IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

AMERICAN FREEDOM LAW CENTER, INC.,
Plaintiff,

v.

DANA NESSEL, in her official capacity as Attorney General of Michigan; JAMES WHITE, in his official capacity as Director, Michigan Department of Civil Rights,
Defendants.

No. 1:19-cv-153

Hon. Paul L. Maloney

ORAL ARGUMENT REQUESTED

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

AMERICAN FREEDOM LAW CENTER
Robert J. Muise, Esq. (P62849)
P.O. Box 131098
Ann Arbor, Michigan 48113
(734) 635-3756
rmuise@americanfreedomlawcenter.org

Attorneys for Plaintiff

Kyla L. Ragatzki (P81082)
Christina M. Grossi (P67482)
Ann M. Sherman (P67762)
Michigan Department of Attorney General
P.O. Box 30754
Lansing, Michigan 48909
(517) 335-7573

Attorneys for Defendant Attorney General Dana Nessel

Ron D. Robinson (P35927)
Tonya C. Jeter (P55352)
Michigan Department of Attorney General
Civil Rights Division
3030 W. Grand Boulevard, Suite 10-200
Detroit, Michigan 48202
(313) 456-0200

Attorneys for Defendant MDCR Director James White

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page**

Rules

ISSUES PRESENTED

1. 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 and Plaintiff is entitled to judgment as a matter of law.

2. 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."

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Am. Freedom Law Ctr., Inc. v. Nessel,
No. 1:19-cv-153, 2020 U.S. Dist. LEXIS 60622, (W.D. Mich. Jan. 15, 2020)

Meese v. Keene, 481 U.S. 465 (1987)

Parsons v. United States DOJ, 801 F.3d 701 (6th Cir. 2015)

Police Department of the City of Chicago v. Mosley, 408 U.S. 92 (1972)

INTRODUCTION

The U.S. Constitution does not permit the Michigan Attorney General ("AG") and the Michigan Department of Civil Rights ("MDCR") to weaponize their government offices to target political opponents. "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." *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 set forth below, Plaintiff is entitled to summary judgment.

SUMMARY JUDGMENT STANDARD

"Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (internal quotations and citation omitted). Accordingly, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1476-81 (6th Cir. 1989).

There is no dispute as to any material fact and Plaintiff is entitled to judgment as a matter of law.

STATEMENT OF UNDISPUTED MATERIAL FACTS[1]

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). (AG Dep. at 22:18-25 to 23:1-7 [Ex. 1]; AG Dep. Ex. 2 [Ex.1]; AG Admissions ¶¶ 13-16 [Ex. 2]; MDCR Admissions ¶¶ 14-16 [Ex. 3]). This official announcement was publicly displayed and posted on the government website until at least ***March 6, 2020***. (AG Admissions ¶¶ 14-16 [Ex. 2]; MDCR Admissions ¶¶ 14-16 [Ex. 3]). Thus, it remained posted for more than a year *after* the filing of this lawsuit, which occurred on February 28, 2019. (Compl. [Doc. No. 1]). This public announcement remains part of the government's official records and is available to the public via FOIA. (AG Dep. at 34:4-6 [Ex. 1]; *see also* MDCR Admissions ¶ 14 [Ex. 3]).

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. (Yerushalmi Suppl. Decl. ¶¶ 3-4 [Ex. 4]; AG Dep. Ex. 3 [Ex. 1]; AG Dep. at 28:3-15 [Ex. 1]).

