

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

ST. VINCENT CATHOLIC
CHARITIES,

Plaintiff,

v.

INGHAM COUNTY BOARD OF
COMMISSIONERS,

Defendant.

CASE NO. 1:19-CV-1050

HON. ROBERT J. JONKER

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION TO DISMISS**

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INTRODUCTION

This Court is unlikely to see a clearer case of government religious discrimination.

For years, Plaintiff St. Vincent Catholic Charities (“St. Vincent”) has provided vital refugee services in partnership with Defendant Ingham County Board of Commissioners (the “Board”). Recently, however, the Board has taken steps to end that partnership—denying St. Vincent grant funding, threatening to cut St. Vincent’s contracts, and looking for an agency to replace St. Vincent. This about-face has nothing to do with the quality of St. Vincent’s services. Instead, as Board members publicly admitted, it is because of St. Vincent’s religious beliefs and its choice to seek this Court’s protection for those beliefs in *Buck v. Gordon*.

The Board now moves to dismiss, insisting that a federal court lacks the power to review claims that a county board has violated the United States Constitution. However, each of the Board’s arguments runs headlong into controlling Supreme Court and Sixth Circuit precedent.

First, the Board claims it has legislative immunity. But legislative immunity *never* covers local governmental entities, only local officials in their individual capacities. Further, the Board’s targeted, individualized

decisions bear all the hallmarks of administration, not legislation. The Board presents a staggeringly broad argument that would confer on county boards greater immunity than is available even to the States.

Second, the Board insinuates that it had to deny St. Vincent the Community Agency Grant to comply with the Establishment Clause. Not only is this unsupported by the facts alleged, but the Supreme Court has repeatedly held the opposite: governments can constitutionally fund social services through religious entities.

Third, the Board argues that St. Vincent lacks Article III standing. But St. Vincent has already lost a \$4,500 grant, suffered injuries to its Free Exercise rights, and is at risk of further losses due to the Board's coercive use of its funding power. The Board has attempted and is attempting to force St. Vincent to change its religious beliefs or stop serving those in need. These injuries easily satisfy Article III.

Although the Board has sought dismissal under Rule 12(b)(6), it does not contest that St. Vincent has plausibly stated a claim—nor could it. Instead, it raises only jurisdictional and affirmative defenses that are easily dispatched. The Court should deny the Board's motion.

BACKGROUND

A. St. Vincent provides critical refugee services in Ingham County.

St. Vincent provides essential translation and resettlement services to refugees arriving in Ingham County. ECF No. 1 at PageID.8. In fact, St. Vincent is the *only* federally designated refugee resettlement agency in the area. *Id.* St. Vincent is excellent at what it does, and the Board takes no issue with St. Vincent's services. As Commissioner Tennis stated: "I don't think anyone on this Board is questioning the quality of services or the wonderful work St. Vincent[] has done for the refugee community." *Id.* at PageID.21. St. Vincent offers these services without regard to sexual orientation. *Id.* at PageID.9.

The Board depends on St. Vincent to provide refugee services in three ways:

1. Each year since 2015, the Board has renewed an annual contract with St. Vincent for refugee health interpreting services; most recently for \$40,000 (the "Health Center Interpreting Contract"). *Id.* at PageID.12.
2. Each fall, for a number of years, the Board has executed a refugee health services contract; most recently for \$128,000 (the "Refugee Health Services Contract"). *Id.*
3. For several years, the Board has issued St. Vincent an annual community grant for refugee services (the "Community Agency Grant" or simply "Grant"). *Id.*

B. The Board targets St. Vincent's beliefs and conduct.

The impetus for the Board's religious discrimination actually begins with a different case before this Court: *Buck v. Gordon*, 1:19-cv-286 (W.D. Mich. filed Apr. 15, 2019). *See* ECF No. 1 at PageID.13. Last year, the State of Michigan threatened to shutter St. Vincent's nearly-century-old foster care program unless it violated its deeply held religious beliefs and certified same-sex couples for foster care and adoptions. *Id.* St. Vincent sued and, in September 2019, this Court preliminarily enjoined Michigan's actions. *Id.*; *Op.*, *Buck*, 1:19-cv-286 (W.D. Mich. Sept. 26, 2019), ECF No. 69.

