

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

ST. VINCENT CATHOLIC
CHARITIES,

Plaintiff,

v.

INGHAM COUNTY BOARD OF
COMMISSIONERS,

Defendant.

Civil No. 1:19-cv-01050

**PLAINTIFF'S BRIEF IN
SUPPORT OF EXPEDITED
MOTION FOR PRELIMINARY
INJUNCTION**

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INTRODUCTION

St. Vincent Catholic Charities (“St. Vincent”) provides crucial services to refugees. It is the only agency with the authorization and expertise to provide the full range of services to refugees resettling in Ingham County. The Ingham County Board of Commissioners (the “Board”) acknowledges that St. Vincent is the “best game in town” at serving refugees.

Nevertheless, the Board cut off social-services funding to St. Vincent. Why? Because it disagrees with St. Vincent’s current lawsuit against Michigan (*Buck v. Gordon*, 1:19-cv-286 (W.D. Mich. filed April 15, 2019)) and dislikes St. Vincent’s religious beliefs and actions. The Board’s discrimination is overt. The Board stated on the record at a public meeting that it wants to stop working with St. Vincent solely because it disagrees with St. Vincent’s speech, religious exercise, and audacity to defend those rights in court. After making those statements, the Board then proceeded to single out St. Vincent by denying it a grant that the Board awarded to every other requesting agency. It is also pressuring the Ingham County Health Department (the “Health Department”) to find an alternative provider of refugee services so it can stop partnering with St. Vincent altogether.

This is First Amendment retaliation, and it is discrimination and targeting in violation of the Free Speech and Free Exercise Clauses. In displaying its religious animus and canceling one of St. Vincent's grants, the Board clearly "did not understand, failed to perceive, or chose to ignore the fact that their official actions violated the Nation's essential commitment to religious freedom." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 524 (1993). Without injunctive relief, there is every reason to conclude that the Board will seize other, upcoming opportunities to strike at St. Vincent's ministry and chill St. Vincent's First Amendment freedoms.

While this case proceeds, and while St. Vincent defends itself in *Buck*, the Board will exercise control over St. Vincent's contracts and grants. Absent further retaliatory action by the Board, St. Vincent's \$40,000 Health Center Interpreting Contract is set to renew on January 31, 2020. And before that, the County must approve St. Vincent's annual "statement of work" under that contract. At the same time, St. Vincent will be preparing its Sixth Circuit merits briefing in *Buck*, due on February 5, 2020—the same lawsuit that so offends the Board and caused it to retaliate against St. Vincent. None of this, of course, accounts for the

ongoing process of St. Vincent engaging with Ingham County for various grants and contracts throughout 2020. Enjoining the Board from further unlawful retaliation is necessary to give St. Vincent certainty that its continued defense of *Buck* will not imperil its refugee work. Protecting the status quo will prevent irreparable harm and benefit the public by ensuring that St. Vincent's unparalleled refugee services continue in Ingham County. For all these reasons, the Court should grant the injunction, and do so on an expedited basis.

FACTUAL BACKGROUND

I. St. Vincent's refugee resettlement services

Each year, more than a hundred refugees are resettled in Ingham County. Attach. A ¶ 7 (hereinafter "Harris Decl."). St. Vincent is the only agency providing resettlement services in Ingham County, and has provided those services for more than four decades. *Id.* ¶ 8. Over that time, St. Vincent has helped resettle thousands of refugees into permanent homes. *Id.* St. Vincent provides a wide variety of services to refugees: its staff meet refugees at the airport and ensure they have housing and food. *Id.* St. Vincent then provides intensive orientation. Among other services, it helps clients obtain ID cards, services, and

school enrollments. *Id.* St. Vincent's staff work with refugees to develop a self-sufficiency plan, acquire necessary skills, and find work. *Id.* St. Vincent's trainer also provides classes on computer literacy, financial literacy, small business development and home purchasing. *Id.*

Most relevant here, St. Vincent staff also help refugees obtain health care, with support from Ingham County contracts and grants. Harris Decl. ¶ 9. St. Vincent escorts clients to appointments and provides them with interpreting services for their medical appointments, lab work, and trips to the pharmacy. *Id.* St. Vincent also provides interpreters who assist refugees in obtaining health care at local health centers and at the Ingham County Health Department's offices. *Id.*

St. Vincent cannot provide refugee services without authorization from or contracts with government agencies, including Ingham County. Harris Decl. ¶ 11. If it lost its contracts, St. Vincent would face staff layoffs and lose the ability to provide critical refugee services, including those described above.

"St. Vincent provides the same services to LGBTQ refugees that it provides to all other refugees." Harris Decl. ¶ 13. "St. Vincent holds Catholic beliefs regarding marriage, human sexuality, the inherent

dignity of every human person, and the importance of serving those in need.” *Id.* ¶ 12. “This comprehensive moral vision leads St. Vincent to serve all refugees in need, regardless of sexual orientation.” *Id.*

II. Ingham County’s retaliation

A. The contracts presently threatened

St. Vincent’s refugee services contracts and grants with Ingham County are at risk. Harris Decl. ¶¶ 16-20. For example, the Board threatened to cancel a subcontract to help refugees access health care (the “Refugee Health Services Contract”). That subcontract has been renewed annually for at least twenty years and is subject to a master contract between Ingham County and the Michigan Department of Health and Human Services (“MDHHS”). *Id.* ¶ 17. The FY 2020 contract is for \$128,000. *Id.* While the Board renewed it this time, it did so only after counsel for the Diocese of Lansing wrote the Board explaining that it risked violating the *Buck* injunction if it failed to renew that contract. *See* Attach. B, Ex. 2. And, the Board still pressured the Health

Department to find alternative refugee service providers because it dislikes St. Vincent's religious views and its defense of them in court.¹

Next, the Board actually terminated a different contract: An annual grant for refugee services (the "Community Agency Grant"). The grant to St. Vincent was \$4,500 in FY 2019. For FY 2020, the Board approved \$0 for St. Vincent while renewing every other agency's funding. Compl. Attach. A.

