

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

ST. VINCENT CATHOLIC  
CHARITIES,

*Plaintiff,*

v.

INGHAM COUNTY BOARD OF  
COMMISSIONERS,

*Defendant.*

Civil No. 1:19-CV-1050

Hon. Robert J. Jonker

**PLAINTIFF'S  
REPLY IN SUPPORT OF  
MOTION FOR  
SUMMARY JUDGMENT**

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## INTRODUCTION

Over 160 pages of summary judgment briefing confirm what St. Vincent has argued all along: The Board used the broad discretion it has over annual grants to punish St. Vincent for its religious beliefs and for defending them in this Court. Under a long line of Supreme Court and Sixth Circuit precedent, this behavior means the Board must bear the burden of strict scrutiny. Rather than attempt to meet that burden, the Board's response doubles down on everything that merits summary judgment for St. Vincent.

First, the facts. As the Board concedes, the “background facts” are not disputed. And, despite attempting to spin the material facts, the Board's response nevertheless admits them: St. Vincent's FY2020 application is the only example in a *decade* in which the Board zeroed out funding because of a supposed failure to meet the grant criteria. This came after St. Vincent received the same grant for the same services the year before. The only difference between the two years is that St. Vincent's religious exercise was thrust into the spotlight—and most Board members found it, to quote them, “morally bankrupt,” “not an appropriate stance,” and “discrimination . . . under the guise of religious freedom.”

If the overt intolerance was somehow insufficient, the Board’s response confirms that its standards are amorphous at best. The Board does not deny that it funded several other grant applications containing the same supposed flaws; instead, it attempts to retrofit those applications to meet its latest interpretation. The Board now admits that “although the criteria may not have changed” when St. Vincent was zeroed out, the Board has the “purview to change its policy emphasis on the criteria” whenever it wants—*caveat emptor*, St. Vincent. The Board’s semantics do not defeat summary judgment.

Second, the law. As a unanimous Supreme Court just confirmed in *Fulton*, the Free Exercise Clause looks with suspicion on any policy that “invites” governmental actors to decide whether particular instances of non-compliance are worthy of “solicitude.” And as the Court already held in *Masterpiece*, when government actors proceed with manifest intolerance toward a person’s religious beliefs, that alone violates the Free Exercise Clause. The Sixth Circuit just reiterated *Masterpiece*’s holding in *Meriwether*—holding that when even a portion of a proceeding contains religious intolerance, strict scrutiny is required. Accordingly, both the Board’s intolerance toward St. Vincent’s religious practice and the

Board's open-ended discretion to apply that intolerance each independently trigger strict scrutiny. As the Board does not even attempt its burden, St. Vincent is entitled to judgment as a matter of law.

Finally, on remedies. From the beginning, St. Vincent has sought an order from this Court that would prevent the Board from excluding St. Vincent from refugee services simply because—as one Commissioner put it—“the majority of this board doesn't approve, maybe we unanimously don't approve” of St. Vincent's religious practices. The Board has literally no response to St. Vincent's requested relief—thereby conceding that, upon the showing of liability, St. Vincent is entitled to its requested damages, declaration, and injunctive relief. If anything, the Board's response underscores the necessity of injunctive relief. The Board admits to the “continuing” Request for Proposal process that, to quote one Commissioner, has “absolutely the intent” of identifying a St. Vincent alternative.

With another round of contract and grant decisions coming this fall, St. Vincent needs protection from the Board's unconstitutional actions. Summary judgment is warranted, as is all of St. Vincent's requested relief.

**I. The Board concedes or ignores all material facts.**

St. Vincent's brief in support of summary judgment sets forth the material facts. *See* Doc. 59-1 at PageID.1462-1484. When the Board filed its own motion for summary judgment, it either conceded or evaded these facts. *See* Doc. 64 at PageID.1714-1735. It does so again here.

