

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

MARGARET WITTMAN,  
Plaintiff,

v.

CITY OF HART, Michigan; LYNNE  
LADNER, individually and in her official  
capacity as City Manager, City of Hart,  
Michigan; and CHERYL RABE,  
individually and in her official capacity as  
City Clerk, City of Hart, Michigan,  
Defendants.

No.

**COMPLAINT**  
[42 U.S.C. § 1983]

Demand for Jury Trial

Plaintiff Margaret Wittman (“Plaintiff”), by and through undersigned counsel, brings this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof alleges the following upon information and belief:

**INTRODUCTION**

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution, challenging Defendants’ policy directive, facially and as applied, which prohibited Plaintiff from wearing a shirt stating, “My heart will TRUST in you JESUS” while serving as an election worker in the City of Hart, Michigan (“City”), during the general election held on November 3, 2020.

2. Plaintiff seeks a declaration that the challenged policy, facially and as applied, violates the First and Fourteenth Amendments to the United States Constitution as set forth in this Complaint; a permanent injunction enjoining the challenged policy; compensatory and nominal damages; and an award of attorney fees and costs pursuant to 42 U.S.C. § 1988, and other applicable laws.

### **JURISDICTION AND VENUE**

3. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

5. Alternatively, should Defendants be deemed state officials acting pursuant to state policy, the Court has jurisdiction to issue declaratory and injunctive relief against Defendants in their official capacities pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

6. Plaintiff's claim for damages is authorized by 42 U.S.C. § 1983.

7. Plaintiff's claim for an award of her reasonable costs of litigation, including attorneys' fees and expenses, is authorized by 42 U.S.C. § 1988 and other applicable law.

8. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district.

### **PARTIES**

9. Plaintiff Margaret ("Peggy") Wittman is a Christian, an adult citizen of the United States, and a resident of the City of Hart, Michigan. Plaintiff does not cease being a Christian when she is performing her duties as an election worker for the City.

10. Defendant City of Hart is a municipal entity organized and existing under the laws of the State of Michigan. It is a municipal corporation with the right to sue and be sued.

11. The City and its officials, including Defendants Ladner and Rabe, are responsible for creating, adopting, approving, ratifying, and enforcing the policies, practices, customs, and/or procedures of the City, including the challenged policy as set forth in this Complaint.

12. Defendant Lynne Ladner is the City Manager for the City of Hart. As the City Manager, Defendant Ladner is responsible for creating, adopting, approving, ratifying, and enforcing the policies, practices, customs, and/or procedures of the City, including the challenged policy as set forth in this Complaint.

13. Defendant Cheryl Rabe is the City Clerk for the City of Hart. As the City Clerk, Defendant Rabe is responsible for creating, adopting, approving, ratifying, and enforcing the policies, practices, customs, and/or procedures of the City, including the challenged policy as set forth in this Complaint.

### **STATEMENT OF FACTS**

14. On Tuesday, November 3, 2020, the general election (“Election Day”) was held throughout the United States, including in the City of Hart, Michigan.

15. Plaintiff signed up to be an election worker for the City during Election Day. Plaintiff was to be paid \$10.50 an hour for her work.

16. Election workers, such as Plaintiff, are not employees of the City; they are independent contractors.

17. Plaintiff was scheduled to work on Election Day from 6:15 a.m. to 1:00 p.m. and then from 4:00 p.m. to 6:30 p.m. at the community center, which is attached to the City Hall.

18. Prior to Election Day, the Oceana County Clerk held a very short training session for election workers. Plaintiff attended the training, and she also sought additional training because she believed that the County’s training was inadequate.

19. During the training, the election workers were told that they could not engage in “political speech” while working the polls on Election Day. In other words, the election workers were told that they could not advocate for or against any candidate or ballot issue.

20. Prior to Election Day, Plaintiff and other election workers received a letter from the City stating, *inter alia*, “Please make sure that there is no visible campaign material in/on your car if you choose to park at City Hall. Also, you should not wear any item that may appear to support any candidate or issue.” A true and correct copy of this letter is attached to this Complaint as Exhibit 1.

21. On Election Day, Plaintiff arrived at approximately 6:15 a.m. (the polls opened at 7 a.m.) at the City community center to commence her duties as an election worker. Plaintiff wore a shirt with the message “My heart will TRUST in you JESUS” printed on the front (hereinafter “TRUST in JESUS shirt”). A true and accurate picture of the message on the front of Plaintiff’s TRUST in JESUS shirt appears in the photograph below:



22. At approximately 7:45 a.m. on Election Day, Defendant Rabe approached Plaintiff and directed her to turn her TRUST in JESUS shirt around and wear it backwards to hide the “TRUST in you JESUS” message because Defendants considered the message to be “political speech.” Plaintiff refused. Defendant Rabe then directed Plaintiff to wear a sweater to cover up her TRUST in JESUS shirt. Plaintiff again refused. Plaintiff was indignant because she sincerely believes that Defendant Rabe’s order was an offense to God.

