

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

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ROUCH WORLD, LLC, A MICHIGAN  
LIMITED LIABILITY COMPANY, AND  
UPROOTED ELECTROLYSIS, LLC, A  
MICHIGAN LIMITED LIABILITY  
COMPANY,

Court of Appeals No.

Court of Claims No. 20-000145-MZ

Plaintiffs-Appellees,

v

MICHIGAN DEPARTMENT OF CIVIL  
RIGHTS, and JAMES WHITE, Director of  
the Michigan Department of Civil Rights,

Defendants-Appellants.

/

**DEFENDANTS-APPELLANTS' APPENDIX**

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Dated: December 28, 2020

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## TABLE OF CONTENTS

<b>Description</b>	<b>Page No.</b>
December 7, 2020 Opinion and Order	1a – 7a
MCRC Interpretative Statement	8a – 9a
Plaintiff's Complaint	10a – 18a
Johnson/Oswalt Complaint	19a – 20a
Great Lakes Center Letter	21a – 26a
MDCR Order	27a – 38a
Wolf Complaint	39a – 45a
Great Lakes Center Letter	46a – 53a
MDCR Order	54a – 64a

**STATE OF MICHIGAN  
COURT OF CLAIMS**

ROUGH WORLD, LLC, a Michigan Limited Liability Co, and UPROOTED ELECTROLYSIS, LLC, a Michigan Limited Liability Co,

Plaintiffs,

v.

MICHIGAN DEPARTMENT OF CIVIL RIGHTS, and MARY ENGELMAN, Interim Director of the Michigan Department of Civil Rights,

Defendants

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**OPINION AND ORDER REGARDING  
DEFENDANTS' MOTION FOR  
SUMMARY DISPOSITION**

Case No. 20-000145-MZ

Hon. Christopher M. Murray

Before the Court is defendants' September 16, 2020 motion for summary disposition, to which plaintiffs responded on October 14, 2020, and to which defendants replied on October 19, 2020. The Court is dispensing with oral argument because the material facts are undisputed, thus requiring the Court to decide issues of law, which the parties' briefs have adequately covered. LCR 2.119(A)(6).

**I. BACKGROUND**

Plaintiffs are two Michigan companies that on religious grounds decided not to provide services to potential customers who were either a same-sex couple or an individual who was "transitioning" their identity from one gender to another. Complaints were filed with the Michigan Department of Civil Rights (MDCR), which started to investigate the complaints until this suit was filed. As far as can be discerned, the MDCR has not issued any findings or determinations on the merits of the administrative complaints.

In the instant complaint, plaintiffs ask this Court to declare that the prohibition against discriminating because of one's "sex" under the Elliot-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.*, which does not include discrimination because of one's sexual orientation or gender identity, and as a result of that conclusion, rule that the MDCR's Interpretative Statement 2018-1 is invalid and the department has no jurisdiction over these administrative complaints. Plaintiffs also allege that to find them responsible for violating the ELCRA would also be inconsistent with the free exercise of religion guaranteed by both the United States and Michigan Constitutions.

Defendants' motion contains two arguments: (1) the term "sex" under the ELCRA includes sexual orientation and gender identity; and (2) that the interpretive statement coming to that conclusion is valid and consistent with the plain meaning of the term "sex" as used in the ELCRA. Defendants do not address plaintiffs' asserted religious freedom claim, except in a somewhat conclusory fashion in their reply brief.

## II. ANALYSIS

A motion for summary disposition filed under MCR 2.116(C)(8) "tests the legal sufficiency of the complaint on the basis of the pleadings alone." *Beumrie v Henderson*, 465 Mich 124, 129, 631 NW2d 308 (2001). "The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted." *Id.* at 129-130. "The motion should be granted if no factual development could possibly justify recovery." *Id.* at 130.

There are two issues raised by the motion and response. One, what is the legal effect of Interpretive Statement 2018-1, as it was not promulgated as a rule under the Administrative Procedures Act, MCL 24.201 *et seq.* Two, to the extent that the MDCR utilizes Interpretive

Statement 2018-1 to address civil rights complaints filed with it, is it a valid interpretation of Michigan law?

#### A. FORCE OF AN INTERPRETIVE STATEMENT

Initially the Court will address plaintiffs' assertion that the Interpretive Statement does not have the force of law. That is certainly true, see MCL 24.207(h) and *Michigan Farm Bureau v Bureau of Workmen's Compensation*, 408 Mich 141, 149-150, 289 NW2d 699 (1980), but whether defendants are seeking to apply the term "sex" under the ELCRA through an Interpretive Statement or a rule is ultimately not the controlling concern. Instead, whether it is by rule or non-binding statement, the ultimate question is whether defendants' enforcement of the ELCRA is consistent with the law. *Bunoe v Secretary of State*, 239 Mich App 204, 216-217, 607 NW2d 372 (1999). As detailed below, in one manner it is, and in another it is not.

#### B. SEX UNDER THE ELCRA

Relevant to the provision of goods and services, MCL 37.2302(a) provides:

Except where permitted by law, a person shall not

(a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status.

As it is used in this context, the term "sex" is not defined within the statute, so courts are left to utilize tools of construction to determine the plain meaning intended by the Legislature.<sup>1</sup> See *Bruckett v Foamy Hope, Inc.*, 482 Mich 269, 276, 753 NW2d 207 (2008), citing MCL 8.3a; *People v Thompson*, 477 Mich 146, 151, 730 NW2d 708 (2007) ("[a]n undefined statutory term must be

<sup>1</sup>The ELCRA does define the term in the context of employment, see MCL 37.2201(d), but there is no argument that that definition applies in the present context.

accorded its plain and ordinary meaning.”). “A lay dictionary may be consulted to define a common word or phrase that lacks a unique legal meaning.” *Brackett*, 482 Mich at 276.

With respect to whether sexual orientation falls within the meaning of “sex” under the ELCRA, the Court of Appeals has already concluded that it does not. *Barbour v Dep’t of Social Services*, 198 Mich App 183, 185; 497 NW2d 216 (1993) (“harassment or discrimination based on a person’s sexual orientation is not an activity proscribed by the act”). Being a decision published after November 1, 1990, *Barbour* is binding on this Court under MCR 7.215(A) and must be followed. And, whether *Barbour*’s reasoning is no longer valid in light of *Howick v Clayton Co*, \_\_\_ US \_\_\_, 140 S Ct 1731, 207 L Ed 2d 218 (2020), and cases containing similar reasoning, is a matter for the Court of Appeals, not this Court. As the Court of Appeals held in *In re AGD*, 327 Mich App 332, 343, 933 NW2d 751 (2019):

“An elemental tenet of our jurisprudence, stare decisis, provides that a decision of the majority of justices of [the Supreme] Court is binding upon lower courts.” *People v Mitchell*, 428 Mich 364, 369, 408 NW2d 798 (1987). “The obvious reason for this is the fundamental principle that only [the Supreme] Court has the authority to overrule one of its prior decisions.” *Paige v Sterling Hts*, 476 Mich 495, 524, 720 NW2d 219 (2006). “Until [it] does so, all lower courts and tribunals are bound by that prior decision and must follow it even if they believe that it was wrongly decided or has become obsolete.” *Id.* (emphasis added). Accord *Rodriguez de Quijas v Shearson/American Express, Inc.*, 490 US 477, 484, 109 S Ct 1917, 104 L Ed 2d 526 (1989) (“If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”).

Under *Barbour*, the Court must hold that sexual orientation does not fall within the term sex under the ELCRA public accommodation provision.

But *Barbour* does not address whether “gender identity” falls within the prohibition of discriminating on the basis of sex, and no other Michigan court has addressed whether “gender identity” falls within the term “sex” under the ELCRA. As is often the case, when no guiding

Michigan decision exists on the meaning of a provision within the ELCRA, courts turn to a consideration of federal decisions applying analogous provisions of Title VII. *Alsquagh v Comm'n on Law Enforcement Standards*, 246 Mich App 547, 556, 634 NW2d 161 (2001) ("With regard to gender discrimination, those federal civil rights cases interpreting title VII of the federal Civil Rights Act of 1964, 42 USC 2000e *et seq.*, and as amended, 42 USC 1983, although not controlling, provide persuasive authority for considering and resolving cases brought pursuant to Michigan's Civil Rights Act").

Although there are no cases addressing this issue under the ELCRA, there is one recent decision addressing whether the term "gender" as used in the ethnic intimidation statute, MCL 750.147b, covers a transgender person. In *People v Rogers*, 331 Mich App 12; \_\_\_ NW2d \_\_\_ (2020), vacated \_\_\_ Mich \_\_\_, 950 NW2d 48 (2020), the Court held that as defined in 1988, the year the statute was enacted, "gender" was synonymous with "sex," which did not include transgender people. *Rogers*, 331 Mich App at \_\_\_, slip op at 6-7. Along with contemporaneous dictionary definitions, the *Rogers* Court relied upon *Barbour*, recognizing that the *Barbour* Court "used the term 'gender' interchangeably with the statutory term 'sex,'" and concluded that there was "no indication that the term gender would have been understood to encompass one who is a transgender person when" the ethnic intimidation statute was enacted. *Id.*, slip op at 7. Importantly, however, the Supreme Court vacated that decision, ordering the Court of Appeals to reconsider its decision in light of *Bostock*. *Rogers*, \_\_\_ Mich \_\_\_, 950 NW2d 48.