**A. The Board does not dispute the grant's denial, the criteria's subjectivity, or the sequence of ongoing hostility toward St. Vincent.**

The Board concedes that St. Vincent "has successfully provided services to refugees in Ingham County for many years." Doc. 65 at PageID.1787. As the Board also concedes, St. Vincent received "[g]rant funding for the same programs" in FY2019 that it sought for FY2020. *Id.* at PageID.1799. As the Board also admits, the County Controller "recommended that [St. Vincent]" again receive the same grant funding. *Id.* at PageID.1789. Yet the Board's Human Services Committee "decline[d]" that recommendation and "[t]he full Board" agreed. *Id.*

The Board agrees with St. Vincent that Commissioners "generally rel[y] on the Controller's recommendation," and this is only one of three times in the past decade that the Board ever disregarded the Controller's recommendation by awarding less or no funding. *Id.* at PageID.1789-

1790. The Board also agrees that “Commissioners may have testified that the services that would have been provided by [St. Vincent] meet basic needs”—the requirement for receiving community agency grants. *Id.* at PageID.1813. And the Board acknowledges that it has previously awarded grants—including in lieu of funding St. Vincent’s FY2020 grant—to agencies “for mostly personnel related expenses.” *Id.* at PageID.1793.

When it comes to why St. Vincent did not receive a grant in FY2020, the Board no longer asserts many of its prior rationalizations. For example, the Board has now abandoned any argument that the grant denial had anything to do with the new “priority” placed on the County’s non-discrimination ordinance, or any concern that funding St. Vincent would violate the Establishment Clause.<sup>1</sup> Similarly, the Board no longer relies on Commissioner Morgan’s claim that zeroing out St. Vincent had something to do with limited County funds.<sup>2</sup>

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<sup>1</sup> See Doc. 65 at PageID.1814 (non-discrimination ordinance); Doc. 65 at PageID.1794 (Establishment Clause).

<sup>2</sup> See Doc. 65 at PageID.1814 (arguing that footnote 23 “does not purport to reiterate the initial reasoning provided by Commissioner Morgan”); see also Doc. 59-1 at PageID.1478, 1495 (St. Vincent debunking Morgan’s claim).

The Board also concedes that just three weeks before the grant denial, “Commissioners” on the same Human Services Committee “expressed concerns about [St. Vincent’s] practices complying with [Ingham County’s] Nondiscrimination Policies during this meeting.” *Id.* at PageID.1800. This is an oblique way of putting what Commissioners publicly declared: they wanted to terminate a contract because of “St. Vincent Catholic Charities’ publicly stated stances and lawsuit against the State of Michigan toward same sex couples.” *See* Doc. 59-1 at PageID.1473-1474 (quoting Commissioner Sebolt and identifying similar statements). The Board neither disputes nor disavows any of these statements. *See* Doc. 65 at PageID.1800.

Finally, the Board’s response does not dispute any evidence of continued hostility toward St. Vincent. Rather, most of it goes unmentioned.

***November 6 Sebolt-Morgan email.*** Although the Board acknowledges “a November 6 email between Commissioners Sebolt and Morgan” about St. Vincent’s FY2020 grant, the Board never explains it. *See* Doc. 65 at PageID.1800; *see also* Doc. 59-15 (email); Doc. 59-1 at PageID.1477 (discussing email). In that email, as St. Vincent has twice explained,

Sebolt called St. Vincent’s FY2020 grant application to Morgan’s attention—and Morgan said “That’s a no from me” without “yet” looking at St. Vincent’s funding recommendation.<sup>3</sup> See Doc. 59-15; 59-1 at PageID.1477-1478; Doc.64 at PageID.1718, 1727. The Board never disputes the email’s content.<sup>4</sup>

***Health Department directive to replace St. Vincent.*** Discovery confirmed that the County Health Department has an ongoing directive to replace St. Vincent’s refugee services. See Doc. 59-22 at PageID.1639; Doc. 59-24; Doc. 59-1 at PageID.1475-1477, Doc. 64 at PageID.1718, 1722. The Board’s response never acknowledges this evidence.

