21-25, PageID.3230.

Trial revealed the City's motivation for excluding Country Mill: disagreement with Tennes's religious practices and beliefs. Councilmember Beier affirmed that at a public debate she called Tennes's Catholic beliefs "bigot[ed]," "ridiculous, horrible, [and] hateful things," Ex. 42, PageID.3670; Tr. 394:7-396:3, PageID.3328-3331, and she testified that she hopes those beliefs change. Tr. 385:10-15, PageID.3318. The evidence showed that Meadows also identified Tennes's "statement" about his "religion" as the "issue." Ex. 8, PageID.3566. He castigated Tennes on Facebook for translating his "Catholic views on marriage" into a business practice, Ex. 33, ECF No. 137-33, PageID.3649, debated the validity of Tennes's Catholic marriage beliefs in comments to that Facebook post, *id.*, and in an email to a private citizen labeled Tennes a "discriminator[]" for acting on his Catholic faith. Ex. 37, ECF No. 137-36, PageID.3661.

Shockingly, City Manager Lahanas and City Attorney Yeadon judge Tennes's Catholic beliefs about marriage "the same" as the views that defended Jim Crow racism:

[I]t's the same thing ... [i]f you would have talked sixty years ago against African-Americans, people could 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.

Tr. 310:19-311:12 (Lahanas), PageID.3228-3229; Ex. 123, ECF No. 137-85,

PageID.3925 (Yeadon: "It is no different than if a vendor came to the farmer's

market and put up a sign that said ‘whites only’ or ‘no Catholics served here.’”); Ex. 42, PageID.3670 (Beier: similar).

All city witnesses agreed that Tennes must “change” his wedding related speech and practices or surrender his stand at the farmers market. Ex. 42, PageID.3671; *see also* Tr. 311:21-312:3, PageID.3230. The City has and will “take a firm stand” to ensure that happens. Ex. 42, PageID.3671; Tr. 394:7-396:3, PageID.3328-3331.

That “firm stand” violates the state and federal constitutions.

Argument

I. The City violated Plaintiffs’ constitutional freedoms.

A city cannot constitutionally force someone to choose between their religious beliefs and their participation in the public square, especially while affording exemptions to other businesses for purely secular reasons. But that is exactly what the City of East Lansing did here in violation of the Free Exercise Clause, Free Speech Clause, Establishment Clause, Unconstitutional Conditions Doctrine, and Michigan State Constitution.

A. East Lansing’s decision to exclude Country Mill from the farmers market is unconstitutional for the same reasons as the City of Philadelphia’s exclusion of CSS from the foster program.

Fulton v. City of Philadelphia resolves this case as a matter of law. 141 S. Ct. 1868. *Accord* Pls.’ Mot. for Directed Verdict, PageID.2841. Indeed, as the Court observed while hearing the oral motion, if you substitute Country Mill and the City of East Lansing everywhere that Catholic Social Services and the City of

Philadelphia appear in the *Fulton* opinion, it is difficult to see any difference. Tr. 477:6-11, PageID.3428.

This means *Fulton* applies with full force when it says the government cannot “prohibit[] religious conduct while permitting secular conduct,” nor can it burden religious practices under a policy that allows “individualized exemptions.” 141 S. Ct. at 1877 (cleaned up). East Lansing’s policy does both. Recognizing that does not require this Court to make any factual findings about City officials’ intent or resolve any factual disputes. Rather, the Court need only look at the City’s policies and see that those policies include categorical and individualized exemptions that the City does not extend to Country Mill.

The Vendor Guidelines provide a textbook example of individualized assessments. Vendor invitations rest on “case by case” analysis of a wide range of discretionary factors. Tr. 152:15-153:20, PageID.3038-3039; Tr. 156:14-157:21, PageID.3043-3044; Tr. 206:23-25, PageID.3103. These 14-plus factors include assessments of the quality, quantity, and appearance of the vendor’s produce, whether the vendor was successful in “[b]uilding relationships with customers,” whether they are “[b]eing friendly and courteous,” and whether they are “Having fun!” Ex. 24, PageID.3598. Compliance with the City’s Human Relations Ordinance and associated public policy is also now one of these factors. *Id.*; Tr. 290:23-292:12, PageID.3205-3207.

As Majano testified, City officials enforce these factors based on their sense of “fair[ness].” Tr. 206:16-25, PageID.3102-3103. They have denied invitations to

vendors for being “grumpy at the market,” being a “sourpuss,” or not having “a more colorful display.” Tr. 156:14-157:21, PageID.3043-3044. On the other end of the spectrum, The Cheese People were repeatedly invited back despite concerns that their cheese was not Michigan-produced—a requirement for Market participation. Tr. 196:21-197:3, PageID.3091; Ex. 150, ECF No. 137-95, PageID.3977-3978; Ex. 151, ECF No. 137-96, PageID.3979. And another vendor was permitted to continue attending after hitting another vendor’s stand with his car while possibly intoxicated. Tr. 206:16-25, PageID.3102-3103.