*Rogers*, having dealt with a different statute and different (though perhaps synonymous) term, is not controlling. But, the Supreme Court's order directing that Court to reconsider its decision in light of *Bostock* sheds at least some light on whether this Court should consider *Bostock* when interpreting the ELCRA. Clearly, both because it is a decision from the Supreme Court of

the United States interpreting the same term under Title VII, and because of the *Rogers* order, it must

Turning to relevant federal decision, *Bostock* held, amongst other things, that an employer violates Title VII when it treats an employee born male but who now “identifies” as female differently than an employee born female. *Bostock*, 140 S.Ct. at 1741-1742. That type of dissimilar treatment, the Court held, was discrimination because of sex. In light of that reasoning, the Court did not need to decide what the word “sex” meant at the time Title VII was adopted in 1964. *Id.* at 1739.<sup>2</sup> The *Bostock* Court’s rationale for concluding that the differential treatment of a transgender person constitutes discrimination because of “sex” was as follows:

The statute’s message for our cases is equally simple and momentous: An individual’s homosexuality or transgender status is not relevant to employment decisions. That’s because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex. Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer’s mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee’s sex, and the affected employee’s sex is a but-for cause of his discharge. Or take an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee’s sex plays an unmistakable and impermissible role in the discharge decision. [*Bostock*, 140 S.Ct. at 1741-1742.]

<sup>2</sup> Looking to the meaning an undefined term had when the statute was passed is, of course, the traditional way in which courts discern a term’s meaning. See *Bornisch Constr. Group, Inc v Lofft on the Nig, LLC*, 499 Mich 544, 563 n 58; 886 NW2d 113 (2016), and *Cum v Waste Mgt, Inc (After Remand)*, 472 Mich 236, 247; 697 NW2d 130 (2005).



The Court's focus was on the individual, and whether the particular decision was based in part on the sex of the plaintiff. If it was, then the conduct was prohibited discrimination because of sex. *Id.*

Following the *Hosock* Court's rationale, if defendants determine that a person treated someone who "identifies" with a gender different than the gender that he or she was born as, then that is dissimilar treatment on the basis of sex, and they are entitled to redress that violation through the existing MDCR procedures. Nothing in the ELCRA would preclude that action.

### III. CONCLUSION

For these reasons, defendants' motion for summary disposition is GRANTED to the extent that discrimination because of sex under the ELCRA includes discrimination because of an individual's "gender identity," and thus Interpretative Statement 2018-1 is valid to that extent. Defendants' motion is DENIED to the extent that Interpretative Statement 2018-1 is contrary to existing Michigan law, as *Barbour* holds that discrimination because of an individual's "sexual orientation" is not prohibited under the ELCRA. Whether enforcement of Interpretative Statement 2018-1, as modified by this opinion and order, would interfere with plaintiffs' First Amendment rights to the free exercise of religion has not been sufficiently briefed to resolve at this juncture.

This is not a final order as it does not resolve all of the pending issues in this case.

Date: December 7, 2020

  
\_\_\_\_\_  
Christopher M. Murray  
Judge, Court of Claims



**I MOVE THAT THE MICHIGAN CIVIL RIGHTS COMMISSION ADOPT THE FOLLOWING RESOLUTION AS INTERPRETIVE STATEMENT 2018-1 REGARDING THE MEANING OF "SEX" IN THE ELLIOTT-LARSEN CIVIL RIGHTS ACT (ACT 453 OF 1976) AND GIVE IT IMMEDIATE EFFECT.**

**WHEREAS**, the Michigan Civil Rights Commission finds the language "discrimination because of ... sex ..." as used in the Elliott Larsen Civil Rights Act ambiguous, leaving the MI Department of Civil Rights without clear authority to accept complaints of discrimination based on "gender identity" and "sexual orientation", the Commission issues Interpretive Statement 2018-1.

**WHEREAS**, the Michigan Civil Rights Commission finds that the definition of "discrimination because of ... sex" under Michigan law has to date been interpreted to be less inclusive than the definitions of other protected classes, and in a way that is contrary to the plain meaning of the language in this context.

**WHEREAS**, The Michigan Civil Rights Commission finds that both discrimination because of gender identity and discrimination because of sexual orientation are forms of discrimination because of sex.

**WHEREAS**, the U.S. 6th Circuit Court of Appeals on March 7, 2018 ruled in the case of EEOC v R.G. & G.R. Harris Funeral Homes Inc. that the same language "discrimination because of ... sex" when used in federal civil rights law protected a transgender Michigan woman who was gender stereotyped and discriminated against for not behaving like a male, and adding Michigan where gender identity and sexual orientation are already federally protected under the definition of "discrimination because of sex."

**WHEREAS**, The Michigan Civil Rights Commission finds that continuing to interpret the protections afforded by the phrase "discrimination because of ... sex" more restrictively by continuing to exclude individuals for reasons of their gender identity or sexual orientation, would itself be discriminatory.

**WHEREAS** the Michigan Constitution of 1963 provides that "no person shall be denied the equal protection of the laws" and directs that "it shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person ... and to secure the equal protection of such civil rights without such discrimination ... The commission shall have power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures ... and to issue appropriate orders."

**WHEREAS**, the Administrative Procedures Act (MCL 24.207(h)) defines the interpretive statement as a category of agency action which in itself does not have the force and effect of law but is merely explanatory to be followed by the agency.

**MOTION:** To adopt interpretive statement on meaning of "discrimination because of ... sex" and grant immediate effect; Commission determines the terminology in ELCRA is ambiguous and restricts department ability to accept complaints; discrimination because of sex affords that protected class less protection than all other protected classes contrary to plain meaning of "sex"; commission finds that discrimination because of gender identity and sexual orientation are forms of discrimination because of sex. That Harris decision under federal law provides more inclusive protections than ELCRA; the commission finds that continuing to interpret sex more restrictively is in itself discrimination; that the Mi Constitution provides that "no person shall be denied the equal protection of the laws" and directs the commission to secure the equal protection of such civil rights without such discrimination and grants powers to protect those rights by promulgating rules and regulations for its own procedures... and to issue appropriate orders." The 'APA defines the interpretive statement as a category of agency action which in itself does not have the force and effect of law but is merely explanatory to be followed by the agency; the supreme court ruled agencies have the authority to make such statements which govern the agency unless/until otherwise authoritatively interpreted by the courts therefore commission adopts Interpretive Statement 2018-1 and the department shall process complaints under it; the department shall publish to appropriate offices.

ROLL	AYE	NO	ABSTAIN	PASS
Commissioner Clayton	✓			
Commissioner Combs			✓	
Commissioner Demashkieh	✓			
Commissioner Haque	✓			
Commissioner Kopack	✓			
Commissioner Resio				
Commissioner Sakwa				
Commissioner Smith	✓			
<b>TOTAL</b>	<b>5</b>	<b>0</b>	<b>1</b>	

STATE OF MICHIGAN  
IN THE COURT OF CLAIMS

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ROUCH WORLD, LLC, a Michigan Limited  
Liability Company, and UPROOTED  
ELECTROLYSIS, L.L.C., a Michigan  
Limited Liability Company,

Plaintiffs,

COURT OF CLAIMS

VERIFIED COMPLAINT

FILE NO: 20-000175 -MZ

HONORABLE Kelly

-vs-

MICHIGAN DEPARTMENT OF CIVIL  
RIGHTS, & MARY ENGELMAN, Interim  
Director of the Michigan Dept. of Civil Rights,

Defendants.

DEPT OF ATTORNEY GENERAL

AUG 13 2020

CIVIL RIGHTS DIVISION  
RECEIVED

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5600 W. Mount Hope Hwy.  
Lansing, MI 48917  
(517) 322-3207

There is no other pending or resolved civil action  
arising out of the transaction or occurrence alleged in  
this Complaint.

NOW COME the above-named Plaintiffs, ROUCH WORLD, LLC, and UPROOTED  
ELECTROLYSIS, L.L.C., by and through their attorneys, Great Lakes Justice Center, and for their  
Verified Complaint against Defendants, hereby state as follows:

**JURISDICTION AND VENUE**

1. Plaintiff Rouch World, LLC, is a Michigan Limited Liability Company that conducts business in the State of Michigan and is located in Sturgis, Michigan. It is wholly owned and operated by Ben A. Rouch and Jamey C. Rouch, both Christian persons holding sincerely held Christian beliefs.
2. UpRooted Electrolysis, L.L.C., is a Michigan Limited Liability Company that conducts business in the State of Michigan and is located in Marquette, Michigan. It is wholly owned and operated by Sheri Curtice-Young, a Christian person holding sincerely held Christian beliefs.
3. Defendant Michigan Department of Civil Rights is tasked with properly enforcing Michigan's duly enacted civil rights laws.
4. Defendant Mary Engelman is the Interim Director of the Michigan Department of Civil Rights.
5. The facts giving rise to this Complaint took place within the State of Michigan.
6. The facts giving rise to this Complaint include allegations against an agency of the State of Michigan; thus, the Court of Claims has jurisdiction pursuant to MCL 600.6419.

**PLAINTIFF ROUCH WORLD, LLC**

7. Rouch World, LLC is a small business that hosts events such as weddings, celebrations, family reunions, and other similar types of gatherings.
8. One of the core tenants of the Christian faith is that marriage is a sacred act of worship and a religious ceremony between one man and one woman and the owners and operators of Rouch World, LLC sincerely believe in this core tenet of the Christian faith.

9. Because of said sincerely held Christian beliefs, it would violate a core tenet of Plaintiff's religion were it to be forced to host and participate in a same-sex marriage ceremony.

**PLAINTIFF UPROOTED ELECTROLYSIS, L.L.C.**

10. UpRooted Electrolysis, L.L.C. is a small business that performs hair removal services.
11. One of the core tenants of the Christian faith is that sex (male or female) is an immutable gift from God and that efforts to deny or change one's sex violates clear Biblical teaching. The owner and operator of UpRooted Electrolysis, L.L.C. sincerely believes in this core tenet of the Christian faith.
12. Because of said sincerely held Christian beliefs, it would violate a core tenet of Plaintiff's religion were it to be forced to participate in assisting a transition from male to female.