Now, the Board exercises discretion and control over a third contract by which St. Vincent provides interpreting services for refugees at County health centers (the "Health Center Interpreting Contract"). This \$40,000 contract has been renewed annually for four years and is up for renewal again on January 31, 2020. Harris Decl. ¶ 19. St. Vincent fears further retaliatory action in conjunction with the renewal of this contract or the acceptance of the annual statement of work under that contract. *Id.* ¶¶ 20-21.

¹ See, e.g., Audio: Ingham Cty. Human Servs. Comm. Meeting at 1:05:00 (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ>.

B. St. Vincent protects its rights in *Buck*. The Board is not pleased.

By the Board's own admission (as detailed in the audio links below), its actions stem from its disagreement with St. Vincent's actions in *Buck*. St. Vincent is the plaintiff in *Buck*, where it has challenged state and federal actions that threaten to close its foster and adoption ministry. Those unlawful actions would require that St. Vincent violate its religious beliefs by directly endorsing and certifying same-sex couples and cohabitating, opposite-sex couples. St. Vincent challenged these actions as a violation of its free exercise and free speech rights.

As Chief Judge Jonker's decisions in that lawsuit explain, Michigan's Attorney General targeted St. Vincent's religious beliefs, and sought to undermine "a carefully balanced and established practice that ensures non-discrimination in child placements while still accommodating traditional Catholic religious beliefs on marriage." Op. at Page ID # 2519, *Buck v. Gordon*, 1:19-cv-286 (W.D. Mich. Sept. 26, 2019), ECF No. 69. Consistent with established Michigan law, see Mich. Comp. Laws § 722.124, and as Chief Judge Jonker explained, "St. Vincent stands aside and allows other qualified agencies to make recommendations on behalf of unmarried or LGBTQ couples." Op. at Page ID # 2503, *Buck v.*

Gordon, 1:19-cv-286 (W.D. Mich. Sept. 26, 2019), ECF No. 69. (internal quotation marks and citation omitted). “Historically,” as the court also explained—and a Sixth Circuit motions panel agreed—“the State of Michigan has permitted” this reasonable accommodation. *Id.* With that harmonious status quo in place, St. Vincent now “may continue to operate as it has for the past seventy years.” Order at 2, *Buck v. Gordon*, No. 19-2185 (6th Cir. Nov. 11, 2019), ECF No. 29-2 (denying stay of injunction pending appeal). St. Vincent is now protected by an injunction against Michigan’s actions because they violate the First Amendment. *Id.*

On May 20, 2019, about one month after St. Vincent filed its well-publicized lawsuit, Commissioner Sebolt successfully moved the Board to condition the future distribution of community agency funds not simply on the prior standard—whether an agency “address[es] the County’s overarching long-term objective of ‘Meeting Basic Needs,’ such as food, clothing, and shelter[.]” Instead, going forward, “priority” would be “given to those agencies that comply with the County’s non-discrimination provision.”²

² See Ingham Cty. Human Servs. Comm. Minutes at 2 (May 20, 2019), <https://perma.cc/B7E6-MPF3>.

This proposed addition puzzled other commissioners. Commissioner Naeyaert asked whether Commissioner Sebolt could identify any agencies that did not comply with that provision—it “seems like all of them do,” Naeyaert said.³ Jared Cypher, Deputy County Controller, stated he could not think of any non-complying agency. *Id.* at 3:37. Sebolt said he “just want[s] to make sure,” and the amendment passed. *Id.* at 3:49.

On September 26, 2019, St. Vincent received a preliminary injunction in *Buck*. Shortly after this injunction and the resulting public attention, the Refugee Health Services Contract came up for reauthorization.⁴ At that time, Health Department staff recommended reauthorization, and no other agency in Lansing had the capacity to perform this refugee work.⁵ *Id.* But Commissioner Sebolt—the same commissioner who added the revised “priority” non-discrimination provision to community grant

³ See Audio: Ingham Cty. Human Servs. Comm. Meeting at 3:27 (May 20, 2019), <https://perma.cc/WT3Y-6ZA8>.

⁴ Ingham Cty. Human Servs. Comm. Minutes (Nov. 4, 2019), <https://perma.cc/ZV88-T8U8>.

⁵ See Ingham Cty. Human Servs. Comm. Minutes at 11-12 (Nov. 4, 2019), <https://perma.cc/ZV88-T8U8>.

authorizations—pulled the resolution on St. Vincent’s contract from the consent agenda, thereby opening the floor to commissioner comment.⁶

Multiple commissioners criticized St. Vincent’s religious beliefs, speech, and its decision to defend itself in *Buck*. For example:

- Commissioner Sebolt said he believed that St. Vincent would discriminate “based on St. Vincent’s Catholic Charities publicly stated stances and lawsuit against the state of Michigan toward same-sex couples.”
- Chairman Tennis said there was “a difference of ideology at times in how we treat our residents and how we view our residents between ourselves and St. Vincent’s Catholic Charities.”
- Anne Scott, Ingham Community Health Centers Executive Director and Deputy Health Officer, said that LGBTQ refugees receive services from St. Vincent, and “we see the benefit . . . the value of that is high for the people that it benefits, but it’s not without note that there is concern about the stance of the agency.”
- Commissioner Stivers stated, “I’m sure that not everybody at St. Vincent’s is anti-LGBTQ, and that they probably do some great work.”
- Commissioner Stivers also stated she “can’t support working with this group” because of “the anti-LGBTQ stance of the greater organization.”
- Commissioner Stivers claimed—without any conceivable basis in fact—“that this charity has been implicated in the separation of families at the border . . . in order to be adopted out to Christian white families.”

⁶ Audio: Ingham Cty. Human Servs. Comm. Meeting at 5:00 (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ>.