Now to this case. On November 4, 2019, the Ingham County Human Services Committee (a subset of the Board) met to consider renewing the Refugee Health Services Contract. *See* ECF No. 1 at PageID.16. At that meeting, Commissioner Sebolt opposed renewing the Refugee Health Services Contract because of "St. Vincent's Catholic Charities' publicly stated stances and lawsuit against the State of Michigan toward same sex couples." *Id.* Commissioner Stivers then called St. Vincent "morally bankrupt" for the very views this Court has protected in *Buck v. Gordon*. *See id.* at PageID.18.

Next, Commissioner Sebolt publicly questioned the sincerity of St. Vincent's religious beliefs. He asserted that St. Vincent could certify same-sex couples, but "St Vincent[] is specifically choosing not to." *Id.* at PageID.17.¹ Board members then asked Ingham County staff to look for a replacement refugee services provider, not because of St. Vincent's services, but because of its beliefs. *Id.* at PageID.17-19.

The Committee then recommended cutting the Refugee Health Services Contract in half to coerce St. Vincent to betray its religious beliefs. As Commissioner Tennis explained, the Board would shorten the contract in the hope that St. Vincent might "come around." *Id.* at PageID.17. And Commissioner Naeyert hoped that renewing St. Vincent's contract for a shorter term (instead of just canceling it) would "giv[e] St. Vincent[] an opportunity to change their policy." *Id.* at PageID.18. That "policy" refers to St. Vincent's deeply held religious beliefs about marriage and the family. *See id.* at PageID.16-18.

¹ *But see* Op. at PageID.2529, *Buck*, 1:19-cv-286 (W.D. Mich. Sept. 26, 2019), ECF No. 69 ("What St. Vincent has not done and will not do is give up its traditional Catholic belief that marriage as instituted by God is for one man and one woman" and "[t]hat kind of targeted attack on a sincerely held religious belief is what calls for strict scrutiny.").

On November 12, 2019, St. Vincent’s counsel sent the Board a letter explaining that the Board would violate the law if it accepted the Committee’s recommendation. *See id.* at PageID.20. The very same day, the Board reversed course and agreed to renew the Refugee Health Services Contract in full. *Id.* But, to clarify that the Board’s about-face did not represent a change of heart, Commissioner Tennis said: “[It’s] truly horrible to be placed in a situation where we have to choose between services to a very vulnerable population and . . . our own principles of equality and fairness.” *Id.* at PageID.21.

On November 18—exactly two weeks after the Board’s initial comments—the Human Services Committee met again, this time to consider renewing the Grant. *Id.* The County Controller recommended St. Vincent receive \$4,500—the same amount it had received the prior year. ECF No. 1-1. However, the Committee sought to cut St. Vincent’s funding completely. But (unlike during the November 4, 2019 meeting), the Committee knew better than to fill the record with statements decrying St. Vincent’s “moral bankrupt[cy].” ECF No. 1 at PageID.18. Rather, a single board member stated that the Board should shift funding away from St. Vincent to focus on “[the] necessities of life: food, shelter

and clothing.” *Id.* There was no further discussion. *Id.* Another Board member told St. Vincent privately that the “‘fix’ was in” before the meeting. *Id.* at PageID.23. The Committee thus attempted to whitewash the record, but the facts speak for themselves.

Despite the Board’s insistence for the need to fund “food, shelter and clothing,” it allocated roughly:

- \$15,000 for drug-abuse prevention,
- \$5,000 for inmate transition,
- \$5,000 for elderly transport and telephone assistance,
- \$11,500 for community gardening,
- \$6,750 for prescription drug translation services, and
- \$2,000 for an emotional crisis hotline.

ECF No. 1-1. While these are valuable community services, they are not food, clothing, or shelter. *Id.*

Thirty-two agencies sought grant funding. *Id.* Thirty-one received funding. *Id.* Only St. Vincent received nothing. *Id.* No other agency even saw a decrease (except for one agency which asked for less money). *Id.* Indeed, the Board had previously made clear that it sought to “make everyone happy,” even if doing so required expanding the budget. ECF No. 1 at PageID.23. Importantly, by shifting St. Vincent’s funds elsewhere, the Board did not change the overall budget. ECF No. 1-1.