***November 8 Tennis email.*** The Board’s response is similarly silent on Commissioner Tennis’s November 8, 2019 email to St. Vincent’s CEO, accusing the religious charity of “discrimination . . . under the guise of

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<sup>3</sup> The Board block quotes—but does not defend—Commissioner Morgan’s deposition rationale that St. Vincent’s grant would pay “the director’s salary.” Doc. 65 at PageID.1801. St. Vincent has already explained that this smear is baseless. See Doc. 64 at PageID.1726-1728.

<sup>4</sup> Nor does the Board dispute that Sebolt and Morgan subsequently exchanged “text messages . . . making a joke about Pope Francis rebuking [St. Vincent].” Doc. 65 at PageID.1809; see also Doc. 59-1 at PageID.1479 (Sebolt proposing to Morgan that Pope Francis would say “F\*\*\* you”).

religious freedom” that “put me and the rest of my colleagues in an impossible position,” requiring “the county to explore options that do not compromise our principles.” Doc. 59-16 at PageID.1618; *see also* Doc. 59-1 at PageID.1475, Doc. 64 at PageID.1719.

***The ongoing RFP and FY2021 grant.*** St. Vincent explained at length that it only received FY2021 grant funding after the Board’s Finance Committee went into closed session with its lawyers (apparently about this case), and that St. Vincent’s interpretive services contract is subject to an ongoing Request for Proposal (RFP) with, as Commissioner Tennis said, “absolutely the intent” of finding an alternative to St. Vincent. *See* Doc. 59-1 at PageID.1480-1484, 1510.<sup>5</sup> The Board disputes none of this. Instead, it agrees that the FY2021 grant recommendation was “modified” after closed session and that the RFP “is continuing.” Doc. 65 at PageID.1802.

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<sup>5</sup> Separate from the ongoing RFP and the FY2021 grant, the Board claims that “another contract with Ingham County for \$40,000” “was never in jeopardy.” Doc. 65 at PageID.1801-1802. But the Board contends with none of the contrary evidence. *See, e.g.*, Doc. 28-1 at PageID.613.

**B. Unable to dispute the obvious conclusion, the Board asserts unsupported characterizations as fact disputes.**

Having either conceded or evaded the material facts, the Board's response is left to create a fact dispute by mischaracterizing them. But "a court should not adopt [a] version of the facts" that "is blatantly contradicted by the record." *Scott v. Harris*, 550 U.S. 372, 380 (2007).

***Controller recommendations.*** The Board claims that what it "has historically done with regard to accepting or rejecting the Controller's Office recommendations for appropriations . . . is not telling" because Commissioners' "priorities and agendas change on a regular basis." Doc. 65 at PageID.1790. First, as St. Vincent has repeatedly explained, malleable, exemption-ridden criteria are subject to strict scrutiny. Second, if "priorities and agendas change on a regular basis," then changes should be clear from a decade of 332 grant applications. Instead, that timeframe shows St. Vincent is the only recommended grant applicant ever treated this way. *See* Doc. 59-1 at PageID.1464-1465.

***Morgan's first chance to zero out St. Vincent.*** The Board claims that St. Vincent's grant was treated differently because "Commissioner Morgan . . . simply had not yet had occasion to reduce or reject another agency's grant application based on a failure to meet the criteria because

he was new to the office.” Doc. 65 at PageID.1790. This characterization fails too. First, it undermines the Board’s subsequent effort to dispute that a single Commissioner *can* influence grant funding. *See id.* at PageID.1795. Second, it contradicts Morgan himself. When asked in deposition “were there any other agencies you sought to strip funding from or just St. Vincent?” Morgan responded: “I don’t believe so. Otherwise I would have made the motion.” Doc. 59-5 at PageID.1552 (Morgan Tr. 32:10-16).

***November 12, 2019 hostility.*** The Board persists in claiming that only “three” Commissioners were hostile to St. Vincent—and that they were outvoted 11-3 at the November 12, 2019 meeting where St. Vincent’s interpretive services contract was temporarily reauthorized. *E.g.*, Doc. 65 at PageID.1788-1789, 1808-1809, 1811, 1816. But what the Board doesn’t say is what this meeting confirmed.