The Human Relations Ordinance, which was incorporated into the vendor guidelines, contains an additional laundry list of written, secular exemptions. Ex. 24, PageID.3611-3619; *see also* Pls.’ Mot. for Directed Verdict 3-4, PageID.2846-2847 (listing exemptions). As Meadows testified, those exemptions allow private clubs, including the Detroit Athletic Club, the Lansing Golf Club, the Kiwanis Club, the Rotary Club, and the VFW to violate the Ordinance for any reason. Tr. 354:13-356:11, PageID.3281-3283. The list contains purely discretionary exemptions including the “potential exemption” permitting businesses to apply for a bona fide occupational qualification exception, which is granted “at the option of the commission.” Tr. 357:20-21, PageID.3285. Other exemptions allow the City to contract with businesses even if those businesses refuse to comply with the Ordinance’s domestic partner benefit requirement. That provision doesn’t apply, for instance, if the business is the lowest bidder, does less than \$20,000 worth of work

for the City, or is part of a collective bargaining agreement. *See* Ex. 24 (Appendix B), PageID.3619 (Section 22-40 (c)(1), (2), and (8)).

But the exemptions go even further. The license agreement that all vendors must sign to participate in the Market informs vendors that “any license may be revoked by the City for failure to comply with the guidelines or any other term of this license agreement,” and forces vendors to agree that “The City of East Lansing reserves the right to discontinue participation in the market.” Ex. 4, ECF No. 137-4, PageID.3559 (section 12).

Any one of these exemptions undercuts the City’s interest in enforcing its Human Relations Ordinance. And under *Fulton*, any one of them ends this case. 141 S. Ct. at 1879. The City cannot exempt secular conduct—or operate a discretionary system that would allow it to do so—without extending the same exception to Country Mill. *Id.* Full stop.

The City’s response? To claim the Plaintiffs aren’t religious enough. But *Fulton* already answered that question. There, Philadelphia similarly claimed that forcing Catholic Charities to certify same-sex couples was not endorsement and so could not burden religious beliefs. *Fulton*, 141 S. Ct. at 1876. The Court disagreed. It said that if “CSS believes that certification is tantamount to endorsement” then that religious belief merits “First Amendment protection.” *Id.* (citation omitted).

Fulton also did not limit its ruling to non-profits or religious organizations. 141 S. Ct. 1868. Free Exercise rights extend to for-profit businesses just as they do to other entities. The Court in *Hobby Lobby* affirmed that, explaining that the Free

Exercise Clause “protect[s] the free-exercise rights of corporations” because doing so “protects the religious liberty of the humans who own and control those corporations.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 707 (2014).

Courts across the Country have followed this principle to rule in favor of for-profits’ Free Exercise rights. *See e.g., Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*, 138 S. Ct. 1719 (2018) (free exercise rights of cakeshop); *Telescope Media Grp. v. Lucero*, 936 F.3d 740 (8th Cir. 2019) (same for videographer); *Chelsey Nelson Photography LLC v. Louisville/Jefferson Cnty. Metro Gov’t*, 479 F. Supp. 3d 543 (W.D. Ky. 2020) (same for photographer); *United States v. Lee*, 455 U.S. 252 (1982) (same for Amish carpenter); *Gallagher v. Crown Kosher Super Market of Mass., Inc.*, 366 U.S. 617 (1961) (same for kosher market). This Court can too.

Further, the record rejects the City’s assertion that Tennes and Country Mill do not engage in religious practices during weddings on their farm. Tr. 64:19-21, PageID.2933; Tr. 65:12-19, PageID.2934. As Tennes testified, he only hosts weddings because he believes they are sacred. Tr. 110:22-111:2, PageID.2988. That belief influences all aspects of his participation. Tr. 132:22-133:2, PageID.3014-3015. It is why he helps with wedding preparations, prays for the couple, and is present at every ceremony to help the bride and groom and their guests. Tr. 64:5-65:24, PageID.2932-2934; Tr. 448:13-450:2, PageID.3393-3395. This includes escorting late friends or family to their seats, providing for the minister’s technical needs, and livestreaming the service. *Id.* Tennes and his family also sit in during the wedding ceremonies where they bow their heads, sing, and pray blessings on

the couple along with the other wedding attendees. Tr. 65:12-19, PageID.2934. For Tennes, as for many, these acts are his religious practice.

The City then argues that there is no system of individualized assessments at all because the current city manager, Lahanas, deems the Guidelines mandatory, not discretionary—as if his interpretation changes the words in the document. Tr. 291:19-23, PageID.3206 (it’s a “yes-or-no thing ... [y]ou either comply or you don’t comply...”). But that’s Lahanas’s interpretation and it’s not what the Guidelines say. And as this Court suggested during closing argument, that’s the “running room” in the Ordinance playing out. Tr. 478:23-479:4, PageID.3429-3430. That the four corners of the document allow differing interpretations, proves the *Fulton* point. “[T]hat there’s the potential[] for the exercise of discretion in granting an exemption” renders it “no longer generally applicable and therefore ... subject to strict scrutiny.” Tr. 478:12-16, PageID.3429.

B. East Lansing’s actions and statements raise “slight suspicion” of hostility and are unconstitutional under *Masterpiece*.

