

No. 25-1684

**United States Court of Appeals
for the
Sixth Circuit**

AMERICAN FREEDOM LAW CENTER, INC.,

PLAINTIFF - APPELLANT,

v.

DANA NESSEL, in her official capacity as Attorney General of Michigan; **JOHN E. JOHNSON, JR.**, in his official capacity as Director, Michigan Department of Civil Rights, identified on initiating document as Agustin V. Arbulu,

DEFENDANTS - APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
HONORABLE PAUL L. MALONEY
CIVIL CASE No. 1:19-CV-153

APPELLANT'S BRIEF

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**DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTERESTS**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and 6th Cir. R. 26.1, Plaintiff-Appellant American Freedom Law Center, Inc. (“Plaintiff-Appellant”) states the following:

Plaintiff-Appellant is a nonprofit corporation. It does not have a parent corporation and no publicly held company owns 10% of its stock.

No party is a subsidiary or affiliate of a publicly owned corporation. There are no publicly owned corporations, not a party to the appeal, that have a financial interest in the outcome.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise
Robert J. Muise, Esq.

REASONS WHY ORAL ARGUMENT SHOULD BE PERMITTED

Pursuant to Rule 34(a) of the Federal Rules of Appellate Procedure and 6th Cir. R. 34(a), Plaintiff-Appellant respectfully requests that this Court hear oral argument. This case presents for review important legal issues regarding the constitutional rights arising under the First and Fourteenth Amendments and the standing necessary to advance those rights.

Oral argument will assist this court in reaching a full understanding of the issues presented and the underlying facts. Moreover, oral argument will allow the attorneys for both sides to address any outstanding legal or factual issues that this Court deems relevant.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise
Robert J. Muise, Esq.

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INTRODUCTION

The U.S. Constitution does not permit the Michigan Attorney General (“AG”) or the Michigan Department of Civil Rights (“MDCR”) (collectively referred to as “Defendants”) to weaponize their government offices to target political opponents.

In 2020, the district court denied Defendants’ motions to dismiss on standing grounds. *Am. Freedom Law Ctr., Inc. v. Nessel*, No. 1:19-cv-153, 2020 U.S. Dist. LEXIS 60622, at *17 (W.D. Mich. Jan. 15, 2020). As the court stated in that opinion: “Similar to the enforcement of the statute defining ‘political propaganda’ to describe the films at issue in *Meese* [*v. Keene*, 481 U.S. 465 (1987)], as representatives of the State government, Defendants’ endorsement of the SPLC’s list of hate groups constitutes a concrete and particular reputational injury to AFLC.” *Id.* Yet, after waiting for over four years¹ to rule on the parties’ cross-motions for summary judgment, the district court dismissed the case on standing grounds. The district court was correct the first time. Plaintiff has standing, and it is entitled to summary judgment on its constitutional claims as there is no genuine dispute of material fact.

STATEMENT OF JURISDICTION

On February 28, 2019, Plaintiff filed this action, alleging violations arising

¹ On *multiple* occasions, Plaintiff filed notices of matters under advisement, seeking to move the district court to take action on the pending motions. (See R-92 [notice of matter under advisement for more than two years]; R-94 [notice of matter under advisement for more than three years]; R-95 [notice of matter under advisement for more than four years]). Unfortunately, it took over *four years* for the district court to act, and when it did, it essentially reversed its earlier ruling made five years prior.

under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. On March 13, 2019, Plaintiff filed a (Corrected) First Amended Complaint with four exhibits. (R.7, R.7-1, First Am. Compl. & Exhibits 1-4, PageID.54-78). The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

Following the close of discovery, the parties filed cross-motions for summary judgment. (R.76, Pl.'s Mot. for Summ. J.; R.78, AG's Mot. for Summ. J., R.79, MDCR's Mot. for Summ. J.).

On July 10, 2025, the district court entered an order granting Defendants' motions for summary judgment and denying Plaintiff's motion for summary judgment. (R.102, Op. & Order, PageID.1735-63). Judgment was entered in favor of Defendants and against Plaintiff. (R.103, J., PageID.1764).

On August 2, 2025, Plaintiffs timely filed a notice of appeal, seeking review of the district court's Order. (R.104, Notice of Appeal, PageID.1765-66). This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES FOR REVIEW

I. Whether Plaintiff has standing to advance its claims when it has demonstrated that the challenged government action has (1) a chilling effect on its constitutionally protected activity, (2) harmed its public reputation, and (3) harmed its economic interests.

II. Whether Plaintiff is entitled to summary judgment on its claims arising under the First and Fourteenth Amendments when there is no dispute of material fact that Defendants placed the power of the State's government, with its authority, presumed neutrality, and assumed access to all the facts, behind the Southern Poverty Law Center's designation of Plaintiff as a "hate group"—a designation designed to harm and which does in fact harm Plaintiff.

III. Whether Plaintiff is entitled to prospective relief against Defendants, the officials responsible for the challenged policy directive, where declaratory and injunctive relief would restore Plaintiff's public reputation and reassure Plaintiff and those who associate with Plaintiff that they could freely participate in and support Plaintiff's constitutionally protected activity without being denigrated and labeled as a "hate group" by the government, appearing in government records as a "hate group," or being threatened by the government with investigation because they are deemed a "hate group."

STATEMENT OF THE CASE

I. Procedural Background.

On February 28, 2019, Plaintiff filed this action, alleging violations arising under the First and Fourteenth Amendments and 42 U.S.C. § 1983. On March 13, 2019, Plaintiff filed a (Corrected) First Amended Complaint with four exhibits. (R-7, R-71, First Am. Compl., PageID.54-78).

Defendants filed motions to dismiss, arguing, *inter alia*, that Plaintiff lacks standing to advance its constitutional claims. (R.12, AG Mot. to Dismiss; R.14, MDCR Mot. to Dismiss). On January 15, 2020, the district court issued its opinion and order denying the motions. (R.35, Op. & Order, PageID.631-51); *see also Am. Freedom Law Ctr., Inc.*, No. 1:19-cv-153, 2020 U.S. Dist. LEXIS 60622.

Following the close of discovery, the parties filed cross-motions for summary judgment. (R.76, Pl.’s Mot. for Summ. J.; R.78, AG’s Mot. for Summ. J., R.79, MDCR’s Mot. for Summ. J.). The motions were filed in January 2021. (*Id.*).

After waiting for more than *four years*, on July 10, 2025, the district court issued its ruling, granting Defendants’ motions and dismissing Plaintiff’s claims on standing grounds. (R.102, Op. & Order, PageID.1735-63). Judgment was entered in Defendants’ favor the same day. (R.103, J., PageID.1764). This timely appeal follows. (R.104, Notice of Appeal, PageID.1765-66).

II. Statement of Facts.

On February, 22, 2019, the “MDCR Director . . . and Attorney General Dana Nessel” issued a press release that was posted on the official *government* website of the Michigan Department of Civil Rights (www.michigan.gov/mdcr). (R.77-2, AG Dep. at 22:18-25 to 23:1-7 [Ex. 1], PageID.904; R.77-2, AG Dep. Ex. 2 [Ex.1]. PageID.921-22; R.77-3, AG Admissions ¶¶ 13-16 [Ex. 2], PageID.951-52; R.77-4, MDCR Admissions ¶¶ 14-16 [Ex. 3], PageID.957). This official announcement was

publicly displayed and posted on the government website until at least March 6, 2020. (R.77-3, AG Admissions ¶¶ 14-16 [Ex. 2], Page ID.952; R.77-4, MDCR Admissions ¶¶ 14-16 [Ex. 3], PageID.957). Thus, it remained posted for more than a year *after* the filing of this lawsuit, which occurred on February 28, 2019. (R.1, Compl.). This public announcement remains *to this day* part of the government’s official records and is available to the public via FOIA. (R.77-2, AG Dep. at 34:4-6 [Ex. 1], PageID.907; *see also* R.77-4, MDCR Admissions ¶ 14 [Ex. 3], PagID.957).

In this official, public statement, Defendants posted a hyperlink to the “Hate Map” of Michigan that was produced by the Southern Poverty Law Center (“SPLC”). The “Hate Map” listed Plaintiff American Freedom Law Center as the first “hate group” operating in Michigan. (R.77-5, Yerushalmi Suppl. Decl. ¶¶ 3-4 [Ex. 4], PageID.960-61; R.77-2, AG Dep. Ex. 3 [Ex. 1], PageID.923; R.77-2, AG Dep. at 28:3-15 [Ex. 1], PageID.905).