**DEFENDANTS MICHIGAN DEPARTMENT OF CIVIL RIGHTS  
AND MARY ENGELMAN**

13. Defendants are tasked with properly enforcing the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 et. seq.
14. ELCRA prohibits discrimination on the basis of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status. MCL 37.2102(1).
15. Despite the Michigan Legislature considering legislation eleven times since 1999 to add the categories of sexual orientation and gender identity to ELCRA, all eleven bills were rejected.<sup>1</sup> Thus, ELCRA does not currently include sexual orientation or gender identity as protected classes.
16. Under the Michigan Constitution of 1963, Article IV, Section 1, all legislative power rests with the legislature.

<sup>1</sup> See Michigan Legislature HB 5959 (2014), HB 5804 (2014), SB 1053 (2014), SB 1063 (2012), HB 4192 (2009), HB 4160 (2007), SB 0787 (2005), HB 4956 (2005), SB 0609 (2003), HB 4850 (2003), and HB 5107 (1999).

17. In an attempt to extra-constitutionally amend ELCRA, the Michigan Civil Rights Commission, under the guise of an interpretive statement (Exhibit A), abused its power by redefining the word "sex" to now include sexual orientation and gender identity.
18. MCL 24.207 defines "Rules" which are binding law on businesses and individuals. MCL 24.207(h) states that an "interpretive statement . . . in itself does not have the force and effect of law but is merely explanatory."
19. MCL 24.232(5) states that an "interpretive statement . . . is not enforceable by an agency, is considered merely advisory, and shall not be given the force and effect of law. . . . A court shall not rely upon a(n) . . . interpretive statement . . . to uphold an agency decision to act or refuse to act."

#### FACTUAL BACKGROUND

20. Natalie Johnson and Megan Oswald contacted Rouch World, LLC on April 12, 2019, requesting it to host their same-sex marriage ceremony.
21. Rouch World, LLC respectfully declined to host and participate in the same-sex wedding ceremony because it conflicted with their sincerely held religious beliefs.
22. Rouch World, LLC offered to host other types of events for Ms. Johnson and Ms. Oswald, but indicated that they could not participate in, or host, the same-sex marriage ceremony.
23. Ms. Johnson and Ms. Oswald subsequently filed complaints with the Michigan Department of Civil Rights (MDCR#: 495352 and MDCR#: 495243, Exhibit B) alleging that they had been discriminated against because Rouch World, LLC would not host and participate in their same-sex marriage ceremony.
24. Rouch World, LLC responded to the complaints of Ms. Johnson and Ms. Oswald on July 10, 2019 (Exhibit C).

25. Defendants subsequently issued two orders for interrogatories and request for production of documents against Rouch World, L.L.C on January 10, 2020 (Exhibit D).
26. Marissa Wolfe contacted UpRooted Electrolysis, L.L.C. on May 28, 2019, requesting it to provide her with electrolysis services.
27. UpRooted Electrolysis, L.L.C. respectfully declined to participate in Ms. Wolfe's transition process from a man to a woman because it conflicted with its sincerely held religious beliefs.
28. Ms. Wolfe subsequently filed a complaint with the Michigan Department of Civil Rights (MDCR#: 496327, Exhibit E) alleging that she had been discriminated against because UpRooted Electrolysis, L.L.C. would not participate in the transition process from a man to a woman.
29. UpRooted Electrolysis, L.L.C. responded to Ms. Wolfe's complaint on August 20, 2019 (Exhibit F).
30. Defendants subsequently issued an order for interrogatories and request for production of documents against UpRooted Electrolysis, L.L.C. on February 20, 2020 (Exhibit G).

#### COUNT I- DECLARATORY JUDGMENT

31. Plaintiffs incorporate herein in their entirety paragraphs 1 through 30 above as if fully restated herein.
32. Defendants are attempting to improperly conduct an investigation based upon an allegation not prohibited by ELCRA, i.e., a person or business declining to participate in a same-sex marriage ceremony or provide electrolysis services for a gender transition.
33. Defendants improperly claim that Plaintiffs' have engaged in a prohibited form of "sex" discrimination under ELCRA.



34. "Sexual orientation" and "gender identity" are not encompassed by the word "sex" and is therefore not protected by ELCRA.
35. ELCRA violations on the basis of "sex" or "sex stereotypes" cannot include declining to participate in same-sex marriage ceremonies or to fail to provide electrolysis services for a gender transition.
36. Declining to participate in same-sex marriage ceremonies equally applies to both female/female and male/male marriages; thus, such a declination cannot be based on "sex" and is instead based upon sincerely held religious beliefs regarding the religious ceremony itself.
37. The Michigan Legislature clearly intended the word "sex" to mean biological sex and has refused eleven times to add the categories used for the basis of this investigation.
38. Plaintiffs seek a declaratory judgment that the category of "sex" in ELCRA means biological sex, as it was originally enacted by the Michigan Legislature.
39. Plaintiffs seek a declaratory judgment that "sexual orientation" and "gender identity" are not included under ELCRA.
40. Plaintiffs seek a declaratory judgment that Defendants must comply with the Administrative Procedures Act and not enforce the Interpretive Statement (Exhibit A).
41. Plaintiffs seek a declaratory judgment that the Michigan Civil Rights Department has no authority to accept or investigate complaints based upon categories not covered by ELCRA.
42. Under these facts, there is an actual controversy between the parties, and a multiplicity of litigation will be avoided if all of these issues are determined by this court at one time.

43. This Honorable Court has proper authority pursuant to MCR 2.605 to adjudicate the matters at issue and enter a judgment declaring the rights of all parties to this action.
44. It is necessary for this Honorable Court to adjudicate and declare the rights of the parties to this action to guide Plaintiffs' future conduct and preserve legal rights under the law.
45. Pursuant to MCR 2.605(F), this Honorable Court may grant further necessary or proper relief, including injunctive relief, to prohibit Defendants from investigating and pursuing the Complaints filed in this matter (MDCR#: 495352, MDCR#: 495243, and MDCR#: 496327).
46. Pursuant to MCR 2.605(F), this Honorable Court may grant further necessary or proper relief, including injunctive relief, to prohibit Defendants from pursuing investigations or complaints beyond the scope of Defendants' authority, including, but not limited to, investigations or complaints based upon sexual orientation and gender identity.
47. Pursuant to MCR 2.605(F), this Honorable Court may grant further necessary or proper relief, including injunctive relief, to require Defendants to comply with the Administrative Procedures Act and enjoin Defendants from enforcing the Michigan Civil Rights Commission's Interpretive Statement against Plaintiffs and all citizens in Michigan.

#### **RELIEF REQUESTED**

Based upon the above allegations, Plaintiffs respectfully request that this Honorable Court:

1. Grant a declaratory judgment that the category of "sex" in ELCRA means biological sex;
2. Grant a declaratory judgment that "sexual orientation" and "gender identity" are not included in the protected categories under ELCRA;
3. Grant a declaratory judgment that Defendants must comply with the Administrative Procedures Act and not enforce the Interpretive Statement;

4. Grant a declaratory judgment that the Michigan Civil Rights Department has no authority to accept or investigate complaints based upon categories not covered by ELCRA;
5. Grant an injunction prohibiting Defendants from investigating and pursuing the Complaints filed in this matter (MDCR#: 495352, MDCR#: 495243, and MDCR#: 496327);
6. Grant an injunction prohibiting Defendants from pursuing investigations or complaints beyond the scope of Defendants' authority, including, but not limited to, investigations or complaints based upon sexual orientation and gender identity;
7. Grant an injunction to require Defendants to comply with the Administrative Procedures Act and enjoin Defendants from enforcing the Michigan Civil Rights Department's Interpretive Statement against Plaintiffs and all citizens in Michigan.
8. Grant Plaintiffs their costs, expenses, and attorney fees incurred for having to bring this action to protect their rights; and
9. Grant such other further relief as is just and appropriate.

**I HEREBY STATE AND AFFIRM THAT I HAVE READ THE ABOVE COMPLAINT AND THAT IT IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.**

DATED: July 28, 2020.



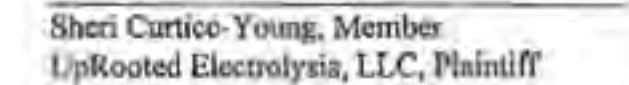
Jamey C. Rouch, Member  
Rouch World, LLC, Plaintiff

DATED: July 28, 2020.



Ben A. Rouch, Member  
Rouch World, LLC, Plaintiff

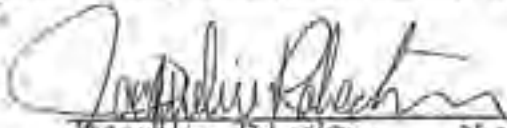
DATED: August \_\_\_\_, 2020.



Sheri Curtico-Young, Member  
UpRooted Electrolysis, LLC, Plaintiff

STATE OF MICHIGAN )  
COUNTY OF St. Joseph ) SS.

On this 28th day of July, 2020, before me, a notary public in and for said County, personally appeared Jamey C. Rouch and Ben A. Rouch, members of Rouch World, LLC, to me known to be the same persons described in the foregoing Verified Complaint and they acknowledged that they executed the foregoing instrument as their own free act and deed.

  
\_\_\_\_\_  
Jacqueline Robertson, Notary Public  
St. Joseph County, MI  
My commission expires: 12/03/2024

STATE OF MICHIGAN )  
COUNTY OF \_\_\_\_\_ ) SS.

On this \_\_\_\_ day of August, 2020, before me, a notary public in and for said County, personally appeared Sheri Curtice-Young, member of UpRooted Electrolysis, LLC, to me known to be the same person described in the foregoing Verified Complaint and she acknowledged that she executed the foregoing instrument as her own free act and deed.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, MI  
My commission expires: \_\_\_\_\_

Prepared By:

\_\_\_\_\_  
David A. Kallman (P34200)  
Stephen P. Kallman (P75622)  
Great Lakes Justice Center  
Attorneys for Plaintiff

Publicly: Acts 453 and 205, P.A. of 1976, as amended.  
 Completion: Required  
 Penalty: Allegations of unlawful discrimination cannot be investigated without a written complaint.