While this Court may resolve the case through directed verdict, the case was fully tried before this court. So, to conserve future judicial resources, Plaintiffs request that the Court make factual findings now as the trier of fact and reach Plaintiffs’ additional legal claims. As the Supreme Court reiterated in *Masterpiece*, even “slight suspicion” of religious animus violates the Free Exercise Clause. *Masterpiece*, 138 S. Ct. at 1731 (cleaned up) (affirming the government’s “high duty” of neutrality and that even “subtle departures” from that duty cannot stand).

The hostility question before this Court is not a preponderance of the evidence question. It is a slight suspicion question. If this Court even suspects the City acted out of animus, the City's actions fail. Indeed, *Masterpiece* itself involved only a single Colorado Civil Rights Commissioner out of seven. Her comments comparing Jack Phillips's marriage views to racism in the Jim Crow South was enough for the Supreme Court to rule 7-2 on his Free Exercise Claim. The East Lansing officials who the City says made the decision to exclude Country Mill—Lahanas and Yeadon—said exactly the same thing as the Colorado Commissioner. And City officials who directed Lahanas's actions said much worse.

Taking Meadows first, he was the first city official to question Country Mill's market participation. Ex. 7, PageID.3565; Ex. 87, PageID.3801-3802. And when he found out that Country Mill had stopped booking weddings, he told City employees that did not address the "issue," which was Tennes's "*public statement* that their *religion* does not permit them to allow same sex couples to be married at their farm." Ex. 8 (emphasis added), PageID.3566. On that basis he asked Lahanas to maintain the request not to vend. *Id.*

After this case was filed, Meadows took to Facebook to ridicule Tennes for translating his "Catholic views on marriage" into a business practice, Ex. 33, PageID.3649, and to critique the validity and biblical basis for those Catholic views. *Id.* (see Meadows comments to the post). He even accused Tennes of sharing his faith as a stunt to improve his wedding business, Ex. 34, ECF No. 137-34, PageID.3653, and suggested that Tennes's Catholic faith would also lead him to

refuse to “sell apples to a same-sex couple.” Ex. 8, PageID.3566. Catholic doctrine teaches the exact opposite. Tr. 61:6-8, PageID.2929 (“Well, as a Catholic, we believe everybody should be treated with dignity and respect, and we’ve always served people of all backgrounds.”).⁵

Meadows also published at least one op-ed, Ex. 32, ECF No. 137-32, PageID.3647-3648, and made his views known in emails to citizens about the case. Ex. 37, PageID.3660-3663. In one such email, Meadows called Tennes a “discriminator[]” and explained that the City’s decision was no mere oversight or mistake: “It was intentional. ... Comply or we don’t do business with you is the message given.” *Id.*

City councilmembers Ruth Beier and Susan Woods were equally blunt. Beier resorted to name calling at a public debate: “We don’t doubt you’re allowed to be a bigot. You’re allowed to say whatever you want. You can say it on Facebook. You can say ridiculous, horrible, hateful things.” Ex. 42, PageID.3670. She added that if you act on those beliefs by “not allowing same-sex couples to marry on your farm, then we don’t want you in East Lansing,” because “change” does not happen “unless

⁵ This critiquing of Tennes’s religious beliefs was a theme at trial too, with defense counsel repeatedly questioning Tennes on the logic and sincerity of his beliefs. *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). First, counsel probed Tennes about the Church’s teaching on divorce, questioning Tennes for not asking couples about their prior marital status. Tr. 127:18-128:16, PageID.3008-3009. Then he tested this Church teaching by suggesting that Tennes’s practice of not asking about divorce is inconsistent with his Catholic belief about marriage between one man and one woman. Tr. 128:17-129:2, PageID.3009-3010. And finally, counsel tried to show inconsistency between Tennes’s hosting weddings of other denominations on his farm and the Catholic obligation to attend Sunday Mass. Tr. 124:3-9, PageID.3004.

cities take a firm stand and we have.” *Id.* at PageID.3670-3671. Councilmember Susan Woods agreed, emphasizing that the City is “liberal,” “highly educated” and “highly inclusive.... So what we did with Country Mill is just an extension” of the City’s stance on inclusion. *Id.* at PageID.3672.

Both Beier and Lahanas slandered Tennes’s Catholic beliefs about marriage as “the same” as views promoting post-slavery racism and they expressed their sincere hope that Tennes would change his views. Beier emailed a citizen: “I disagree that the views held by people like this vendor [are] not likely to change. It was not that long ago that a farm like this one might have prohibited interracial marriage. That commonly held view changed. *This one will too.*” Ex. 39, ECF No. 137-38, PageID.3665 (emphasis added); Ex. 38, PageID.3664 (similar); Ex 40, PageID.3667 (similar). When asked about these comments at trial, Beier affirmed that she believes Tennes’s marriage beliefs will change and that she hopes they do. Tr. 385:10-15, PageID.3318.