[1] The transcript of the deposition of the Office of the Attorney General ("AG Dep.") and associated exhibits ("AG Dep. Ex.") are attached as **Exhibit 1**. The Attorney General's admissions ("AG Admissions") are attached as **Exhibit 2**. The MDCR's admissions ("MDCR Admissions") are attached as **Exhibit 3**. The supplemental declaration of David Yerushalmi ("Yerushalmi Suppl. Decl.") is attached as **Exhibit 4**. The MDCR's amended responses to Plaintiff's interrogatories ("MDCR Am. Resp. to Interrogs.") are attached as **Exhibit 5**. The transcript of the deposition of the Michigan Department of Civil Rights ("MDCR Dep.") and associated exhibit ("MDCR Dep. Ex.") are attached as **Exhibit 6**. Plaintiff's responses to the Attorney General's interrogatories ("AFLC Resp. to AG Interrogs.") are attached as **Exhibit 7**. The Attorney General's responses to Plaintiff's interrogatories ("AG Resp. to Interrogs.") are attached as **Exhibit 8**. The transcript of the deposition of David Yerushalmi ("Yerushalmi Dep.") with errata is attached as **Exhibit 9**. And the declaration of Robert J. Muise, which authenticates the above exhibits, is attached as **Exhibit 10**.

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." (AG Dep. Ex. 2 [Ex. 1]).

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). (AG Dep. Ex. 2 [Ex. 1]). The Attorney General ***personally*** approved her comments for this press release. (AG Dep. 44:6-25 to 45:1-21 [Ex. 1]; AG Dep. Ex. 9 [Ex. 1]).

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.

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

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. (AFLC's Resp. to AG Interrogs. ¶ 3 [Ex. 7]).

Plaintiff formally responded on February 28, 2019, by filing this federal civil rights lawsuit. (Compl. [Doc. No. 1]). 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. (AG Dep. at 41:18-25 to 42:1-5 [Ex. 1]; AG Dep. Exs. 6 & 7 [Ex. 1]). 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 page[3] with the following comment:

---

[2] James White is automatically substituted as a defendant because he is the new MDCR Executive Director, (MDCR Dep. at 16:2-4 [Ex. 6]). *See* Fed. R. Civ. P. 25(d).

[3] Defendant Nessel uses this Facebook page to post information about official matters related to

> 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.

(AG Dep. at 41:1-25 to 42:1-22 [Ex. 1]; AG Dep. Exs. 6 [Facebook post] & 7 [Detroit News story] [Ex. 1]). 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.

(AG Dep. at 37:9-12 [Ex. 1]; *see also id.* at 16:17-25 to 18:1-5; AG Admissions ¶ 7 [admitting that the AG has "no credible information that Plaintiff has ever engaged in any criminal activity"] [Ex. 2]; *see also* Yerushalmi Suppl. Decl. ¶ 2 [Ex. 4]; Yerushalmi Decl. ¶ 4 [Doc. No. 24-1]). And there is no reasonable dispute that the "hate group" label is a pejorative label. (AG Dep. at 16:8-13; 37:5-7 [Ex. 1]; *see also* Yerushalmi Suppl. Decl. ¶ 2 [Ex. 4]; Yerushalmi Decl. ¶¶ 2-13 [Doc. No. 24-1]).

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." (AG Resp. to Interrogs. ¶ 2 [Ex. 8]). 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

---

her duties as the AG. (AG Dep. at 41:10-12 [Ex. 1]; AG Admissions ¶¶ 20-21 [Ex. 2]).

criminal investigation involving . . . St. Michael's Media, Inc., and/or Church Militant, and *their* possible violation of state criminal statutes." (AG Dep. at 42:24-25 to 44:1-4 [Ex. 1]; AG Dep. Ex. 8 [emphasis added] [Ex. 1]; *see also* AG Dep. at 100:16-25 to 101:1-20 [Ex. 1]). 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*.

(AG Dep. at 28:25 to 29:1-9 [emphasis added] [Ex. 1]; *see also* AG Dep. at 117:18-23 [testifying that there is no formal written definition of investigation] [Ex. 1]).[4]

"Church Militant/St. Michael's Media" is designated by SPLC as a "hate group" operating in Michigan. (AG Dep. at 78:7-25 to 79:1-9 [Ex. 1]; Dep. Ex. 3 [Ex. 1]). 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." (AG Dep. at 78:7-25 to 79:1-9 [Ex. 1]; AG Dep. Ex. 24 [Ex. 1]).

