

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

Russ Gordon and Cathy Stackpoole,

Plaintiffs,

vs.

Civil Action No.:

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

Hon.

Defendants.

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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)

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**COMPLAINT AND JURY DEMAND**

**NOW COME Russ Gordon and Cathy Stackpoole**, pursuant to the First and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. §§ 1983 and 1988, seeking equitable relief, and compensatory, exemplary and punitive damages against the named Defendants, and state:

**PRELIMINARY STATEMENT**

This lawsuit involves the enactment of an unconstitutional Resolution by the City of Hamtramck, the Hamtramck City Council, and its Mayor. The Resolution rescinded a prior City resolution which had allowed for the display of the Pride flag from a flagpole on Joseph Campau Ave. The Resolution violates the Freedom of Speech and Establishment Clause provisions of the First Amendment, as well as the Equal Protection Clause of the Fourteenth Amendment.

**JURISDICTION AND VENUE**

1. This action arises under the First Amendment of the United States Constitution, as incorporated with respect to the States by the Fourteenth Amendment, and is brought pursuant to 42 U.S.C. §§ 1983 and 1988.

2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over the Michigan state law claims under 28 U.S.C. § 1367(a).

3. Venue is proper in the Eastern District of Michigan under 28 U.S.C. § 1391 because the events giving rise to the claims detailed herein occurred in the Eastern District of Michigan.

**PARTIES**

4. Russ Gordon is a resident and taxpayer in Hamtramck and a former Commissioner on the Hamtramck Human Relations Commission.

5. Cathy Stackpoole is a resident and taxpayer in Hamtramck and a former Commissioner on the Hamtramck Human Relations Commission.

6. The City of Hamtramck is a municipality located in Wayne County, Michigan.

7. The Hamtramck City Council is the governing body of the City of Hamtramck. Its members during the time relevant to this lawsuit were Muhith Mahmood, Abu Musa, Khalil Refai, Mohammed Alsomiri, Nayeem Choudhury, and Mohammed Hassan.

8. Amer Ghalib is the Mayor of the City of Hamtramck.

**FACTUAL ALLEGATIONS**

9. On May 14, 2013, the Mayor and City Council of Hamtramck 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.

10. 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.

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

12. 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.

13. 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.

14. A Pride flag was thereafter raised on the Zussman Park flag pole, which is located across from the Hamtramck City Hall.

15. The Chairperson of the Arts and Culture Commission thereafter inquired about

displaying the Pride flag on a flag pole on Joseph Campau Ave. Cathleen Angerer, the City manager, contacted Gordon and asked him if there was a flag pole 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.

16. 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.

17. Gordon raised the Pride flag on a flag pole 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.

18. Stackpoole became a member of the Human Relations Commission in January, 2023.

19. 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 3):

**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 flag poles would no longer be permitted.

20. 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=izxF600qzuo>. (A transcript of the complete proceeding is attached as Exhibit 4.)

21. 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 4, pp. 4, 23, 30, 31, 32 and 33)

22. Several commenters indicated that they opposed the Resolution based on its stemming from religious convictions. (Exhibit 4, pp. 19, 27, 45, 47, 50, 60, and 63) Several opposed it based on freedom of speech grounds. (Exhibit 4, pp. 43, 45, 48, 51, 56, 58, 59, 61, and 65) Two expressed the opinion that it violated the Michigan Elliott-Larsen Civil Rights Act. (Exhibit 4, pp. 50, 62)

23. 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.

24. 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 4, 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.

25. Councilman Choudhury offered the following comment, in relevant part (Exhibit 4, 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).

26. The Council voted unanimously to approve the Resolution. (Exhibit 4, pp. 78-79)

27. On July 9, 2023, Gordon and Stackpoole raised the Pride flag on one of the flagpoles on Joseph Compau 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.

28. 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 5.) The Resolution was unanimously approved. A video recording of the proceeding may be seen at <https://www.youtube.com/watch?v=izxF600qzu0> (A transcript of the complete proceeding is attached as Exhibit 6.)

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.