As Commissioner Grebner observed from his colleagues’ comments, St. Vincent’s “policy” on foster care is “a discriminatory policy which the majority of this board doesn’t approve of, maybe we unanimously don’t approve[.]” Doc. 17-12 at PageID.382 (Nov. 12 Tr. 78:1-3); *see also* Doc. 64 at PageID.1719-1722 (describing November 12 meeting). Indeed, by that

meeting at least half the Board—seven Commissioners—were on record desiring to replace St. Vincent. *Id.* The only dispute among Commissioners was whether St. Vincent should be excluded immediately, or after an alternative provider was identified. Doc. 59-1 at PageID.1476. The latter view prevailed on November 12, and the agreed upon RFP is now ongoing. *Supra* 8.

***Recharacterizing Commissioner testimony.*** The Board also attempts to recharacterize the deposition testimony of Commissioners Tennis, Sebolt, and Schafer.

For Tennis, the Board claims “there was no testimony from any Commissioner” saying that Commissioners gave one another the impression that St. Vincent would violate the County’s non-discrimination policy because of *Buck*. Doc. 65 at PageID.1795. While St. Vincent’s brief unfortunately cited the wrong page range, the Board’s response is still wrong. The very testimony the Board claims is non-existent appears on page 44 lines 15-22 and page 45 lines 1-2 of Commissioner Tennis’s deposition transcript. Doc. 59-8 at PageID.1590.

For Sebolt, the Board claims that the only “stance” he considered “not an appropriate stance” was St. Vincent’s “adoption policy and **not** with

regard to the *Buck* litigation.” Doc. 65 at PageID.1797 (emphasis in original). This is a distinction without a difference. Even Sebolt spoke of them together. *See, e.g.*, Doc. 59-7 at PageID.1580 (Sebolt Tr. 57:14-16: “The court ruling is the court ruling. I—again, I have my own personal beliefs about the ability for couples to seek adoption”); *supra* 6 (calling to defund St. Vincent because of its “publicly stated stances and lawsuit against the State of Michigan”).

And for Commissioner Schafer, the Board explains that he “responded out of frustration” when he told St. Vincent’s CEO that the votes against St. Vincent’s grant were lined up in advance. *See* Doc. 65 at PageID.1801. Tellingly, however, the Board never disputes that Commissioner Schafer agreed that “the major issue” behind the grant denial was “the adoptions.” Doc. 59-6 at PageID.1563 (Schafer Tr. 40:13-14).

***Semantics with the grant criteria.*** Finally, the Board claims that “the services to be provided by [St. Vincent] could be considered as meeting basic needs,” but that does not mean St. Vincent “met the funding . . . criteria.” Doc. 65 at PageID.1793. According to the Board, “individual Commissioners have varying understandings of the scope of ‘meeting basic needs’” and “it is natural for priorities to change.” *Id.* at

PageID.1791, 1799, 1805. Attempting to prove this point, the Board purports to distinguish grants that “directly contribute” to meeting basic needs from those that meet basic needs. *Id.* at PageID.1792.

For example, the Board claims that paying people—not for direct services—is fine when people “provide medical transportation for older adults,” because that “meet[s] fundamental or basic human needs.” *Id.* at PageID.1792. But paying St. Vincent’s staff to teach English language classes to refugees or computer skills does *not* meet basic needs. Yet even Commissioner Morgan disagrees. When deposed, he said teaching refugees English can meet the criteria because it is “essential” “to get a job, manage finances, to exist in today’s world.” Doc. 59-5 at PageID.1553 (Morgan Tr. 34:11-18). This only confirms that the Board’s criteria are malleable and subjective, and the Board relies on that subjectivity here.