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***." (AG Dep. at 46:19-25 to 47:1-14 [Ex. 1]; AG Dep. Ex. 10 [Ex. 1]). In an email exchange dated February 28, 2019, the AG directed Ms. Rossman-McKinney, the AG's "head of the communications department" (AG Dep. at 46:2-4 [Ex. 1]), to change "hate crimes" to "hate

[4] *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)).

groups" in an official, public response to this lawsuit. (AG Dep. at 51:1-25 to 52:1-10 [Ex. 1]; 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]).

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* AG Admissions ¶ 7 [Ex. 2]). Rather, Plaintiff engages in conduct that is protected by the First Amendment (as does Church Militant, for that matter, *see* https://www.churchmilitant.com/). (AG Dep. at 37:9-12 [Ex. 1]; *see also* Yerushalmi Decl. ¶¶ 2, 4 [Doc. No. 24-1]; Yerushalmi Suppl. Decl. ¶ 2 [Ex. 4]).

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"). (AG Dep. at 78:7-25 to 79:1-9 [Ex. 1]; Dep. Ex. 24 [Ex. 1]). 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. . . .[5] Church Militant also posted a photograph of [the

[5] 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

complainant] and his husband on their website. There was a link on the photograph that gave the exact map to his address."[6] (AG Dep. at 78:7-25 to 79:1-9 [Ex. 1]; Dep. Ex. 24 [Ex. 1]). Thus, there was an official *investigation* initiated by the 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. (AG Dep. at 30:1-6; 90:3-11 [Ex. 1]; AG Dep. Ex. 29 [Ex. 1]).

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 have been no (*i.e.*, zero) prosecutions by the Hate Crimes Unit. (AG Dep. at 20:3-15 [Ex. 1]).

Michigan prosecutes any form of hate crime," does not include sexual orientation as a category. (AG Dep. at 13:24-25 to 14:1-14 [Ex. 1]).

[6] 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"). (AG Dep. at 32:13-18 [Ex. 1]). Indeed, Church Militant is located in Michigan (AG Dep. Ex. 3 [Ex. 1]), and the complainant resides in San Diego, California, so there was no likelihood that Church Militant was involved.

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***.[7] [(Judiciary Committee, Michigan House TV, http://www.house.mi.gov/Archive.html?video=JUDI-021919.mp4.)]

(AG Dep. Ex. 5 [Ex. 1]; AG Dep. at 37:17-25 to 39:1-23 [emphasis added] [Ex. 1]).

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*[8] and then they do a further 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.)]

---

[7] 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* Yerushalmi Decl. ¶ 5 [Doc. No. 24-1]).

[8] 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 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* Yerushalmi Suppl. Decl. ¶ 3 [Ex. 4]; *see generally* AG Dep. at 34:8-25 to 35:1-20 [Ex. 1]; AG Dep. Ex. 4 ["Intelligence Report" excerpt] [Ex. 1]).

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

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 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.

(AFLC Resp. to AG Interrogs. ¶ 4 [Ex. 7]; *see also* Yerushalmi Decl ¶¶ 2-13 [Doc. No. 24-1]).

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.

(Yerushalmi Dep. at 127:7-25 to 130:1-20, Errata [Ex. 9]).

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. (AG Dep. 94:10-25 to 96:1-6 [Ex. 1]; AG Dep. Ex. 31 [Ex. 1]).

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.**

(AG Resp. to Interrogs. ¶ 6 [Ex. 8]). MDCR responded similarly. (MDCR Am. Resp. to Interrogs. ¶ 8 [same] [Ex. 5]).

ARGUMENT

I. 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 Michigan Attorney General 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, and they most certainly fail strict scrutiny.

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

There is no dispute in fact or law that Plaintiff's activities and associations—the very activities and associations that subject them to pejorative labeling and threats of investigation and surveillance by the Michigan AG and the MDCR—are protected by the Constitution. As the Sixth Circuit has long recognized, "The right of an American citizen to criticize public officials and to advocate peacefully ideas for change is 'the central meaning of the First Amendment.'" *Glasson v. City of Louisville*, 518 F.2d 899, 904 (6th Cir. 1975), *overruled in part by Bible Believers*, 805 F.3d 228, 252, (quoting *N.Y. Times v. Sullivan*, 376 U.S. 254, 273 (1964)). 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). The Sixth Circuit 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). And "[e]ffective 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 43 (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." *Bates*, 361 U.S. at 523.