29. 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 7.) 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.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **VIOLATION OF THE FREEEOM OF SPEECH PROVISION OF THE FIRST AMENDMENT UNDER 42 U.S.C. § 1983**

30. Plaintiffs incorporate herein each and every of the prior averments as if fully stated herein.

31. 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.

32. 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 ... .

33. The Defendants were acting under color of law when they enacted Resolution



2023-82.

34 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).

35. A governmental action, including a statute, an ordinance, resolution, or policy, which regulates speech 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).

36. Hamtramck’s Resolution 2023-82 is not content 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.

37. 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 (1988). The Resolution does not survive strict scrutiny because its distinctions based on content are not justified by a constitutional compelling state interest.

**WHEREFORE**, Plaintiffs request that the Court enter a declaratory judgment holding that Resolution 2023-82 is unconstitutional because it violates the Free Speech provision of the First Amendment and order that the Resolution must be rescinded; order that the status *quo ante* is to be restored before the Resolution was passed and that the Pride flag, and all the other flags which were being displayed prior to the Resolution’s passage, be re-displayed; award Plaintiffs their reasonable attorney fees pursuant to 42 U.S.C. § 1988, and grant whatever additional relief

the Court deems to be just and proper.

## COUNT II

### VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT UNDER 42 U.S.C. § 1983

38. Plaintiffs incorporate herein each and every of the prior averments as if fully stated herein.

39. The Establishment Clause of the First Amendment 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).

40. The Establishment Clause applies to the States under the 14<sup>th</sup> Amendment.

41. The evidence indicates that a primary motivating factor in the 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.

42. 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.

43. Strict scrutiny applies to evaluating whether the violation of the Establishment Clause was justified by a constitutional compelling state interest. It was not.

**WHEREFORE**, Plaintiffs request that the Court enter a declaratory judgment holding that Resolution 2023-82 is unconstitutional because it violates the Establishment Clause of the First Amendment and order that the Resolution must be rescinded; order that the status *quo ante* is to be restored before the Resolution was passed and that the Pride flag, and all the other flags which were being displayed prior to the Resolution's passage, be re-displayed; award Plaintiffs their reasonable attorney fees pursuant to 42 U.S.C. § 1988, and grant whatever additional relief

the Court deems to be just and proper.

**COUNT III**

**VIOLATION OF THE EQUAL PROTECTION CLAUSE  
OF THE FOURTEENTH AMENDMENT**

44. Plaintiffs incorporate herein each and every of the prior averments as if fully stated herein.

45. 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); *Carey v. Brown*, 447 U.S. 455 (1980); *Congregation Lubavitch v. City of Cincinnati*, 997 F.3d 1160 (6<sup>th</sup> Cir. 1993).

46. 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.

47. 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.

**WHEREFORE**, Plaintiffs request that the Court enter a declaratory judgment holding that Resolution 2023-82 is unconstitutional because it violates the Equal Protection Clause of the Fourteenth Amendment and order that the Resolution must be rescinded; order that the status *quo ante* is to be restored before the Resolution was passed and that the Pride flag, and all the other flags which were being displayed prior to the Resolution's passage, be re-displayed; award

Plaintiffs their reasonable attorney fees pursuant to 42 U.S.C. § 1988, and grant whatever additional relief the Court deems to be just and proper.

**COUNT IV**

**VIOLATION OF THE FREEDOM OF SPEECH OF GORDON  
UNDER 42 U.S.C. § 1983**

48. Plaintiffs incorporate herein each and every of the prior averments as if fully stated herein.

49. Resolution 2023-82 is, and was, unconstitutional on July 9, 2023, when Gordon raised the Pride flag on the flag pole on Joseph Compau 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, Gordon was not 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 (1908) (enforcement of an unconstitutional statute is a proceeding without authority and is illegal).

50. By raising the Pride flag in opposition to the unconstitutional Resolution, Gordon was exercising his freedom of speech protected under the First Amendment.

51. The statement in Resolution 2023-99 that by raising the Pride flag on the flag pole on Joseph Compau Ave. Gordon 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 was 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.

52. By removing Gordon as a Commissioner on the Human Relations Commission, the Defendants violated Gordon's freedom of speech under the First Amendment.

