

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

Russ Gordon and Cathy Stackpoole,

Plaintiffs,

vs.

Civil Action No.: 23-12812

The City of Hamtramck, the Hamtramck  
City Council, and Mayor Amer Ghalib,  
in his official capacity, only,

Hon. David Lawson

Defendants.

---

Marc M. Susselman (P29481)  
Attorney at Law  
Attorney for Plaintiffs  
43834 Brandywyne Rd.  
Canton, Michigan 48187  
(734) 416-5186  
[marcsusselman@gmail.com](mailto:marcsusselman@gmail.com)

---

Odey Meroueh (P76460)  
Meroueh & Hallman LLP  
Attorney for Defendants  
14339 Ford Road  
Dearborn, Michigan 48126  
(313) 582-7469  
[okm@mhatlaw.com](mailto:okm@mhatlaw.com)

---

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

**TABLE OF CONTENTS**

<b>INDEX OF AUTHORITIES</b> .....	ii
<b>QUESTIONS PRESENTED</b> .....	v
<b>STATEMENT OF FACTS</b> .....	1
<b>ARGUMENT</b> .....	7
<b>STANDARD OF REVIEW</b> .....	7
<b>I. RESOLUTION 2023-82 VIOLATES THE FREE SPEECH PROVISION OF THE FIRST AMENDMENT BECAUSE IT IS NOT CONTENT AND VIEWPOINT NEUTRAL</b> .....	7
<b>II. RESOLUTION 2023-82 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.</b> .....	12
<b>III. RESOLUTION 2023-82 VIOLATES THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT AND IS THEREFORE UNCONSTITUTIONAL</b> .....	13
<b>IV. RESOLUTION 2023-99 REMOVING GORDON AND STACKPOOLE FROM THE HUMAN RELATIONS COMMISSION VIOLATED THEIR FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT.</b> .....	15
<b>V. RESOLUTION 2023-99 REMOVING GORDON AND STACKPOOLE FROM THE HUMAN RELATIONS COMMISSION VIOLATED THEIR FREEDOM OF . SPEECH UNDER ARTICLE I, § 5 OF THE MICHIGAN CONSTITUTION (1963)</b> .....	17
<b>VI. RESOLUTION 2023-99 REMOVING GORDON AND STACKPOOLE FROM THE HUMAN RELATIONS COMMISSION VIOLATED THEIR RIGHTS UNDER THE MICHIGAN ELLIOTT-LARSEN CIVIL RIGHTS ACT</b> .....	19
<b>CONCLUSION AND RELIEF</b> .....	20
<b>CERTIFICATE OF SERVICE</b> .....	21

**INDEX OF AUTHORITIES**

<b>Cases</b>	<b>Page</b>
<b>Federal</b>	
<i>American Civil Liberties Union of Ohio Foundation, Inc. v. Ashbrook</i> , 375 F.3d 484 (6 <sup>th</sup> Cir. 2004) .....	14
<i>Board of County Comm’rs, Wabaunsee Cty. v. Umbehr</i> , 518 U.S. 688 (1998) .....	17
<i>Board of Ed. of Kiryas Joel v. Grumet</i> , 512 U.S. 687 (1994).....	14
<i>Butterworth v. Smith</i> , 494 U.S. 624 (1990).....	12
<i>Carey v. Brown</i> , 447 U.S. 455 (1980).....	12
<i>Clark v. Jeter</i> , 486 U.S. 456 (1988).....	12
<i>Cleveland Area Board of Realtors v. City of Euclid</i> , 88 F.3d 382 (6 <sup>th</sup> Cir. 1996).....	8
<i>Congregation Lubavitch v. City of Cincinnati</i> , 997 F.3d 1160 (6 <sup>th</sup> Cir. 1993).....	12
<i>Dimas v. City of Warren</i> , 939 F. Supp. 554 (E.D. Mich. 1996) .....	9
<i>Everson v. Board of Education</i> , 330 U.S. 1 (1947) .....	13
<i>Ex Parte Young</i> , 209 U.S. 123 (1908) .....	16
<i>Fehribach v. City of Troy</i> , 412 F. Supp. 2d 639 (E.D. Mich. 2006).....	9
<i>Ferro Corp. v. Cookson Group</i> , 585 F.3d 946 (6 <sup>th</sup> Cir. 2009).....	7
<i>Gonzales v. North Township of Lake County</i> , 4 F.3d 1412 (7 <sup>th</sup> Cir. 1992) .....	14
<i>Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor &amp; City Council</i> , 721 F.3d 264 (4 <sup>th</sup> Cir. 2013) .....	7
<i>Healy v. James</i> , 408 U.S. 169 (1972) .....	16
<i>Int’l Outdoor, Inc. v. City of Troy</i> , 974 F.3d 690 (6 <sup>th</sup> Cir. 2020).....	9
<i>Larkin v. Grendel’s Den, Inc.</i> , 459 U.S. 116 (1982).....	13
<i>Larson v. Valente</i> , 456 U.S. 228 (1982) .....	13,15
<i>Lib v. University of Missouri</i> , 558 F.2d 848 (8 <sup>th</sup> Cir. 1977) .....	16