As for the City Manager, he testified that a Catholic like Tennes would need to host same-sex weddings—“If he wants to do business and do business with the City of East Lansing, he would need to do that, yes.” Tr. 310:25-311:4, PageID.3229—even if doing so violates Tennes’s religious beliefs. Lahanas further explained, “I would say it’s the same thing. If you would have talked sixty years ago against African-Americans, people could 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.” Tr. 311:3-14, PageID.3229. City attorney Yeadon agreed. His email on the topic said Tennes’s Facebook post was “no different than if a vendor came to the farmer’s market and put up a sign that said, ‘whites only’ or ‘no Catholics served here.’” Ex. 123, PageID.3925.

But there is a vast difference. One is a faith-based decision not to participate in a sacred event no matter who requests it. The other is rank status discrimination and exclusion of an entire class of people from every aspect of public life merely because of their skin color—something Tennes’s faith would never permit him to do. Tr. 60:8-61:8, PageID.2927-2929. The fact that city witnesses think these are the same thing underscores the existence here of the very hostility the Supreme Court identified and held unconstitutional in *Masterpiece*.

That hostility is highlighted by the timeline of events, which itself creates a “slight suspicion” of animus. The trial record showed that the City created the Policy *because of* Tennes’s decision to exercise his religious beliefs in his business. Country Mill alone was the “catalyst” for the Policy, and the Policy was specifically written to respond to Country Mill and applied only to him. As Majano stated in her email to Market Planning Committee Members, “we cannot specifically target one vendor in the guidelines.” Ex. 23, ECF No. 137-23, PageID.3595. Yet that’s exactly what they did.

That fact highlights more evidence of animus: differential treatment. The City applied the Guidelines to target Country Mill’s religious practices while allowing other vendors to flaunt the rules without the same consequence. For

example, The Cheese People were known to sell Wisconsin-produced cheese at the East Lansing Farmers Market despite the market policy of including only Michigan growers and producers. Yet, they continued to participate in the Market in at least 2017 and 2018 despite the policy violation.⁶

Similarly, a different market vendor ran into another vendor's stand with his vehicle while appearing to be intoxicated. He was moved to another Market location—presumably away from the vendor he hit—but he was allowed to continue his market participation despite the guideline violation. Why? Because city officials considered the situation and did what they thought was “fair.” Tr. 206:16-25, PageID.3102-3103. But, they refused to do the same for Country Mill.⁷

The City doesn't dispute its officials' comments or actions. Instead, it tries to separate the most egregious offenders—Meadows and Beier—from the decision-making process. But to no avail. *Masterpiece's* hostility ruling is not limited to

⁶ Majano testified at trial that she thought the “targeting” comment may have referred to The Cheese People, who had been accused at some point of selling out-of-state products at the Market. However, in 2017 there were no changes to the Vendor Guidelines related to the Michigan growers/Michigan producers requirements, there were no notes next to The Cheese People in Majano's notes from the Market Planning Committee meeting, and The Cheese People participated in the 2017 and 2018 Markets. *Compare* Ex. 2, PageID.3551- 3555 *with* Ex. 24, PageID.3597-3619; *see also* Ex. 150, PageID.3977-3978; Ex. 151, PageID.3979. The only vendor in 2017 who was targeted by guideline changes was Country Mill.

⁷ Majano also testified that this vendor may have been having a diabetic episode. But the following year, the City amended the vendor guidelines to ban drunkenness at the Market, a stipulation that was not present in prior Market Guidelines. *Compare* Ex. 58, ECF No. 137-51, PageID.3729-3735 *with* Ex. 2, PageID.3551-3555; Ex. 24, PageID.3597-3619; Ex. 50, PageID.3681; Ex. 52, ECF No. 137-45, PageID.2690-3695; and Ex. 55, ECF No. 137-48, PageID.3704-3709. Coincidence?

certain decision-makers at certain stages of the process. This Circuit just affirmed that “what matters is whether unconstitutional animus infected the proceedings” at any point. *Meriwether v. Hartop*, 992 F.3d 492, 517 (2021). And that applies to executive government officials as much as to adjudicatory bodies. *Id.*

Meadows’s and Beier’s hostility infected the proceedings in this case. Meadows started the entire controversy when he demanded that Country Mill be asked not to vend at the Market because of their Facebook post. Ex. 7, PageID.3565; Ex. 87, PageID.3801-3802. As emails show, he and other councilmembers were consulted throughout the process, determined the August 2016 course of action, and approved Country Mill’s application denial in March 2017. Ex. 7, PageID.3565; Ex.8, PageID.3566- 3567; Ex. 10, PageID.3569; Ex. 17, PageID.3586; Ex. 27, PageID.3625; Ex.28, PageID.3626. Text messages from Rebecca Titus say council members also influenced the guideline changes, the decision to bar Tennes’s vendor invitation, and the instruction to pull his application for special review by city officials. Ex. 63, PageID.3773-3775. McCaffrey agreed with this, conceding in testimony that these decisions involved so many people it became “confusing” with the mayor “perhaps” involved and conversations “between City staff and council” on the matter. Tr. 256:17, 23, PageID.3162; Tr. 257:1-6, PageID.3163.

But none of that is necessary to find the hostility violation here because Lahanas and Yeadon—the two officials the City points to for all decision-making concerning Country Mill—displayed their own unconstitutional hostility. Like the Colorado Commissioner in *Masterpiece*, Lahanas and Yeadon advanced the view

that Tennes's religious beliefs about marriage were akin to racism. Tr. 311:3-14, PageID.3229; Ex. 123, PageID.3925. According to the Supreme Court, that's the end of the inquiry.