- Commissioner Sebolt claimed—also incorrectly and without any evidence—that other Catholic charities permit “adoption to same-sex couples,” but “St. Vincent’s is specifically choosing not to.”
- Chairman Tennis then speculated that, perhaps by cutting the duration of St. Vincent’s contract in half (from one year to six months), St. Vincent will realize it is being given time to “come around.”
- Chairman Tennis acknowledged that it is “unusual” for the county board to second-guess the health center board, which had recommended renewing the contract, and noted that such distinctions could be a concern under federal law governing the health center.
- Chairman Tennis further stated that St. Vincent is “the best game in town when it comes to” refugee resettlement, but “I do share concerns with some of the more recent decisions the organization has made.”
- Finally, Commissioner Stivers spoke again just to confirm that St. Vincent is “an organization that I feel is kind of morally bankrupt.”

Commissioners also made other demeaning and untrue allegations throughout this commentary. These statements may all be heard on the County’s November 4, 2019 audio recording of the meeting.⁷

As the recording demonstrates, after learning from county staff that no other agency could provide the refugee health services in question, the Committee voted to reauthorize the contract for only six months. The

⁷ Audio: Ingham Cty. Human Servs. Comm. Meeting at 1:05:00 (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ>.

stated reason for the six months was to give St. Vincent an opportunity to change its policy, or the Health Department time to locate another provider. Audio (Nov. 4, 2019) at 1:13:35. Several commissioners also criticized the Health Department's staff for not presenting alternatives. Commissioners then pressured the staff to seek out alternatives to St. Vincent. For example:

- Commissioner Morgan chastised the health department's staff for not providing the Board any alternatives to St. Vincent: "[W]hat's up with that? If there are alternatives, I really prefer staff list them or allude to them at the very least as opposed to saying in four words that there are none." *Id.* at 1:12:28.
- Commissioner Stivers wanted to "temporarily table" the resolution of St. Vincent's refugee services contract to "allow staff some time to give us more alternatives and not necessarily vote it down right now." *Id.* at 1:13:06.
- Commissioner Stivers also thought it was "a shame" that the lack of alternatives "wasn't brought to our attention" before the deadline to renew St. Vincent's Refugee Health Services Contract had passed. *Id.*
- Commissioner Tennis expressed his "hope . . . that, my druthers would be that we approve this but also ask our staff and our health officer and our CHC director to bring us some other options for doing this in the future." *Id.*
- Commissioner Tennis supported the six-month extension because it "at least would give our staff some time to look for alternatives and not put refugee health in jeopardy." *Id.*

After this vote, the Refugee Health Services Contract went before the full Board for a final decision. Ahead of this meeting, St. Vincent

contacted all the county commissioners to correct the numerous false allegations made at the November 4th meeting and explain the important work that St. Vincent does to serve refugees, including LGBTQ refugees. *See* Attach. B, Ex. 1. Counsel for the Diocese of Lansing also sent a letter to the full Board informing them that, if the Board chose not to renew the Refugee Health Services Contract, the Board would likely run afoul of the preliminary injunction in *Buck*. *See* Attach. B, Ex. 2. The *Buck* injunction, among other things, prohibits those working “in concert” with MDHHS from declining to renew contracts with St. Vincent because of St. Vincent’s protected religious exercise. The letter explained that, since the Refugee Health Services Contract is a subcontract subject to and governed by a master contract with MDHHS, the Board is working in concert with MDHHS and is therefore covered by the injunction. *See id.*

After receiving these communications, the Board narrowly voted (8-6) to reauthorize the Refugee Health Services Contract for the full term on November 12, 2019.⁸ Unlike the November 4 meeting, this

⁸ Ingham Cty. Bd. of Comm’rs, Resolution 19-475, <https://perma.cc/HU6D-DTK6>.

reauthorization was kept on the “consent” agenda with limited comment. And, unlike the November 4 meeting, the Board had just received the attorney letter described above alleging unconstitutional targeting and retaliation.

Tellingly, at that vote, Commissioner Tennis (who chairs the Human Services Committee), said:

I don't think anyone on this Board is questioning the quality of services or the wonderful work St. Vincent's has done for the refugee community. The issue at hand is regarding other areas of St. Vincent's work and litigation pending against the State that goes against the principles of many of us on this Board.

He further stated that it was “truly horrible to be placed in a situation where we have to choose between services to a very vulnerable population and our own principles of equality and fairness.”⁹

C. The Board cancels St. Vincent's grant—and only St. Vincent's grant.

The following week, on November 18, 2019, the Community Agency Grant came before the Human Services Committee, the same committee

⁹ Audio: Ingham Cty. Human Servs. Comm. Meeting at 10:32 (Nov. 12, 2019), <https://perma.cc/X7EY-X4ZH>.

which had previously disparaged St. Vincent and its beliefs.¹⁰ In prior years, according to Commissioner Tennis, the Board tried “to make everyone happy” when issuing Community Agency Grants—even if it meant “expand[ing]” beyond the amount budgeted for grants.¹¹ Indeed, as Tennis noted, the Board “[o]ften” exceeded the budgeted allocation in these grants, “and sometimes we have a resolution to spend a little out of our contingency fund” to ensure any organization that provides “food, clothing, and shelter” receives a grant.¹²

But this time, the Committee voted not to renew St. Vincent’s grant. Compl. Attach. A. This vote contradicted the County Controller, who recommended that St. Vincent receive a \$4,500 grant. *Id.* In fact, as the chart adopted with the resolution demonstrates, the Controller recommended a grant for every organization that timely applied. *Id.* And for organizations which received a grant last year, the Controller recommended a grant of either the amount the organization requested,

¹⁰ Ingham Cty. Human Servs. Comm. Draft Minutes (Nov. 18, 2019), <https://perma.cc/U4VN-ST3Z>.

¹¹ See Audio: Ingham Cty. Human Servs. Comm. Meeting at 9:09 (May 20, 2019), <https://perma.cc/WT3Y-6ZA8>.