STATE OF MICHIGAN  
 DEPARTMENT OF CIVIL RIGHTS  
**COMPLAINT**

MCOR # 495352  
 FED. # \_\_\_\_\_

CLAIMANT <b>Mrs. Natalie Johnson</b>	RESPONDENT <b>Rouch World Event Center</b>
ADDRESS <b>31841 Fawn River Road Burr Oak, MI 49030</b>	ADDRESS <b>63412 M-66 Sturgis MI 49091</b>
TELEPHONE <b>(269) 221-4863</b>	TELEPHONE <b>(269) 625-7750</b>
Area of Discrimination: <b>Public Access / Service</b>	Date of Discrimination: <b>April 12, 2019</b>

**Statement of Alleged Discrimination:**

I am a woman and I believe I was denied service on or around or around April 12, 2019, due to my sex.

I was a customer of the respondent.

**Denied service    04/12/2019          Sex**

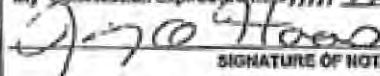
On or around April 12, 2019, I was informed by the respondent's representative, I could not have my wedding ceremony at the respondent's venue, because the respondent does not allow patrons to conduct same sex marriage ceremonies. I believe I was discriminated on the basis of sex, female, for not conforming to sex stereotypes about how women are expected to present themselves in my physical appearance, actions, and/or behaviors.

This complaint is based on the following law:  
 Elliott-Larsen Civil Rights Act No 453, Public Act of 1976, as amended

JOYCE ANN HAAS  
 Notary Public, St. Joseph Co., MI  
 My Commission Expires 12-17-2023

I swear or affirm that I have read the above complaint and that it is true to the best of my knowledge, information and belief. I have notified the department of all other civil or criminal actions pending with regard to the allegations in this complaint.

  
 SIGNATURE OF CHARGING PARTY / CLAIMANT

Subscribed and sworn to before me  
 This 08 day of May, 2019  
 at Sturgis, Michigan  
 My Commission expires (dd/mm/yyyy) 12-17-2023  
  
 SIGNATURE OF NOTARY PUBLIC

Complaint Taken by: Karyn Griffin

Commissioned in St Joseph County.

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Penalty: Act 453 and 225, P.A. of 1976, as amended.  
Completion: Required  
Fee: Allegations of unlawful discrimination cannot be investigated without a written complaint.

STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS  
**COMPLAINT**

MOON # 495243  
FED. # \_\_\_\_\_

CLAIMANT <b>Ms. Megan Oswalt</b>	RESPONDENT <b>Rouch World Event Center</b>
ADDRESS <b>31841 Pawa River Road Burr Oak, MI 49030</b>	ADDRESS <b>63412 M-66 Sturgis, MI 49091</b>
TELEPHONE <b>(269) 830-7200</b>	TELEPHONE <b>(269) 625-7750</b>
Area of Discrimination: <b>Public Accom / Service</b>	Date of Discrimination: <b>April 12, 2019</b>

Statement of Alleged Discrimination:

I am a woman and I believe I was denied service on or around or around April 12, 2019, due to my sex.

I was a customer of the respondent.

Denied service 04/12/2019 Sex

On or around April 12, 2019, I was informed by the respondent's representative, I could not have my wedding ceremony at the respondent's venue, because the respondent does not allow patrons to conduct same sex marriage ceremonies. I believe I was discriminated on the basis of sex, female; for not conforming to sex stereotypes about how women are expected to present themselves in my physical appearance, actions, and/or behaviors.

This complaint is based on the following law:  
Elliott-Larsen Civil Rights Act No 453, Public Act of 1976, as amended

JOYCEANN HAAS  
Notary Public, St. Joseph Co., MI  
My Commission Expires 12-17-2023

I swear or affirm that I have read the above complaint and that it is true to the best of my knowledge, information and belief. I have notified the department of all other civil or criminal actions pending with regard to the allegations in this complaint.

Megan Oswalt  
SIGNATURE OF CHARGING PARTY / CLAIMANT

Subscribed and sworn to before me  
This 08 day of May, 2019  
Sturgis, Michigan  
My Commission expires (dd/mm/yyyy) 12-17-23  
Joyceann Haas  
SIGNATURE OF NOTARY PUBLIC

Complaint Taken by: Karyn Griffin

Commissioned in St. Joseph County.

RECEIVED by MCOA 12/28/2020 11:46:52 AM



GREAT LAKES  
— JUSTICE CENTER —

WILLIAM R. WAGNER  
PRESIDENT

DAVID A. KALLMAN  
SOLICITOR GENERAL

JACOB C. JORDAN  
CHIEF COUNSEL OFFICE

STEPHEN P. KALLMAN  
SOLICITOR GENERAL

JOHN S. KANE  
PRESIDENT

ERIN E. MERSINO  
SOLICITOR GENERAL

July 10, 2019

Via First Class Mail and  
Email: [BaronA1@michigan.gov](mailto:BaronA1@michigan.gov)

Ms. Alexandra Baron  
Civil Rights Investigator  
Enforcement Division  
Michigan Dept. of Civil Rights  
350 Ottawa NW, 4<sup>th</sup> Floor  
Grand Rapids, MI 49503

RE: Rouch World Complaints  
#495243/Megan Orwalt and #495352/Natalie Johnson

Dear Ms. Baron:

I am once again writing on behalf of our client regarding the above-referenced complaints filed with your office. Both complaints should be dismissed based upon a legal issue, i.e., whether the complainants have filed a complaint that, even if all the facts alleged were to be true, involves a potential violation by our client of the Elliott-Larsen Civil Rights Act (ELCRA)? The clear answer to this question is no. There is no development of facts, even in the light most favorable to the complainants, that would justify issuing charges against Rouch World under R37.6. There is no justification to investigate anything. Even if the Michigan Department of Civil Rights (Department) accepts all the allegations as true, it cannot issue charges against Rouch World because there is no protection under ELCRA for the categories of sexual orientation or gender identity. Neither the Department nor the Michigan Civil Rights Commission (MCRC) have the authority to change or amend the meaning of the word "sex" under ELCRA. Your attempt to enforce the MCRC's Interpretive Statement is illegal and an *ultra vires* act. This legal reality requires that the Department deny the complaints without investigation.

I. MICHIGAN LAW

Although the MCRC may issue an interpretive statement on issues under its purview (R37.23), it does not have the authority to change or amend ELCRA. Article IV, Section 1 of the Michigan Constitution provides that "[t]he legislative power of the State of Michigan is vested in a senate and a house of representatives," not the MCRC. The Legislature has declined to add sexual orientation and gender identity as new categories under ELCRA numerous times over the past thirty years. The MCRC is not the Legislature, nor is it politically accountable to the people.

An interpretive statement is not binding law. It would not, therefore, make LGBTQ discrimination unlawful in Michigan, would not be legally binding on employers and individuals in our state, and would not give any legal remedies to alleged victims. The following review and analysis of the statutes negates your attempt to enforce new, non-existent categories.

First, MCL 37.2601 says nothing about the authority of the MCRC to enact legislation or interpretive statements that carry the force of law. In fact, it clearly states the opposite. The MCRC can only make "recommendations" to the Governor "for legislative or other action necessary

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to effectuate" its constitutional mandate (MCL 37.2601(1)(e)). It holds no independent power or authority to enforce its recommendations in any way. Since the MCRC can only make recommendations to the Governor for legislation, it clearly does not have the right to amend statutes and enact new legislation on its own authority.

Second, the Administrative Procedures Act (APA) clearly states interpretive statements cannot be enforced by your office. The phrase "interpretive statement" is only used twice in the APA.

MCL 24.207 defines "Rules" which are binding law on businesses and individuals. MCL 24.207(h) states that an "interpretive statement . . . in itself does not have the force and effect of law but is merely explanatory." (emphasis added). Any attempt to enforce an interpretive statement passed by the MCRC to add the new categories is unlawful and an *ultra vires* act. No businesses or individuals are legally required to comply with an interpretive statement, and it provides no new legal remedies to anyone.

Moreover, MCL 24.232(5) states that an "interpretive statement . . . is not enforceable by an agency, is considered merely advisory, and shall not be given the force and effect of law. . . . A court shall not rely upon a(n) . . . interpretive statement . . . to uphold an agency decision to act or refuse to act." (emphasis added). Once again, this plain language makes it clear that an interpretive statement has no binding authority and cannot be enforced against our client.

As a matter of law, nothing supports issuing charges against Rouch World pursuant to an interpretive statement that is not legally binding or enforceable against Michigan businesses and citizens. There is no basis to perform an investigation based upon new, non-existent categories.

## II. FEDERAL LAW

The claim that Title VII case law interpretations by federal courts around the country are binding and controlling law in Michigan is also not accurate and is very misleading. None of the federal cases cited by supporters of the interpretive statement apply to ELCRA and are not binding in Michigan. Any claim that these federal cases and interpretations are equally applicable to Michigan's Elliott-Larsen Act is false.

Title VII, a federal statute that covers only employment discrimination in a business with 15 or more employees (see 42 U.S.C. 2000e-2), is not the same as ELCRA. Nothing in Title VII has anything to do with public accommodations. The sexual harassment sections of ELCRA are different than Title VII. Even though a few federal courts have re-defined Title VII's definition of the word "sex" as applied to employment discrimination, this new court-created definition does not apply to Michigan's ELCRA.

Federal court decisions do not control the interpretation of Michigan statutes. Again, the cases from other states or from non-binding federal jurisdictions interpreting other state or federal statutes relate only to employment discrimination. Further, Equal Employment Opportunity Commission (EEOC) recommendations and decisions explicitly pertain to employer/employee relationships, not housing or public accommodations.