53. The removal of Gordon from the Commission, in violation of his right to free speech, has directly caused him emotional distress, embarrassment, and humiliation.

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

**WHEREFORE**, Gordon requests that the Court order that Resolution 2023-99 be rescinded and that he be reinstated as a Commissioner on the Human Relations Commission; order that Resolution 2023-100 be rescinded; that Gordon be awarded compensatory, exemplary and punitive damages; that the Court award him reasonable attorney fees pursuant to 42 U.S.C. § 1988; and grant him whatever further relief the Court deems to be just and proper.

**COUNT V**

**VIOLATION OF THE FREEDOM OF SPEECH OF STACKPOOLE  
UNDER 42 U.S.C. § 1983**

55. Plaintiffs incorporate herein each and every of the prior averments as if fully stated herein.

56. Resolution 2023-82 is, and was, unconstitutional on July 9, 2023, when Stackpoole raised the Pride flag on the flag pole on Joseph Compau 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, Stackpoole was not 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 Pate Young*, 209 U.S. 123 (1908).

57. By raising the Pride flag in opposition to the unconstitutional Resolution, Stackpoole was exercising her freedom of speech protected under the First Amendment.

58. The statement in Resolution 2023-99 that by raising the Pride flag on the flag pole on Joseph Compau Ave. 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, Stackpoole was 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.

59. By removing Stackpoole as a Commissioner on the Human Relations Commission, the Defendants violated Stackpoole's freedom of speech under the First Amendment.

60. The removal of Stackpoole from the Commission, in violation of her right to free speech, has directly caused her emotional distress, embarrassment, and humiliation.

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

**WHEREFORE**, Stackpoole requests that the Court order that Resolution 2023-99 be rescinded and that she be reinstated as a Commissioner on the Human Relations Commission; order that Resolution 2023-100 be rescinded; that Stackpoole be awarded compensatory, exemplary and punitive damages; that the Court award her reasonable attorney fees pursuant to



42 U.S.C. § 1988; and grant her whatever further relief the Court deems to be just and proper.

**PENDENT STATE CLAIMS**

**COUNT VI**

**VIOLATION OF GORDON'S RIGHT OF FREE SPEECH UNDER ARTICLE I, § 5  
OF THE MICHIGAN CONSTITUTION**

62. Plaintiffs incorporate herein each and every of the prior averments as if fully stated herein.

63. 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.

64. 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).

65. 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.

66. Resolution 2023-82 is not content neutral and therefore violates Article I, § 5 of the Michigan Constitution.

67. By raising the Pride flag in opposition to the unconstitutional Resolution, Gordon was exercising his freedom of speech protected under Article I, § 5 of the Michigan Constitution.

68. The statement in Resolution 2023-99 that by raising the Pride flag on the flag pole on Joseph Compau Ave. Gordon 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 was 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.

69. By removing Gordon as a Commissioner on the Human Relations Commission, the Defendants violated Gordon's freedom of speech under Article I, § 5 of the Michigan Constitution..

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

71. A court may award attorney fees to redress a violation of the Michigan Constitution. *Schellenberg v. Rochester, Michigan, Lodge No 2225 of the Benevolent & Protective Order of the Elks of the United States of America*, 228 Mich. App. 20 (Mich. Ct. App. 1998).

**WHEREFORE**, Gordon requests that the Court order that Resolution 2023-99 be rescinded and that he be reinstated as a Commissioner on the Human Relations Commission; order that Resolution 2023-100 be rescinded; that the Court award him reasonable attorney fees and grant him whatever further relief the Court deems to be just and proper.

## **COUNT VII**

### **VIOLATION OF STACKPOOLE'S RIGHT OF FREE SPEECH UNDER ARTICLE I, § 5 OF THE MICHIGAN CONSTITUTION**

72. Plaintiffs incorporate herein each and every of the prior averments as if fully stated herein.

73. Resolution 2023-82 is not content neutral and therefore violates Article I, § 5 of

the Michigan Constitution.

74. By raising the Pride flag in opposition to the unconstitutional Resolution, Stackpoole was exercising her freedom of speech protected under Article I, § 5 of the Michigan Constitution.