¹² See Audio: Ingham Cty. Human Servs. Comm. Meeting at 5:10 (May 20, 2019), <https://perma.cc/WT3Y-6ZA8>.

or the amount that the organization received last year, whichever was lower. *Id.* St. Vincent requested the same amount it received the prior year: \$4,500. *Id.*

The only explanation for this change was that the Commissioners wished to “provide funding for direct aid to the residents, including clothing, food, and shelter.” Compl. Attach. A. But St. Vincent sought the Community Agency Grant to provide direct aid to refugees, including assistance with home purchasing and maintenance, language services, and job skills training—the type of services contemplated by the grant. *Id.* at 10.

Other organizations received funding for services including home repairs and modification, “emotional support” via a crisis intervention hotline, “helping clients navigate systems that will reduce barriers that originally brought them to the criminal justice system,” and “telephone reassurance systems to provide assistance and social calls to elderly.” *Id.* at 7-8.

After the Committee voted to deny the grant to St. Vincent, St. Vincent’s outside counsel also sent a letter to the Board, listing several constitutional provisions and laws that would be broken if the Board

approved the resolution to deny the Community Agency Grant to St. Vincent. Attach. B, Ex. 3. That letter, unlike the letter from the Diocese's in-house counsel regarding the Refugee Health Services Contract, did not state that terminating the Community Agency Grant was prohibited by the *Buck* injunction. *See id.* But the Board did not heed the letter. Instead, it approved the resolution, thereby denying St. Vincent the Community Agency Grant. The chart adopted alongside the Board's resolution shows that every agency to request a grant received one—except St. Vincent. Compl. Attach. A. In other words, thirty-two organizations sought grants. Thirty-one of them received grants.

III. St. Vincent fears further retaliation.

Based on the Board's actions to date, St. Vincent fears that the Board, or the Health Department acting on its orders, will refuse to renew St. Vincent's statement of work for its \$40,000 Health Center Interpreting Contract, or otherwise interfere with that contract's renewal. Harris Decl. ¶ 20. St. Vincent also fears that Health Department staff will seek alternatives to contracting with St. Vincent. *Id.* St. Vincent believes this will occur not out of dissatisfaction with its services, but out of disagreement with its religious beliefs and its legal

actions to protect them. *Id.* And, as St. Vincent has other contracts and grants up for consideration by the Board while also litigating *Buck* at the Sixth Circuit, St. Vincent fears the Board will use its contracting and grantmaking authority to chill the defense of St. Vincent's First Amendment rights in court. *Id.* Because of these actions, St. Vincent fears that even if its 2020 contracts are renewed, it will be the last renewal. *Id.* "St. Vincent believes that further adverse action from the Board is certainly impending." *Id.* ¶ 21. St. Vincent stands to lose the ability to provide significant services to refugees, and refugees in Ingham County stand to lose out on crucial health care access services. *Id.*

LEGAL STANDARD

When granting a preliminary injunction, a court must balance four factors: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction." *City of Pontiac Retired Emps. Ass'n v. Schimmel*, 751 F.3d 427, 430 (6th Cir. 2014). "The purpose of a

preliminary injunction is simply to preserve the status quo[.]” *United States v. Edward Rose & Sons*, 384 F.3d 258, 261 (6th Cir. 2004).

ARGUMENT

I. St. Vincent is likely to succeed on the merits.

A. Ingham County has engaged in unlawful retaliation against St. Vincent.

This is as clear a retaliation claim as this Court is ever likely to see. “The law is well settled in this Circuit that retaliation under color of law for the exercise of First Amendment rights is unconstitutional” *Thaddeus-X v. Blatter*, 175 F.3d 378, 386 (6th Cir. 1999) (en banc) (quoting *Zilich v. Longo*, 34 F.3d 359, 365 (6th Cir. 1994)). And that is precisely what the Board did here.

To prove a claim of First Amendment retaliation, St. Vincent must show that “(1) [St. Vincent] engaged in protected conduct; (2) an adverse action was taken against [St. Vincent] that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two—that is, the adverse action was motivated at least in part by [St. Vincent’s] protected conduct.” *Id.* at 394. St. Vincent has demonstrated them all.

First, St. Vincent is engaged in activities protected by the First Amendment. St. Vincent's religious practices regarding the referral of unmarried and same-sex couples is a religious exercise protected by the First Amendment. The Chief Judge of this Court has already recognized that fact. *Buck v. Gordon*, No. 1:19-cv-286, 2019 WL 4686425, at *1 (W.D. Mich. Sept. 26, 2019) ("What this case is about is whether St. Vincent may continue to do this work and still profess and promote the traditional Catholic belief that marriage as ordained by God is for one man and one woman."). St. Vincent's speech, and its ability to remain silent, is also protected by the First Amendment, and also at stake in *Buck*, where Michigan seeks to compel it to make home study certifications contrary to its religious beliefs. Further, St. Vincent's decision to protect its First Amendment rights by bringing a lawsuit is an act protected by the First Amendment and 42 U.S.C. § 1983. *Thaddeus-X*, 175 F.3d at 394 ("[R]etaliation for the exercise of constitutional rights is itself a violation of the Constitution.").¹³

¹³ In free speech cases concerning government contractors, courts apply the *Pickering* test. See *Bd. of Cty. Comm'rs v. Umbehr*, 518 U.S. 668, 678 (1996); see also *Thaddeus-X*, 175 F.3d at 390 (noting test is often applied to Speech and Petition Clause retaliation claims). This case, however,