The United States Supreme Court "repeatedly has held that state courts are the ultimate expositors of state law, see, e.g., *Murdock v. City of Memphis*, 20 Wall. 590 (1875) ...." *Mullany v. Wilbur*,





421 U.S. 684, 691 (1975). Further, the Court has held that "Congress has explicitly disclaimed any intent categorically to preempt state law or to 'occupy the field' of employment discrimination law. See 42 U.S.C. §§ 2000e-7 and 2000h-4." *California Federal Savings & Loan Assn v Guerra*, 479 U.S. 272, 281 (1987).

The Michigan Supreme Court has ruled multiple times on the issue of interpreting ELCRA in light of federal interpretations of Title VII. In *Chambers v Tretco, Inc.*, 463 Mich 297 (2000), the Michigan Supreme Court reversed the Michigan Court of Appeals when it applied federal interpretations to ELCRA. The Michigan Supreme Court stated:

We hold that the principles stated in the federal cases relied on by the Court of Appeals do not apply to claims brought under Michigan's Civil Rights Act. Instead, we adhere to prior Michigan precedent and the specific language of the Michigan statute.

*Id.* at 303 (emphasis added). The opinion further held that although the Court can sometimes look at federal interpretations, Michigan courts are not compelled to do so:

However, we have generally been careful to make it clear that we are not compelled to follow those federal interpretations. See, e.g., *Radtke*, supra at 381-382, 501 N.W.2d 155. Instead, our primary obligation when interpreting Michigan law is always "to ascertain and give effect to the intent of the Legislature, ... 'as gathered from the act itself.'" *McJunkin v. Cellasto Plastic Corp.*, 461 Mich. 590, 598, 608 N.W.2d 57 (2000). . . . [W]e cannot defer to federal interpretations if doing so would nullify a portion of the Legislature's enactment.

*Id.* at 313-314 (emphasis added).

In *Haynie v State*, 468 Mich 302 (2003), the dissenting opinion stated that "[b]ecause Michigan's employment-discrimination statute so closely mirrors federal law, we often rely on federal precedent for guidance." *Id.* at 325. The majority opinion explicitly rejected the dissent's arguments when it held:

Even if, as the dissent states, the Michigan Legislature relied heavily on the federal civil rights act in drafting Michigan's Civil Rights Act, the Michigan Legislature was clearly not bound by the federal civil rights act. That is, the Michigan Legislature was free to adopt a civil rights act that differed from the federal civil rights act, and although, as the dissent points out, there are many similarities between the two acts, the Michigan Legislature did, in fact, choose to adopt an act that is different from the federal act. Despite the dissent's determination not to allow them to do so, the Michigan Legislature is allowed to determine for itself the extent to which it wishes to track the language of the federal law. In particular, Michigan's Civil Rights Act is different from the federal civil rights act with regard to its treatment of sexual harassment. The dissent fails to respect this difference and, instead, concludes that because these acts are nearly identical they must be construed to mean exactly the same thing. We cannot agree that any time the Michigan Legislature creates a law that is



"similar" to a federal law, it must be made identical, and the two laws must be interpreted to mean exactly the same thing.

*Id.* at 319-320 (emphasis added).

Michigan courts are not bound by federal interpretations that might be analogously applied to ELCRA, but are instead bound to comply with the Michigan Legislature's intent when it enacted ELCRA. It is for the Michigan Legislature to establish public policy for Michigan, not other state or federal court interpretations of a different statute.

In its strained attempt to bind Title VII to ELCRA, the MCRC now argues that the federal courts' re-definition of the word "sex" must be imposed on Michigan law. It appears that it is arguing that the Michigan Legislature intended that those additional classifications (i.e. sex stereotypes, gender identity, sexual orientation, etc.) must now be protected under ELCRA. However, in *Bush v Shabazz*, 484 Mich 156, 173 (2009), the Supreme Court held:

Where the Legislature has considered certain language and rejected it in favor of other language, the resulting statutory language should not be held to authorize what the Legislature explicitly rejected.

The Michigan Legislature has considered legislation at least eleven times since 1999 to add additional classifications to ELCRA such as gender identity, sexual orientation, etc. All eleven bills were rejected by our Legislature. See Michigan Legislature HB 5959 (2014), HB 5804 (2014), SB 1053 (2014), SB 1063 (2012), HB 4192 (2009), HB 4160 (2007), SB 0787 (2005), HB 4956 (2005), SB 0609 (2003), HB 4850 (2003), and HB 5107 (1999). Our Legislature has clearly refused to add to ELCRA the additional classifications that the MCRC is trying to sneak in through the back door as an alleged interpretation of the Legislature's intent. The MCRC cannot illegally "interpret" ELCRA to mean what our Legislature has explicitly rejected. Despite how other state or federal courts may re-define the word "sex" for other statutes, our Legislature has made its intent clear. Michigan courts, and the MCRC, are bound to enforce that intent. The MCRC and the Department have the constitutional duty to enforce the laws passed by the Legislature, not make up its own laws. Having repeatedly failed to persuade the Legislature to amend ELCRA, the MCRC and the Department may not do an end run around the Legislature by improperly prosecuting our client under non-existent ELCRA categories; categories that were specifically declined by the Legislature.

### III. CONSTITUTIONAL LAW

Due process entitles a person to fair proceedings and to fair notice of what law has been violated. Our client has violated no law by respectfully declining to participate in, and endorse, a religious ceremony with which they disagree. Despite the Department's intent to violate the sincere religious convictions of our client and force them to violate their own conscience, the law does not support such an oppressive and draconian prosecution. Tolerance is a two-way street.

Michigan's Constitution, Article I, Section 17 states, "No person shall be . . . deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed." If the Department insists on investigating



alleged discrimination under non-existent categories in ELCRA, it is doing so in direct violation of our client's due process rights. Such an improper investigation and any subsequent hearing is not "fair and just treatment." No law in Michigan prohibits discrimination under these proposed new categories. Therefore, what exactly is the Department investigating? Even if the Department believes that Rouch World discriminated against the complainants based on sexual orientation or gender identity (which they did not), ELCRA provides no protection or remedy for such alleged discrimination. Further, Rouch World is also protected by the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

Article I, Section 2 of Michigan's Constitution states: "No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin." The Department and the MCRC, by accepting for filing and investigating these complaints, are denying our client's specifically protected constitutional rights.

The Michigan Department of Civil Rights and the MCRC should not be prosecuting individuals on the basis of what it may want the law to be. It must only proceed with complaints based upon the actual law. Under ELCRA, religion is a specifically listed, protected category. Our client is also protected by the First Amendment and Michigan's Constitution Article I, Section 4. Section 4 states:

Every person shall be at liberty to worship God according to the dictates of his own conscience. . . . The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.

Your actions to investigate these complaints and to potentially issue charges clearly diminishes the civil rights of our client on account of their religious belief. Your actions also arguably violate our client's Federal civil rights protections (42 USC 1983):

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

Our client is plainly acting based upon their sincerely held religious beliefs. Justice Kennedy in the *Masterpiece Cakeshop v Colorado* case made it clear that such beliefs are entitled to protection:

[T]he religious and philosophical objections to gay marriage are protected views and in some instances protected forms of expression. As this Court observed in *Obergefell v. Hodges*, 576 U. S. \_\_\_ (2015), "[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths."

In *Obergefell* the Supreme Court more fully stated:



Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.

Any attempt to investigate or issue charges against our client in this matter is clearly at odds with the above cited law, and is itself an illegal and unconstitutional act. This is a legal issue, not a factual issue.

The complaints filed with your office are based upon categories that do not exist under ELCRA or anywhere else in Michigan law. The MCRC's interpretive statement is not enforceable against our client. Therefore, these complaints should be dismissed based upon the clear protection of our client's religious beliefs, as specifically protected under ELCRA, the above-cited cases, and under the Michigan and United States Constitutions. The question is simple: how can the Department issue charges for alleged discrimination based upon non-existent categories and thereby discriminate against our client for acting pursuant to their clearly protected statutory and constitutional rights?

If you intend to proceed with the investigation of our client in blatant violation of the above-cited law and statutes, then respond to me, in writing, with the legal authority you are relying upon to investigate our client. There is no legal basis for these complaints. No factual development can possibly justify issuing charges for discrimination based upon non-existent categories under ELCRA.

The Department and the MCRC have been placed on notice that these complaints are baseless and have no legal merit. I am once again requesting that the Department dismiss these unfounded complaints without investigation. If your office proceeds with the investigation and issues charges, then understand that we will pursue all legal remedies available to our client to stop such an illegal prosecution, including holding all state actors involved personally liable for acting so clearly outside the scope of their legal authority.

Thank you for your consideration.

Sincerely,



David A. Kallman  
Senior Legal Counsel  
Great Lakes Justice Center

DAK/cas

cc: Rouch World  
Michigan Civil Rights Commissioners  
Director Agustin V. Arbulu



Rouch

STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS

LANSING ENFORCEMENT UNIT, Capital Tower Building - 110 W. Michigan Ave, Suite 800 - Lansing, MI 48933  
Phone: (517) 335-4854

ORDER

MDCR #: 495352  
Claimant: Natalie Johnson  
Respondent: Rouch World Event Center

To: 63412 M-66  
Sturgis MI 49091

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN  
YOU ARE ORDERED TO:

- Appear personally to testify before the Michigan Department of Civil Rights on the date, time and place listed below.
- Produce the following items, in person or by mail, on or before the date, time, and place listed below.
- Answer the attached interrogatories. Provide notarized answers to interrogatories along with any and all relevant documents
- Preserve all information and evidence in this matter, including but not limited to the following: Documents; video, audio recordings; oral and written statements; voice mail; photographs; and electronic data, communication and media. Please see the Attachment

Place : Michigan Department of Civil Rights 350 Ottawa NW 4 <sup>th</sup> Fl Grand Rapids MI 49503 Phone: (616) 3560015	
Date : February 7, 2020	
Time : 5:00 pm	Attn: Alexandra Baron

Failure to comply with this order may subject you to enforcement proceedings in the Circuit Court of the State of Michigan.