<i>Maye v. Klee</i> , 915 F.3d 1076 (6 <sup>th</sup> Cir. 2019) .....	14
<i>Monell v. New York City Dept’t of Soc. Servs.</i> , 436 U.S. 658 (1978).....	8
<i>New York Times v. Sullivan</i> , 376 U.S. 254 (1964).....	7
<i>Pickering v. Board of Educ</i> , 391 U.S. 563 (1968) .....	17
<i>Pleasant Grove v. Sumnum</i> , 555 U.S. 460 (2009) .....	15
<i>Police Dep’t of Chicago v. Mosley</i> , 408 U.S. 92 (1972) .....	12
<i>R.A.V. v. St. Paul</i> , 505 U.S. 377 (1992).....	8
<i>Reed v. Town of Gilbert</i> , 576 U.S. 155 (2015) .....	8
<i>Santa Fe Independent School District v. Doe</i> , 530 U.S. 290 (2000) .....	14
<i>Shurtleff v. City of Boston, Mass.</i> , 42 S. Ct. 1583 (2022).....	8,9,10,11
<i>Thomas v. Bright</i> , 937 F.3d 723 (6 <sup>th</sup> Cir. 2019).....	8
<i>Whitton v. City of Gladstone</i> , 54 F.3d 1400 (8 <sup>th</sup> Cir. 1995).....	9
<i>Zinerman v. Burch</i> , 494 U.S. 113 (1990).....	7

**Michigan**

<i>In re Contempt of Dudzinski</i> , 257 Mich. App. 96 (Mich. Ct. App. 2003) .....	17
<i>James v. City of Burton</i> , 221 Mich. App. 130 (Mich. Ct. App. 1997).....	19
<i>Rouch World, LLC v. Dep’t of Civil Rights</i> , 510 Mich. 398 (Mich. 2022).....	19
<i>Thomas M. Cooley Law Sch. v. Doe</i> , 300 Mich. App. 245 (Mich. Ct. App. 2013)...	18
<i>Whitman v. City of Burton</i> , 311 Mich. App. 315 (Mich. Ct. App. 2015) .....	19

**Constitution**

**Federal**

U.S. Const. amend. I .....	<i>passim</i>
U.S. Const. amend. XIV .....	13

**Michigan**

Mich Const 1963, art 1, Sec. 5..... 17,18

**Statutes**

**Federal**

42 U.S.C. § 1983 ..... 8

**Michigan**

Elliott-Larsen Civil Rights Act, MCL § 37.2101, *et seq.* ..... 19

**Rules**

Fed. R. Civ. P. 56 ..... 7

**Miscellaneous**

Thoreau, On the Duty of Civil Disobedience ..... 16

**QUESTIONS PRESENTED**

**I. Whether Resolution 2023-82 violates the Free Speech provision of the First Amendment?**

**Plaintiffs answer “Yes.”**

**II. Whether Resolution 2023-82 violates the Equal Protection Clause of the Fourteenth Amendment.**

**Plaintiffs answer “Yes.”**

**III. Whether Resolution 2023-82 violates the Establishment Clause of the First Amendment.**

**Plaintiffs answer “Yes.”**

**IV. Whether Resolution 2023-99 removing Plaintiffs from the Human Relations Commission violated their freedom of speech under the First Amendment.**

**Plaintiffs answer “Yes.”**

**V. Whether Resolution 2023-99 removing Plaintiffs from the Human Relations Commission violated their freedom of speech under Article I, § 5 of the Michigan Constitution (1963).**

**Plaintiffs answer “Yes.”**

**VI. Whether Resolution 2023-99 removing Plaintiffs from the Human Relations Commission violated their rights under the Michigan Elliott-Larsen Civil Rights Act.**

**Plaintiffs answer “Yes.”**

**STATEMENT OF FACTS**

On May 14, 2013, the Mayor and City Council of Hamtramck, Michigan, passed Resolution 2013-167, which stated in relevant part (copy of the Resolution is attached as Exhibit 1):

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Hamtramck that

FIRST: The Human Relations Commission is hereby authorized to move forward with their flagpole restoration project.

SECOND The Human Relations Commission is hereby authorized to solicit funds from interested parties, individuals or businesses for the sole purpose of the restoration and maintenance of city flagpoles, purchase of flags and plaques and ongoing maintenance of the project.

Resolution 2013-167 placed no limitations on the Human Relations Commission (“Commission”) regarding the character of the flags which it chose to display on the city flagpoles. The Commission was granted sole authority to decide what flags would be displayed.

The Commission displayed flags on the flagpoles which lined Joseph Campau Ave. which were representative of the residents of Hamtramck who came from different nations. Gordon was the Chairman of the Commission at the time and he raised the flags in May, and lowered them after Thanksgiving, because the winter weather damaged the flags.

On June 8, 2021, the City Council passed Resolution 2021-73 which stated, in relevant part (copy attached as Exhibit 2):

**WHEREAS** the Arts and Culture Commission wishes to hold a ceremony on June 19, 2021 at the Zussman Park flagpole in recognition of Pride month.

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Hamtramck, Wayne County, Michigan to approve the display of a Pride flag at the Zussman Park flag poles during the month of June, 2021.

At the time the Resolution was passed, the Hamtramck administration consisted of Mayor

Karen Majewski, and Council persons Al-Marsoumi, Choudhury, Lasely, Almasmari, Alsomiri, and Hassan.

A Pride flag was thereafter raised on the Zussman Park flagpole, which is located across from the Hamtramck City Hall. The Chairperson of the Arts and Culture Commission thereafter inquired about displaying the Pride flag on a flagpole on Joseph Campau Ave. Cathleen Angerer, the City manager, contacted Gordon and asked him if there was a flagpole available on Joseph Campau from which the Pride flag could be displayed. He indicated that there was. The Chairperson of the Arts and Culture Commission then contacted Gordon and specified what Pride flag he wanted to be displayed. Gordon ordered the Pride flag, but it arrived too late in 2021 to be displayed. (*See* Affidavit of Russ Gordon, attached as Exhibit 3.)

In the November, 2021 election, Karen Majewski was replaced by Amer Ghalib as Mayor, and Council members Al-Marsoumi, Lasely and Almasmari were replaced by Muhith Mahmood, Abu Musa and Khalil Refai.