Defense counsel's response was to take every witness through a post-hoc litany of religious neutrality and then argue that Plaintiffs could not prevail without proving perjury. Tr. 506:13-507:6, PageID.3463. That argument ignores the "slight suspicion" standard and the fact that city witnesses may believe they are telling the truth and still act with what the Supreme Court calls religious animus. Across the board, the City witnesses criticized Tennes for translating his belief into a business practice, completely misunderstanding the nature of religious faith. For a Christian like Tennes, belief means nothing without action. Tr. 50:6-25, PageID.2915-2916. His faith impacts every aspect of his life and work. Tr. 132:22-133:2, PageID.3014-3015. So while City witnesses may think they have no issue with Tennes's belief—what's in his head and his heart—they certainly have an issue once he acts on those beliefs. And animus against religious practice is exactly what the Free Exercise Clause was designed to stop.

That's why the City's repeated comparison of Catholic marriage views to racism is so constitutionally important. *Obergefell* rejected this comparison outright. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2593-94 (2015). *Masterpiece* found it to be evidence of unconstitutional animus. 138 S. Ct. 1719. And Justice Alito in *Fulton* considered the comparison constitutionally bankrupt:

Suppressing speech—or religious practice—simply because it expresses an idea that some find hurtful is a zero-sum game. While CSS's ideas about

marriage are likely to be objectionable to same-sex couples, lumping those who hold traditional beliefs about marriage together with racial bigots is insulting to those who retain such beliefs. In *Obergefell v. Hodges*, the majority made a commitment. It refused to equate traditional beliefs about marriage, which it termed “decent and honorable,” with racism, which is neither. And it promised that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. An open society can keep that promise while still respecting the “dignity,” “worth,” and fundamental equality of all members of the community.

Fulton, 141 S. Ct. at 1925 (Alito, J., concurring) (cleaned up). Tennes deserves the freedom Justice Alito affirms. And East Lansing’s failure to grant him that violates the Free Exercise Clause.

C. City officials violated the Free Speech Clause by creating and enforcing the Policy to retaliate against Tennes for his speech and religious practices.

Because the Constitution protects Tennes’s belief and practice, his speech about those topics is also protected. The City violates the Free Speech Clause when it punishes him for that speech. *See* Plaintiffs’ Trial Brief (“Pls.’ Trial Br.”), ECF No. 129, PageID.2762.

The record shows that Tennes’s December 2016 Facebook post is the sole basis for their actions during the 2017 Application process. Tr. 240:12-19, PageID.3143. Indeed, with that post in hand, City officials changed the guidelines, barred Tennes’s market invitation and pulled his application for special review. Tr.174: 25-175:16, PageID.3065; Tr. 185:11-24, PageID.3077-3078. And based solely on that December 2016 Facebook post, they banned him from the Market. Tr. 240:12-19, PageID.3143. Their letters say this, and every city witness agreed,

admitting they looked no further than that post in making their decisions. Tr. 188:8-10, PageID.3081; Tr. 215:13-23, PageID.3113; Tr. 307:13-308:2, PageID.3225.

That is speech retaliation. And it's speech retaliation that the City can't sidestep by claiming they were only concerned with illegal conduct. Tennes's conduct, his religious practices, were not illegal. Pls.' Trial Br. 11-15, PageID.2772-2776. Nothing in Charlotte or Benton County bars him from legally referring out same-sex weddings based on his religious beliefs. And as both this Circuit and the Supreme Court have explained, a city cannot punish a business for advertising (speaking about) legal conduct where it is occurring, even if that conduct is not legal in the objecting jurisdiction. *See* Pls.' Trial Br. 13, PageID.2774 (discussing *Bigelow*, 421 U.S. at 824-25; *Record Revolution No. 6, Inc. v. City of Parma*, 638 F.2d 916, 936-37 (6th Cir. 1980); *Katt v. Dykhouse*, 983 F.2d 690, 696-97 (6th Cir. 1992)).

The City gets no further by arguing that it can control Tennes's speech or practice because the farmers market license creates a "contract" or "business relationship" between the City and Tennes. The same thing could have been said in *Holzemer v. City of Memphis*, yet this Circuit found retaliation when that buggy service provider lost his vendor's license because of his speech. 621 F.3d 512, 525-527 (6th Cir. 2010). And the argument is even truer in *Fulton* where the City contracts with Catholic Social Services to provide foster and adoption services for the state. Yet, the Supreme Court rejected Philadelphia's similar argument, saying "principles of neutrality and general applicability still constrain the government in its capacity as manager. We have never suggested that the government may

discriminate against religion when acting in its managerial role.” *Fulton*, 141 S. Ct. at 1878 (cleaned up). The same is true here. No matter how the City wants to characterize their actions now, they singled Tennes out for differential treatment, created a new policy just for him, and then applied that policy to remove only him from the 2017 Market all because of his Facebook post. That violates the Free Speech Clause.