Second, St. Vincent has demonstrated that the Board's actions would deter a person of ordinary firmness from asserting their rights. The Board has already threatened not to renew a \$128,000 contract—and only renewed that contract because the Board felt forced to do so (as the Board said, the Health Department provided it with no alternative refugee services provider, and it was too late to “table” the Refugee Health Services Contract until one could be found).¹⁴ The Board accordingly pressured Health Department staff to come up with

also includes retaliation for rights exercised under the Free Exercise Clause, so the *Pickering* test would be an odd fit. *Cf. Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (applying Free Exercise clause to discriminatory grant denial with no mention of *Pickering* test). But, if the court applied this test, it would be easily satisfied. St. Vincent satisfies *Pickering*'s adverse action and retaliatory motivation prongs for the same reasons it satisfies them in the retaliation analysis. St. Vincent satisfies the public concern prong: it engaged in speech and litigation on a matter of public concern, as the considerable public comment, legislation, and executive action on the rights of religious child-placing agencies makes clear. *See Buck*, No. 1:19-cv-286, 2019 WL 4686425, at *6-9 (recounting history). The balancing prong tips strongly in favor of St. Vincent, which is vindicating its First Amendment rights and its ability to continue providing crucial services to those in need. *See id.* It tips strongly against the Board, whose interest in ensuring efficient and effective refugee services would actually be undermined by cutting off contracts and grants to St. Vincent—a fact the commissioners admit. *See infra* pp. 38-40.

¹⁴ Audio: Ingham Cty. Human Servs. Comm. Meeting at 1:13:06 (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ>.

alternatives to working with St. Vincent, so that it may terminate that and other contracts in the future. In the meantime, the Board denied St. Vincent's request for renewal of its Community Authorization Grant for \$4,500—making St. Vincent the only agency (out of thirty-two) that was denied funding for FY 2020, and the only agency that received less funding than was recommended by the County Controller. Now, a \$40,000 contract for similar services (the Health Center Interpreting Contract) is up for renewal. St. Vincent is concerned that the Board will act to prevent this contract's renewal, or reject St. Vincent's statement of work, in retaliation for St. Vincent's protect speech and conduct. *Supra* pp. 17-18. This would be a devastating blow to St. Vincent's ability to serve refugees, and to the refugees themselves. *See Harris Decl.* ¶ 20.

Threats less serious and less direct than these have been deemed sufficient to succeed on a First Amendment retaliation claim. Indeed, mere encouragement to terminate a private contract has been deemed sufficient by the Sixth Circuit. *See Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 726 (6th Cir. 2010) ("A person of ordinary firmness would be deterred from engaging in protected conduct, if as a result, a public official encouraged her employer to terminate the person's contract or to

have her change her behavior.”); *see also Kinney v. Weaver*, 367 F.3d 337, 357 (5th Cir. 2004) (en banc) (determining criminal justice professors stated a claim for retaliation—serious enough to deny qualified immunity—where police “deprived [plaintiffs] of the benefit of continued enrollment in their courses—a form of public patronage”).

Refusal to renew a contract has long been recognized as an example of prohibited retaliatory conduct. *See Bd. of Cty. Comm’rs*, 518 U.S. 668 (non-renewal of waste management contracts was sufficient to state claim for First Amendment retaliation); *see also Oscar Renda Contracting, Inc. v. City of Lubbock*, 463 F.3d 378, 380 (5th Cir. 2006) (“[T]he First Amendment protects a contractor whose bid has been rejected by a city in retaliation for the contractor’s exercise of freedom of speech” even when “the contractor had no pre-existing relationship with that city.”). Similarly, exclusion from County fora, even seemingly minor exclusions, can satisfy the standard. In *Country Mill Farms, LLC v. City of East Lansing*, the court determined that exclusion from a booth at a city-run farmer’s market was sufficient to state a retaliation claim. 280 F. Supp. 3d 1029, 1048 (W.D. Mich. 2017).

Here, St. Vincent has already suffered the loss of a County grant and is on notice, via the Board's open religious animus, that it stands to lose significant County contracts. Such a loss would have a serious adverse impact on St. Vincent's refugee services ministry. *See* Harris Decl. ¶¶ 17, 18, 19, 21. This more than suffices to constitute prohibited retaliatory conduct—while saying nothing of the Board's attempt to chill St. Vincent's ongoing defense of its religious freedom in *Buck*.

Finally, there is a causal connection between the adverse action and the assertion of St. Vincent's rights. In assessing this prong, “[c]ourts consider the totality of the circumstances, including temporal proximity between the protected conduct and the adverse action, when determining whether to draw an inference of a retaliatory motive.” *Country Mill Farms, LLC*, 280 F. Supp. 3d at 1048 (citing *Vereecke v. Huron Valley Sch. Dist.*, 609 F.3d 392, 401 (6th Cir. 2010)); *see also Hill v. Lappin*, 630 F.3d 468, 476 (6th Cir. 2010) (“temporal proximity and disparate treatment have been explicitly recognized by this court as being capable of proving a retaliatory motive,” in addition to “direct evidence” of such motive) (internal parentheses omitted). “Retaliation [claims] ‘rarely can be supported with direct evidence of intent.’” *Harbin-Bey v. Rutter*, 420

F.3d 571, 580 (6th Cir. 2005) (quoting *Murphy v. Lane*, 833 F.2d 106, 108 (7th Cir. 1987)). But that's exactly what the Court has before it here.

On November 4, 2019, multiple Commissioners stated that they had retaliatory intent, explicitly connecting their actions to St. Vincent's religious beliefs and actions to protect its rights. *See supra* pp. 10-11. On November 12, Commissioner Tennis and five other Commissioners voted against renewal of the contract, even after being informed that doing so would violate an existing injunction. Tennis reiterated the motive:

I don't think anyone on this Board is questioning the quality of services or the wonderful work St. Vincent's has done for the refugee community. *The issue at hand is regarding other areas of St. Vincent's work and litigation pending against the State that goes against the principles of many of us on this Board.*¹⁵

Just one week later, the Human Services Committee voted to strip grant funding from St. Vincent. The full Board voted to approve that recommendation. In this process, St. Vincent was singled out as the lone agency among thirty-two agencies who did not receive a grant. This evidence easily establishes a prima facie case of retaliation.