Issued By: Stacey Maddy Hill  
Date: January 9<sup>th</sup>, 2020

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**PROOF OF SERVICE**

**SERVICE BY MAIL**

I, Kimberly Lucas, swear or affirm that I am a legally competent adult and that I served a copy of this order, together with any required fees for attendance and mileage, upon the following person or entity:

Name and Complete Address Of Service:

Rouch World Event Center  
63412 M-66  
Sturgis MI 49091

Service was made by ordinary mail addressed to the person served at their last known address.

Day, Date and Time Of Service: Friday, January 10th, 2020 @ 9:30 A

EMERLY HILL  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF ISHT  
MY COMMISSION EXPIRES 10, 2021  
ACTING IN COUNTY OF ISHT

Signed before me this 9 Day of JANUARY at

ESSEX ROAD MI

My Commission expires 10-11-21

Kimberly Lucas  
Notary Public

Commissioned in ISHT County.

Kimberly Lucas Signature  
of Secretary  
Title

**PERSONAL SERVICE**

I, \_\_\_\_\_, swear or affirm that I am a legally competent adult and that I served a copy of this order, together with any required fees for attendance and mileage, upon the following person or entity:

Name and Complete Address Of Service:

Day, Date and Time Of Service:

Rouch World Event Center  
63412 M-66  
Sturgis MI 49091

Service was made through personal delivery by informing the served person of the nature of the Order, offering it to that person, and having it within that person's physical control.

Signed before me this \_\_\_\_\_ Day of \_\_\_\_\_ at \_\_\_\_\_ MI

My Commission expires \_\_\_\_\_

Notary Public

Commissioned in \_\_\_\_\_ County.

Signature of Server

Title

STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS

LANSING ENFORCEMENT UNIT, Capital Tower Building – 110 W. Michigan Ave, Sixth 800 – Lansing, MI 48933  
Phone: (517) 335-4854

**ORDER ATTACHMENT**

MDCR #: 495352  
Claimant: Natalie Johnson  
Respondent: Rouch World Event Center

**YOU ARE ORDERED TO:**

Produce the following items, in person or by mail, on or before the date, time, and place listed on the order.

Preserve all information and evidence in this matter, including but not limited to the following: Documents; video; body camera footage, dash camera footage, booking, detention and cell video, audio recordings; oral and written statements; voice mail; photographs; and electronic data, communication and media.

Answer the interrogatories.

STATE OF MICHIGAN  
**DEPARTMENT OF CIVIL RIGHTS**

LANSING ENFORCEMENT UNIT, Capital Tower Building – 110 W Michigan Ave 8th Floor – Lansing, MI 48933

Phone: (517) 241-6300

MICHIGAN DEPARTMENT OF CIVIL RIGHTS,  
ex rel, NATALIE JOHNSON

Claimant,

Complaint No. #495352

v.

ROUCH WORLD EVENT CENTER

Respondent

\_\_\_\_\_  
Attorney for Respondent  
David A. Kallman

**INTERROGATORIES**

These interrogatories are authorized under the provisions of the Elliott-Larsen Civil Rights Act, No. 453, Section 602(d) and/or the Persons with Disabilities Civil Rights Act No. 220, Section 605, Public Acts of 1976, as amended. They must be answered and returned to the department within 28 days of receipt. The interrogatories must be signed by the person answering them in the presence of a notary public.

**DEMAND FOR PRESERVATION OF EVIDENCE**

The Department of Civil Rights demands that you preserve all writings, documents and any information that is recorded or retained, including, without limitation, originals, non-identical copies, drafts, or electronic or computer data storage. "Documents" also refers to microfilm, microfiche, videotape, motion pictures, audio tape and any other electronic or mechanical recording. "Writings" shall include, without limitation, all materials of any kind including, but not limited to, orders, instructions, directives, regulations, reports, interviews, statements, summaries, complaints, transcripts, memoranda, notes, correspondence, and logs.

The answers must be true and include information available to the respondent and/or its employees, agents or representatives. Repeat the question or sub-question immediately before the answer to it on a separate sheet. Attach the questions and answers to these interrogatories. Submit documentation to support your responses to each question.



These interrogatories are continuing. Supplemental answers are required immediately if the respondent obtains further or different information from the time the answers are provided to the time of hearing or disposition of the complaint.

#### DEFINITIONS

1. The term "incident" shall refer to the entire series of interactions between the Claimant and Respondent, or any other employers of Respondent, as described in the Complaint.
2. The term "document" shall have the meaning set forth in Rule 34 of the Federal Rules of Civil Procedure and shall refer to any means by which information is recorded or retained, including, without limitation, originals, non-identical copies, drafts, or electronic or computer data storage. "Writings" shall include, without limitation, all materials of any kind including, but not limited to, orders, instructions, directives, regulations, reports, interviews, statements, summaries, complaints, transcripts, memoranda, notes, correspondence, and logs. "Documents" also refers to microfilm, microfiche, videotape, motion pictures, audio tape and any other electronic or mechanical recording.
3. The term "identify" or "identity" when used with respect to persons is a request to supply the full name, employee/badge number, address, height, weight, race, national origin, age, gender and length of employment of the person to be identified.
4. The term "identify" or "identity" when used with respect to documents is a request to supply the date of the document, the author, the addressee, if any, the length in pages, the title and a brief description of the contents of the document.

#### INTERROGATORIES

1. Please state the name, address, job title, and employer of the person(s) answering these interrogatories.
2. Describe the nature of the business and/or services the Respondent provides to the public.
3. Does the Respondent provide catering? If yes, is the kitchen help and servers (bartenders) part of a union and provide a copy of the Collective Bargaining Agreement.
4. Identify and provide the type of licenses the Respondent holds and state:
  - i. type of license, e.g. liquor, occupancy, etc;
  - ii. Issued by what state, city, county or political subdivision.
5. Identify and provide any applications required of Respondent to operate and state:
  - i. type of application;
  - ii. state any nondiscriminatory clauses in the application;

- iii. state any Human Rights Ordinances that you are subject to and the jurisdiction.
6. Identify the nature of the services that Claimant requested and are incorporated in renting the facilities or venue. Please state:
    - i. the contractual services and duties that would have been bargained for;
    - ii. any personal services that would have been provided by the Respondent;
    - iii. duties performed by Respondent, such as catering, opening and closing the facility, bartender, disc jockey, music, celebrant, etc.
  7. Identify the person who made the decision to deny service to the Claimant and their reason for not renting the facilities or venue to Claimant. If this decision was based on a religious belief, please state:
    - i. any specific name of a religious organization they belong to;
    - ii. the sincerity of that religious belief;
    - iii. the religious doctrine that supports that belief;
    - iv. how serving the Claimant would violate that belief;
    - v. how serving the Claimant would have a personal effect on the person having to do so.
  8. Identify if there were other employees available and/or willing to provide the service Claimant requested whose religious beliefs would have not been affected by the request.
  - 4.
  9. Identify all persons who, to your knowledge, or the knowledge of your agents or attorneys, witnessed or purport to have knowledge of facts relevant to this incident. For each, state:
    - a. the date, time, and place on which the person was involved;
    - b. the substance of any conversations or reports with such person regarding the Claimant or the incident;
    - c. the name, phone number and address of each person having any involvement concerning the alleged incidents stated in the complaint number MDCR #495352.
  9. Has the Respondent ever been named as defendants in any suit or claim involving civil rights violations? If so, state for each suit:
    - A. the name and address of each party and each party's attorney;
    - B. the nature of the cause of action;
    - C. the date on which the suit was instituted;
    - D. the result of each suit that has been concluded by judgment or settlement.
  10. Please describe in detail how Respondent trains its staff and employees on deciding what members of the public violate the Respondent's religious beliefs if they were served? In particular, please state: the nature and substance of the training he/she/they received; the name and address of each specialized school

he/she/they attended to receive such training and the degree or certificate, if any, each employee received from each specialized school.

11. Give the date upon which the employees involved in this complaint commenced employment with Respondent, whether he/she remains employed today, and the date of and reason for any termination or interruption of his/her employment.

12. Please state any complaints made to Respondent regarding failure to provide service to the public based on your religious beliefs. Give the name and address of the complainant, the substance of the complaint, and the ultimate disposition of the complaint.

13. State the title and substance of any document created in preparation for or in response to this incident.

14. Were there in existence at the times of these incidents, internal administrative procedures designed to assist the Respondent in determining when their religious beliefs would require refusing service to members of the public?

If yes, state:

1. the nature of such policies and/or procedures;
2. the person who is responsible for implementing such policies and/or procedures.

15. Were you insured at the time of this incident against judgments of personal or business liability based on civil rights violations, or were you a party to any bonding agreement by which you were held free of liability or by which an insurance company will stand as a guarantor or surety in connection with any state judgment based on violating civil rights laws? If yes, state:

- ii. the name and address of the insurer;
- iii. the name and address of the person or persons who pay the premiums;
- iv. the identification number of the policy;
- v. the effective dates of each policy;
- vi. the policy limits, or amount of any bond;
- vii. the substance of disclaimers of liability contained in the policy.

16. For each expert witness you intend to call at a public hearing, please state the expert's name and present address, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of grounds for each such opinion.

#### REQUESTS FOR PRODUCTION OF DOCUMENTS DEFINITIONS

I. These requests are directed to the Respondent and involved person(s) who will hereinafter be referred to collectively as "you" or "your." The requests require you to produce to the MDCR all requested

documents that are in your possession, custody, or control or in the possession, custody, or control of any of your attorneys, agents, representatives, financial advisors, accountants, or consultants.