Gordon raised the Pride flag on a flagpole on Joseph Campau Ave. in May, 2022. He was then contacted by Angerer, who informed him that the new City Council wanted the Pride flag removed. At this point in time, Resolution 2013-167, which gave the Commission sole authority to decide what flags would be displayed, was still in place. Gordon refused to remove the Pride flag, and it remained displayed through Thanksgiving, 2022. Stackpoole became a member of the Human Relations Commission in January, 2023.

Mayor Ghalib convened a meeting, which Gordon attended, specifically to discuss the display of the Pride flag. Mayor Ghalib stated that he was receiving complaints from members of the Hamtramck community complaining about the display of the Pride flag and asking him why he was allowing it. He indicated that he responded that it was not his fault, that it was the fault of



the previous administration. Gordon interpreted the complaints about the display of the Pride flag to be based on religious grounds. (Gordon Affidavit, ¶5)

At the City Council meeting on June 13, 2023, the Council considered passing Resolution 2023-82, titled “Resolution To Maintain And Confirm The Neutrality Of The City Of Hamtramck Towards Its Residents.” The Resolution stated, in relevant part (copy attached as Exhibit 4):

**WHEREAS**, each religious, ethnic racial, political, or sexually oriented group is already represented by the country it belongs to; and

**WHEREAS**, the City does not want to open the door for radical or racist groups to ask for their flags to be flown; and

**WHEREAS**, this resolution does not in any way, shape or form infringe upon the fundamental right of an individual or business in the City of Hamtramck to engage free speech. Nor does this resolution limit speech by public employees provided that such employees engage in such speech in a protected time, manner and place.

**NOW, THEREFOE, BE IT RESOLVED** by the City Council of the City of Hamtramck, Wayne County, Michigan, that the government of the City of Hamtramck does not allow any religious, ethic, racial, political, or sexual orientation group flags to be flown on the City’s public properties, and that only, the American flag, the flag of the State of Michigan, the Hamtramck Flag, the Prisoner of War flag and the nations’ flags that represent the international character of our City shall be flown.

Under the terms of the Resolution, displaying the Pride flag on City flagpoles would no longer be permitted.

During the Council meeting, numerous individuals expressed their opinions, in person and by electronic mail, both in support of, and opposed to, the Resolution. The meeting was videotaped, and can be seen at [https://www.youtube.com/watch?v=RfwM\\_q9pFKs](https://www.youtube.com/watch?v=RfwM_q9pFKs). (A transcript of the complete proceeding is attached as Exhibit 5.)

In the course of the meeting, several individuals who supported the Resolution indicated that they supported it based on religious grounds, two of whom spoke in Arabic, and were translated by Mayor Ghalib. (Exhibit 5, pp. 4, 23, 30, 31, 32 and 33)

Several commenters indicated that they opposed the Resolution based on its stemming from religious convictions. (Exhibit 5, pp. 19, 27, 45, 47, 50, 60, and 63) Several opposed it based on freedom of speech grounds. (Exhibit 5, pp. 43, 45, 48, 51, 56, 58, 59, 61, and 65) Two commenters expressed the opinion that it violated the Michigan Elliott-Larsen Civil Rights Act. (Exhibit 5, pp. 50, 62)

Of the 37 Hamtramck residents who appeared in person to comment on the Resolution, 19 opposed the Resolution, and 18 supported it. Of the 48 emails/letters which were submitted by Hamtramck residents, 47 opposed the Resolution, while only 1 supported it. Among the 85 Hamtramck residents who offered an opinion regarding the Resolution, a total of 66 opposed it, versus 19 who supported it. Consequently, of the 85 Hamtramck residents who offered opinions at the June 13, 2023, Council meeting, 77% opposed the Resolution.

After the public opinion segment of the meeting was concluded, the Council members offered their opinions. The Mayor Pro Temp, Councilman Mohammed Hassan, gave a fervent and impassioned explanation of the meaning of democracy, invoking the famous words from President Lincoln's Gettysburg Address, "Of the people, by the people, for the people." (Exhibit 5, p. 72) He stated: "I am of the people. I am elected by the people, okay? And I am for the people. So, what I'm doing ... what I'm doing because I'm elected, I am of the people and by the people elected, I'm working for the people." In that case, since 77% of the Hamtramck residents who offered their opinions during the public statement segment of the meeting opposed the Resolution, he should have voted to reject the Resolution. He did not.

Councilman Choudhury offered the following comment, in relevant part (Exhibit 5, p. 73):

But here's the thing, folks. You guys are welcome to the community. You guys welcome to walk to the restaurants, walk to the grocery store. Why do we have to have a flag flown in the city property to be represented? You already represented. We already know who you are, and we don't have any hate or any discrimination

against that. We get along very well. By making this bigotry, making this scene, it's making like you wanted to hate us. It's you versus and others. It's not that. It's everyone included. And this is the community we live. I love where you live. I have no problems. But the community as a whole has this respect that we are raising family. We're doing our best to support the community.

Therefore, you are not unwelcome. You are welcome here. But we have to respect the religions. We have to respect the people around here. Schools, mosques, churches. I won't take any longer than this. It's been a long night. But I welcome every one of you.  
(Emphasis added.)

None of the other Councilmen said anything indicating that they disagreed with Councilman Choudhury's invocation of religion as a basis for approving the Resolution. Their silence represented assent. *See Everett v. Everett*, 319 Mich. 475, 481 (Mich. 1947) (silence clearly indicated approval). The Council voted unanimously to approve the Resolution. (Exhibit 5, pp. 78-79)

On July 9, 2023, Gordon and Stackpoole raised the Pride flag on one of the flagpoles on Joseph Campau Ave. Councilman Hassan appeared soon thereafter, contacted the City manager, and demanded that the Pride flag be removed. The City manager arrived with the police, and the police removed the Pride flag.