¹⁵ Audio: Ingham Cty. Human Servs. Comm. Meeting at 10:03 (Nov. 12, 2019), <https://perma.cc/X7EY-X4ZH> (emphasis added).

“If the plaintiff can establish a prima facie case, the burden shifts to the defendant to show that it would have taken the same action [in] the absence of the protected activity.” *Country Mill Farms, LLC*, 280 F. Supp. 3d at 1048. Ingham County cannot hope to meet that burden.

In addition to the direct statements of retaliatory intent, the Board took all these actions against the recommendations of County staff. Health Department staff recommended continuing to work with St. Vincent and the County Controller recommended that St. Vincent receive a grant. Compl. Attach. A. The Board followed the County Controller’s recommendations by funding thirty-one other agencies. *Id.* Chairman Tennis even acknowledged taking the “unusual” step of contravening the recommendations of the County Health Board, despite the fact it might have legal consequences.¹⁶ This is a sharp departure from the Board’s long, peaceful history of working with St. Vincent. And not once did the Board question St. Vincent’s stellar record or ability to perform the requested services, instead calling St. Vincent the “best game in town.”¹⁷

¹⁶ Audio: Ingham Cty. Human Servs. Comm. Meeting (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ>.

¹⁷ Audio: Ingham Cty. Human Servs. Comm. Meeting at 1:05:00 (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ>.

The Board's own conduct prohibits it from meeting its burden here. Accordingly, St. Vincent has established a likelihood of success on the merits of its First Amendment retaliation claim.

B. Ingham County has violated the Free Exercise Clause.

For similar reasons, St. Vincent is likely to prevail on its free exercise claim. St. Vincent engages in religious exercise by serving refugees. Harris Decl. ¶ 6. The loss of county grants and contracts will substantially burden that exercise. *See id.* at ¶ 11 (detailing adverse consequences for St. Vincent and those it serves). That religious exercise has been restricted and burdened pursuant to a system of individualized assessments, which is the “antithesis of a neutral and generally applicable law.” *Ward v. Polite*, 667 F.3d 729, 740 (6th Cir. 2012) (applying strict scrutiny to laws with individualized discretion). In making its grant and contracting the decisions, the Board engages in case-by-case determination of whether to engage in a particular contract or provide a particular grant, including analysis of which providers ought to receive those contracts and grants. Its individual resolutions approving contracts, lengthy discussion of individual contract renewals, and line-by-line consideration of Community Agency Grants make this

clear.¹⁸ Therefore its decision to burden St. Vincent's religious exercise through this process must face strict scrutiny.

The Board faces strict scrutiny for other reasons as well. The Free Exercise Clause prohibits government actions that target religion. In *Lukumi*, the Supreme Court struck down city ordinances which were neutral on their face, but in effect acted as "religious gerrymanders" and had the "impermissible object" of singling out a disfavored religious group. *Lukumi*, 508 U.S. at 524, 534. Indeed, the Board's actions here bear a disturbing resemblance to the very behavior condemned in that case—confirming that St. Vincent will succeed on the merits of its free-exercise claim, and that part of the Board's goal is to chill St. Vincent in both the assertion and legal defense of its religious freedom.

Here, the Board's actions in denying the grant had an impermissible object, and the secular ends asserted in defense of that decision were only pursued against St. Vincent. Thirty-two agencies sought funding, and thirty-one received it. The Board went against the recommendation of the County Controller in making this decision, and its decision to do so was

¹⁸ See generally, Ingham Cty. Human Servs. Comm. Minutes (Nov. 4, 2019), <https://perma.cc/ZV88-T8U8>; Compl. Attach. A.

wholly inconsistent with its treatment of other applications and the stated criteria for considering the grants. St. Vincent meets the grant criteria, providing direct services to refugees, helping them to meet basic needs, and other agencies received funding for services that were not basic needs. *See supra* pp. 15-16. Indeed, board members previously admitted that they try “to make everyone happy” in this process—even if it means “spend[ing] a little out of our contingency fund” to do so.¹⁹ But this generous standard was not applied toward St. Vincent—instead, it was singled out. The Board sought to punish St. Vincent for having religious beliefs the Board dislikes, and for defending them against the State. So, St. Vincent (and St. Vincent alone), was excluded from the grants. These facts are enough to show that the Board has engaged in unconstitutional targeting and that St. Vincent is likely to succeed on its free-exercise claim.

Moreover, the Board’s discriminatory statements are an independently sufficient basis to establish a free-exercise violation. In *Masterpiece*, the Supreme Court held that “[f]actors relevant to the

¹⁹ *See* Audio: Ingham Cty. Human Servs. Comm. Meeting at 9:09 (May 20, 2019), <https://perma.cc/WT3Y-6ZA8> (Chairman Tennis).

assessment of governmental neutrality include ‘the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body.’” *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1731 (2018) (quoting *Lukumi*, 508 U.S. at 540). Applied here, all those factors lay the Board’s religious animus bare—a fact confirmed by the numerous parallels between the Board’s hostility and that of the city council in *Lukumi*.

In *Lukumi*, “[t]he minutes and taped excerpts” of the city council meeting “evidence[d] significant hostility exhibited by . . . members of the city council, and other city officials toward the Santeria religion and its practice of animal sacrifice.” 508 U.S. at 541 (opinion of Kennedy, J.); *see also Masterpiece*, 138 S. Ct. at 1732 (“official expressions of hostility to religion in some of the commissioners’ comments” establish a lack of neutrality toward religion that the Free Exercise Clause commands).²⁰

²⁰ While *Lukumi*’s discussion of statements made against the Santeria religion only occurred in Justice Kennedy’s plurality opinion, no member of the Court disputed that they happened, or that they demonstrated religious hostility. And a seven-justice majority in *Masterpiece* considered

One councilman said that this religion is “in violation of everything this country stands for.” *Lukumi*, 508 U.S. at 541. Another said that he was “totally against” the religious practice at issue, and that it had no “real purpose.” *Id.* Still another, the city council president, plainly asked: “What can we do to prevent the Church from opening?” *Id.* This hostility “prompted” the city council to pass certain “resolutions and ordinances” designed to exclude the religious organization from the community. *Id.* at 526 (opinion of the Court). “The city council desired to undertake further legislative action, but Florida law prohibited a municipality from enacting legislation relating to animal cruelty that conflicted with state law.” *Id.* at 526-27. So, after it consulted with the Florida Attorney General’s Office to determine how it could nevertheless target religious animal sacrifices, the council began doing so. *Id.* at 527.