2. The term "document" shall have the meaning set forth in Rule 34 of the Federal Rules of Civil Procedure and shall refer to any means by which information is recorded or retained, including, without limitation, originals, non-identical copies, drafts, or electronic or computer data storage. "Writings" shall include, without limitation, all materials of any kind including, but not limited to, orders, instructions, directives, regulations, reports, interviews, statements, summaries, complaints, transcripts, memoranda, notes, correspondence, and logs. "Documents" also refers to microfilm, microfiche, videotape, motion pictures, audio tape and any other electronic or mechanical recording.

3. For any requested document that you claim to be protected by privilege or immunity, state as to each such document the privilege or immunity asserted and the following information:

- i. the author(s);
- ii. the recipient(s) (including those copied);
- iii. the date;
- iv. the subject matter of the document; and
- v. the basis for the claim of privilege or immunity.

4. As used herein, "or" shall include "and/or".

5. As used herein, the singular shall include the plural, and vice versa.

6. The term "concerning" means referring to, describing, evidencing, or constituting.

7. If documents responsive to a particular request no longer exist, but are known to have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they are responsive, and identify any person having knowledge of the content of such documents.

#### REQUESTS FOR PRODUCTION

1. Any and all documents which are in your possession concerning the series of incidents described in the Complaint.

This includes, but is not limited to:

- a. any and all reports or forms describing any aspects of these events;
- b. any and all incident reports; and
- c. statements and/or interviews of witnesses, the Claimant, and any other persons who had any role or contact with the case.

2. Any licenses Respondent has regarding the operations of the Respondent.

3. Any applications and/or certificates Respondent has regarding the operations of the Respondent.
4. Copies of all contracts used since 4/1/18 that Respondent used in renting out the facilities or venue.
5. All materials which are in your possession and relevant to this incident, including, but not limited to, guidelines, directives, policy statements, procedures, and training materials, in any form and of any type, concerning policy, custom or practice regarding:
  - a. renting the facilities or venue;
  - b. determining who can rent the facilities or venue;
  - c. the procedure for denying someone service.
6. Copies of all papers involving denial of service from 4/1/18 to date.
7. Provide Respondent's non-discrimination policies.
8. Provide all written communications between Claimant and Respondent regarding her request/denial of service, including texts and online messages through the wedding app "The Knot."
9. Any and all audio, video or other electronic recording in your possession and relevant to this incident, including, but not limited to camera recordings, security recordings or any other audio, video or electronic recording, from any source.

The answers to these interrogatories must be signed by an officer or agent of the respondent. The signature of the authorized representative is to be notarized, using the space provided below.

I have read the answers to the Michigan Department of Civil Rights Interrogatories. I swear or affirm that they are true, except where stated that the answers given are based on information and belief, and those answers I believe to be true.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Signed before me this \_\_\_\_\_ Day of \_\_\_\_\_ at \_\_\_\_\_, MI.

My Commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Commissioned in \_\_\_\_\_ County

Rouch

STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS

LANSING ENFORCEMENT UNIT, Capital Tower Building - 110 W. Michigan Ave, Suite 800 - Lansing, MI 48933  
Phone: (517) 335-4854

**ORDER**

MDCR #: 495243  
Claimant: Megan Oswald  
Respondent: Rouch World Event Center  
  
To: 63412 M-66  
Sturgis MI 49091

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN  
YOU ARE ORDERED TO:

- Appear personally to testify before the Michigan Department of Civil Rights on the date, time and place listed below.
- Produce the following items, in person or by mail, on or before the date, time, and place listed below.
- Answer the attached interrogatories. Provide notarized answers to interrogatories along with any and all relevant documents.
- Preserve all information and evidence in this matter, including but not limited to the following: Documents; video, audio recordings; oral and written statements; voice mail; photographs; and electronic data, communication and media. Please see the Attachment.

Place : Michigan Department of Civil Rights 350 Ottawa NW 4th Fl Grand Rapids MI 49503 Phone: (616) 3560015	
Date : February 7, 2020	
Time : 5:00 pm	Attn: Alexandra Baron

Failure to comply with this order may subject you to enforcement proceedings in the Circuit Court of the State of Michigan.



Issued By Hacey Moody/KCC  
Date January 9th, 2020

Revised Consent to Arbitrate, Part 27 of the Michigan Consumer Protection Act, and Part of the Michigan Civil Rights Commission and Michigan Department of Justice, (2016) (Rev 9-16)

RECEIVED by MCOA 12/28/2020 11:46:52 AM

**PROOF OF SERVICE**

**SERVICE BY MAIL**

I, Kimberlym Lucas, swear or affirm that I am a legally competent adult and that I served a copy of this order, together with any required fees for attendance and mileage, upon the following person or entity:

Name and Complete Address Of Service:

Rouch World Event Center  
63412 M-66  
Sturgis MI 49091

Service was made by ordinary mail addressed to the person served at their last known address.

Kimberlym Lucas Signature  
of Server  
Secretary Title

Day, Date and Time Of Service:  
Friday, January 10th, 2020 @ 9:30A

PROVIDE YOUR  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF MI  
MY COMMISSION EXPIRES ON 12/16/23  
ACTIVE IN COUNTY OF EAST

Signed before me this  
9 Day of January  
Gracie Ruppel MI  
My Commission expires 12-16-23  
Michelle Hill Notary Public  
Commissioned in East County.

**PERSONAL SERVICE**

I, \_\_\_\_\_, swear or affirm that I am a legally competent adult and that I served a copy of this order, together with any required fees for attendance and mileage, upon the following person or entity:

Name and Complete Address Of Service:

Day, Date and Time Of Service:

Rouch World Event Center  
63412 M-66  
Sturgis MI 49091

Service was made through personal delivery by informing the served person of the nature of the Order, offering it to that person, and leaving it within that person's physical control.

\_\_\_\_\_  
Signature of Server  
\_\_\_\_\_  
Title

Signed before me this  
\_\_\_\_ Day of \_\_\_\_\_ MI  
\_\_\_\_ MI  
My Commission expires \_\_\_\_\_  
\_\_\_\_ Notary Public  
Commissioned in \_\_\_\_\_ County.

RECEIVED by MCOA 12/28/2020 11:46:52 AM

STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS

LANSING ENFORCEMENT UNIT, Capital Tower Building – 110 W. Michigan Ave, Suite 800 – Lansing, MI 48933  
Phone: (517) 335-4854

**ORDER ATTACHMENT**

MDCR #: 495243  
Claimant: Megan Oswald  
Respondent: Rouch World Event Center

**YOU ARE ORDERED TO:**

Produce the following items, in person or by mail, on or before the date, time, and place listed on the order.

Preserve all information and evidence in this matter, including but not limited to the following: Documents; video; body camera footage, dash camera footage, booking, detention and cell video, audio recordings; oral and written statements; voice mail; photographs; and electronic data, communication and media.

Answer the interrogatories.



STATE OF MICHIGAN  
**DEPARTMENT OF CIVIL RIGHTS**

LANSING ENFORCEMENT UNIT, Capital Tower Building – 1111 W Michigan Ave 8th Floor – Lansing, MI 48933  
Phone: (517) 241-6300

MICHIGAN DEPARTMENT OF CIVIL RIGHTS,  
on behalf of, MEGAN OSWALT

Claimant,

Complaint No. #495243

v

ROUGH WORLD EVENT CENTER

Respondent

\_\_\_\_\_  
Attorney for Respondent  
David A. Kallman

**INTERROGATORIES**

These interrogatories are authorized under the provisions of the Elliott-Larsen Civil Rights Act, No. 453, Section 602(d) and/or the Persons with Disabilities Civil Rights Act No. 220, Section 605, Public Acts of 1976, as amended. They must be answered and returned to the department within 28 days of receipt. The interrogatories must be signed by the person answering them in the presence of a notary public.

**DEMAND FOR PRESERVATION OF EVIDENCE**

The Department of Civil Rights demands that you preserve all writings, documents and any information that is recorded or retained, including, without limitation, originals, non-identical copies, drafts, or electronic or computer data storage. "Documents" also refers to microfilm, microfiche, videotape, motion pictures, audio tape and any other electronic or mechanical recording. "Writings" shall include, without limitation, all materials of any kind including, but not limited to, orders, instructions, directives, regulations, reports, interviews, statements, summaries, complaints, transcripts, memoranda, notes, correspondence, and logs.

The answers must be true and include information available to the respondent and/or its employees, agents or representatives. Repeat the question or sub-question immediately before the answer to it on a separate sheet. Attach the questions and answers to these interrogatories. Submit documentation to support your responses to each question.

These interrogatories are continuing. Supplemental answers are required immediately if the respondent obtains further or different information from the time the answers are provided to the time of hearing or disposition of the complaint.

#### DEFINITIONS

1. The term "incident" shall refer to the entire series of interactions between the Claimant and Respondent, or any other employers of Respondent, as described in the Complaint.
2. The term "document" shall have the meaning set forth in Rule 34 of the Federal Rules of Civil Procedure and shall refer to any means by which information is recorded or retained, including, without limitation, originals, non-identical copies, drafts, or electronic or computer data storage. "Writings" shall include, without limitation, all materials of any kind including, but not limited to, orders, instructions, directives, regulations, reports, interviews, statements, summaries, complaints, transcripts, memoranda, notes, correspondence, and logs. "Documents" also refers to microfilm, microfiche, videotape, motion pictures, audio tape and any other electronic or mechanical recording.
3. The term "identify" or "identity" when used with respect to persons is a request to supply the full name, employee/badge number, address, height, weight, race, national origin, age, gender and length of employment of the person to be identified.
4. The term "identify" or "identity" when used with respect to documents is a request to supply the date of the document, the author, the addressee, if any, the length in pages, the title and a brief description of the contents of the document.