In this official, public statement, Defendants stated, “The [SPLC] report documents an increase in active extremist and hate organizations in Michigan.” The MDCR Director stated, “This is a troubling trend . . . These groups range in the ideological extremes from anti-Muslim, to anti-LGBT to black nationalists and white nationalists. Particularly of concern, over one half of the identified groups are located east of US-23 between Flint and Ann Arbor.” (R.77-2, AG Dep. Ex. 2 [Ex. 1], PageID.921).

The public release stated, “Attorney General Dana Nessel said she would stand up to hate in Michigan.” Defendant Nessel was quoted as stating, “Hate cannot continue to flourish in our state. . . . I have seen the appalling, often fatal results of hate when it is acted upon. That is why I am establishing *a hate-crimes unit* in my office -- *to fight against* hate crimes *and the many hate groups* which have been allowed to proliferate *in our state*.” (emphasis added). (R.77-2, AG Dep. Ex. 2 [Ex. 1], PageID.921). The Attorney General *personally* approved her comments for this press release. (R.77-2, AG Dep. 44:6-25 to 45:1-21 [Ex. 1], PageID.909; R.77-2, AG Dep. Ex. 9 [Ex. 1], PageID.936).

This official announcement further states,

In addition to Attorney General Nessel’s hate crime unit initiative, MDCR is developing a process by which it can document hate and bias incidents in the state. Hate and bias incidents are those instances where an action does not rise to the level of a crime or a civil infraction. For instance, in Lansing’s Old Town over the President’s Day weekend experienced (sic) a spat of flyering by the white nationalist group Patriot Front. Flyers removed by residents and visitors, but posted on social media, show the group was targeting immigrants as well as Jews with the flyers. The flyers are protected under the First Amendment and do not rise to a crime.

(R.77-2, AG Dep. Ex. 2 [Ex. 1], PageID.921-22). In other words, “[i]n *addition to* . . . the hate crime unit initiative, MDCR” publicly announced that this government agency was going to track and record in a database what it considers “hate and bias incidents,” even if they are “protected under the First Amendment.” (*Id.*).

The MDCR has previously “experimented” with a hate and bias incidents database. (R.77-6, MDCR Am. Resp. to Interrogs. at ¶ 6 [Ex. 5], PageID.965). There is *no* current MDCR policy that prohibits the creation of a hate and bias incidents database. (R.77-7, MDCR Dep. at 31:22-25 to 32:1 [Ex. 6], PageID.972). No one was reprimanded or censored in any way by the MDCR for this official, public announcement of the government’s intent to create a hate and bias incident database. (R.77-7, MDCR Dep. at 27:15-25 to 29:1; 31:22-25 to 32:1 [Ex. 6], PageID.971-72). The MDCR director has authority to post press releases such as this (R.77-2, AG Dep. Ex. 2 [Ex. 1], PageID.921-22) on the official government website of the MDCR (R.77-7, MDCR Dep. at 27:15-17 [Ex. 6], PageID.971).

The day that this official course of action was publicly announced by Defendants, Plaintiff received a media inquiry from *The Detroit News*, asking for a response to the announcement that “Attorney General Nessel is going to be investigating” the SPLC designated hate groups, which includes Plaintiff. (R.77-8, AFLC’s Resp. to AG Interrogs. ¶ 3 [Ex. 7], PageID.981-82).

Plaintiff formally responded on February 28, 2019, by filing this federal civil rights lawsuit. (R.1, Compl.). The same day Plaintiff filed its initial Complaint, Defendant Nessel commented on her official Facebook page about a news story published by *The Detroit News* regarding Plaintiff’s lawsuit. The title of *The Detroit News* story was “Law center files federal lawsuit against Nessel, state civil rights

director.” The “law center” referenced in the story is Plaintiff, and the story was about *this* legal action. (R.77-2, AG Dep. at 41:18-25 to 42:1-5 [Ex. 1], PageID.908-09; R.77-2, AG Dep. Exs. 6 & 7 [Ex. 1], PageID.928-32). Rather than publicly disavow any efforts to “fight against . . . the many hate groups” in Michigan, including Plaintiff, Defendant Nessel doubled-down, posting a link to *The Detroit News* story on her official Facebook page² with the following comment:

Only in Trump’s America do you get sued for pledging to prosecute hate crimes and *pursue organizations that engage in illegal conduct against minority communities*. I will never back down on my commitment to protect the safety of all Michiganders. Bring it.

(R.77-2, AG Dep. at 41:1-25 to 42:1-22 [Ex. 1], PageID.908-09; R.77-2, AG Dep. Exs. 6 [Facebook post] & 7 [*The Detroit News* story] [Ex. 1], PageID.928-32). Despite her public endorsement of Plaintiff as a “hate group” and her vow to “fight against” such “hate groups,” the Attorney General’s designated witness testified on September 23, 2020, as follows:

Q. Do you have any information as you sit here today that AFLC has ever engaged in any activity that is not legal or protected by the constitution?

A. No.

(R.77-2, AG Dep. at 37:9-12 [Ex. 1], PageID.907; *see also id.* at 16:17-25 to 18:1-5, PageID.902-03; R.77-3, AG Admissions ¶ 7 [admitting that the AG has “no credible

² Defendant Nessel uses this Facebook page to post information about official matters related to her duties as the AG. (R.77-2, AG Dep. at 41:10-12 [Ex. 1], PageID.908; R.77-3, AG Admissions ¶¶ 20-21 [Ex. 2], PageID.953).

information that Plaintiff has ever engaged in any criminal activity”] [Ex. 2], PageID.950; *see also* R.77-5, Yerushalmi Suppl. Decl. ¶ 2 [Ex. 4], PageID.960; R.24-1, Yerushalmi Decl. ¶ 4, PageID.443). And there is no reasonable dispute that the “hate group” label is a pejorative label. (R.77-2, AG Dep. at 16:8-13; 37:5-7 [Ex. 1], PageID.902, 907; *see also* R.77-5, Yerushalmi Suppl. Decl. ¶ 2 [Ex. 4], PageID.960; R.24-1, Yerushalmi Decl. ¶¶ 2-13, PageID.443-46).

The Attorney General, via “Assistant Attorney General Sunita Doddamani, Lead Prosecutor/Director, Michigan Department of Attorney General’s Hate Crimes Unit”—the person chosen to respond on behalf of the Attorney General—stated in a *sworn* response to an interrogatory submitted by Plaintiff that “[t]he Hate Crimes Unit does not investigate groups.” (R.77-9, AG Resp. to Interrogs. ¶ 2 [Ex. 8], PageID.989). Yet, this same witness (Ms. Sunita Doddamani), in a sworn affidavit disclosed via discovery (the affidavit was executed on October 30, 2019, in response to a FOIA request submitted on behalf of, *inter alia*, Church Militant/St. Michael’s Media), “attest[ed] to the fact that the Hate Crimes Unit [was] in the midst of an open and ongoing *criminal investigation* involving . . . St. Michael’s Media, Inc., and/or Church Militant, and *their* possible violation of state criminal statutes.” (R.77-2, AG Dep. at 42:24-25 to 44:1-4 [Ex. 1], PageID.909; R.77-2, AG Dep. Ex. 8 [emphasis added] [Ex. 1], PageID.933; *see also* R.77-2, AG Dep. at 100:16-25 to 101:1-20 [Ex.

1], PageID.915). Moreover, the AG, through her designated witness, testified at deposition as follows:

Q. Did you conduct an investigation of that complaint [of Church Militant]?

A. Could you define investigation?

Q. Well, you used the term investigation previously. You said *you investigate and you prosecute hate crimes. Using your understanding of the term investigation* then did you investigate that organization?

A. Yeah. I mean in my term of what an investigation means it means any follow up to a complaint that's received to verify its accuracy or inaccuracy, so any follow up, *yes*.

(R.77-2, AG Dep. at 28:25 to 29:1-9 [emphasis added] [Ex. 1], PageID.905; *see also* R.77-2, AG Dep. at 117:18-23 [testifying that there is no formal written definition of investigation] [Ex. 1], PageID.916).³

“Church Militant/St. Michael’s Media” is designated by SPLC as a “hate group” operating in Michigan. (R.77-2, AG Dep. at 78:7-25 to 79:1-9 [Ex. 1], PageID.912; R.77-2, AG Dep. Ex. 3 [Ex. 1], PageID.923). In the “formal report” of this criminal investigation by the Hate Crimes Unit, the report states, “Church Militant is listed by the Southern Poverty Law Center as an LGBT-Hate Group.” (R.77-2, AG Dep. at 78:7-25 to 79:1-9 [Ex. 1], PageID.912; R.77-2, AG Dep. Ex. 24 [Ex. 1], PageID.943).