Almost thirty years later, in a different part of the country, and dealing with different religious beliefs, the “minutes and taped excerpts”

this portion of *Lukumi* and incorporated Justice Kennedy’s *Lukumi* plurality, holding that “contemporaneous statements made by members of the decisionmaking body” is a “relevant” “[f]actor . . . to the assessment of governmental neutrality.” See 138 S. Ct. at 1731 (quoting *Lukumi*, 508 U.S. at 540 (opinion of Kennedy, J.)). This holding clearly applies here.

of Ingham County Board of Commissioners meetings evidence the same, prohibited religious hostility. Commissioner Stivers said St. Vincent’s Catholic beliefs make it a “morally bankrupt” organization—one that is at odds, said Commissioner Tennis, with “equality and fairness.”²¹ Demeaning, baseless hyperbole was employed, as in *Lukumi*—with Commissioner Stivers suggesting that St. Vincent travels thousands of miles to the southern U.S. border for the purpose of separating children from their families and placing those children with “white Christian families.”²² And as in *Lukumi*, where a councilman considered that the religious organization’s right to free exercise is itself suspect, *see* 508 U.S. at 541 (wondering why this religion could be practiced in America when it was banned in Cuba), two Commissioners here said that St. Vincent’s continued participation in Ingham County social services should be denied *because of* St. Vincent exercising its First Amendment rights to have

²¹ Audio: Ingham Cty. Human Servs. Comm. Meeting at 1:05:00 (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ>; Audio: Ingham Cty. Human Servs. Comm. Meeting at 10:32 (Nov. 12, 2019), <https://perma.cc/X7EY-X4ZH>.

²² Audio: Ingham Cty. Human Servs. Comm. Meeting at 1:10:08 (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ>.

and defend religious beliefs that some dislike.²³ Put another way, at least two Ingham County Commissioners made very clear that the Board should punish St. Vincent for asserting its right to seek a preliminary injunction in *Buck*.

Indeed, the desire to revise existing law to specifically target unpopular religious beliefs not only mirrors *Lukumi*, but *Buck* as well. The Board was determined to cut off St. Vincent from Ingham County—just as the city council was determined to exclude the Santeria religion in *Lukumi*, and just as the Michigan Attorney General sought to exclude groups with St. Vincent’s religious beliefs from Michigan’s foster and adoption system in *Buck*. The Board explored cutting the duration of St. Vincent’s Refugee Health Services Contract short, so it was clear that St. Vincent had a limited time to “come around.”²⁴ It instructed the Health

²³ See Audio: Ingham Cty. Human Servs. Comm. Meeting (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ> (Commissioner Sebolt: St. Vincent’s “publicly stated stances [on marriage] and lawsuit against the State of Michigan” are reason to terminate Ingham County’s relationship with St. Vincent); see also Audio: Ingham Cty. Human Servs. Comm. Meeting at 10:03 (Nov. 12, 2019), <https://perma.cc/X7EY-X4ZH> (Commissioner Tennis: “St. Vincent’s . . . litigation pending against the State . . . goes against the principles of many of us on this Board”).

²⁴ Audio: Ingham Cty. Human Servs. Comm. Meeting at 1:13:35 (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ>).

Department's staff to find alternatives to St. Vincent, despite St. Vincent's "wonderful" refugee services work (Commissioner Tennis's description). *Id.* And, the first opportunity the Board had to cut funding off from St. Vincent without having to fret over alternatives, the \$4,500 grant, it took—even as doing so ignored the recommendation of the County Controller and violated standard Board practices.²⁵ Worse still, the Board took all these actions fully aware of the *Buck* litigation, where Chief Judge Jonker intervened to stop prevent Michigan from "stamp[ing] out St. Vincent's religious beliefs and replac[ing] it with [Defendant's] own." *Buck*, 2019 WL 4686425, at *11 (Michigan's demands of fealty to a State "orthodoxy" violate the Free Exercise Clause where—as here—the government actors knew that St. Vincent did not interfere with LGBTQ individuals accessing the social services at issue).²⁶

²⁵ Compl. Attach. A; Audio: Ingham Cty. Human Servs. Comm. Meeting at 1:05:00 (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ>.

²⁶ As the letter from Andrea Seyka, CEO of St. Vincent, to the Ingham County Board of Commissioners confirms, the Board was fully aware that St. Vincent serves LGBTQ refugees. Attach. B, Ex. 1. Similarly, in *Buck*, Michigan was well aware that, as Chief Judge Jonker explained, St. Vincent does not stand in the way of any unmarried or LGBTQ couple from fostering or adopting children.

In sum, both here and in *Lukumi*, “[l]egislators . . . devise[d] mechanisms, overt [and] disguised, designed to persecute or oppress a religion or its practices.” *See* 508 U.S. at 547. As a result, Ingham County’s actions are “contrary to the[] constitutional principles” of religious neutrality and general applicability. *Id.* Such actions must face strict scrutiny and will “survive” it “only in rare cases.” *Id.* at 546.

“It follows from what we have already said that [the Board’s actions] cannot withstand this scrutiny.” *Id.* Defendant has no valid interest, much less a compelling interest, in penalizing St. Vincent for actions that are protected by law. *See Buck*, 2019 WL 4686425, at *16. As for any interest in assuring services for LGBTQ refugees, Defendant’s “proposed action here actually undermines that goal” by denying funding to the *only* agency resettling LGBTQ refugees in Ingham County. *Buck*, 2019 WL 4686425, at *12. St. Vincent has therefore demonstrated a likelihood of success on its free exercise claim.