23. Plaintiff's TRUST in JESUS shirt is not "political speech." As publicly stated by Plaintiff, "Jesus holds no political office and was not on the ballot."

24. Plaintiff refused Defendant Rabe's demand because she did not want her religion "turned around," "covered up," or hidden by City officials. Plaintiff believes that it would be disrespectful and sacrilegious to treat JESUS, a name above all names, in this manner. *See* Matthew 1:21 ("She will bear a son and you are to name him Jesus, because he will save his people from their sins."); Luke 1:31-33 ("Behold, you will conceive in your womb and bear a son, and you shall name him Jesus. He will be great and will be called Son of the Most High, and the Lord God will give him the throne of David his father, and he will rule over the house of Jacob forever, and of his kingdom there will be no end.").

25. Because Plaintiff would not act contrary to her firmly held religious beliefs and convictions, she was "relieved of her duties" as an election worker.

26. Plaintiff was then directed to speak with Defendant Ladner. During Plaintiff's conversation with Defendant Ladner, Defendant Ladner confirmed that Plaintiff's TRUST in JESUS shirt was "political speech" and that Plaintiff could not wear it while working at the polls.

27. Accordingly, Plaintiff was "relieved of her duties" as an election worker because she refused to violate her deeply held religious beliefs and convictions and because of the viewpoint expressed by her TRUST in JESUS shirt.

28. Plaintiff remained in the voting precinct, observing from the public viewing area for the remainder of the day until the building closed at midnight. If Plaintiff's TRUST in JESUS shirt was "political speech"—*i.e.*, advocating for or against a candidate or a ballot issue—then she should not have been allowed within 100 feet of the polls pursuant to Michigan election law. *See* Mich. Comp. Laws § 168.744.

29. The challenged policy is a local restriction that Defendants were enforcing that prohibited Plaintiff from wearing her TRUST in JESUS shirt.

30. Upon information and belief, City officials, including Defendants, would permit a Muslim election worker to wear a hijab or a Jewish election worker to wear a Yamaka while working the polls within the City. These articles of clothing convey the Muslim and Jewish religious beliefs and convictions of the respective wearer. Yet, Defendants would not permit Plaintiff to wear clothing that conveys her particular Christian religious beliefs because, according to Defendants, Plaintiff's religious beliefs are "political."

31. On Election Day, City officials, including Defendants, permitted an election worker to wear a shirt stating, "One Nation Under God." This election worker was not relieved of her duties.

32. Election workers, including Plaintiff, are certified for two years. Plaintiff intends to work at other elections in the future to ensure their fairness and integrity, particularly in light of the many reports of widespread election malfeasance throughout the State of Michigan. However, in order to do so, Plaintiff will be required by the challenged policy to check her Christian faith at the door, which she refuses to do because of her deeply held religious beliefs and convictions.

33. Defendants' policy of restricting "political speech" as set forth in this Complaint provides no definition of "political" nor guidelines as to how this amorphous ban on "political" speech can be objectively applied.

34. The creation, adoption, and implementation of the challenged policy has caused, and will continue to cause, irreparable harm to Plaintiff. Due to the challenged policy and its

application as set forth in this Complaint, Plaintiff lost wages because she was relieved of her duties as a paid election worker.

### **FIRST CLAIM FOR RELIEF**

#### **(First Amendment—Freedom of Speech)**

35. Plaintiff hereby incorporates by reference all above-stated paragraphs.

36. By reason of the aforementioned policy, which was created, adopted, and enforced under the color of state law and authority, Defendants have deprived Plaintiff of her right to freedom of speech in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

37. “It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995). Viewpoint discrimination is an egregious form of content discrimination, and it is prohibited in all forums. *Id.* at 829. “The principle that has emerged from [U.S. Supreme Court] cases is that the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.” *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) (internal quotations and citation omitted). The challenged policy is a content- and viewpoint-based restriction on speech in violation of the First Amendment.

38. Speech restrictions in nonpublic forums such as polling places must be “guided by objective, workable standards,” and Defendants’ unqualified ban on “political” speech or apparel is unreasonable in violation of the First Amendment because it does not provide those standards

and thus allows government officials unbridled discretion to determine what does or does not constitute “political” speech. *Minn. Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1891 (2018).

39. The challenged policy “adopt[s] an amorphous ban on ‘political’ speech that cannot be objectively applied” in violation of the First Amendment. *Am. Freedom Def. Initiative v. Suburban Mobility Auth.*, 978 F.3d 481, 498 (6th Cir. 2020).

40. As a direct and proximate result of Defendants’ violation of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of her constitutional rights, entitling her to declaratory and injunctive relief and damages.