On July 11, 2023, the City Council passed Resolution 2023-99, titled "Resolution Removing Russ Gordon And Cathy Stackpoole From Human Relations Commission." (Copy attached as Exhibit 6.) The Resolution was unanimously approved. A video recording of the proceeding may be seen at <https://www.youtube.com/watch?v=izxF600qzuo> (A transcript of the complete proceeding is attached as Exhibit 7.)

The Resolution stated:

**WHEREAS**, on July 9<sup>th</sup>, 2023, two members o the Human Relations Commission, Russ Gordon and Cathy Stackpoole, did intentionally violate the laws of the City of Hamtramck by flying a flag in contravention of Resolution 2023-82; and

**WHEREAS**, in order to maintain the respect and dignity of the rule of law, the City must act to remove Russ Gordon and Cathy Stackpoole from the Human Relations Commission.

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Hamtramck, Wayne County, Michigan, that Russ Gordon and Cathy Stackpoole be immediately removed from their membership on the board of the Human Relations Commission to be replaced by candidates appointed by the Mayor and confirmed by the City Council at a later date.

On July 11, 2023, the City Council unanimously passed Resolution 2023-100, titled “Resolution To Rescind Authority Of Human Relations Commission To Maintain And Fly Flags On City Property.” (Copy attached as Exhibit 8.) The Resolution stated, in relevant part:

**WHEREAS**, on July 9<sup>th</sup>, 2023, members of the Human Relations Commission did willfully and blatantly violate the laws of the City of Hamtramck by flying a flag in contravention of the law designating that no flags of any religion, ethnic, racial, political, or sexual orientation group may be flown inf City property, and

**WHEREAS**, in order to maintain the respect and dignity of the rule of law, the City must act to remove Russ Gordon and Cathy Stackpoole from the Human Relations Commission.

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Hamtramck, Wayne County, Michigan, that the Human Relations Commission of the City of Hamtramck be hereby and henceforth stripped of their authority and control over any and all flag poles on City property and that the City of Hamtramck shall henceforth hold dominion, authority and control over such flagpoles as the sole authority determining compliance under the laws of the City of Hamtramck and State of Michigan.

Plaintiffs filed the instant lawsuit on November 6, 2023, and filed their First Amended Complaint (FAC) by right on November 17, 2023.

## ARGUMENT

### STANDARD OF REVIEW

The standard of review of a motion for summary judgment filed pursuant to Fed. R. Civ. P. 56 was set forth in *Ferro Corp. v. Cookson Group*, 585 F.3d 946 (6<sup>th</sup> Cir. 2009), as follows, *id.* at 949:

Summary judgment is proper if "there is no genuine issue as to any material fact [such that] the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). But "summary judgment will not lie if the . . . evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). In considering a motion for summary judgment, the court must construe the evidence in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 148, 89 L.Ed.2d 538 (1986). The movant therefore has the burden of establishing that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Barnhart v. Pickrel, Schaeffer Ebeling Co.*, 12 F.3d 1382, 1388-89 (6th Cir. 1993). But the non-moving party "may not rely merely on allegations or denials in its own pleading." Fed. R. Civ. P. 56(e)(2); *see Celotex*, 477 U.S. at 324, 106 S.Ct. 2548; *Searcy v. City of Dayton*, 38 F.3d 282-286 (6th Cir. 1994). The non-moving party must present "significant probative evidence" to show that there is more than "some metaphysical doubt as to the material facts." *Moore v. Philip Morris Co.*, 8 F.3d 335, 339-40 (6th Cir. 1993).

Under the terms of Rule 56(b), a motion for summary judgment may be brought by any party at any time until 30 days after the close of discovery. This includes by a plaintiff before an Answer has been filed, or before the defendants have otherwise pled. *See, e.g., Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council*, 721 F.3d 264 (4<sup>th</sup> Cir. 2013).

#### **I. RESOLUTION 2023-82 VIOLATES THE FREE SPEECH PROVISION OF THE FIRST AMENDMENT BECAUSE IT IS NOT CONTENT AND VIEWPOINT NEUTRAL.**

The free speech provision of the 1<sup>st</sup> Amendment of the United States Constitution applies to the States pursuant to the 14<sup>th</sup> Amendment. *New York Times v. Sullivan*, 376 U.S. 254, 266 (1964); *Zinermon v. Burch*, 494 U.S. 113, 125 (1990).

42 U.S.C. § 1983 states, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ... .

The Defendants were acting under color of law when they enacted Resolution 2023-82. Municipalities qualify as persons under 42 U.S.C. § 1983. *Monell v. New York City Dept't of Soc. Servs.*, 436 U.S. 658 (1978).

A governmental action, including a statute, an ordinance, resolution, or policy, which regulates speech in a public forum may only do so if it is both content and viewpoint neutral. It is unconstitutional for government to select what speech will be permitted, and what speech will be prohibited, based on the content or viewpoint of the message conveyed by the speech. *See R.A.V. v. St. Paul*, 505 U.S. 377 (1992) (St. Paul ordinance which made it a criminal offense to burn a cross violated the Free Speech provision of the First Amendment because it failed to criminalize all comparable hate speech); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015) (the sign ordinance enacted by the City of Gilbert, Arizona, violated the Free Speech provision of the First Amendment because, while it prohibited the display of outdoor signs, it exempted 23 categories of signs based on their content); *Shurtleff v. City of Boston, Mass.*, 42 S. Ct. 1583 (2022) (City of Boston violated the Free Speech provision of the First Amendment by rejecting the request of a Christian organization to display a Christian flag from the flagpole in front of the Boston City Hall, when the City allowed the display of flags requested by other private groups); *Cleveland Area Board of Realtors v. City of Euclid*, 88 F.3d 382 (6<sup>th</sup> Cir. 1996) (City's ordinance regulating the size, number, and placement of signs in residential neighborhoods unconstitutional because it was not content neutral); *Thomas v. Bright*, 937 F.3d 723 (6<sup>th</sup> Cir. 2019) (Tennessee's Billboard Act was