C. The Board’s actions also violate the Free Speech Clause.

The Board wants St. Vincent to engage in speech about marriage that is contrary to St. Vincent’s religious beliefs. If it does not do so, the Board will withhold contracts and grant funding for a separate program. That

is precisely the fact pattern of *Agency for Int’l Dev. v. AOSI*, 570 U.S. 205 (2013). In *AOSI*, those receiving federal grants were required to adopt “a policy explicitly opposing prostitution and sex trafficking.” *Id.* at 210. The Supreme Court held that requirement unconstitutional: “[T]he government may not place a condition on the receipt of a benefit or subsidy that infringes upon the recipient’s constitutionally protected rights, even if the government has no obligation to offer the benefit in the first instance.” *Id.* at 212. The government cannot “seek to leverage funding to regulate speech outside the contours of the program itself.” *Id.* at 214-15. *See also FCC v. League of Women Voters of California*, 468 U.S. 364 (1984) (prohibiting funding condition which “leveraged the federal funding to regulate the stations’ speech outside the scope of the program”).

The Board is seeking to leverage its funding power over refugee programs to regulate speech outside the contours of the programs it funds. It wants to withhold refugee services contracts, and has already denied a refugee services grant, unless St. Vincent adopts a different policy on marriage as part of its foster care and adoption ministry, a ministry the County does not fund. It seeks to compel St. Vincent to

provide written home study certifications to same-sex couples, rather than referring them elsewhere as permitted by law. *See* Op. at Page ID # 2503, *Buck*, 1:19-cv-286 (W.D. Mich. Sept. 26, 2019), ECF No. 69. The Board is taking these actions even though St. Vincent serves LGBTQ refugees under the grants and contracts that the Board seeks to cancel. This is a blatant attempt to use government funding in one area to compel speech in another, or as the Board put it, to get St. Vincent to “come around.”²⁷ Nor can the County hope to justify its actions under strict scrutiny. This violates the Free Speech Clause.

II. St. Vincent will suffer irreparable harm absent an injunction.

St. Vincent has established violations of its constitutional rights. “The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.” *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989). Thus, “to the extent that [Plaintiff] can establish a substantial likelihood of success on the merits of its First Amendment claim, it also has established the possibility of irreparable harm as a

²⁷ Audio: Ingham Cty. Human Servs. Comm. Meeting at 1:13:35 (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ>.

result of the deprivation of the claimed [First Amendment] rights.” *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998). Here, where the Board has already stripped funding for refugees in need, has threatened to strip more such funding, and has deliberately pressured St. Vincent over the ongoing *Buck* litigation, St. Vincent easily satisfies this prong.

III. An injunction is in the public interest and will not create substantial harm to others.

An injunction here is in the public interest. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *G & V Lounge, Inc. v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994). No one will be harmed by granting the injunction. The harm to St. Vincent “should the preliminary injunction not be issued must be weighed against the harm to others from the granting of the injunction.” *United Food & Commercial Workers Union, Local 1099 v. Sw. Ohio Reg’l Transit Auth.*, 163 F.3d 341, 363 (6th Cir. 1998).

Here, granting the injunction will maintain the status quo and ensure that refugees continue to receive critical services. As Commissioner Trubac acknowledged, refusal to work with St. Vincent would create an “unavoidable . . . lapse in these services, the availability of these services,

to the people who need them, there's not really any way around that"²⁸ Indeed, in reauthorizing St. Vincent's Refugee Health Services Contract (where an existing injunction left the Board no choice), the Board said that the services St. Vincent provides are "essential and critical to ensure refugees receive the necessary medical care they need and are able to manage health conditions within the first 90 days of their arrival."²⁹ Loss of St. Vincent's refugee services contracts may lead to loss of staff members, disruption in services to refugees, and difficulty obtaining the necessary services, such as translation services that only St. Vincent has the expertise to provide.

Moreover, St. Vincent is also irreparably harmed by the Board's continuing effort to use its control over refugee service contracts to pressure St. Vincent into changing its foster and adoption programs and its position in the ongoing *Buck* litigation. As Chief Judge Jonker has already found, "[a]llowing St. Vincent to continue its work" furthers the

²⁸ Audio: Ingham Cty. Human Servs. Comm. Meeting at 1:15:14 (Nov. 4, 2019), <https://perma.cc/NR7G-SRAJ>.

²⁹ Ingham Cty. Bd. of Comm'rs, Resolution 19-475, <https://perma.cc/HU6D-DTK6>.

public interest.³⁰ Moreover, it is manifestly in the public interest to allow parties to assert their constitutional rights in an Article III courtroom without governments attempting to restrict their actions from afar. St. Vincent has easily satisfied this requirement as well.

CONCLUSION

A jurisdiction's religious targeting does not need to rival the hostility presented in *Lukumi* to violate the Free Exercise Clause. But when it does—as it does here—the conduct falls “well below the minimum standard necessary to protect First Amendment rights.” 508 U.S. at 543. The Board's retaliation and targeting are brazen. To make matters worse, the Board is taking adverse actions against the only agency in Ingham County that can provide resettlement services to refugees. The Court should enjoin the Board to ensure that St. Vincent can exercise its First Amendment rights, preserve the status quo, and continue important services to refugees.

³⁰ Op. at Page ID # 2524, *Buck*, 1:19-cv-286 (W.D. Mich. Sept. 26, 2019), ECF No. 69.

Dated: December 16, 2019

Respectfully submitted:

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CERTIFICATE OF COMPLIANCE

This memorandum complies with the word limit of Local Rule 7.2(b)(i) because, excluding the parts exempted by that rule, it contains 8,178 words. The word count was generated using Microsoft Word 2016.

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