## **SECOND CLAIM FOR RELIEF**

### **(First Amendment—Free Exercise of Religion)**

41. Plaintiff hereby incorporates by reference all above-stated paragraphs.

42. By reason of the aforementioned policy, which was created, adopted, and enforced under the color of state law and authority, Defendants have deprived Plaintiff of her right to religious exercise in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

43. By wearing her TRUST in JESUS shirt, Plaintiff was engaging in a form of religious expression.

44. Plaintiff wore her TRUST in JESUS shirt as an exercise of her religion. Plaintiff’s religious beliefs motivated this conduct.

45. Defendants violated Plaintiff’s deeply held religious beliefs and thus her right to free exercise of religion protected by the First Amendment by demanding that she turn her TRUST in JESUS shirt around and wear it backwards or that she cover up its message.



46. By “relieving” Plaintiff of her duties as an election worker because of her deeply held religious beliefs and convictions, Defendants violated Plaintiff’s right to free exercise of religion protected by the First Amendment.

47. “The Free Exercise Clause categorically prohibits government from regulating, prohibiting, or rewarding religious beliefs as such.” *McDaniel v. Paty*, 435 U.S. 618, 626 (1978). “The principle that government may not enact laws that suppress religious belief or practice is . . . well understood.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 523 (1993).

48. “The right to free exercise of religion includes the right to engage in conduct that is motivated by the religious beliefs held by the individual asserting the claim. . . . The government cannot prohibit an individual from engaging in religious conduct that is protected by the First Amendment. . . . Free exercise claims are often considered in tandem with free speech claims and may rely entirely on the same set of facts. . . . Therefore, [Plaintiff’s] free exercise claim succeeds on the same basis as [her] free speech claim.” *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255-56 (6th Cir. 2015) (*en banc*).

49. As a direct and proximate result of Defendants’ violation of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of her constitutional rights, entitling her to declaratory and injunctive relief and damages.

### **THIRD CLAIM FOR RELIEF**

#### **(Fourteenth Amendment—Equal Protection)**

50. Plaintiff hereby incorporates by reference all above-stated paragraphs.

51. By reason of the aforementioned policy, which was created, adopted, and enforced under the color of state law and authority, Defendants have deprived Plaintiff of the

equal protection of the law guaranteed under the Fourteenth Amendment to the United States Constitution by targeting Plaintiff for disfavored treatment on account of Plaintiff's religious beliefs and viewpoint.

52. When the government treats an individual disparately "as compared to similarly situated persons and that such disparate treatment . . . burdens a fundamental right, targets a suspect class, or has no rational basis," such treatment violates the equal protection guarantee of the Fourteenth Amendment. *Bible Believers*, 805 F.3d at 256.

53. Additionally, "under 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," as in this case. *Police Dep't of the City of Chi. v. Mosley*, 408 U.S. 92, 96 (1972).

54. As a direct and proximate result of Defendants' violation of the Fourteenth Amendment, Plaintiff has suffered irreparable harm, including the loss of her constitutional rights, entitling her to declaratory and injunctive relief and damages.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff asks this Court:

- A) to declare that Defendants' policy violates the First and Fourteenth Amendments to the United States Constitution as set forth in this Complaint;
- B) to permanently enjoin the challenged policy and its application to Plaintiff and her protected expressive activity as set forth in this Complaint;
- C) to award Plaintiff compensatory damages for lost wages as an election worker and nominal damages for the loss of her constitutional rights;

D) to award Plaintiff her reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988, and other applicable law;

E) to grant such other and further relief as this Court should find just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues triable of right by a jury.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

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# EXHIBIT 1

# City of Hart

407 State Street

(231) 873-2488

Hart, Michigan 49420

October 2020

Dear Election Worker:

*Peggy*

We appreciate your assistance, professionalism, and dedication for volunteering to work on the General Election, which will be held on Tuesday November 3, 2020.

We are looking at a larger than normal turnout of voters for this election but could see fewer on election day due to the large number of Absentee Ballots that have already been cast. We will be conducting the voting in the Community Center following the same COVID-19 Protocol that we did in the August Primary.

Please make sure that there is no visible campaign material in/on your car if you choose to park at City Hall. Also, you should not wear any item that may appear to support any candidate or issue. We may be under strict scrutiny and do not wish to raise any questions about how we operate the polls.

Although health protection equipment will be in place at the polling location, all election workers will be required to wear a face mask.

The work hours are divided among ALL the workers. Each election worker will be given a lunch or dinner break during the day. For this election there shall not be any furnished snacks to share. However, coffee, water and diet pop will be provided for your pleasure. If you desire additional snacks, you may bring them with you, but not to be shared with other workers.

Your time for working on Tuesday, November 3, 2020 is as follows:

6:15 AM until 1:00 PM      4:00 P.M. — 6:30 P.M

Please NOTE the new starting time.

If you have any questions, or if this schedule does not work for you, please call City Hall at 873-2488.

Thank you in advance for your help.

*Cheryl Rabe* City Clerk