unconstitutional because its “on-premise exception” was not content neutral); *Int’l Outdoor, Inc. v. City of Troy*, 974 F.3d 690 (6<sup>th</sup> Cir. 2020) (Troy’s sign ordinance was content based because it treated commercial and non-commercial signs differently and was therefore unconstitutional); *Whitton v. City of Gladstone*, 54 F.3d 1400 (8<sup>th</sup> Cir. 1995) (City’s sign ordinance was unconstitutional because it placed different time limits on displaying political signs versus commercial signs, and therefore was not content neutral); *Dimas v. City of Warren*, 939 F. Supp. 554 (E.D. Mich. 1996) (Warren’s sign ordinance was not content neutral because it placed different restrictive time limitations on political signs which it did not place on commercial signs, and was therefore unconstitutional); *Fehribach v. City of Troy*, 412 F. Supp. 2d 639 (E.D. Mich. 2006) (Troy’s sign ordinance regulating the display of political signs was unconstitutional because it was not content neutral and was not justified by a compelling state interest).

In *Shurtleff, supra*, the City of Boston allowed residents to fly a flag of their choosing from the flagpole in front of the Boston City Hall. Setting the background of the lawsuit, the Court stated, 142 S. Ct. at 1587:

For years, Boston has allowed private groups to request use of the flagpole to raise flags of their choosing. As part of this program, Boston approved hundreds of requests to raise dozens of different flags. The city did not deny a single request to raise a flag until, in 2027, Harold Shurtleff, the director of a group called Camp Constitution, asked to fly a Christian flag. Boston refused. At that time, Boston admits, it had no written policy limiting use of the flagpole based on the content of a flag. The parties dispute whether, on these facts, Boston reserved the pole to fly flags that communicate governmental messages, or instead opened the flagpole for citizens to express their own views. If the former, Boston is free to choose the flags its flies without the constraints of the First Amendment’s Free Speech Clause. If the latter, the Free Speech Clause prevents Boston from refusing a flag based on its viewpoint.

So, the issue came down to the question of whether the flagpole in front of the City Hall was being used for government speech, in which case Boston could refuse to fly the Christian flag, or whether its use over the years had made it a public forum, which precluded Boston from refusing

to fly the Christian flag based on its viewpoint. To resolve this issue, the Court engaged in a lengthy analysis of how the flagpole had been utilized over the years, *id.* at 1592:

To be sure, Boston maintained control over an event’s date and time to avoid conflicts. It maintained control over the plaza’s physical premises, presumably to avoid chaos. And it provided a hand crank so that groups could rig and raise their chosen flags. But it is Boston’s control over the flags’ content and meaning that here is key; that type of control would indicate that Boston meant to convey the flags’ messages.

On this issue, Boston’s record is thin. Boston says that all (or at least most) of the 50 flags I approved reflect particular city-approved values or views. Flying flags associated with other countries celebrated Bostonians’ many different national origins; flying other flags, Boston adds, was not “wholly unconnected” from a diversity message or “some other day or cause the City or Commonwealth had already endorsed.” .... That may well be true of the Pride Flag raised annually to commemorate Boston Pride Week. ... But it is more difficult to discern a connection to the city as to, say, the Metro Credit Union flag raising, a ceremony by a local community bank.

In any event, we do not settle this dispute by counting noses-or, rather, counting flags. That is so for several reasons. For one thing, Boston told the public that it sought “to accommodate all applicants” who wished to hold events at Boston’s “public forum,” including on City Hall Plaza. ... The application form asked only the contact information and a brief description of the event, with proposed dates and times. The city employee who handled applications testified by deposition that he had previously “never requested to review a flag or requested changes to a flag in connection with approval”; nor did he even see flags before the events. ... The city’s practice was to approve flag raisings, without exception. It has no record of denying a request until *Shurtleff*’s. Boston acknowledges it “hadn’t spent a lot of time really thinking about” its flag-raising practices until this case. ... True to its word, the city had nothing-no written policies or clear internal guidance-about what flags groups could fly and what those flags would communicate.

Considering the factors identified in the above analysis, the Court concluded that the flagpole in front of the Boston City Hall was not confined to government speech and therefore constituted a public forum. Consequently, the city’s refusal to display the Christian flag was based on its viewpoint and therefore violated the First Amendment.

Applying the factors considered by the Supreme Court in *Shurtleff* to the instant lawsuit indicates that the history of how flags have been displayed on the flagpoles on Joseph Campau



Ave. supports the conclusion that the flagpoles have not been used for government speech, but rather have been used as a public forum. Gordon attests in his affidavit that as Chairman of the Human Relations Commission, it was his practice to display any flag which a resident requested. The Commission accordingly displayed a flag honoring the Cherokee people, some of whom resided in Hamtramck. They displayed a flag honoring the African-American residents of Hamtramck. The flags of countries from which residents had emigrated to the United States were displayed, including a Sicilian flag, although Sicily is an island, not an independent nation. The Pride flag was displayed in 2022, at the request of the Chairperson of the Hamtramck Arts and Culture Commission. A chart attached to Gordon's Affidavit demonstrates the variety and frequency with which the various flags were displayed. Moreover, unlike in Boston, where the city provided the hand crank to raise the flags, Gordon used his own ladder to raise the flags on the flagpoles. In addition, no Hamtramck funds were used to buy the flags. The flags were purchased using contributions from the various businesses in Hamtramck.