C. St. Vincent files this lawsuit to protect its rights.

Surprised by the loss of \$4,500 and fearing further discrimination, St. Vincent brought this case. ECF No. 1. Three days later, St. Vincent filed a preliminary injunction, which is pending before this Court. ECF No. 5. Now the Board moves to dismiss. ECF No. 19.

In its briefing, the Board has waffled in its factual representations. To avoid a preliminary injunction, the Board insisted numerous times that the Health Center Interpreting Contract did not exist. *E.g.*, ECF No. 16 at PageID.157 (“There is no \$40,000 interpreter agreement.”). Now, in a footnote, the Board admits that its repeated representations to this Court were wrong—the Health Center Interpreting Contract exists, just as St. Vincent described it. ECF No. 20-1 at PageID.491 (“Director Scott subsequently realized she was in error—the \$40,000 contract . . . automatically renews.”).

The Board has also used its briefing to continue attacking St. Vincent and its religious beliefs by, among other things, accusing St. Vincent of “predations on the public fisc” and demanding a groundless quarter-million-dollar bond to cover attorney’s fees it could never collect. *See* ECF No. 16 at PageID.162, 171.

STATEMENT OF THE LAW

The Board has sought dismissal exclusively under Federal Rule of Procedure 12(b)(6).² ECF No. 19. “A complaint survives a motion to dismiss under Rule 12(b)(6) by simply alleging facts sufficient to state a claim to relief that is plausible on its face.” *Gallivan v. United States*, 943 F.3d 291, 293 (6th Cir. 2019) (internal quotation marks and citation omitted). At this stage the Court accepts the complaint’s allegations as true and draws all reasonable inferences in St. Vincent’s favor. *E.g., In re Fifth Third Early Access Cash Advance Litig.*, 925 F.3d 265, 276 (6th Cir. 2019).

ARGUMENT

Each of the Board’s dismissal arguments is deeply flawed.

1. The Board does not have legislative immunity because: (i) local government entities *never* have legislative immunity and (ii) the Grant denial was not a legislative act.
2. The Board would not have violated the Establishment Clause had it issued the Grant—as it had done for years prior—and, in any event, that is an inappropriate argument in a motion to dismiss.
3. St. Vincent suffered an Article III injury when the Board: denied it funding, attempted to coerce it to change its religious beliefs, and threatened further retaliatory action.

² As discussed below, most of the Board’s actual arguments have little to do with Rule 12(b)(6) and are more in the vein of affirmative defenses or 12(b)(1) arguments.

The Court should deny the Board's motion to dismiss.

I. The Board is not immune.

The Board's primary argument is that it has absolute legislative immunity. ECF No. 19 at PageID.437-42. This is wrong for two independent reasons. First, as a municipal entity, the Board cannot avail itself of local legislative immunity, which applies only to local legislators in their individual capacities. Second, the Board's individualized, targeted decision to deny St. Vincent the Grant was an administrative, not legislative, act.

A. Municipal entities—like the Board—are ineligible for legislative immunity.

Local legislative immunity from § 1983 suits does not cover local governments, local governmental entities, or local officials in their official capacities. Where it applies, it extends only to individual government officials in their individual capacities. St. Vincent has sued only the Board (ECF No. 1), which is categorically ineligible for legislative immunity. The Court's consideration of the Board's immunity claims should end there.

The Supreme Court has held legislative immunity does not apply to local governmental entities. In *Board of County Commissioners v.*

Umbehr, the plaintiff sued county board members in their individual and official capacities. 518 U.S. 668, 671-72 (1996). Just like Defendant here, the board members argued that legislative immunity covered not only “individual actors, but . . . the governmental entity itself.” Reply Br. at *11, *Bd. of Cty. Comm’rs v. Umbehr*, No. 94-1654, 1995 WL 655121 (Nov. 6, 1995). The Supreme Court rejected that argument: “Because only claims against the Board members in their *official* capacities are before us, and because immunity from suit under § 1983 extends to public servants only in their *individual* capacities, the legislative immunity claim is moot.” *Umbehr*, 518 U.S. at 677 n.* (emphasis in the original).³ The Supreme Court went on to hold that *Umbehr* could sue the county board for First Amendment retaliation based upon the board’s vote not to renew *Umbehr*’s contract. *Id.* at 672-73.