³ *See United States v. Lawrence*, 308 F.3d 623, 631-32 (6th Cir. 2002) (“Perjury occurs when a witness, testifying under oath or affirmation, ‘gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory.’”) (quoting *United States v. Dunnigan*, 507 U.S. 87, 94 (1993)).

In an email dated February 22, 2019, the Attorney General’s *Chief of Staff* at the time wrote, “*AG has publicly stated that the [hate crimes] unit will be looking at hate groups from the SPLC.*” (R.77-2, AG Dep. at 46:19-25 to 47:1-14 [Ex. 1], PageID.910; R.77-2, AG Dep. Ex. 10 [Ex. 1], PageID.940). In an email exchange dated February 28, 2019, the AG directed Ms. Rossman-McKinney, the AG’s “head of the communications department” (R.77-2, AG Dep. at 46:2-4 [Ex. 1], PageID.910), to change “hate crimes” to “hate groups” in an official, public response to this lawsuit. (R.77-2, AG Dep. at 51:1-25 to 52:1-10 [Ex. 1], PageID.911; R.77-2, AG Dep. Ex. 12 [“We will rely on our own research and investigation in making a determination as to what *organizations* are operating as *hate groups* in this state, and what action is required in order to ensure the public is safe from any illegal activity which stems from *such organizations.*”] [emphasis added] [Ex. 1], PageID.941).

Defendants have made these public pronouncements about “hate groups”—pronouncements which specifically include Plaintiff—even though Defendants have *zero* evidence that Plaintiff or anyone associated with Plaintiff has ever engaged in any criminal conduct. (See R.77-3, AG Admissions ¶ 7 [Ex. 2], PageID.950). Rather, Plaintiff engages in conduct that is protected by the First Amendment (as does/did Church Militant, for that matter, see <https://www.churchmilitant.com/>). (R.77-2, AG Dep. at 37:9-12 [Ex. 1], PageID.907; *see also* R.24-1, Yerushalmi Decl. ¶¶ 2, 4, PageID.443; R.77-5, Yerushalmi Suppl. Decl. ¶ 2 [Ex. 4], PageID.960).

The Hate Crimes Unit’s criminal investigation of Church Militant was ideologically driven (the complaining witness is expressly identified as “an openly gay married man” and Church Militant is expressly described as an “LGBT-Hate Group”). (R.77-2, AG Dep. at 78:7-25 to 79:1-9 [Ex. 1], PageID.912; R.77-2, AG Dep. Ex. 24 [Ex. 1], PageID.943). The allegations *directly related* and *attributed to* Church Militant, as set forth in the official criminal report (the “formal report”), include the complainant receiving “hate mail, and hate comments *due to* the constant comments about his role within the Catholic Church by Church Militant. . . .⁴ Church Militant also posted a photograph of [the complainant] and his husband on their website. There was a link on the photograph that gave the exact map to his address.”⁵ (R.77-2, AG Dep. at 78:7-25 to 79:1-9 [Ex. 1], PageID.912; R.77-2, AG Dep. Ex. 24 [Ex. 1, PageID.943-44]). Thus, there was an official *investigation* initiated by the

⁴ There was no allegation or evidence that Church Militant was responsible for sending the “hate mail” or making “hate comments,” whatever those might be. These “hate” statements are not detailed nor are they described as a “true threat.” *See, e.g., Va. v. Black*, 538 U.S. 343, 359 (2003) (defining “true threats” as “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals”). In other words, there was no basis for initiating an investigation of Church Militant. Moreover, Michigan’s ethnic intimidation statute, “the vehicle by which Michigan prosecutes any form of hate crime,” did not include at the time sexual orientation as a category. (R.77-2, AG Dep. at 13:24-25 to 14:1-14 [Ex. 1], PageID.901-02).

⁵ There is no evidence nor allegation that Church Militant had any involvement in the slashing of the tires of the complainant (an allegation in the “official report”). (R.77-2, AG Dep. at 32:13-18 [Ex. 1], PageID.906). Indeed, Church Militant was located in Michigan (R.77-2, AG Dep. Ex. 3 [Ex. 1], PageID.923), and the complainant resides in San Diego, California, so there was no likelihood that Church Militant was involved.

Hate Crimes Unit of an *organization* identified by the SPLC as a “hate group” operating in Michigan based on allegations of non-criminal activity. In fact, based on the allegations in the official report, Church Militant’s activity that served as the basis for the investigation is protected by the First Amendment as a matter of law. *See Bible Believers v. Wayne Cty.*, 805 F.3d 228, 243 (6th Cir. 2015) (en banc) (“The First Amendment offers sweeping protection that allows all manner of speech to enter the marketplace of ideas. This protection applies to loathsome and unpopular speech with the same force as it does to speech that is celebrated and widely accepted. The protection would be unnecessary if it only served to safeguard the majority views. In fact, it is the minority view, including expressive behavior that is deemed distasteful and highly offensive to the vast majority of people, that most often needs protection under the First Amendment.”).

The Attorney General ultimately declined prosecution. (R.77-2, AG Dep. at 30:1-6; 90:3-11 [Ex. 1], PageID.906, 913; R.77-2, AG Dep. Ex. 29 [Ex. 1], PageID.945).

Despite the public fanfare of the creation of the Hate Crimes Unit and Defendants’ public claims that there has been “an increase in active extremists and hate organizations in Michigan” and a “proliferat[ion]” of “hate groups [within the] state,” as of September 23, 2020, there had been no (*i.e.*, zero) prosecutions by the Hate Crimes Unit. (R.77-2, AG Dep. at 20:3-15 [Ex. 1], PageID.903).

Prior to filing this lawsuit, on February 19, 2019, Defendant Nessel “testified” before the Michigan House Judiciary Committee as follows:

We also have now a Hate Crimes Unit to ***combat*** the exponential rise in hate crimes against members of our minority communities, as well as ***tackling the 28 identifiable hate groups that are currently operating in Michigan.***⁶ [(Judiciary Committee, Michigan House TV, <http://www.house.mi.gov/Archive.html?video=JUDI-021919.mp4>.)]

(R.77-2, AG Dep. Ex. 5 [Ex. 1], PageID.926; R.77-2, AG Dep. at 37:17-25 to 39:1-23 [emphasis added] [Ex. 1], PageID.907-08).

During the “Question and Answer” session following her presentation, the Attorney General also answered the following question from Representative Ryan Berman regarding her comment about the “identifiable hate groups”:

Q. I was surprised to hear you say there’s 28 hate groups in Michigan. Can you give us more about that or the criteria of . . . who is saying that? [(*Id.*, at 35:08.)]

A. *That information was received from the Southern Poverty Law Center and they do a detailed analysis on that. . . . And I think a lot of it has to do with when you have some sort of an organized group—and part of the reason for that groups’ existence has to do with some sort of animosity against minority community members. So if you have a group that speaks out, whether it’s through their postings on the internet or whether it’s in public appearances, and the seeming purpose of the group or a large part of the purpose of the group has to do with disparaging members of minority communities, I think the SPLC frequently connotes that to be a hate group*⁷ and then they do a further

⁶ In addition to being listed as one of the 31 “hate groups” in Michigan as noted in the February 22, 2019 press release, Plaintiff was also listed among the 28 “hate groups” identified by SPLC prior to releasing the updated “hate map” that was linked to the press release. (See R.24-1, Yerushalmi Decl. ¶ 5, PageID.444).

⁷ Consequently, Defendant Nessel knows full well why SPLC lists Plaintiff as a “hate group”—it’s because Plaintiff “speaks out” and the SPLC disagrees with the content

assessment I believe to see if they think that group is a threat of any manner. And I think a lot of that has to do with whether there stockpiling of weapons or threats of violence or things of that nature. [(*Id.*, at 35:20–37:15.)].

(R.77-2, AG Dep. Ex. 5 [Ex. 1], PageID.927; R.77-2, AG Dep. at 38:14-25 to 40:1-3 [Ex. 1], PageID.908). The video of this hearing is available to the public, and it is subject to FOIA. (R.77-2, AG Dep. at 40:2-3 [Ex. 1], PageID.908).