Gordon indicates that on only one occasion was a request to display a flag rejected. A Croatia resident requested that the Serbian flag be displayed while the conflict between Bosnia and Serbia was occurring in Europe. The Serbian residents of Hamtramck indicated that they did not need to have the Serbian flag displayed. Therefore, in order not to generate conflict between the Bosnian and Serbian residents of Hamtramck, the Commission decided not to display the Serbian flag.

Based on the factors identified in *Shurtleff* which qualify a flagpole as a public forum, Gordon's affidavit demonstrates that the flagpoles on Joseph Campau Ave. constitute a public forum, and therefore it is impermissible under the First Amendment to decide what flags will be displayed based on their content or viewpoint. Hamtramck's Resolution 2023-82, however, is not

content and viewpoint neutral, because it permits the display of the Prisoner Of War flag and nations' flags which represent the international character of the City, but prohibits displaying all other flags which convey a different message. The Resolution therefore violates the Freedom of Speech provision of the First Amendment and is unconstitutional. Because the Resolution bears on the fundamental right of free speech, it may only be approved if it survives strict scrutiny. *See Clark v. Jeter*, 486 U.S. 456, 461 (1988); *Butterworth v. Smith*, 494 U.S. 624, 629 (1990). The Resolution does not survive strict scrutiny because its distinctions based on content and viewpoint are not justified by a constitutional compelling state interest.

The Court should accordingly grant Plaintiffs' motion for summary judgment with respect to Count I of the FAC, enter a declaratory judgment indicating that Resolution 2023-82 is unconstitutional, order that it be rescinded, and that the Pride flag, and the other flags which accompanied it, be re-displayed on the flagpoles on Joseph Campau Ave.

## **II. RESOLUTION 2023-82 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.**

In enacting a statute, ordinance, resolution, or policy, which affects free speech, a government entity may not grant the use of a forum to citizens whose views it finds acceptable, but deny it to citizens wishing to express less favored or more controversial views. Exercising such selectivity violates the Equal Protection Clause of the Fourteenth Amendment. *See Police Dep't of Chicago v. Mosley*, 408 U.S. 92 (1972) (a Chicago ordinance which prohibits picketing near a school, but exempts labor picketing, violates the Equal Protection clause); *Carey v. Brown*, 447 U.S. 455 (1980) (Illinois statute which prohibits picketing near a residence, but exempts picketing near a place of employment involved in a labor dispute violates the Equal Protection Clause); *Congregation Lubavitch v. City of Cincinnati*, 997 F.3d 1160 (6<sup>th</sup> Cir. 1993) (Cincinnati violated the Equal Protection Clause by issuing a permit to the Lubavitch Jewish congregation to

erect a menorah in a public square during the holiday of Chanukah, without time limitations, but limiting the time period during which the Ku Klux Klan could erect a cross in the public square near the menorah from 6:00 a.m. until 10:00 p.m.).

Resolution 2023-82 violates the Equal Protection Clause because it favors displaying the Prisoner of War flag, and the flags of nations which are representative of the international character of the City, over all other flags, including the Pride flag. Because the Resolution affects a fundamental right, freedom of speech, the disparity created by the Resolution must be subject to strict scrutiny and be justified by a constitutional compelling state interest. The disparity created by the Resolution is not justified by a compelling state interest, and therefore the Resolution is unconstitutional.

The Court should accordingly grant Plaintiffs' motion for summary judgment with respect to Count III of the FAC, enter a declaratory judgment indicating that Resolution 2023-82 is unconstitutional, order that it be rescinded, and that the Pride flag, and the other flags which accompanied it, be re-displayed on the flagpoles on Joseph Campau Ave.

### **III. RESOLUTION 2023-82 VIOLATES THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT AND IS THEREFORE UNCONSTITUTIONAL.**

The Establishment Clause of the First Amendment applies to the States via the Fourteenth Amendment. *Everson v. Board of Education*, 330 U.S. 1 (1947). The Clause prohibits any governmental entity from enacting any statute, ordinance, resolution or policy in order to accommodate the religious beliefs of its citizenry. *See Larson v. Valente*, 456 U.S. 228 (1982) (Minnesota statute which exempted certain religious denominations from reporting requirements, but not others, violated the Establishment Clause); *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116 (1982) (Massachusetts statute which authorized the governing bodies of churches to prevent issuance of liquor licenses within a 500-foot radius of a church violated the Establishment Clause);

*Board of Ed. of Kiryas Joel v. Grumet*, 512 U.S. 687 (1994) (government should not prefer one religion to another, or religion to irreligion); *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000) (School District's policy of permitting student-led and initiated prayer at football games violated the Establishment Clause); *American Civil Liberties Union of Ohio Foundation, Inc. v. Ashbrook*, 375 F.3d 484 (6<sup>th</sup> Cir. 2004) (Judge's insistence on displaying Ten Commandments in his courtroom violated the Establishment Clause); *Maye v. Klee*, 915 F.3d 1076 (6<sup>th</sup> Cir. 2019) (Michigan Department of Corrections violated the Establishment Clause by preventing the plaintiff, a member of the Nation of Islam, from participating in Eid-al-Fitr, at the conclusion of the observance of Ramadan, based on the sect of Islam to which he belonged); *Gonzales v. North Township of Lake County*, 4 F.3d 1412 (7<sup>th</sup> Cir. 1992) (Presence of a crucifix in the Wicker Memorial Park violated the Establishment Clause).