## **II. The Board indisputably violated the Free Exercise Clause.**

As St. Vincent explained, the Board violated the Free Exercise Clause’s “threshold requirement” that government action be “neutral and generally applicable.” *Fulton v. City of Philadelphia*, 141 S. Ct. 1868,

1871 (2021).<sup>6</sup> At a minimum, the Board “proceed[ed] in a manner intolerant of [St. Vincent’s] religious beliefs” and thereby violated the Free Exercise Clause’s neutrality requirement. *See Fulton*, 141 S. Ct. at 1877 (describing neutrality requirement); *see also* Doc. 59-1 at PageID.1486-1492; Doc. 64 at PageID.1737-1746. Additionally, the Board’s grant criteria are a “moving target,” *Meriwether v. Hartop*, 992 F.3d 492, 514-15 (6th Cir. 2021), in which the Board “decide[s] which reasons for not complying with the policy are worthy of solicitude.” *Fulton*, 141 S. Ct. at 1879.; Doc. 59-1 at PageID.1492-1496; Doc. 64 at PageID.1746-1749. This means the Board must satisfy strict scrutiny, which it doesn’t attempt. *See* Doc. 65 at PageID.1815. Summary judgment should therefore be awarded to St. Vincent.

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<sup>6</sup> As St. Vincent explained, the Board also violated the First Amendment’s prohibition on compelled speech and the Equal Protection Clause. Doc. 59-1 at PageID.1505-1506; Doc. 64 at PageID.1749-1752. In both instances, the Board “relies on its arguments in opposition to the Free Exercise claim.” Doc. 65 at PageID.1818-1819. As to those claims, St. Vincent therefore rests on its free exercise arguments in this brief, and on the compelled speech and equal protection arguments in both its opening brief and response to the Board’s summary judgment motion.

**A. The Board's conduct was not neutral.**

The Board makes four neutrality arguments. First, the Board claims that the “basic needs” policy has “no reference to religion . . . on [its] face.” *Id.* at PageID.1804. Second, the Board argues that St. Vincent’s anomalous treatment is irrelevant because “[t]he record does not show that the Controller’s recommendations are blindly followed.” *Id.* at PageID.1806. Third, the Board claims that St. Vincent is not “consider[ing] the complete sequence” of events leading to the grant denial because it “neglects to mention” that the Board temporarily reauthorized St. Vincent’s interpretive services contract on November 12, 2019. *Id.* at PageID.1808. Fourth and finally, the Board claims the hostile statements “are not related at all” to the grant denial and the Board “did not adopt . . . those statements.” *Id.* at PageID.1809. All fail.

First, “[f]acial neutrality is not determinative” because “courts must look beyond the text.” *Meriwether*, 992 F.3d at 513-14 (citation omitted); *see also* Doc. 59-1 at PageID.1487; Doc. 64 at PageID.1737.

Second, the Board concedes that “the IBC has generally relied on the Controller’s recommendation.” Doc. 65 at PageID.1789. The evidence confirms this—it is undisputed that in only 3 out of 332 applications, the Board awarded *less* funding than the Controller recommended.

What the Board does not dispute—because it cannot—is that St. Vincent’s grant denial was historically anomalous, particularly as St. Vincent received the same grant for the same services the year before. Doc. 59-1 at PageID.1463-1464, 1472-1473. Instead, all the Board claims is that Commissioner Morgan “waited until he had been in office for a full year before making a motion to change the Controller’s Office recommendation.” Doc. 65 at PageID.1805. That’s a *non-sequitur*. Morgan’s newfound “interest[] in rocking the boat” does not make St. Vincent’s treatment any less anomalous. *Id.* Instead, it confirms what St. Vincent explained: If a single Commissioner is interested in defunding St. Vincent, he can persuade the Board to do so. Doc. 59-1 at PageID.1469-1470.

What the evidence supports—and what the Board never disputes—is that Morgan decided to vote “no” on St. Vincent’s grant on November 6; about an hour after Sebolt called it to his attention; before Morgan read the Controller recommendation; and a mere two days after he and Sebolt

sought to defund St. Vincent because of its religious practices. Doc. 59-15; Doc. 59-1 at PageID.1477.