Additionally, in the First Amendment context, it is well established that "[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). This fundamental principle is echoed throughout the case law. *N.H. Right to Life Political Action Comm. v. Gardner*, 99 F.3d 8, 13 (1st Cir. 1996) ("[A]n actual injury can exist when the plaintiff is chilled from exercising her right to free expression or foregoes expression in order to avoid enforcement consequences."); *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 this Court:

> 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 Fundamental 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). The reasoning in *Meese* is dispositive.

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. *Id*. 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 <u>not</u> "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 policy directive, which was announced via an official press release posted on a Michigan government website on February 22, 2019, and reaffirmed by Defendant Nessel in a public Facebook post, in her responses to questions from Representative Berman, and by her Chief of Staff, 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 this Court:

> 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).

Here, 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 the Court to enter judgment in Plaintiff's favor and provide prospective relief (discussed further below) to "provide some restoration of [Plaintiff's] reputation."

In the final analysis, by placing a pejorative label on Plaintiff (such as designating Plaintiff a "hate group"), Defendants place the power of the State 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. *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."). *Meese* compels the Court to grant judgment in Plaintiff's favor as a matter of law.

D. Threatening Investigations and Surveillance Violates Fundamental Rights.

By threating 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 the 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* AG Dep. at 33:8-15 [Ex. 1]). With the "click of a button," 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. (*See* 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]). When government officials,

specifically law enforcement officials, weaponize their office like Defendants have done here, our Constitution, particularly including 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).

In *Presbyterian Church v. United States*, 870 F.2d 518 (9th Cir. 1989), for example, the plaintiff churches brought an action against the federal government and some of its officers for violating their First and Fourth Amendment rights by conducting covert surveillance on members of their congregations. The Ninth Circuit allowed the case to proceed, stating, in relevant part:

> When congregants are chilled from participating in worship activities, when they refuse to attend church services because *they fear the government is spying on them and taping their every utterance*, all as alleged in the complaint, we think a church suffers organizational injury because its ability to carry out its ministries has been impaired. . . . *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*.

Id. at 522-23 (emphasis added).

Because Plaintiff and those with whom it associates are deterred from participating in First Amendment activities because "they fear the government is spying on them and taping their every utterance," Plaintiff's fundamental rights have been violated.

Indeed, the AG, the State's top law enforcement official, has publicly stated that she would "combat," "fight," and "tackle" "hate groups" in Michigan, which includes Plaintiff. Thus, "[a] judicial determination" that Defendants' policy directive violates 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."

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

In *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972), the Court stated, "[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." 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 guarantee of the Fourteenth Amendment *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. The SPLC

targets Plaintiff because of its political views, and Defendants have employed government resources to join this attack for the same reason. And this fact is self-evident as Defendants admit that Plaintiff does not engage in any criminal or legal activity—it engages in activity that is fully protected by the Constitution. And Defendant Nessel 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.*, AG Dep. Ex. 5 ["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 . . ."] [Ex. 1]). Indeed, the "disparaging" or offensive speech that lands you on the "hate group" list is fully protected by the First Amendment. S*ee, 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 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") (citing *Matal v. Tam*, 137 S. Ct. 1744 (2017)) (internal citations, quotations, and punctuation omitted).

Because Defendants' disparate treatment of Plaintiff (pejoratively branding Plaintiff and targeting Plaintiff for investigation, surveillance, and data collection) burdens its fundamental rights as set forth above, Defendants have violated the First and Fourteenth Amendments. *See Bible Believers*, 805 F.3d at 256 (stating that to advance an equal protection claim, a plaintiff must allege disparate treatment that burdens a fundamental right, such as freedom of speech).