The evidence indicates that a primary motivating factor in the City Council's passage of Resolution 2023-82 was in order to accommodate the religious beliefs of a segment of the Hamtramck community which objected to displaying the Pride flag based on religion. Councilman Choudhury expressly stated that the Resolution should be approved in order to respect religions and to respect the mosques and churches in Hamtramck. Not a single Councilman expressed disagreement with this rationale, thereby indicating their assent. The Resolution was not passed pursuant to the Free Exercise provision of the First Amendment, since displaying the Pride flag, and the other flags which were being displayed, did not restrict or infringe on the freedom of religion of the residents of Hamtramck to worship as they pleased.

Councilman Hassan emphasized that as an elected government official, it was his duty in a democracy to represent the dominant opinions of his constituents. But in voting in favor of the Resolution, he in fact ignored the opinions of the 77% of the residents of Hamtramck who offered

public statements in opposition to the Resolution. He instead voted to support the minority opinion of the 23% of Hamtramck residents who offered opinions in favor of the Resolution, including the six Hamtramck residents who supported the Resolution based on religious grounds. Passage of the Resolution accordingly violated the Establishment Clause.

The Resolution was therefore clearly unconstitutional because it violated both the Free Speech Clause and the Establishment Clause of the First Amendment. Moreover, even if the flagpoles on Joseph Campau Ave. did not qualify as a public forum, but were restricted to expressing government speech, it still violated the Constitution, since even government speech may not violate the Establishment Clause. *See Pleasant Grove v. Sumnum*, 555 U.S. 460, 468 (2009) (“[G]overnment speech must comport with the Establishment Clause.”)

Strict scrutiny applies to evaluating whether the violation of the Establishment Clause was justified by a constitutional compelling state interest. *Larsen v. Valente, supra*, 456 U.S. at 246. It was not. The City of Hamtramck has no compelling government interest which justifies precluding displaying the Pride flag, and preventing its citizenry from seeing the Pride flag.

The Court should accordingly grant Plaintiffs’ motion for summary judgment with respect to Count II of the FAC, enter a declaratory judgment indicating that Resolution 2023-82 is unconstitutional, order that it be rescinded, and that the Pride flag, and the other flags which accompanied it, be re-displayed on the flagpoles on Joseph Campau Ave.

#### **IV. RESOLUTION 2023-99 REMOVING GORDON AND STACKPOOLE FROM THE HUMAN RELATIONS COMMISSION VIOLATED THEIR FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT.**

Resolution 2023-82 is, and was, unconstitutional on July 9, 2023, when Gordon raised the Pride flag on the flagpole on Joseph Campau Ave. because it violated the Free Speech and Establishment Clause provisions of the First Amendment, and the Equal Protection Clause of the

Fourteenth Amendment. In so doing, neither Gordon nor Stackpoole were violating the law. An unconstitutional Resolution is itself a violation of law, and a citizen who violates an unconstitutional, and therefore unlawful, Resolution cannot be violating the law. Rather, the Councilmen who voted in favor of the unconstitutional Resolution violated the law by violating the Constitution. *See Ex Parte Young*, 209 U.S. 123, 124 (1908). (enforcement of an unconstitutional statute is a proceeding without authority and is illegal). By disobeying an unconstitutional government action, Gordon and Stackpoole engaged in an honored tradition in the United States of practicing civil disobedience. *See* Henry David Thoreau's "On the Duty of Civil Disobedience"; *Healy v. James*, 408 U.S. 169 (1972) (State college improperly denied recognition of a local chapter of Students for a Democratic Society due, in part, to its advocacy of civil disobedience).

By raising the Pride flag in opposition to the unconstitutional Resolution, Gordon and Stackpoole were exercising their freedom of speech protected under the First Amendment. *See Lib v. University of Missouri*, 558 F.2d 848 (8<sup>th</sup> Cir. 1977) (University's refusal to recognize a student organization comprised largely of homosexuals which advocated on behalf of homosexuals violated their First Amendment rights of freedom of speech and association). The statement in Resolution 2023-99 that by raising the Pride flag on the flagpole on Joseph Campau Ave. Gordon and Stackpoole did not maintain the respect and dignity of the rule of law is false, defamatory, and constitutes libel *per se* under Michigan law. By opposing the unconstitutional Resolution, Gordon and Stackpoole were maintaining the respect and dignity of the United States Constitution, and of the rule of law. It was the Councilmen who voted in favor of the unconstitutional Resolution who failed to maintain the respect and dignity of the rule of law.

By removing Gordon and Stackpoole as Commissioners on the Human Relations

Commission, the Defendants unconstitutionally retaliated against them for exercising their freedom of speech under the First Amendment. *See Pickering v. Board of Educ*, 391 U.S. 563 (1968) (School Board violated public school teacher’s freedom of speech by terminating him for speaking publicly about a matter of public concern); *Board of County Comm’rs, Wabaunsee Cty. v. Umbehr*, 518 U.S. 688 (1998) (County violated independent contractor’s freedom of speech by terminating his contract with the County in retaliation for his public criticisms of the County government).

Since Resolution 2023-100 was based on the erroneous assertion that Gordon and Stackpoole failed to maintain the respect and dignity of the law by raising the Pride flag on the flagpole on Joseph Campau Ave., the Resolution improperly, and unconstitutionally, stripped the Commission of authority and control over the flagpoles on Joseph Campau Ave.

The Court should accordingly grant Plaintiffs’ motion for summary judgment with respect to Counts IV and V of the FAC, enter a declaratory judgment indicating that Resolutions 2023-99 and 2023-100 are unconstitutional, order that they be rescinded, and that Plaintiffs be reinstated as members of the Human Relations Commission.