³ An official-capacity suit against a local official is, in reality, a suit against the entity they represent. *See Official Capacity Suit*, Black’s Law Dictionary (9th ed. 2009); *Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 690 n.55 (1978) (“[O]fficial-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent.”); *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (“[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.”). Thus, refusals to extend legislative immunity to official capacity suits should be understood as a refusal to extend legislative immunity to suits against local entities, as well.

The Sixth Circuit’s *en banc* decision in *Smith v. Jefferson County Board of School Commissioners* similarly routs the Board’s argument. 641 F.3d 197 (6th Cir.) (*en banc*), *cert. denied*, 565 U.S. 820 (2011). The plaintiffs there sued a county school board and its individual members in both their personal and official capacities under § 1983. *Id.* at 204. The Sixth Circuit extended immunity to the board members in their individual capacities but allowed the claims against the board and the members in their official capacities to proceed. “[T]he Board members may be sued in their official capacities but may not be sued as individuals.” *Id.* at 219. *See also Saboury v. City of Lansing*, 366 F. Supp.3d 928 (W.D. Mich. 2017) (Jonker, C.J.) (extending legislative immunity to individual city council members but allowing the case against the city to proceed).

Indeed, it seems that every other circuit to consider this question has ruled the same way: local governments do not have legislative immunity. As the *en banc* Fourth Circuit observed, “every other circuit that has considered this issue has either held or presumed that a municipality is not entitled to absolute legislative immunity from suits brought under section 1983.” *Berkley v. Common Council of City of Charleston*, 63 F.3d

295, 300 (4th Cir. 1995) (collecting cases). *See also Schmidt v. Contra Costa Cty.*, 693 F.3d 1122, 1131 n.10 (9th Cir. 2012); *Morris v. Lindau*, 196 F.3d 102, 111 (2d Cir. 1999); *Craig v. Police Jury Parish*, 265 F. App'x 185 (5th Cir. 2008).

The Board does not acknowledge, much less try to distinguish, this binding rule in the Sixth Circuit's *en banc Smith* decision and the wealth of supporting precedent. Instead, the Board relies on the unpublished decision in *Guindon v. Township of Dundee, Michigan*, 488 F. App'x 27 (6th Cir. 2012), insisting that "legislative immunity applies equally to the legislative body itself." ECF No. 19 at PageID.438 (emphasis omitted). But *Guindon* says no such thing. *Guindon* extended legislative immunity only to individual legislators. *See* 488 F. App'x at 33-34.

In fact, *Guindon* could not have extended legislative immunity to local entities because doing so would have conflicted with *Smith*'s conclusion that local legislators are subject to official-capacity suits. Thus, even if *Guindon* holds what the Board claims—and it does not—it would have to yield to *Smith* as (i) *Smith* precedes *Guindon*, (ii) *Smith* is published (*Guindon* is not), and (iii) *Smith* was decided *en banc* (*Guindon* was not).

The Board also relies on *Bogan v. Scott-Harris*. But this too is misplaced. *Bogan* extended legislative immunity only to local officials, not local entities. *Bogan v. Scott-Harris*, 523 U.S. 44, 53 (1998). *Bogan* also explained why immunity was appropriate for individual legislators but not for local entities: “the threat of [individual] liability may significantly deter service in local government, where prestige and pecuniary rewards may pale in comparison to the threat of civil liability.” *Bogan*, 523 U.S. at 52. *Bogan* further noted that “the time and energy required to defend against a lawsuit are of particular concern at the local level, where the part-time citizen-legislator remains commonplace.” *Id.* The Court’s own reasoning thus further undermines the Board’s arguments here.

What’s more, *Bogan* recognized a clear check on any abuse that could result from individual legislator immunity: the fact that the local government entity *itself* could be held liable for constitutional violations. *Id.* at 53 (noting that “deterrents to legislative abuse may be greater at the local level” because “[m]unicipalities themselves can be held liable for constitutional violations”). That’s what St. Vincent seeks to do here: hold the local government entity itself liable for violating the Constitution.