D. The City violated the Establishment Clause because their predominant purpose in creating and enforcing the Policy was to exclude Tennes from the Market for his beliefs.

The Establishment Clause requires the government to “accommodat[e], not merely tolera[te]” religion, and it “forbids [government] hostility toward” it. *Lynch v. Donnelly*, 465 U.S. 668, 673 (1985) (cleaned up); *See* Pls.’ Trial Br. 15-17, PageID.2776-2778.

East Lansing fails this test because the predominant purpose and primary effect of its actions was hostility towards Tennes’s Catholic marriage beliefs. Within two days of Tennes’s first statement of his Catholic marriage beliefs on Facebook, the City began pressuring him to voluntarily leave the market. Ex. 6, PageID.3564; Ex. 11, PageID.3570-3573; Ex. 12, PageID.3574; Ex. 14, PageID.3580; Ex. 15, PageID.3581-3583; Tr. 222:1-12, PageID.3120. When Tennes responded to City pressure and stopped booking weddings on his farm so he could continue to participate in the Market, Meadows responded that it did not “address the issue” he had raised, which was Tennes’s “statement” about his “religion.” Ex. 8, PageID.3566. Then when Tennes reinstated his religious practice of celebrating weddings on his farm, the City amended the vendor guidelines, stopped the Market

Planning Committee from inviting Tennes to the next Market, pulled his application for special review, and rejected it based on Tennes's speech (December 2016 Facebook post) about his religious beliefs and practices. Tr.173:20-175:16, PageID.3063- 3065; Tr. 185:11-24, PageID.3077-3078; Tr. 94:8-11, PageID.2968; Tr. 240:12-19, PageID.3143.

In the backdrop of these events are the City's public statements opposing Tennes's Catholic views on marriage. Much like Meadows's comments that the "issue" with Tennes was his statement of his religious beliefs, other city officials labeled those beliefs "bigot[ed]," "ridiculous, horrible, hateful" and "wrong." Ex. 42, PageID.3670; Tr. 311:5-14, PageID.3229. They criticized the origin of those views. Ex. 33, PageID.3649. And they "hope[d]" those views would "change," if the City took a "strong stance." Ex. 42, PageID.3670; Tr. 385:10-15, PageID.3318. That strong stance violated the Establishment Clause.

E. The City conditioned Tennes's participation in the 2017 Market on the surrender of his constitutional rights, violating the unconstitutional conditions doctrine.

The City violated the unconstitutional conditions doctrine by denying Tennes access to the 2017 Market unless he surrendered his constitutional rights to practice and speak about his Catholic beliefs. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (The unconstitutional conditions doctrine prohibits the government from "deny[ing] a benefit to a person on a basis that infringes his constitutionally protected interests."); *see* Pls.' Trial Br. 17-18, PageID.2778-2779.

In addition to encouraging his beliefs to "change," Ex. 42, PageID.3671; Tr. 395:9-396:3, PageID.3330- 3331; Tr. 385:10-15, PageID.3318, City officials all

agreed that Tennes's religious practices *had to* change. Tr. 310:19-311:16, PageID.3228-3229. He could either: (1) stop hosting weddings, (2) host and participate in same-sex weddings, or (3) be excluded from the benefit of participating in the Market. Tr. 234:24-235:5, PageID.3136- 3137; Tr. 283:12-19, PageID.3196; Tr. 297:17-22, PageID.3213; Ex 42, PageID.3668- 3672. This puts Tennes to an unconstitutional choice. Tennes expresses and exercises his faith through the weddings on his farm. Tr. 62:8-64:4, PageID.2930- 2932; Tr. 448:5-12, PageID.3393. Participating in a same-sex wedding would violate that faith. Ex. 63:18-64:4, PageID.2932; Ex. 65:25-66:7, PageID.2934- 2935; Tr. 450:3-6, PageID.3395. And not participating in any weddings on the farm would do the same. Tr. 66:8-67:3, PageID.2935- 2936; Tr. 450:7-451:1, PageID.3395- 3396. The City cannot constitutionally force Tennes to make this choice.

F. The City's actions fail strict scrutiny.

For each of these constitutional violations, the City's actions must withstand strict scrutiny. *See* Pls.' Trial Br. 19-20, PageID.2780-2781. There is no justification for the City's religious animus and hostility towards Tennes and his religious beliefs. *See Masterpiece*, 138 S. Ct. at 1729, 1732. Nor is there any compelling interest for the City to control someone's speech and conduct outside the City jurisdictional limits. The City didn't even try to prove one at trial. Instead, they relied in argument on a broadly formulated suggestion that East Lansing must eliminate discrimination in and outside its borders by enforcing its Human Relations Ordinance against anyone who does business with the City.

That interest—eliminating discrimination anywhere a vendor might be found, even if it does not occur in East Lansing and has no effect on East Lansing residents—flies at too “high [a] level of generality.” *Fulton*, 141 S. Ct. at 1881. “The First Amendment demands a more precise analysis.” *Id. Accord Gonzales v. O Centro Espirita Beneficente Uniao de Vegetal*, 546 U.S. 418, 420 (2006) (compelling interest must go beyond “broadly formulated interests” and be justified as to “the particular claimant”). To prevail, the City at least must show a compelling interest in excluding Tennes from the Market in East Lansing for speaking about and engaging in religious practices in Charlotte. The City cannot do so. And it certainly did not do so at trial. *See* Pls.’ Trial Br. 19-20, PageID.2780-81.