Third and fourth, if the Board wants to “actually consider the complete sequence” of events of the Board’s religious intolerance (Doc. 65 at PageID.1808), then it should have some answer to the Board’s conduct on November 12. This meeting demonstrated that, as Commissioner Grebner said there, Commissioners’ comments made it clear that “the majority of this board doesn’t approve of, maybe we unanimously don’t approve” of St. Vincent’s “discriminatory” policy. Doc. 17-12 at PageID.382 (Nov. 12 Tr. 78:1-3). As St. Vincent already explained, no Board member voiced disagreement with the need to replace St. Vincent because of its religious practices—the only disagreement was whether to replace St. Vincent before an alternative was identified. *See* Doc. 64 at PageID.1719-1722; Doc. 59-1 at PageID.1476. By the end of that meeting, at least seven Commissioners—half the Board—were on record wanting to replace St. Vincent. Doc. 64 at PageID.1722.

Tellingly, the Board does not dispute that there is an ongoing RFP with, as Commissioner Tennis said, “absolutely the intent” of finding a St. Vincent alternative. *See* Doc. 59-1 at PageID.1461 *see also* Doc. 65 at

PageID.1802 (“The RFP process is continuing, and no contract has been awarded at this time.”). St. Vincent’s FY2020 grant was the next opportunity to sever ties with St. Vincent—and a convenient one given the malleable criteria. *See* Doc. 59-1 at PageID.1489-1490. The “complete sequence” shows religious targeting. Summary judgment is warranted for St. Vincent.

**B. The Board did not apply a generally applicable standard.**

The Board makes two arguments to claim that the basic needs policy is generally applicable. First it claims that St. Vincent is the only Controller-recommended grant applicant ever to have nothing “in its Application . . . that could even arguably be described as complying with the stated criteria.” Doc. 65 at PageID.1812; *see also id.* at 1813 (contrasting St. Vincent with other grant applicants). Second, the Board argues that its prior failure to “enforce the criteria, even after not doing so in the past” is generally applicable. *Id.* at PageID.1814. These arguments have no basis in law or fact.

St. Vincent has already explained how the Board’s first argument is wrong. The Board has awarded grants to all manner of agencies that fund only personnel, do not fund direct services, or both. *See* Doc. 59-1 at

PageID.1465-1468; Doc. 64 at PageID.1729-1732. And St. Vincent’s application complied with the grant criteria. The application shows the various ways in which “STVCC staff” would work “one-on-one” with refugees. Doc. 59-13 at PageID.1612. The Board simply ignores St. Vincent’s application—even as the Board concedes that multiple Commissioners admitted that St. Vincent’s proposed services met the basic needs criteria. *See* Doc. 59-1 at PageID.1468 (collecting testimony).

The Board’s second argument gives the game away as a matter of law. The Board’s selective enforcement of the grant criteria—and admittedly subjective, changing “priorities” in enforcing the criteria—confirm that the Board is “invite[d] . . . to decide which reasons for not complying with [it] are worthy of solicitude.” *Fulton*, 141 S. Ct. at 1879; *supra* 12-13; *see also* Doc. 65 at PageID.1791, 1793, 1795, 1799. This cannot be generally applicable.

“[G]reater discretion in the hands of governmental actors makes the action taken pursuant thereto more, not less, constitutionally suspect.” *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1298-1299 (10th Cir. 2004). The Board’s grant policy flunks general applicability and therefore requires strict scrutiny.

**C. The Board concedes strict scrutiny.**

The Board does not attempt to satisfy strict scrutiny. *See* Doc. 65 at PageID.1815. Therefore St. Vincent is entitled to summary judgment on its free exercise, compelled speech, and equal protection claims. *See* Doc. 59-1 at PageID.1496-1497; Doc. 64 at PageID.1749.

**III. The Board indisputably engaged in First Amendment retaliation.**

Nothing the Board says mitigates the evidence of retaliation. Nowhere does the Board mention Commissioner Schafer's statement that there are "probably five, six people who are always going to be strongly opposed [to St. Vincent] no matter what." Doc. 59-1 at PageID.1481. The reason for this strong opposition, as Commissioner Schafer testified, was "the adoptions." Doc. 59-6 at PageID.1563 (Schafer Tr. 40:13-14). Nor does the Board meaningfully address the November 6 email between Commissioners Morgan and Sebolt.