Per Plaintiff's sworn responses to the AG's interrogatories:

The false "hate group" designation is part of SPLC's political attack against conservative organizations based on the organization's political views on various issues. If the organization successfully promotes the values and ideals of conservative Christians and Jews, as does Plaintiff, it is likely that the organization will be on SPLC's "hate group" list. *It is because of Plaintiff's political views that it is on this list.*

Because of this harmful political propaganda effort, Plaintiff must spend money, time, effort, and other resources combating this false "hate group" designation. Plaintiff does this principally through its website, social media, and direct mailing. Plaintiff's efforts are undermined by the fact that Defendants (the Michigan Attorney General and the Director of the Michigan Department of Civil Rights), two powerful government officials, have given the government's endorsement of and imprimatur to this pejorative designation. *By doing so, Defendants have now placed the power of the state's government, with its authority, presumed neutrality, and assumed access to all the facts, behind SPLC's*

and viewpoint of that speech. In the SPLC "Intelligence Report," which was also included via a hyperlink in the February 22, 2019 press release, the SPLC lists as a "key moment" of hate the fact that Plaintiff "authored an amicus brief in support of [President Trump's travel] ban, claiming the country is at war with the kinetic militancy of jihadists and the cultural challenge of anti-Western, anti-constitutional Islamic law and mores." (See R.77-5, Yerushalmi Suppl. Decl. ¶ 3 [Ex. 4], PageID.960-61; see generally R.77-2, AG Dep. at 34:8-25 to 35:1-20 [Ex. 1], PageID.907; R.77-2, AG Dep. Ex. 4 ["Intelligence Report" excerpt] [Ex. 1], PageID.924).

designation of Plaintiff as a “hate group.” This government endorsement has exacerbated the harm that the “hate group” label has already caused, and continues to cause, Plaintiff.

The reputational harm that this “hate group” label carries with it can be readily seen through the number of times news agencies have used this demeaning and derogatory label when reporting on Plaintiff. A fully representative sample of such news articles was attached as Exhibit A to the Yerushalmi declaration (Doc. No. 24-1). These articles were obtained by conducting a simple Google search including the terms “American Freedom Law Center,” “hate group,” and “Southern Poverty Law Center,” which yielded over 66,000 results. This result was then filtered to include only Google-labelled “news” sources, and then further filtered to eliminate articles about this litigation and about other groups represented by Plaintiff and labelled “hate groups” by SPLC.

This demeaning and derogatory label is also dangerous. The Family Research Council (FRC), a conservative organization labeled a “hate group” by SPLC, was attacked by an armed domestic terrorist who wounded an FRC employee during his violent rampage. The terrorist, Floyd Lee Corkins, admitted during the course of his prosecution that he specifically relied on SPLC’s “hate group” designation and its hate map as the basis for his attack. This terrorist attack was widely reported. *See, e.g.,* <https://www.washingtonexaminer.com/southern-poverty-law-center-website-triggered-frc-shooting>.

A number of major donors fear that if it was made known publicly that they contributed to Plaintiff, they would be publicly admonished and vilified because of the “hate group” label.

Political opponents use the “hate group” designation to publicly attack and vilify large charitable organizations who donate to Plaintiff. A news story regarding this effort can be found here: “America’s Biggest Christian Charity Funnels Tens of Millions to Hate Groups,” Sludge (March 19, 2019) (<https://readsludge.com/2019/03/19/americas-biggest-christian-charity-funnels-tens-of-millions-to-hate-groups/>).

Because there are ways in which major, private donors can donate anonymously through funds such as Schwab and Fidelity, groups relying upon SPLC’s “hate group” designation are publicly attempting to cower

these financial institutions into blocking such anonymous donations. A news story about this effort can be found here: “America’s Biggest Charities Are Funneling Millions to Hate Groups From Anonymous Donors,” Sludge (February 19, 2019) (<https://readsludge.com/2019/02/19/americas-biggest-charities-are-funneling-millions-to-hate-groups-from-anonymous-donors/>). Anonymous donors have donated to Plaintiff through this method.

Political opponents also use the “hate group” designation to try and convince banks and other financial institutions to deny Plaintiff financial services. A news story about this effort can be found here: “Leftists Hound Mastercard, Demanding It Put Conservative ‘Hate Groups Out of Business,’” PJ Media (June 27, 2019) (<https://pjmedia.com/trending/leftists-hound-mastercard-demanding-it-put-conservative-hate-groups-out-of-business/>).

The AmazonSmile charitable program has expressly denied Plaintiff access to this program based on SPLC’s designation of Plaintiff as a “hate group.”

In sum, the false “hate group” designation causes financial and reputational harm to Plaintiff. And this harm is exacerbated by the fact that the Michigan Attorney General and the Director of the Michigan Department of Civil Rights have endorsed this designation, giving it greater credibility and weight in the mind of the public and in the “mind” of those organizations, such as Amazon, who discriminate against Plaintiff because of this false designation.

(R.77-8, AFLC Resp. to AG Interrogs. ¶ 4 [Ex. 7], PageID.982-85; *see also* R.24-1, Yerushalmi Decl. ¶¶ 2-13, PageID.443-46). Per the testimony of AFLC Co-Founder David Yerushalmi:

I can tell you this for certain, the press release itself, and we can talk subsequently about the actions articulated in that press release, but the press release itself caused immeasurable harm to the reputation of the American Freedom Law Center.

Q. How so?

A. Have you read the press release? The press release itself states very clearly that these hate groups listed by the Southern Poverty Law Center -- and then let's just pause there, hate groups. A government agency defined to and created to protect the civil rights of Michigan's -- Michiganders I think you guys are called, and the attorney general whose job it is to prosecute crimes embrace the very idea that there are hate groups, number one. Number two, that the SPLC is an authoritative source for who those hate groups are and what they're doing apparently, and they then link to that list which identifies the American Freedom Law Center. If I spoke that way of everyone on your city block and linked to a list of people on that city block I think you'd be well-founded to say that damaged immeasurably your reputation. This isn't John Smith and Mary Allen. This is the head of the MDCR and the attorney general of the State of Michigan. Now, I don't know about you but when I'm confronted by the chief law enforcement officer who throws these kinds of accusations around about my organization, and therefore also about me personally, I become extremely concerned. And when I get phone calls and people reaching out to me trying to understand what this is all about and donors who are fearful about being exposed as a result of this you can bet your bottom dollar that AFLC has been damaged and that damage continues because at no time has the attorney general or the MDCR or the commission, as you put it, apologized and retracted any statement by anyone on their behalf.

Q. But to be accurate, Doctor Arbulu never referenced the American Freedom Law Center as a hate group?

A. No, to be accurate he did. He --

Q. Can you show --

A. Let me finish. He linked to the Southern Poverty Law Center hate list, and as you and I both know a link is just like a footnote in the old days. In fact, I will tell you, since I practice in the state of New York, the New York Supreme Court just issued a ruling that if you're going to cite to [a] case or source or to another document you have to link to it in your document. We all understand in the new media environment a link is as good as an explicit reference. And, in fact, all you have to do is go to social media sources and any online magazine, they don't use footnotes anymore. They use links. The MDCR, Mr. Arbulu, and Ms. Nessel specifically referenced the AFLC in that press release by linking to the SPLC hate list, and that's why, Mr. Robinson, they did it. They linked to that hate list because they wanted you and me and the rest of the reading public to go look and see AFLC's name so they would think

twice about donating, they would think twice about associating, they would think twice about going for representation to this group because they're now radioactive. We are now radioactive. And you can look and see how we had to respond to that. We had to put a brave face on in our blogs and press releases we've covered with Ms. Barranco and say, well, we're proud of it, because that's the only way you can respond to that kind of attack. Because if you say we're cowered by it, we're frightened by it, no one is going to believe that we can litigate on their behalf. So we had to put a brave face on in the public domain. But I will tell you [that] when the chief law enforcement officer of even, you know, a little village in Michigan [makes these kinds of public statements, it] is going to bother me, [but] when the State of Michigan and someone as ideologically driven as Ms. Nessel [does], who clearly opposes everything we stand for, that's frightening.

(R.77-10, Yerushalmi Dep. at 127:7-25 to 130:1-20, Errata [Ex. 9], PageID.996-97, 999) (emphasis added).

Plaintiff is identified as a "hate group," with SPLC as the source, in a spreadsheet that is retained by the AG as a government record subject to FOIA.

(R.77-2, AG Dep. 94:10-25 to 96:1-6 [Ex. 1], PageID.914; R.77-2, AG Dep. Ex. 31 [Ex. 1], PageID.946).

Plaintiff submitted the below interrogatory to the AG, and her sworn response follows:

Would you publicly acknowledge/make a public announcement, at least equal in scope, manner, and duration to the Press Release, affirming that Plaintiff is not a hate group and affirming that you disagree with the Southern Poverty Law Center's designation of Plaintiff as a hate group? If not, why not? And if not, what part of this proposed public announcement do you disagree with?