The Policy also is not narrowly tailored. The Policy is loaded with individualized factors and exemptions that grant City officials wide enforcement discretion. Tr. 153:15-154:20, PageID.3039-3040; Tr. 2901:23-2912:7, PageID.3205. City officials have unfettered power to regulate any vendor’s speech and religious beliefs by conditioning participation in the Market on speech and practice the City deems acceptable. And it is apparent that it does not matter if the activity occurs in the vendor’s own home or at the Market itself, or even within the City’s geographical boundaries. This is not “actually necessary” to solve any “actual problem” in a narrow way as the Constitution requires. *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 799 (2011). It is clear the Policy is not narrowly tailored and there are many less restrictive alternatives that would regulate actual

discrimination occurring within the City while allowing vendors to express and practice their religious beliefs outside the City.

G. The City violated the Michigan State Constitution when it targeted Tennes and excluded him from the Market for his religious beliefs, speech, and practices.

The Michigan Constitution, which provides broader religious protections than the federal Constitution, protects the free exercise of religion, prohibits the establishment of religion, and provides for the freedom of conscience and worship. Mich. Const. art. I § 4; *Champion v. Sec’y of State*, 761 N.W.2d 747, 753 (Mich. Ct. App. 2008). See Pls.’ Trial Br. 21-22, PageID.2782-2783.

The City fails the five-factor test Michigan courts use to assess violations. *Champion*, 761 N.W.2d at 753. The City conceded the first two factors: the sincere and religious nature of Tennes’s marriage beliefs. And Tennes has already shown the fourth and fifth elements—that the City lacks a compelling interest and has not used the least restrictive form of the regulation. See supra § V. As to the third factor—whether the belief or conduct is burdened by state action—the record proves that too. The City uniquely burdened Tennes compared to other vendors. It forced Tennes to choose between his religious speech and practices and his farmers market stand. And it publicly denigrated his beliefs announcing to the world that Tennes’s views of marriage were “bigot[ed],” unlawful, and akin to racism. Ex. 42, PageID.3670; Ex. 33, PageID.3649- 3652; Ex. 39, PageID.3665-3666; Ex. 40, PageID.3667; Ex. 123, PageID.3925; Tr. 311:5-12, PageID.3229. These actions violate the Michigan Constitution’s guarantees of free exercise, freedom from establishment of religion, and freedom of conscience and worship.

II. Plaintiffs are entitled to permanent injunction, declaratory relief, damages, and attorneys' fees and costs for the constitutional violations.

Permanent injunctions are warranted when “failure to issue the injunction is likely to result in irreparable harm” and “there is no other adequate remedy at law.” *United States v. Miami Univ.*, 294 F.3d 797, 816 (6th Cir. 2002) (cleaned up).

Because Plaintiffs succeed on the merits of their First Amendment claims, they also satisfy these factors. *United Food and Com. Workers Union, Local 1099 v. Sw. Ohio Reg'l Transit Auth.*, 163 F.3d 341, 363 (likely merits success is determinative of an injunction in First Amendment cases).

The City stripped Tennes of his First Amendment rights to religious freedom and free speech. And “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Id.* at 363 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). That harm is always “sufficient to justify injunctive relief.” *Id.*

In fact, where the injury is the ongoing infringement of Tennes’s constitutional freedoms, nothing but injunctive relief will suffice. No amount of money will cure an ongoing irreparable injury. *Miami Univ.*, 294 F.3d at 819 (“[I]rreparable” harm is “by definition, not compensable.”). And the City will not stop violating Tennes’s rights absent court order. Tr. 241:18-243:14, PageID.3144-3147. Accordingly, entry of an injunction is appropriate and absolutely necessary.

Damages are also appropriate and necessary to remedy the past harm here. Any party deprived of their “rights, privileges, or immunities secured by the Constitution” is entitled to damages, attorneys’ fees, and costs. 42 U.S.C. §§ 1983,

1988. The City deprived Tennes of his First and Fourteenth Amendment rights when it targeted his religious beliefs, retaliated against him for religious speech, acted with open hostility towards his faith, conditioned his future market participation on surrender of his religious convictions, and created and used a discretionary policy to disqualify his market application for activity occurring 22 miles away on his farm.

As a direct result of the City's actions, Tennes lost profits from the farmers market, from weddings when he halted his wedding business in fall 2016, and from supplier agreements that were cancelled because of the City's attack on his reputation. Ex. 70 (Expert Report of Rodney L. Crawford), ECF No. 138. Tennes also incurred increased advertising costs and countless other tangible and intangible damages. *Id.*, Tr. 137:22-138:13, PageID.3020-3021.

Expert Rodney Crawford testified on each of these losses. He calculated Country Mill's lost profits from the farmers market to be \$2,684. But as he explained, Tennes suffered additional financial harm in lost earned advertising when he wasn't at the market that was not included in the lost profits number. Ex. 70, ECF No. 138; Tr. 416:10-417:7, PageID.3355-3356. Crawford calculated that Tennes spent \$6,800 in additional paid advertising in 2017 to make up for this advertising loss. Tr. 423:1-6, PageID.3363.