**V. RESOLUTION 2023-99 REMOVING GORDON AND STACKPOOLE FROM THE HUMAN RELATIONS COMMISSION VIOLATED THEIR FREEDOM OF SPEECH UNDER ARTICLE I, § 5 OF THE MICHIGAN CONSTITUTION (1963).**

Article I, § 5 of the Michigan Constitution (1963) states:

Sec. 5. Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right, and no law shall be enacted to restrain or abridge the liberty of speech or of the press.

The rights of free speech under the Michigan and U.S. Constitutions are coterminous, and therefore federal case law construing the First Amendment may be considered in interpreting Michigan’s constitutional guarantee of free speech. *In re Contempt of Dudzinski*, 257 Mich. App.

96 (Mich. Ct. App. 2003). Federal case law requiring that government restrictions on speech be content and viewpoint neutral therefore apply with equal force under Article I, § 5 of the Michigan Constitution. *See Thomas M. Cooley Law Sch. v. Doe*, 300 Mich. App. 245, 256 (Mich. Ct. App. 2013) (“[T]his Court may consider federal authority when interpreting the extent of Michigan’s protections of free speech.” Footnote omitted.)

Resolution 2023-82 is not content viewpoint neutral and therefore violates Article I, § 5 of the Michigan Constitution. By raising the Pride flag in opposition to the unconstitutional Resolution, Gordon and Stackpoole were exercising their freedom of speech protected under Article I, § 5 of the Michigan Constitution. The statement in Resolution 2023-99 that by raising the Pride flag on the flagpole on Joseph Campau Ave. Gordon and Stackpoole did not maintain the respect and dignity of the rule of law is false, defamatory, and constitutes libel *per se* under Michigan law. By opposing the unconstitutional Resolution, Gordon and Stackpoole were maintaining the respect and dignity of the Michigan Constitution, and of the rule of law. It was the Councilmen who voted in favor of the unconstitutional Resolution who failed to maintain the respect and dignity of the rule of law.

By removing Gordon and Stackpoole as Commissioners on the Human Relations Commission, the Defendants violated their freedom of speech under Article I, § 5 of the Michigan Constitution. Since Resolution 2023-100 was based on the erroneous assertion that Gordon and Stackpoole failed to maintain the respect and dignity of the law by raising the Pride flag on the flagpole on Joseph Campau Ave., the Resolution improperly, and unconstitutionally, stripped the Commission of authority and control *over* the flagpoles on Joseph Campau Ave.

The Court should accordingly grant Plaintiffs’ motion for summary judgment with respect to Counts VI and VII of the FAC, enter a declaratory judgment indicating that Resolutions 2023-



99 and 2023-100 are unconstitutional, order that they be rescinded, and that Plaintiffs be reinstated as members of the Human Relations Commission.

**VI. RESOLUTION 2023-99 REMOVING GORDON AND STACKPOOLE FROM THE HUMAN RELATIONS COMMISSION VIOLATED THEIR RIGHTS UNDER THE MICHIGAN ELLIOTT-LARSEN CIVIL RIGHTS ACT.**

Article 2, § 37.2202(1)(a) of the Elliott-Larsen Civil Rights Act, MCL § 37.2101, *et seq.*,

(“Act”) states:

(1) An employer shall not do any of the following:

(a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status.

Although Gordon and Stackpoole were not paid a salary while serving on the Commission, they qualified as employees, and the City qualified as an employer under the Act. *See James v. City of Burton*, 221 Mich. App. 130 (Mich. Ct. App. 1997) (political appointees qualify as employees under the Act); *Whitman v. City of Burton*, 311 Mich. App. 315 (Mich. Ct. App. 2015) (same).

The reference to “sex” in the Act includes sexual orientation. *Rouch World, LLC v. Dep’t of Civil Rights*, 510 Mich. 398 (Mich. 2022). The Pride flag represents the rights and privileges of the LBGTQ community. By removing Gordon and Stackpoole from the Commission due to their raising the Pride flag on the flagpole on Joseph Campau Ave., the City punished them for their expression of support of the LBGTQ community, and thereby discriminated against them because of sexual orientation and religion, violating Article 2, § 37.2202(1)(a) of the Act.

The Court should accordingly grant Plaintiffs’ motion for summary judgment with respect to Counts VIII and IX of the FAC, enter a declaratory judgment indicating that Resolutions 2023-99 and 2023-100 violated Article 2, § 37.2202(1)(a) of the Elliott-Larsen Civil Rights Act, and

order that Plaintiffs be reinstated as members of the Human Relations Commission.

**CONCLUSION AND RELIEF**

Based on the above Arguments, Plaintiffs' motion for summary judgment should be granted in its entirety, with respect to every Count pled in their First Amended Complaint. A declaratory judgment should be entered holding that Hamtramck Resolutions 2023-82, 2023-99, and 2023-100 violate the U.S. and Michigan Constitutions and that Resolution 2023-99 violates the Elliott-Larsen Civil Rights Act; ordering that the Resolutions be rescinded and that the Pride flag and other flags which accompanied it be re-displayed on the flagpoles on Josephe Campau Ave.; and that Russ Gordon and Cathy Stackpoole be reinstated as members of the Human Relations Commission.

Respectfully submitted,

Marc M. Susselman  
Attorney at Law  
Attorney for the Plaintiffs  
43834 Brandywyne Rd.  
Canton, Michigan 48187  
(734) 416-5186  
[marcsusselman@gmail.com](mailto:marcsusselman@gmail.com)

By:           s/ Marc M. Susselman            
Attorney for Plaintiffs

Dated: December 6, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on December 6, 2023, I electronically filed with the Clerk of the Court the foregoing document using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Marc M. Susselman (P29481)  
Marc M. Susselman  
Attorney for Plaintiffs