RESPONSE: No, because the Hate Crimes Unit does not investigate hate groups, and the Hate Crimes Unit hasn't researched or

investigated the Southern Poverty Law Center’s designation of Plaintiff as a hate group. Consequently, I cannot say whether Plaintiff is a hate group or whether the Southern Poverty Law Center’s designation is correct.

(R.77-9, AG Resp. to Interrogs. ¶ 6 [Ex. 8], PageID.990). MDCR responded similarly. (R.77-6, MDCR Am. Resp. to Interrogs. ¶ 8 [same] [Ex. 5], PageID.966).

The district court’s conclusion that Plaintiff lacks standing is wrong.

STANDARD OF REVIEW

This Court “review[s] a district court’s decision regarding a plaintiff’s Article III standing *de novo*.” *Murray v. United States Dep’t of Treasury*, 681 F.3d 744, 748 (6th Cir. 2012). Moreover, this Court reviews *de novo* an appeal from a grant of summary judgment. *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 242 (6th Cir. 2015). Summary judgment is appropriate when there exists no genuine dispute with respect to the material facts and, in light of the facts presented, the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. However, “[t]he facts must be viewed in the light most favorable to the non-moving party and the benefit of all reasonable inferences in favor of the non-movant must be afforded to those facts.” *Bible Believers*, 805 F.3d at 242 (reversing the grant of summary judgment by the district court in favor of the defendants and remanding for entry of judgment in favor of the plaintiffs).

Furthermore, because this case implicates First Amendment rights, this Court must closely scrutinize the record without *any* deference to the district court. *Hurley*

v. Irish-Am. Gay, Lesbian & Bisexual Group of Bos., 515 U.S. 557, 567 (1995) (requiring courts to “conduct an independent examination of the record as a whole, without deference to the trial court” in cases involving the First Amendment); *see also Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984) (same).

SUMMARY OF THE ARGUMENT

As representatives of the State government, Defendants’ official endorsement of the SPLC’s list of hate groups constitutes a concrete and particular reputational injury to Plaintiff. The stigmatization caused by Defendants’ actions also constitutes an injury in fact for standing purposes, as does the adverse economic effects and the chilling effect on Plaintiff’s constitutionally protected activities caused by Defendants’ actions. Moreover, it is undisputed that Plaintiff does not engage in any criminal activity and that it has been placed on SPLC’s list of hate groups because of its constitutionally-protected activities. Consequently, enjoining Defendants from endorsing the SPLC’s hate list and applying the “hate group” designation to Plaintiff, as well as expunging all governmental records that apply this designation to Plaintiff (records which currently exist and which are discoverable, at a minimum, through FOIA) would at least provide some restoration of Plaintiff’s reputation. In sum, Plaintiff has established standing in this case. It has suffered an injury in fact that is fairly traceable to Defendants’ conduct and likely to be redressed by the requested relief.

Plaintiff is entitled to summary judgment on its claims arising under the First and Fourteenth Amendments as there is no genuine dispute of material fact that Defendants placed the power of the State's government, with its authority, presumed neutrality, and assumed access to all the facts, behind the SPLC's designation of Plaintiff as a "hate group"—a designation designed to harm and which does in fact harm Plaintiff's constitutionally protected activities. Plaintiff's activities and associations—the very activities and associations that subject them to pejorative labeling, appearing in government records, and threats of investigation and surveillance by Defendants—are protected by the U.S. Constitution.

Plaintiff's injury is redressible. A judicial determination that Defendants violated the Constitution would reassure Plaintiff and those who associate with it (and donate to it) that they could freely participate in (or support) Plaintiff's constitutionally protected activities without Plaintiff (and, by extension, those who associate with Plaintiff) being denigrated and labeled as a "hate group" *by the government, appearing in government records* as a "hate group," or *being threatened by the government* with investigation because they are deemed a "hate group." The requested relief will also help repair Plaintiff's public reputation that Defendants have damaged.

ARGUMENT

I. Plaintiff Has Standing to Advance Its Constitutional Claims.

The Constitution confines the federal courts to adjudicating actual “cases” or “controversies.” U.S. Const. art. III, § 2. To give meaning to Article III’s “case” or “controversy” requirement, the courts have developed several justiciability doctrines, including standing. “The doctrine of standing gives meaning to these constitutional limits by identifying those disputes which are appropriately resolved through the judicial process.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014) (internal quotations and citation omitted).

“In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.” *Warth v. Seldin*, 422 U.S. 490, 498 (1975). To invoke the jurisdiction of a federal court, “[a] plaintiff must allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.” *Allen v. Wright*, 468 U.S. 737, 751 (1984).

Plaintiff has standing for several reasons. First, Plaintiff’s injury is not simply a “subjective” chill on speech, which distinguishes this case from *Laird v. Tatum*, 408 U.S. 1, 10-11 (1972). In addition to the chilling effect present here, Plaintiff has established that Defendants have harmed its public reputation. “As a matter of law, reputational harm is a cognizable injury in fact.” *NCAA v. Governor of N.J.*, 730 F.3d

208, 220 (3d Cir. 2013) (citing *Meese*); *Gully v. NCUA Bd.*, 341 F.3d 155, 161-62 (2d Cir. 2003) (stating that “[t]he Supreme Court has long recognized that an injury to reputation will satisfy the injury element of standing”); *Bowers v. Nat’l Collegiate Athletic Ass’n*, 475 F.3d 524, 542-43 (3d Cir. 2007) (finding standing to challenge a sanction that “affect[s] [the plaintiff’s] reputation”); *Foretich v. United States*, 351 F.3d 1198, 1213 (D.C. Cir. 2003) (“Case law is clear that where reputational injury derives directly from an unexpired and un-retracted government action, that injury satisfies the requirements of Article III standing to challenge that action.”).

As noted by this Circuit, “where claims of a chilling effect are accompanied by concrete allegations of reputational harm, the plaintiff has shown injury in fact.” *Parsons v. United States DOJ*, 801 F.3d 701, 711-12 (6th Cir. 2015) (citing *Meese* and distinguishing *Laird v. Tatum*); *see also Parsons*, 801 F.3d at 712 (“Stigmatization also constitutes an injury in fact for standing purposes.”).

Thus, the “*concrete* [evidence] of reputation harm” in addition to the chilling effect caused by Defendants’ actions are sufficient to show injury in fact and for the Court to exercise its jurisdiction to hear and decide this case. *See also Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 139 (1951) (holding that charitable organizations designated as “Communist” by the Attorney General had standing to challenge their designations because of, *inter alia*, “damage [to] the reputation of the organizations in their respective communities”); *see also United States v. Accra Pac*,

Inc., 173 F.3d 630, 633 (7th Cir. 1999) (stating that “being put on a blacklist . . . is treated as immediately redressible harm because it diminishes (or eliminates) the opportunity to practice one’s profession even if the list . . . does not impose legal obligations”); *Doe v. Nat’l Bd. of Med. Exam’rs*, 199 F.3d 146, 153 (3d Cir. 1999) (holding that a student had standing to challenge a rule requiring that he be identified as disabled because such a label could sour the perception of him by “people who can affect his future and his livelihood”). The Second Circuit’s decision in *Oneida Indian Nation v. United States DOI*, 789 F. App’x 271 (2d Cir. 2019), further supports Plaintiff’s argument here. In *Oneida Indian Nation*, the court stated, in relevant part:

Appellant argues that DOI’s name change “vindicated the Wisconsin tribe’s erroneous claim to the Oneida Nation legacy” and thereby “diminished the [New York Oneidas’] status and reputation as the original Oneida Nation, or its direct successor.” Appellant Br. 38-39. To support its reputational injury argument, Appellant cites cases in which a plaintiff successfully asserted reputational injury based on a derogative or negatively perceived label applied to the plaintiff by the government. Appellant Br. 41-42 (citing, *inter alia*, *Meese v. Keene*, 481 U.S. 465, 473-77 (1987) (state senator seeking to exhibit films had standing to challenge the Department of Justice’s characterization of films as “political propaganda”); *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 139-40 (1951) (certain nonprofit organizations designated as “Communist,” injuring their right to be free from defamatory statements); *Parsons v. United States Dep’t of Justice*, 801 F.3d 701, 711-12 (6th Cir. 2015) (group labeled “hybrid gang” in a government report entitled “National Gang Threat Assessment”)).