Finally, the Board's reliance (ECF No. 19 at PageID.438) on *Supreme Court of Virginia v. Consumers Union of the U.S., Inc.* is wholly inapposite. 446 U.S. 719 (1980). That case involved a state governmental entity, not a local entity. *E.g.*, *State Employees Bargaining Agent Coal. v. Rowland*, 494 F.3d 71, 85-87 (2d Cir. 2007) (explaining why legislative immunity extends to state official capacity suits but not local official capacity suits). The differences between the States and localities are legion. The Board is not a sovereign, is not contemplated by the Constitution, and exercises no undiluted power. The sovereign immunity, federalism, and comity concerns present in federal suits against state branches of government have no place here. The Board's insistence that legislative immunity applies to state and local officials "with full force and identical logic" (ECF No. 19 at PageID.438) is a misreading of *Bogan* and fails to account for *Umbehr* and *Smith*.

"Since *Monell*, municipalities and local governments have repeatedly, and unsuccessfully, attempted to secure some immunity from liability in suits brought under section 1983." *Berkley*, 63 F.3d at 296. The Board is no different; its arguments run headlong into binding Supreme Court and Sixth Circuit jurisprudence and defy the animating principles behind

legislative immunity. The Court should deny the motion to dismiss on this ground.

B. The Board's grant denial was not a legislative act.

Legislative immunity only extends to legislative acts. *E.g.*, *Canary v. Osborn*, 211 F.3d 324, 329-30 (6th Cir. 2000). To be legislative, the act must be both legislative in form (integral to the legislative process) and in substance (bearing all the “hallmarks of traditional legislation”). *Id.* at 330 (quoting *Bogan*, 523 U.S. at 55-56). Here, the Board's Grant denial was administrative, not legislative. Thus, even if municipal entities were eligible for legislative immunity—they are not—the Board's actions against St. Vincent are not immune.

The Board's decision to deny St. Vincent—and St. Vincent alone—a community grant bore *none* of the “hallmarks of traditional legislation.” Legislative acts set broad policy that, applicable to everyone (or most everyone), and often with far-reaching effects.⁴ By contrast, executive or administrative action applies those decisions on a case-by-case basis.

⁴ *Prentis v. Atl. Coast Line Co.*, 211 U.S. 210, 226 (1908) (“Legislation . . . looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power.”).

The Sixth Circuit’s legislative immunity decision in *Canary v. Osborn* helps elucidate this distinction. There, the Sixth Circuit rejected legislative immunity when a local government denied a contract renewal because “the Board was making personalized assessments of individual employees, not engaging in an impersonal budgetary analysis of various positions.” 211 F.3d at 330. *See also Jaggers v. City of Alexandria*, No. 08-5213, 2009 WL 233244, at *5 (6th Cir. Feb. 2, 2009) (“If the underlying purpose of zoning activity is to establish general policy, then it is legislative. If, however, the zoning action involves applying existing zoning rules to a specific property, . . . [it] is more likely to be administrative rather than legislative.”) (internal quotation marks and citation omitted).

When it denied St. Vincent’s grant request, the Board singled out St. Vincent for individualized treatment. Of the thirty-two grant applicants, the other thirty-one received funding. Indeed, the Board’s discussion of the community grant funding began and ended with St. Vincent. The Board did not set a broad new policy applicable to everyone; it made a specific determination regarding the amount of funding it would give St. Vincent for the 2020 fiscal year. This

individualized, disparate treatment of a single agency is fatal to the Board's immunity claim.

Yet another way the Board's Grant denial shows itself administrative is its scope. The effects of the Board's decision are limited to St. Vincent. In denying the Grant, the Board did not change the overall amount of money allocated for community grants. ECF No. 1-1; ECF No. 19 at PageID.433. Nor, by its own admission, did the Board even change its funding priorities. ECF No. 19-3. Nor did the Board stop funding community agency services in Ingham County. Simply put, the Board's decision does not "have prospective implications that reach well beyond the particular" grant request. *Canary*, 211 F.3d at 330 (internal quotation marks and alterations omitted). This renders an action non-legislative. *See id.*

Further, when the Board denied St. Vincent the grant, it did not prioritize so-called "necessities." A review of the Board's resolution (ECF No. 1-1), reveals that at least *one-fifth* of the Board's grant funding went toward services and items the Board deems as non-necessities, including things like gardening tools and emotional support hotlines. ECF No. 1-1.