The Board continues to fall back on the argument that St. Vincent can only prove retaliation if most of the Board made retaliatory statements. Were that true, any First Amendment retaliation claim relying in part on circumstantial evidence would fail, and that is certainly not the law. *See, e.g., Paterek v. Vill. of Armada*, 801 F.3d 630, 647 (6th Cir. 2015)

“Circumstantial evidence, like the timing of events or the disparate treatment of similar individuals, may support [the] inference [of a retaliatory motive].” (alterations in original) (quoting *Arnett v. Myers*, 281 F.3d 552, 560-61 (6th Cir. 2002))). Whether by direct statements or circumstantial evidence, retaliation is proven when enough Commissioners “voted with improper motivation” such that “[t]he Board would not have taken the action it did were it not for their votes.” *Scarborough v. Morgan Cnty. Bd. of Educ.*, 470 F.3d 250, 263 (6th Cir. 2006) (requiring not a majority to express hostility, only a “deciding margin”). Here, that standard is comfortably met.

Not a single Commissioner opposed zeroing out St. Vincent’s FY2020 grant. There’s express hostility—conceded by the Board—from three Commissioners. Then there’s the record evidence confirming that at least half the Board shared similar sentiments. This is clear from Commissioner Schafer’s statement. *Supra* 20 (five or six opposed “no matter what”). It is clear from the November 4 and 12 meetings, as confirmed by Commissioner Grebner’s observation of either “majority” or “unanimous[]” opposition to St. Vincent. *Supra* 10; *see also* Doc. 64 at PageID.1719-1722. And it is clear from Commissioner Tennis’ email to

St. Vincent, where he spoke about the “impossible position” into which the charity’s “discrimination . . . under the guise of religious freedom” “put me *and the rest of my colleagues*[.]” Doc. 59-16 at PageID.1618 (emphasis added). The Board has also yet to identify any consistent, non-retaliatory reason for unanimously denying St. Vincent a FY2020 grant, defeating any argument that a majority of the Board acted on benign motives when singling out St. Vincent for disparate treatment.

Faced with this abundant evidence, the Board retreats to an argument refuted by the Court’s motion to dismiss decision and longstanding Supreme Court precedent: Courts cannot inquire into legislative motive. *See* Doc. 65 at PageID.1817-1818. St. Vincent has explained at length why that argument fails. Doc. 64 at PageID.1738 n.4, 1762 n.8. Summary judgment is warranted.

#### **IV. The Board does not dispute St. Vincent’s need for relief.**

St. Vincent explained that it is entitled to declaratory relief, damages, and a permanent injunction prohibiting the Board from continuing to discriminate and retaliate against St. Vincent. The Board offers no argument regarding the scope of this relief, so the appropriate relief is undisputed.

## CONCLUSION

For the foregoing reasons, St. Vincent's motion should be granted in full.

Dated: July 13, 2021

Respectfully submitted,

/s/ William J. Haun

William J. Haun

Mark L. Rienzi

Lori H. Windham

Nicholas R. Reaves

The Becket Fund for Religious Liberty

1919 Pennsylvania Ave. NW, Ste. 400

Washington, DC 20006

whaun@becketlaw.org

Telephone: (202) 955-0095

Facsimile: (202) 955-0090

William R. Bloomfield (P68515)

Catholic Diocese of Lansing

Lansing, Michigan 48933-1122

wbloomfield@dioceseoflansing.org

Telephone: (517) 342-2522

*Counsel for Plaintiff*

## CERTIFICATE OF COMPLIANCE

This memorandum complies with the word limit of L. Civ. R. 7.2(c) because, excluding the parts exempted by L. Civ. R. 7.2(b)(i), it contains 4,271 words. The word count was generated using Microsoft Word 2019.

*/s/ William J. Haun*

William J. Haun

The Becket Fund for Religious Liberty

1919 Pennsylvania Ave. NW, Ste. 400

Washington, DC 20006

Telephone: (202) 955-0095

[whaun@becketlaw.org](mailto:whaun@becketlaw.org)