Those cases are distinguishable. *In each of them, the government attached a derogatory label to the plaintiff*, whereas here the government has said nothing about the New York Oneidas, let alone anything derogatory. *See Meese*, 481 U.S. at 469-70 (the Department of Justice applied label “political propaganda” to films pursuant to statutory

definition); *McGrath*, 341 U.S. at 125 (government entities purported to act pursuant to Presidential authorization to designate organizations as Communist “after appropriate investigation and determination”); *Parsons*, 801 F.3d at 707 (government agency described group as “hybrid gang” in threat assessment report).

In any event, that DOI published the new name *does not imply that the federal government regards Appellant as lesser*. As Appellant admits, DOI’s policy is to approve automatically any name chosen by a tribe. By contrast, *Meese*, *McGrath*, and *Parsons* involved negative labels applied by the Government based on certain statutory criteria or the Government’s own analysis.

Oneida Indian Nation, 789 F. App’x at 277 (emphasis added).

In sum, the reputational harm alone set forth in the record is sufficient to establish Plaintiff’s standing to advance its claims. But there is more.

Plaintiff also presented evidence that Defendants’ actions have harmed its economic interests. By giving the *government’s* imprimatur to SPLC’s designation, Defendants have given credibility to the widespread efforts to financially harm groups designated by SPLC as “hate groups.”⁸ The pejorative “hate group” label deters donors from supporting Plaintiff and financial institutions from affiliating with Plaintiff. (See R.24-1, Yerushalmi Decl. ¶¶ 9-13, PageID.445-46). This harm to Plaintiff’s “economic interests” is also sufficient to confer standing. *See Friends of*

⁸ This attack on conservative organizations by labeling them as “hate groups” is widespread. It is a concerted effort to financially and publicly harm these organizations, including Plaintiff. *See* Sludge, “America’s Biggest Christian Charity Funnels Tens of Millions to Hate Groups,” at <https://readsludge.com/2019/03/19/americas-biggest-christian-charity-funnels-tens-of-millions-to-hate-groups/> (criticizing Christian charity organization for donating to SPLC-designated “hate groups,” expressly including Plaintiff).

the Earth, Inc. v. Laidlaw Env'tl. Servs., Inc., 528 U.S. 167, 184 (2000) (acknowledging that government actions injuring a plaintiff's "economic interests" create the necessary injury-in-fact to confer standing).

Indeed, as the incident involving the Family Research Council, one of the conservative organizations labelled a "hate group" by the SPLC, demonstrates, this false and pejorative labelling is dangerous. It provides justification for deranged individuals to engage in violence against conservative groups.

In sum, there is no question that Plaintiff is a *subject* of Defendants' actions. Plaintiff is one of the 31 "hate groups" identified by Defendants in their official press release. And this government endorsement of the pejorative "hate group" label causes harm to Plaintiff.

As the district court previously and correctly ruled:

AFLC has established the three elements necessary for standing: injury in fact, causation and redressability. . . .

AFLC has shown . . . that the announcement itself provides a basis *to initiate and maintain* this lawsuit. By implicitly endorsing SPLC's list of hate groups, which includes AFLC, the announcement of the Policy Directive injured AFLC. . . .

By referencing SPLC's publications as part of the rationale of the Policy Directive, *the Press Release created an injury in fact*. SPLC has designated AFLC as a hate group located in Michigan. The Press Release relies on SPLC's reports as evidence of "an increase in active extremist and hate organizations in Michigan." (Press Release PageID.71.) The Press Release calls this evidence a "troubling trend." (*Id.*) Nessel commits the Office of the Attorney General to "stand up to hate in Michigan" by "establishing a hate-crimes unit in my office." (*Id.*)

Similar to the enforcement of the statute defining “political propaganda” to describe the films at issue in *Meese*, as representatives of the State government, *Defendants’ endorsement of the SPLC’s list of hate groups constitutes a concrete and particular reputational injury to AFLC. . . .*

AFLC has identified legal authority which, on the facts established with Yerushalmi’s affidavit,⁹ demonstrate the causation and redressability elements for standing. Defendants cannot control who SPLC labels a hate group. By referencing SPLC’s reports as the justification for the Policy Directive, . . . Defendants have placed the State’s imprimatur on SPLC’s list of hate groups in Michigan, which includes AFLC. . . . Notably, AFLC contends it does not engage in any criminal activity and further contends it has been placed on SPLC’s list of hate groups because of its constitutionally-protected activities. Should the Court ultimately affirm this allegation and enjoin Defendants in some manner from applying the Policy Directive to AFLC, the outcome would provide some restoration of AFLC’s reputation.

Am. Freedom Law Ctr., Inc., 2020 U.S. Dist. LEXIS 60622, at *16-19 (emphasis added). The district court was correct in 2020. It’s recent ruling, which was a 180-degree departure from its prior ruling, is patently wrong. Plaintiff has standing to advance its claims. And because the parties agree that there is no dispute of fact, this Court should reverse the district court’s ruling on standing and remand the case for entry of judgment in Plaintiff’s favor. *Bible Believers*, 805 F.3d at 242 (reversing the grant of summary judgment by the district court in favor of the defendants and remanding for entry of judgment in favor of the plaintiffs).

We turn now to the substantive claims.

⁹ Consequently, the district court’s prior standing decision was not based simply on allegations in the pleadings; it was based on uncontested facts set forth in the Yerushalmi declaration.

II. Defendants Violated Plaintiff's First Amendment Rights.

A. The First Amendment Protects Against Direct *and* Indirect Interference.

For official acts that infringe First Amendment liberties, the Supreme Court has “long recognized that even regulations aimed at proper governmental concerns can restrict unduly the exercise of rights protected by the First Amendment.” *Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575, 592 (1983). “Freedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle government interference.” *Bates v. Little Rock*, 361 U.S. 516, 523 (1960); *see also NAACP v. Button*, 371 U.S. 415, 433 (1963) (stating that First Amendment “freedoms are delicate and vulnerable, as well as supremely precious in our society,” and “[b]ecause [these] freedoms need breathing space to survive, government may regulate in the area only with narrow specificity”). As the Court stated in *NAACP v. Alabama*, 357 U.S. 449, 460-61 (1958), “[S]tate action which may have the *effect* of curtailing the freedom to associate is subject to the closest scrutiny.” (emphasis added). In constitutional terms, “closest scrutiny” means “strict scrutiny,” “the most demanding test known to constitutional law.” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).

Using the power and authority of the Office of the AG and the MDCR to pejoratively label and to threaten investigations and surveillance on law-abiding citizens, such as Plaintiff, solely because of their dissident political views does not

promote a legitimate interest of government, and it has the calculated *and intended* effect of suppressing constitutional freedoms in violation of the First Amendment. *Cf. NAACP v. Ala.*, 357 U.S. at 461 (“In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, *even though unintended*, may inevitably follow from varied forms of governmental action.”) (emphasis added).

“No state action that limits protected speech will survive strict scrutiny unless the restriction is narrowly tailored to be the least-restrictive means available to serve a compelling government interest.” *Bible Believers*, 805 F.3d at 248. Defendants have no legitimate interest for their actions in this case. *See generally Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) (“[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.”) (internal quotations and citation omitted). Defendants’ actions do not survive any level of constitutional scrutiny.

B. Defendants’ Actions Deter the Exercise of Fundamental Rights.

Plaintiff’s activities and associations—the very activities and associations that subject them to pejorative labeling, appearing in government records, and threats of investigation and surveillance by Defendants—are protected by the Constitution. *See Bible Believers*, 805 F.3d at 243. The Supreme Court “has recognized that expression on public issues ‘has always rested on the highest rung of the hierarchy of First

Amendment values.’ ‘[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.’” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (citations omitted).

“Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs. While the freedom of association is not explicitly set out in the Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition.” *Healy v. James*, 408 U.S. 169, 181 (1972) (citations omitted). This Court echoed this fundamental understanding, stating, “Freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of freedom of speech.” *Connection Distributing Co. v. Reno*, 154 F.3d 281, 295 (6th Cir. 1998) (citing *NAACP v. Ala.*, 357 U.S. at 460). “[I]mplicit in the right to engage in activities protected by the First Amendment” is “a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). “Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as [the Supreme] Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly.” *NACCP v. Ala.*, 357 U.S. at 460; *see also NAACP v. Button*, 371 U.S. at 431 (noting that “association for litigation may be the most effective form of political association”). Thus, it cannot be gainsaid

that Plaintiff's "[f]reedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle government interference," such as Defendants' actions in this case. *Bates*, 361 U.S. at 523; *see also Fed. Election Com. v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 255 (1986) ("The fact that the statute's practical effect may be to discourage protected speech is sufficient to characterize [it] as an infringement on First Amendment activities.").