The Board argues that its decision to prioritize funding the “necessities” was a legislative decision. Even if that were the case, it is not what happened here. First, as discussed *supra*, the Board denied the Grant to retaliate against St. Vincent for its religious beliefs and for pursuing relief in this Court—not to pursue the necessities. Second, the Board has supposedly prioritized funding necessities since at least 2016, years before prior to the Grant denial. *See* ECF No. 19-3. Thus, under the Board’s own theory, the grant denial was merely the execution of a previously enacted policy, which is an administrative, not legislative, action.

The Board’s other actions at issue in this case are similarly administrative. The Board’s threats to terminate St. Vincent’s funding if St. Vincent did not change its religious views; the Board’s directives to County staff to find alternatives to St. Vincent; and the Board’s entire consideration of the Refugee Health Services Contract are administrative. ECF No. 1 at PageID.16-19, PageID.24-27. Each action applied only to St. Vincent and constituted an individualized, case-by-case determination. These actions were neither part of a broader legislative process nor legislative in function.

In sum, even if the Board could be eligible for legislative immunity (it cannot), the Board is still not immune because its actions were administrative, not legislative.

II. The Board's Establishment Clause argument is nonsense.

The Board next argues that it cannot be held to account under the Free Exercise Clause because it denied St. Vincent \$4,500 “to avoid contributing to an establishment of religion, or even being perceived as doing so.” ECF No. 19 at PageID.445. For several reasons, this argument goes nowhere.

First, it is premature. Why the Board denied the Grant is a factual question. St. Vincent has alleged that the Board denied the Grant to punish St. Vincent's religious beliefs and its decision to protect those beliefs in this Court. ECF No. 1 at PageID.2. These allegations find support in the Board's public statements. *Id.* at Page ID.16-18. This is the exact sort of targeting evidence the Supreme Court in *Masterpiece Cakeshop* and this Court in *Buck* found sufficient to show religious targeting. St. Vincent has pled sufficient facts to state a claim under the Free Exercise Clause. As for the Board's post hoc justification, this is a defense to be tested later, not a failure of pleading.

Second, the Board's post hoc explanation is implausible. For years, the Board has provided St. Vincent the Grant without a whiff of Establishment Clause concerns. *See* ECF No. 19 at PageID.431 (acknowledging St. Vincent received grants since 2016). And, while denying St. Vincent the Grant, the Board funded numerous other religious agencies without apparent concern. ECF No. 1-1 (funding Advent House Ministries and Cristo Rey Community Center, a Catholic entity). Simply, the Board does not actually fear an Establishment Clause violation.

Moreover, the Supreme Court has repeatedly held that governments may fund secular services provided through religious entities. Indeed, from homeless shelters, to food banks, to hospitals, to foster care, religious social services are interwoven into the national fabric. *E.g.*, 3 W. Cole Durham & Robert Smith, *Religious Organizations & the Law* § 26 (2017).

The Board insists that this case is like *Locke v. Davey*, not *Trinity Lutheran Church of Columbia, Inc. v. Comer*.⁵ The opposite is true. In

⁵ The Board's reliance on *Harvest Family Church v. Federal Emergency Management Agency*—via three-page uninterrupted block quote—merits

Locke, the Supreme Court held that the State of Washington could constitutionally decline to pay to train religious ministers. 540 U.S. 712 (2004). In *Trinity Lutheran*, the Supreme Court held that the State of Missouri could not deny a church access to a publicly available grant simply because it was a church. 137 S. Ct. 2012 (2017). Here, the Grant does not fund clergy training; it funds refugee services for people of all faiths.

In fact, the contrast between *Locke* and *Trinity Lutheran* highlights precisely why the Board's actions here are unconstitutional. The Board did not deny the Grant because of how the funds would be used (*Locke*), but because of St. Vincent's religious beliefs and character (*Trinity Lutheran*).