75. The statement in Resolution 2023-99 that by raising the Pride flag on the flag pole on Joseph Compau Ave. 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, Stackpoole was 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.

76. By removing Stackpoole as a Commissioner on the Human Relations Commission, the Defendants violated Stackpoole's freedom of speech under Article I, § 5 of the Michigan Constitution.

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

78. A court may award attorney fees to redress a violation of the Michigan Constitution. *Schellenberg v. Rochester, Michigan, Lodge No 2225 of the Benevolent & Protective Order of the Elks of the United States of America*, 228 Mich. App. 20 (Mich. Ct. App. 1998).

**WHEREFORE**, Stackpoole requests that the Court order that Resolution 2023-99 be rescinded and that she be reinstated as a Commissioner on the Human Relations Commission;

order that Resolution 2023-100 be rescinded; that the Court award her reasonable attorney fees and grant her whatever further relief the Court deems to be just and proper.

**COUNT VIII**

**VIOLATION OF GORDON'S RIGHTS UNDER  
THE ELLIOTT-LARSEN CIVIL RIGHTS ACT**

79. Plaintiffs incorporate herein each and every of the prior averments as if fully stated herein.

80. 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.

81. Although Gordon was not paid a salary while serving on the Commission, he qualified as an employee, 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).

82. The reference to “sex” in the Act includes sexual orientation. *Rouch World, LLC v. Dep’t of Civil Rights*, 510 Mich. 398 (Mich. 2022).

83. The Pride flag represents the rights and privileges of the LBGTQ community.

84. By removing Gordon from the Commission due to his raising the Pride flag on the flag pole on Joseph Campau Ave., the City punished Gordon for his expression of support of the LBGTQ community, and thereby discriminated against him because of sexual orientation and religion, violating Article 2, § 37.2202(1)(a) of the Act.

85. As a result of his removal from the Commission, Gordon has experienced emotional distress, embarrassment and humiliation.

86. Article 8, § 37.2801 of the Act, provides that an individual alleging a violation of the Act may bring a civil action requesting injunctive relief and damages, including reasonable attorney fees.

**WHEREFORE**, Gordon requests that the Court order that he be reinstated as a Commissioner on the Human Relations Commission; order that Gordon be awarded compensatory, exemplary and punitive damages; that the Court award him reasonable attorney fees; and grant him whatever further relief the Court deems to be just and proper.

### **COUNT IX**

#### **VIOLATION OF STACKPOOLE'S RIGHTS UNDER THE ELLIOTT-LARSEN CIVIL RIGHTS ACT**

87. Plaintiffs incorporate herein each and every of the prior averments as if fully stated herein.

88. Although Stackpoole was not paid a salary while serving on the Commission, she qualified as an employee, 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).

89. The reference to “sex” in the Act includes sexual orientation. *Rouch World, LLC v. Dep’t of Civil Rights*, 510 Mich. 398 (Mich. 2022).

90. The Pride flag represents the rights and privileges of the LBGTQ community.

91. By removing Stackpoole from the Commission due to her raising the Pride flag on the flag pole on Joseph Campau Ave., the City punished Stackpoole for her expression of support of the LBGTQ community, and thereby discriminated against her because of sexual

orientation and religion, violating Article 2, § 37.2202(1)(a) of the Act.

92. As a result of her removal from the Commission, Stackpoole has experienced emotional distress, embarrassment and humiliation.

93. Article 8, § 37.2801 of the Act, provides that an individual alleging a violation of the Act may bring a civil action requesting injunctive relief and damages, including reasonable attorney fees.

**WHEREFORE**, Stackpoole requests that the Court order that she be reinstated as a Commissioner on the Human Relations Commission; order that Stackpoole be awarded compensatory, exemplary and punitive damages; that the Court award her reasonable attorney fees; and grant her whatever further relief the Court deems to be just and proper.

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)  
P29481

By: s/ Marc M. Susselman  
Attorney for Plaintiffs

Dated: November 6, 2023

**JURY DEMAND**

Plaintiffs hereby demand a jury trial for all issues triable by a jury.

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

By:           s/ Marc M. Susselman            
Attorney for Plaintiffs

Dated: November 6, 2023