Additionally, in the First Amendment context, "[t]he threat of sanctions may deter . . . almost as potently as the actual application of sanctions." *Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965); *see also N.H. Right to Life Political Action Comm. v. Gardner*, 99 F.3d 8, 13 (1st Cir. 1996); *Minn. Citizens Concerned for Life v. Fed. Election Comm'n.*, 113 F.3d 129, 132 (8th Cir. 1997) ("Sufficient hardship is usually found if the regulation . . . chills protected First Amendment activity."). Even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify prospective relief. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

As the court in *Clark v. Library of Congress*, 750 F.2d 89, 94 (D.C. Cir. 1984), stated, "Exacting scrutiny is especially appropriate where the government action is motivated solely by an individual's lawful beliefs or associations, for government action so predicated is imbued with the potential for subtle coercion of the individual to abandon his controversial beliefs or associations."

In this case, the challenged actions plainly deter or “interfere” with protected First Amendment activity. As stated by the district court in its 2020 ruling:

Defendants’ general disagreement with the scope and nature of their new initiative does not undermine the *effect* that the announcement of the new policy [has] on AFLC’s reputation and activities, as established by the affidavit submitted by AFLC.

Am. Freedom Law Ctr., Inc., 2020 U.S. Dist. LEXIS 60622, at *26 (emphasis added).

This “effect” violates the Constitution.

C. Designating Plaintiff a “Hate Group” Violates Plaintiff’s Constitutional Rights.

By designating Plaintiff a “hate group” on account of its political views, Defendants violated Plaintiff’s fundamental rights. This principle was affirmed in *Meese v. Keene*, 481 U.S. 465 (1987). In *Meese*, the plaintiff, a politician, sued to prevent the government from designating as “political propaganda” certain films he was sponsoring. The Court held that the plaintiff had standing to challenge this official designation as a violation of the First Amendment because the plaintiff’s showing of the films with the designation would cause injury to his reputation.¹⁰ *Id.*

¹⁰ Because Keene “submitted detailed affidavits, including one describing the results of an opinion poll and another containing the views of an experienced political analyst” (*Meese*, 481 U.S. at 473-74) to show how this *indirect* governmental action of labelling the films at issue in that case would cause harm to *his* reputation does not impose a similar evidentiary burden on Plaintiff in this case, particularly where the reputational harm is clearly evident and direct (*i.e.*, identifying Plaintiff as a “hate group”). Moreover, as set forth in the Yerushalmi declaration, Plaintiff has presented similar evidence demonstrating the harm caused by the “hate group” labelling. (R.24-1, Yerushalmi Decl. ¶¶ 2-13, PageID.443-46).

However, because the Court believed that the term “political propaganda” was “neutral,” “evenhanded,” and without any “pejorative connotation,” it concluded that the act placed “no burden on protected expression” and was thus constitutional. *Id.* at 480. Consequently, it logically follows that had the Court determined that this official designation was not “neutral,” “evenhanded,” or without any “pejorative connotation,” then a constitutional violation would have occurred. As the dissent points out, when the government places pejorative labels on speech, “[i]t places the power of the Federal Government, with its authority, presumed neutrality, and assumed access to all the facts, behind an appellation *designed* to reduce the effectiveness of speech in the eyes of the public” in violation of the First Amendment. *Id.* at 493 (Blackmun, J., joined by Brennan, J., and Marshall, J., dissenting).

This is precisely the situation presented here. Through the challenged actions of Defendants, which were announced via an official press release posted on a Michigan government website on February 22, 2019, and reaffirmed by the AG in a public Facebook post, in her responses to questions from Representative Berman, and by her Chief of Staff, *inter alia*, Defendants have given the government’s imprimatur to and official endorsement of the *designation of Plaintiff* as a “hate group,” *identifying Plaintiff* as one of the 31 “hate groups” operating in Michigan and posting SPLC’s “hate map” to prove it.

As stated by the district court in its 2020 ruling:

In *Meese*, the Supreme Court found that the injury to reputation was caused by the Department of Justice's enforcement of a statute that used the term "political propaganda." *Meese*, 481 U.S. at 476. And, enjoining *application of the term* "political propaganda" would "at least partially redress the reputational injury[.]" *Id.* Notably, AFLC contends it does not engage in any criminal activity and further contends it has been placed on SPLC's list of hate groups because of its constitutionally-protected activities. Should the Court ultimately affirm this allegation and enjoin Defendants in some manner from applying the Policy Directive to AFLC, the outcome would provide some restoration of AFLC's reputation.

Am. Freedom Law Ctr., Inc., 2020 U.S. Dist. LEXIS 60622, at *18-19 (emphasis added).

The undisputed facts "affirm" that Plaintiff "does not engage in any criminal activity and [that] it has been placed on SPLC's list of hate groups because of its constitutionally-protected activities," warranting this Court to enter judgment in Plaintiff's favor and to grant prospective relief to "provide some restoration of [Plaintiff's] reputation."

D. Threatening Investigations and Surveillance Violates Fundamental Rights.

By threatening investigations and surveillance of private citizens, such as Plaintiff, on account of their dissident political views, Defendants have violated the Constitution. Indeed, the investigation of Church Militant by the AG, as described above, creates a chilling effect on all groups that come within the sights of the AG and her "Hate Crimes Unit." This investigation was politically-motivated as there was no semblance of any criminal activity on the part of the organization from the beginning,

and it is chilling for all groups listed by SPLC as a “hate group,” particularly in light of the AG’s *public* pledge to “combat,” “fight” and “tackle” them. This chilling effect is exacerbated by the nature of criminal investigations, which the AG conducts under the cloak of secrecy. (*See* R.77-2, AG Dep. at 33:8-15 [Ex. 1], PageID.906). With the “click of a button” (R.77-2, AG Dep. at 30:13-23 [“There’s a button on the website to submit a complaint or contact the [hate crimes] unit.”] [Ex. 1], PageID.906), political opponents can make a complaint to the AG’s Hate Crimes Unit similar to the bogus complaint made against Church Militant, and thus trigger the politically-charged “Hate Crimes Unit” to leap into action. When government officials, specifically law enforcement officials, weaponize their office like Defendants have done here, our Constitution, especially the First Amendment, is undermined.

The Supreme Court has repeatedly acknowledged the constitutional infirmities associated with the threat of government surveillance and investigations, which in turn dampen the exercise of First Amendment rights. *DeGregory v. N.H. Atty. Gen.*, 383 U.S. 825, 829 (1966) (“Investigation is a part of lawmaking and the First Amendment, as well as the Fifth, stands as a barrier to state intrusion of privacy.”); *Gibson v. Fla. Legislative Comm.*, 372 U.S. 539, 560-61 (1963) (“We deal here with the authority of a State to investigate people, their ideas, their activities. . . . When the State or Federal Government is prohibited from dealing with a subject, it has no constitutional privilege to investigate it.”) (Douglas, J., concurring); *NAACP v. Ala.*, 357 U.S. at

449; *Barenblatt v. United States*, 360 U.S. 109, 126 (1959) (“The provisions of the First Amendment . . . of course reach and limit . . . investigations.”); *Socialist Workers Party v. Att’y Gen.*, 419 U.S. 1314, 1319 (1974) (noting the dangers inherent in investigative activity that “threatens to dampen the exercise of First Amendment rights”); *Clark*, 750 F.2d at 89 (applying strict scrutiny in a case challenging the federal government’s investigation into an employee’s political beliefs and associations); *Presbyterian Church v. United States*, 870 F.2d 518, 522-23 (9th Cir. 1989) (“A judicial determination that the INS surveillance of the churches’ religious services violated the First Amendment would reassure members that they could freely participate in the services without having their religious expression being recorded by the government and becoming part of official records.”).

The AG has publicly pledged to “combat,” “fight,” and “tackle” “hate groups” in Michigan, which includes Plaintiff. “A judicial determination” that Defendants have violated the First Amendment “would reassure” Plaintiff and those who associate with Plaintiff “that they could freely participate in” their constitutionally protected activity without “being recorded [or surveilled] by the government and becoming part of official records.”

III. Targeting Plaintiff for Adverse Treatment Based on Its Political Views Violates the Equal Protection Clause.

“[U]nder the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds

acceptable, but deny use to those wishing to express less favored or more controversial views.” *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). Thus, when government officials target individuals or groups for disparate treatment based on their political *views*, as Defendants have done here, their actions violate the Equal Protection Clause *in addition to* the First Amendment.