The Board's professed concerns are entirely unfounded. It can rest assured that it can fund refugee services through a religious organization without imposing a state religion. What the Board cannot do is withhold

little discussion. The Fifth Circuit vacated that decision. No. 17-20768, 2018 WL 386192 (5th Cir. Jan. 10, 2018). In fact, the Fifth Circuit vacated the decision because the government there realized its error and FEMA issued new rules allowing funding without regard to whether the applicant was secular or religious. See Letter from the Solicitor General to the United States Supreme Court re Harvest Family Church (Jan. 3, 2018), <https://perma.cc/HJB9-F9GM>.

funding to punish religious beliefs. And, in any event, none of this goes to whether St. Vincent adequately plead the facts necessary to support its claims. It did, and the Board provides no reason to conclude otherwise.

III. St. Vincent has Article III standing.

The Board claims St. Vincent has not suffered an Article III injury-in-fact because the Board renewed the Refugee Health Services and Health Center Interpreting Contracts. Yet St. Vincent has suffered: (i) an actual loss of funding, (ii) a violation of its Free Exercise rights, (iii) religious targeting and coercion, and (iv) threats of future harms. All four of these injuries are sufficient for Article III standing.

First, the loss of government funding constitutes an Article III injury. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019). *See also Linton v. Comm'r of Health & Env't*, 973 F.2d 1311, 1316 (6th Cir. 1992) (“An economic injury which is traceable to the challenged action satisfies the requirements of Article III.”). Here, the Board denied St. Vincent a Grant worth \$4,500. This alone satisfies Article III.

Second, a violation of one’s Free Exercise rights constitutes an injury-in-fact. In fact, “even minimal infringement upon First Amendment values” is not only sufficient to state a claim but constitutes irreparable

harm. *Buck v. Gordon*, No. 1:19-cv-286, 2019 WL 4686425, at *13 (W.D. Mich. Sept. 26, 2019) (quotation omitted). And a government violates the Free Exercise clause where it attempts to compel someone “to affirm or disavow a belief forbidden or required by one’s religion.” *E.g.*, *Nikolao v. Lyon*, 875 F.3d 310, 316 (6th Cir. 2017). St. Vincent has alleged—and the record shows—that the Board denied the Grant and will likely deny future contracts in an attempt to force St. Vincent to disavow and betray its religious beliefs. *E.g.*, ECF No. 1 at PageID.29.

Third, the government “cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices.” *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1731 (2018). Again, St. Vincent has alleged—and the record shows—that Board members’ comments and the Board’s actions express an overt hostility to St. Vincent’s religious beliefs inconsistent with the Free Exercise Clause. *E.g.*, ECF No. 1 at PageID.28. St. Vincent has alleged an injury to its Free Exercise rights. This too satisfies Article III. Indeed, this is the precise sort of injury the Court is currently considering in *Buck v. Gordon*.

Fourth, St. Vincent has alleged that it fears imminent, further retaliation from the Board for its religious beliefs and speech. ECF No. 1 at PageID.30-31. This too satisfies Article III. *See, e.g., Briner v. City of Ontario*, 370 F. App'x 682, 704 (6th Cir. 2010) (holding that the plaintiffs' distinct and palpable "allegations of fear, intimidation, and anxiety" about a city's First Amendment retaliation satisfied standing).

The Board's mootness argument likewise makes no sense. The Board denied St. Vincent a Grant; St. Vincent still does not have the Grant; this Court could order the Board to issue the Grant. Similarly, the Board has publicly said it will seek to coerce St. Vincent to change its religious beliefs by withholding or conditioning funding on St. Vincent changing those beliefs. ECF. No. 1 at PageID.17. It has never disavowed those statements; this Court could enjoin the Board from withholding or conditioning funding in this way.

St. Vincent suffered several injuries when the Board denied the Grant and threatened to cancel additional contracts unless St. Vincent changed its religious beliefs. St. Vincent continues to suffer injuries due to the threats of further retaliation. All of these injuries satisfy constitutional muster. And this Court can remedy them all.

CONCLUSION

The Court should deny the Board's motion to dismiss.

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Respectfully submitted:

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CERTIFICATE OF COMPLIANCE

This memorandum complies with the word limit of L. Civ. R. 7.2(b)(i) because, excluding the parts exempted by L. Civ. R. 7.2(b)(i), it contains 5,054 words. The word count was generated using Microsoft Word 2019.

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