III. Declaratory and Injunctive Relief Are Appropriate.

Prospective relief is appropriate for the reason stated by the Ninth Circuit in *Presbyterian Church*: "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." *Presbyterian Church*, 870 F.2d at 523. The requested relief is appropriate for the reasons stated by this Court:

> Should the Court ultimately . . . 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 *19.

And the requested relief is certainly appropriate for the reasons stated by the Sixth Circuit in *Parsons v. United States DOJ*, 801 F.3d 701 (6th Cir. 2015):

> The Agencies argue that the alleged reputational harm and chilling effect would not be remedied by an order setting aside the 2011 [National Gang Intelligence Center or] NGIC Report because information about criminal activity performed by Juggalo subsets is available from a variety of other sources, including state and local law enforcement in the locations where the Juggalos were allegedly injured. . . . In *Meese*, the defendant, the Attorney General, espoused an analogous argument—that enjoinment of the DOJ's label of certain films as "political propaganda" would not stem negative reaction to the plaintiff's exhibition of the films. . . . The Supreme Court disagreed, articulating that the harm to plaintiff occurred because "*the Department of Justice has placed the legitimate force of its criminal enforcement powers behind the label of 'political propaganda.'*" . . . 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*."
>
> The Agencies also assert that an order declaring the 2011 NGIC Report unconstitutional would not alleviate the alleged harm entirely because the

> information on Juggalo activity is available through the aforementioned alternate channels. But it need not be likely that the harm will be *entirely* redressed, as partial redress can also satisfy the standing requirement. *See Meese*, 481 U.S. at 476 ("enjoining the application of the words 'political propaganda' to the films would at least partially redress the reputational injury of which appellee complains"); [*Friends of the Earth, Inc. v.*] *Laidlaw* [*Envtl. Servs., Inc.*, 528 U.S. 167, 185 (2000)] (finding civil penalties sufficient to satisfy redressability noting that they have at least "*some* deterrent effect") (emphasis added). "It can scarcely be doubted that, for a plaintiff who is injured or faces the threat of future injury due to illegal conduct ongoing at the time of a suit, a sanction that effectively abates that conduct and prevents its recurrence provides a form of redress." *Laidlaw*, 528 U.S. at 185-86. 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' policy directive violates the Constitution would reassure Plaintiff and those who associate with it that they could freely participate in 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." Furthermore, the requested relief will help repair Plaintiff's public reputation—a 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, as set forth above. The Court should enter an order enjoining Defendants from making such false and harmful public statements about Plaintiff. *See, e.g., 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, e.g., 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 in this motion.

In sum, "[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." *See 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*.

CONCLUSION

As stated by Justice Douglas in his concurrence in *Gibson v. Florida Legislative Committee*, 372 U.S. 539 (1963):

> For the views a citizen entertains, the beliefs he harbors, the utterances he makes, the ideology he embraces and the people he associates with are *no concern of government*. That article of faith marks indeed the main difference between the Free Society which we espouse and the dictatorships both on the Left and on the Right.

Id. at 570 (emphasis added). The First Amendment does not permit the government to abridge—whether directly, indirectly, forcefully, or subtly—the precious and vulnerable rights to freedom

of speech and association of law-abiding citizens, regardless of political ideology. A private citizen's first defense against such government abuse is the Constitution. Consequently, the challenged policy at issue here, which takes us a step closer to the "dictatorship . . . on the Left," cannot exist in a Free Society. The Court should grant Plaintiff's motion.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq. (P62849)
PO Box 131098
Ann Arbor, Michigan 48113
Tel: (734) 635-3756; Fax: (801) 760-3901
rmuise@americanfreedomlawcenter.org

CERTIFICATE OF COMPLIANCE WITH LOCAL RULES

I hereby certify that this brief contains 9,008 words, exclusive of the case caption, cover sheets, any table of contents, any table of authorities, the signature block, attachments, exhibits, and affidavits, and is thus within the word limit allowed under Local Civil Rule 7.2(b)(i). The word count was generated by the word processing software used to create this brief: Word for Microsoft Office 365, Version 1904.

AMERICAN FREEDOM LAW CENTER

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

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: None.

AMERICAN FREEDOM LAW CENTER

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