The AG has not pledged to “combat,” “fight,” or “tackle” ACLU Michigan (<https://www.aclumich.org/>), for example, even though this organization engages in similar nonprofit work as Plaintiff, but from a different political perspective and view.¹¹ SPLC targets Plaintiff because of its political views, and Defendants have employed government resources to join this attack for the same reason. This fact is self-evident as Defendants admit that Plaintiff does not engage in any criminal or illegal activity—it engages in activity that is fully protected by the Constitution. And the AG admitted during her “testimony” to the Michigan Legislature that “speaking out” publicly and expressing a particular viewpoint gets you on the list of “hate groups.” (See, e.g., R.77-2, AG Dep. Ex. 5 [Ex. 1], PageID.927). This “disparaging” or offensive speech that lands you on the “hate group” list is fully protected by the First Amendment. See, e.g., *Am. Freedom Def. Initiative v. Suburban Mobility Auth.*, 978 F.3d 481, 501 (6th Cir. 2020) (holding that the restriction of an ad that was

¹¹ Many consider the ACLU to be anti-Christian, so why is this organization not designated a “hate group”? See, e.g., F. LaGard Smith, *ACLU: The Devil’s Advocate: The Seduction of Civil Liberties in America* (1996).

offensive to Muslims was unconstitutional and noting that “a speech restriction disfavoring ideas that offend discriminates based on viewpoint, in violation of the First Amendment”) (internal citations, quotations, and punctuation omitted); *Bible Believers*, 805 F.3d at 243 (stating that First Amendment protection “applies to loathsome and unpopular speech with the same force as it does to speech that is celebrated and widely accepted,” and noting that “expressive behavior that is deemed distasteful and highly offensive to the vast majority of people [is the speech] that most often needs protection under the First Amendment”).

Because Defendants’ disparate treatment of Plaintiff burdens its fundamental rights, Defendants have violated the First and Fourteenth Amendments. *See Bible Believers*, 805 F.3d at 256 (stating that disparate treatment that burdens a fundamental right, such as freedom of speech, violates equal protection).

IV. Declaratory and Injunctive Relief Are Appropriate.

The requested relief is appropriate for the reasons stated by this Court in *Parsons*:

The Juggalos in this case *also suffer alleged harm due to the force of a DOJ informational label*. While the 2011 NGIC Report *is not the designation itself, it reflects the designation* and includes an analytical component of the criminal activity performed by Juggalo subsets, classifying the activity as gang-like. As in *Meese*, “[a] judgment declaring the [action in question] unconstitutional would eliminate the need to choose between [First Amendment-protected activity] and incurring the risk that public perception of this criminal enforcement scheme will harm appellee’s reputation.”

* * *

An order declaring the 2011 NGIC Report unconstitutional and setting it aside would abate the reflection of Juggalo criminal activity as gang or gang-like by the Agencies. . . . *The declaration the Juggalos seek would likely combat at least some future risk that they would be subjected to reputational harm and chill due to the force of the DOJ's criminal gang or gang-like designation.*

Parsons, 801 F.3d at 716-17 (internal citations omitted) (emphasis added).

A judicial determination that Defendants violated the Constitution would reassure Plaintiff and those who associate with it (and donate to it) that they could freely participate in (or support) Plaintiff's constitutionally protected activities without Plaintiff (and, by extension, those who associate with Plaintiff) being denigrated and labeled as a "hate group" by the government, appearing in government records as a "hate group," or being threatened by the government with investigation because they are deemed a "hate group." The requested relief will also help repair Plaintiff's public reputation that Defendants have damaged.

Accordingly, the Court should grant judgment in Plaintiff's favor and declare, at a minimum, that Defendants' public endorsement of SPLC's designation of Plaintiff as a "hate group" violates Plaintiff's constitutional rights and that threatening investigations of Plaintiff because of this designation violates Plaintiff's constitutional rights. The Court should enter an order enjoining Defendants from making such false and harmful public statements about Plaintiff. *See Rooks v. Krzewski*, No. 306034, 2014 Mich. App. LEXIS 604, at *91 (Mich. Ct. App. Apr. 3, 2014) ("Numerous other courts, both federal and state, have held that a trial court may enjoin a defendant from

making defamatory statements after there has been a determination that the speech was, in fact, false.”) (citing cases). And the Court should issue an order expunging all official government records that list, endorse, affirm, infer, or include Plaintiff as a “hate group,” *see Smith v. Nixon*, 807 F.2d 197, 204 (D.C. Cir. 1986) (stating that “a court may order expungement of records in an action brought . . . directly under the Constitution, without violating the intricate statutory provisions that purport to be the ‘exclusive’ means by which [government records] may . . . be alienated or destroyed”), which includes, *at a minimum*, all of the records identified during discovery.

“A judgment declaring the [action in question] unconstitutional would eliminate the need to choose between [First Amendment-protected activity] and incurring ***the risk that public perception*** of this criminal enforcement scheme will harm [Plaintiff’s] reputation.” *Parsons*, 801 F.3d at 717 (emphasis added). The declaration Plaintiff “seek[s] would likely combat at least some future risk that they would be subjected to reputational harm and chill due to the force of [Defendants’ ‘hate group’] designation.” *Id.*

The district court’s contrary conclusion is wrong and should be reversed.

CONCLUSION

Based on the foregoing, the Court should reverse the district court and remand for the entry of judgment in Plaintiff’s favor on its constitutional claims.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

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Counsel for Plaintiff-Appellant

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 32(a), the foregoing Brief is proportionally spaced, has a typeface of 14 points Times New Roman, and contains 11,068 words, excluding those sections identified in Fed. R. App. P. 32(f).

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that all of the participants in this case are registered CM/ECF users.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

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**ADDENDUM: DESIGNATION OF RELEVANT
DISTRICT COURT DOCUMENTS**

No.	PageID #	DESCRIPTION
R.7	54-69	Corrected First Amended Complaint
R.7-1	70-78	Exhibits 1 – 4
R.24-1		Declaration of David Yerushalmi
R.35	631-51	Opinion and Order Denying Motions to Dismiss
R.77-2	897-947	Exhibit 1: Deposition of the Office of the Attorney General with Exhibits
	917-20	AG Deposition Exhibit 1: Notice of Deposition
	921-22	AG Deposition Exhibit 2: February 22, 2019 Press Release
	923	AG Deposition Exhibit 3: SPLC “Hate Map” of Michigan
	924	AG Deposition Exhibit 4: SPLC “Intelligence Report” (excerpt)
	925-27	AG Deposition Exhibit 5: AG Brief (excerpt)
	928	AG Deposition Exhibit 6: AG Facebook Post
	929-32	AG Deposition Exhibit 7: Detroit News Story
	933-35	AG Deposition Exhibit 8: Affidavit of Sunita Doddamani
	936-39	AG Deposition Exhibit 9: Nessel Email Approving Press Release

	940	AG Deposition Exhibit 10: Email from AG's Chief of Staff
	941-43	AG Deposition Exhibit 12: Nessel Email re: Changing "Hate Crimes" to "Hate Groups"
	943-44	AG Deposition Exhibit 24: "Formal Report" of Criminal Investigation of Church Militant
	945	AG Deposition Exhibit 29: Letter Declining Prosecution re: Church Militant
	946-47	AG Deposition Exhibit 31: Spreadsheet Identifying American Freedom Law Center as a "Hate Group"
R.77-3	948-54	Exhibit 2: Attorney General's Admissions (excerpts)
R.77-4	955-58	Exhibit 3: MDCR's Admissions (excerpts)
R.77-5	959-61	Exhibit 4: Supplemental Declaration of David Yerushalmi
R.77-6	962-67	Exhibit 5: MDCR's Amended Responses to Interrogatories (excerpts)
R.77-7	968-76	Exhibit 6: Deposition of MDCR (Mary Engelman) (excerpts)
R.77-8	977-86	Exhibit 7: Plaintiff's Responses to the Attorney General's Interrogatories (excerpts)
R.77-9	987-93	Exhibit 8: Attorney General's Responses to Interrogatories (excerpts)
R.77-10	994-99	Exhibit 9: Deposition of David Yerushalmi with attached Errata (excerpts)
R.77-11	1000-001	Exhibit 10: Declaration of Robert J. Muise

R.102	1735-63	Opinion and Order Granting Defendants' Motions for Summary Judgment and Denying Plaintiff's Motion for Summary Judgment
R.103	1764	Judgment
R.104	1765-66	Notice of Appeal