Crawford calculated that Tennes lost \$20,000 in lost profits from weddings that were not hosted at his farm. Tennes typically books 44 weddings a year and charges \$2,500 per wedding on average. But from August to December 2016, Tennes

did not book any weddings to appease the City and keep his market vendor stand.

As a result, he booked only 38 weddings in 2017, a loss of 8 weddings and \$20,000 in income. Tr. 426:6-23, PageID.3367; Demonstrative Chart 6, ECF No. 137-102, PageID.4018.

Finally, Crawford looked at three supplier agreements that Country Mill had for years. Tr. 426:24-427:8, PageID.3367-3368. One of the supplier agreements with Michigan State University went back as far as 2013. Tr. 427:9-16, PageID.3368. But MSU suddenly stopped ordering in May 2017. Tr. 427:17-25, PageID.3368-3369. The other two agreements were terminated “approximately contemporaneous with this situation.” Tr. 428:1-14, PageID.3369. Crawford testified that “as a forensic accountant” the timing of all three lost supplier agreements was “quite remarkable.” Tr. 433:9-11, PageID.3375. The evidence showed that the relationships were “suddenly terminated at the time these events were happening, which ... is important evidence.” Tr. 433:6-18, PageID.3375. By losing these three agreements, Tennes lost an additional \$11,737. Tr. 427:3-8, PageID.3368.

Crawford opined that the City’s actions cost Country Mill \$41,199. Plaintiffs ask this court to award these damages, with reasonable attorneys’ fees, and costs, including expert fees.

In sum, Plaintiffs seek a permanent injunction to ensure that Country Mill can continue to serve all of its customers at the East Lansing farmers market, declaratory relief, and damages to compensate for their economic loss caused by the City’s unlawful actions.

Conclusion

Like Catholic Social Services of Philadelphia, Tennes seeks only an accommodation that will allow him to continue serving customers at the farmers market and operate his farm in a manner consistent with his religious beliefs. He does not seek to impose those beliefs on anyone else. The Ordinance and Vendor Guidelines grant city officials vast discretion to grant exemptions. East Lansing cannot constitutionally use that individualized system to target Tennes for disfavored treatment because they disagree with his Catholic beliefs, speech, and practices on marriage.

Respectfully submitted this 27th day of August, 2021.

By: s/Katherine L. Anderson

Katherine L. Anderson (AZ Bar No. 033104)*

Ryan J. Tucker (AZ Bar No. 034382)*

Jonathan A. Scruggs (AZ Bar No. 030505)*

Alliance Defending Freedom

15100 N. 90th Street

Scottsdale, AZ 85260

Telephone: (480) 444-0020

Fax: (480) 444-0028

kanderson@adflegal.org

rtucker@adflegal.org

jscruggs@adflegal.org

James R. Wierenga

(P48946)

Jeshua T. Lauka (P71958)

David & Wierenga, P.C.

99 Monroe Avenue, N.W.

Suite 1210

Grand Rapids, MI 49503

Telephone: (616) 454-3883

Facsimile: (616) 454-3988

jim@dwlawpc.com

jeshua@dwlawpc.com

David A. Cortman (GA Bar No. 188810)*
Alliance Defending Freedom
1000 Hurricane Shoals Rd. NE
Suite D-1100
Lawrenceville, GA 30043
Telephone: (770) 339-0774
Fax: (770) 339-6744
dcortman@adflegal.org

John Bursch (P57679)
Bursch Law PLLC
9339 Cherry Valley
Avenue, SE
Suite 78
Caledonia, MI 49316
Telephone: (616) 450-4235
jbursch@burschlaw.com

Rachel Csutoros (MA Bar No. 706225)*
Hailey Vrdolyak (IL Bar No. 6333515)*
Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, D.C. 20001
Telephone: (202) 393-8690
Fax: (202) 347-3622
rcsutoros@adflegal.org
hvrldolyak@adflegal.org

ATTORNEYS FOR PLAINTIFFS

*Admitted to this Court

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2021, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following counsel of record who are registered users of the ECF system:

Michael S. Bogren
Plunkett Cooney
333 Bridge St. NW, Ste. 530
Grand Rapids, MI 49504
269-226-8822
mbogren@plunkettcooney.com

Audrey J. Forbush
Plunkett Cooney
Plaza One Financial Ct.
111 E. Court St., Ste 1B
Flint, MI 48502
269-226-8822
aforbush@plunkettcooney.com

Thomas M. Yeadon
McGinty Hitch Housefield Person
Yeadon & Anderson PC
601 Abbott Rd.
P.O. Box 2502
East Lansing, MI 48826
517-351-0280
tomyeadon@mcgintylaw.com

By: s/ Katherine L. Anderson
Katherine L. Anderson (AZ Bar No. 033104)*
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, Arizona 85260
Telephone: (480) 444-0020
Fax: (480) 444-0028
kanderson@adflegal.org

ATTORNEY FOR PLAINTIFFS