#### INTERROGATORIES

1. Please state the name, address, job title, and employer of the person(s) answering these interrogatories.
2. Describe the nature of the business and/or services the Respondent provides to the public.
3. Does the Respondent provide catering? if yes, is the kitchen help and servers (bartenders) part of a union and provide a copy of the Collective Bargaining Agreement.
4. Identify and provide the type of licenses the Respondent holds and state:
  - i. type of license, e.g. liquor, occupancy, etc;
  - ii. issued by what state, city, county or political subdivision
5. Identify and provide any applications required of Respondent to operate and state:
  - i. type of application;
  - ii. state any nondiscriminatory clauses in the application;

- iii. state any Human Rights Ordinances that you are subject to and the jurisdiction.
6. Identify the nature of the services that Claimant requested and are incorporated in renting the facilities or venue. Please state:
  - i. the contractual services and duties that would have been bargained for;
  - ii. any personal services that would have been provided by the Respondent;
  - iii. duties performed by Respondent, such as catering, opening and closing the facility, bartender, disc jockey, music, celebrant, etc.
7. Identify the person who made the decision to deny service to the Claimant and their reason for not renting the facilities or venue to Claimant. If this decision was based on a religious belief, please state:
  - i. any specific name of a religious organization they belong to;
  - ii. the sincerity of that religious belief;
  - iii. the religious doctrine that supports that belief;
  - iv. how serving the Claimant would violate that belief;
  - v. how serving the Claimant would have a personal effect on the person having to do so.
8. Identify if there were other employees available and/or willing to provide the service Claimant requested whose religious beliefs would have not been affected by the request.
9. Identify all persons who, to your knowledge, or the knowledge of your agents or attorneys, witnessed or purport to have knowledge of facts relevant to this incident. For each, state:
  - a. the date, time, and place on which the person was involved;
  - b. the substance of any conversations or reports with such person regarding the Claimant or the incident;
  - c. the name, phone number and address of each person having any involvement concerning the alleged incidents stated in the complaint number MDCR #495243.
9. Has the Respondent ever been named as defendants in any suit or claim involving civil rights violations? If so, state for each suit:
  - A. the name and address of each party and each party's attorney;
  - B. the nature of the cause of action;
  - C. the date on which the suit was instituted;
  - D. the result of each suit that has been concluded by judgment or settlement.
10. Please describe in detail how Respondent trains its staff and employees on deciding what members of the public violate the Respondent's religious beliefs if they were served? In particular, please state: the nature and substance of the training he/she/they received; the name and address of each specialized school

he/she/they attended to receive such training and the degree or certificate, if any, each employee received from each specialized school.

11. Give the date upon which the employees involved in this complaint commenced employment with Respondent, whether he/she remains employed today, and the date of and reason for any termination or interruption of his/her employment.

12. Please state any complaints made to Respondent regarding failure to provide service to the public based on your religious beliefs. Give the name and address of the complainant, the substance of the complaint, and the ultimate disposition of the complaint.

13. State the title and substance of any document created in preparation for or in response to this incident.

14. Were there in existence at the times of these incidents, internal administrative procedures designed to assist the Respondent in determining when their religious beliefs would require refusing service to members of the public?

If yes, state:

1. the nature of such policies and/or procedures;
2. the person who is responsible for implementing such policies and/or procedures.

15. Were you insured at the time of this incident against judgments of personal or business liability based on civil rights violations, or were you a party to any bonding agreement by which you were held free of liability or by which an insurance company will stand as a guarantor or surety in connection with any state judgment based on violating civil rights laws? If yes, state:

- ii. the name and address of the insurer;
- iii. the name and address of the person or persons who pay the premiums;
- iv. the identification number of the policy;
- v. the effective dates of each policy;
- vi. the policy limits, or amount of any bond;
- vii. the substance of disclaimers of liability contained in the policy.

16. For each expert witness you intend to call at a public hearing, please state the expert's name and present address, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of grounds for each such opinion.

#### REQUESTS FOR PRODUCTION OF DOCUMENTS DEFINITIONS

1. These requests are directed to the Respondent and involved person(s) who will hereinafter be referred to collectively as "you" or "your." The requests require you to produce to the MDCR all requested

documents that are in your possession, custody, or control or in the possession, custody, or control of any of your attorneys, agents, representatives, financial advisors, accountants, or consultants.

2. The term "document" shall have the meaning set forth in Rule 34 of the Federal Rules of Civil Procedure and shall refer to any means by which information is recorded or retained, including, without limitation, originals, non-identical copies, drafts, or electronic or computer data storage. "Writings" shall include, without limitation, all materials of any kind including, but not limited to, orders, instructions, directives, regulations, reports, interviews, statements, summaries, complaints, transcripts, memoranda, notes, correspondence, and logs. "Documents" also refers to microfilm, microfiche, videotape, motion pictures, audio tape and any other electronic or mechanical recording.

3. For any requested document that you claim to be protected by privilege or immunity, state as to each such document the privilege or immunity asserted and the following information:

- i. the author(s);
- ii. the recipient(s) (including those copied);
- iii. the date;
- iv. the subject matter of the document; and
- v. the basis for the claim of privilege or immunity.

4. As used herein, "or" shall include "and/or".

5. As used herein, the singular shall include the plural, and vice versa.

6. The term "concerning" means referring to, describing, evidencing, or constituting.

7. If documents responsive to a particular request no longer exist, but are known to have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they are responsive, and identify any person having knowledge of the content of such documents.

#### REQUESTS FOR PRODUCTION

1. Any and all documents which are in your possession concerning the series of incidents described in the Complaint.

This includes, but is not limited to:

- a. any and all reports or forms describing any aspects of these events;
- b. any and all incident reports; and
- c. statements and/or interviews of witnesses, the Claimant, and any other persons who had any role or contact with the case.

2. Any licenses Respondent has regarding the operations of the Respondent.

3. Any applications and/or certificates Respondent has regarding the operations of the Respondent.
4. Copies of all contracts used since 4/1/18 that Respondent used in renting out the facilities or venue.
5. All materials which are in your possession and relevant to this incident, including, but not limited to, guidelines, directives, policy statements, procedures, and training materials, in any form and of any type, concerning policy, custom or practice regarding:
  - a. renting the facilities or venue;
  - b. determining who can rent the facilities or venue;
  - c. the procedure for denying someone service.
6. Copies of all papers involving denial of service from 4/1/18 to date.
7. Provide Respondent's non-discrimination policies.
8. Provide all written communications between Claimant and Respondent regarding her request/denial of service, including texts and online messages through the wedding app "The Knot."
9. Any and all audio, video or other electronic recording in your possession and relevant to this incident, including, but not limited to camera recordings, security recordings or any other audio, video or electronic recording, from any source.

The answers to these interrogatories must be signed by an officer or agent of the respondent. The signature of the authorized representative is to be notarized, using the space provided below.

I have read the answers to the Michigan Department of Civil Rights Interrogatories. I swear or affirm that they are true, except where stated that the answers given are based on information and belief, and those answers I believe to be true.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Signed before me this \_\_\_\_\_  
Day of \_\_\_\_\_  
at \_\_\_\_\_ MI  
My Commission expires \_\_\_\_\_  
Notary Public  
Commissioned in \_\_\_\_\_ County

Penalty: Act 457 of 2011, P.A. of 1976, as amended.  
 Discipline: Required  
 Penalty: Allegations of unethical discrimination claims are investigated without a biased complaint.

STATE OF MICHIGAN  
 DEPARTMENT OF CIVIL RIGHTS  
**COMPLAINT**

WORK # 495327  
 REC # \_\_\_\_\_

CLAIMANT <b>Mr. Marissa Wolfe</b>	RESPONDENT <b>Uprooted Electrolysis</b>
ADDRESS <b>184 Co Road Ks Marquette, MI 49855</b>	ADDRESS <b>607 North 3rd Street Marquette, MI 49855</b>
TELEPHONE <b>(906) 869-1107</b>	TELEPHONE <b>(906) 458-1558</b>
Area of Discrimination: <b>Public Accom / Service</b>	Date of Discrimination: <b>May 28, 2019</b>

Statement of Alleged Discrimination:

I am a woman and believe I was denied service on or around May 28, 2019, due to my sex.

I was a potential patient of the respondent's medical facility located at 607 North 3rd Street in Marquette, Michigan.

**Denied service 05/28/2019 Sex**

On or around May 28, 2019, I sought out services with the respondent's owner; however, she stated that she was uncomfortable working with me. I was discriminated against on the basis of my sex, female, for not conforming to societal expectations for how women are expected to present themselves in my physical appearance, actions and/or behaviors.

This complaint is based on the following law:

Elliott-Larsen Civil Rights Act No 453, Public Act of 1976, as amended.

I swear or affirm that I have read the above complaint and that it is true to the best of my knowledge, information and belief. I have notified the respondent of all other civil or criminal actions pending with regard to the allegations in this complaint.

*Marissa Jayne Wolfe*  
SIGNATURE OF CHARGING PARTY / CLAIMANT

Complaint Taken by: Tonya Baty

Subscriber and event is before me

This 12 day of June, 2019

at Marquette, Michigan

My Commission Expires (dd/mm/yyyy) 08/04/2023

*Jennifer Lindsey*  
SIGNATURE OF NOTARY PUBLIC

Commissioned in Marquette County



GREAT LAKES  
— JUSTICE CENTER —

WILLIAM R. WAGNER  
President

DAVID A. KALLMAN  
Senior Legal Counsel

JACK C. JORDAN  
Chief Executive Officer

STEPHEN P. KALLMANN  
Senior Legal Counsel

JOHN S. KANE  
Executive Director

ERIN E. MERSINO  
Senior Legal Counsel

August 20, 2019

Via First Class Mail and  
Email: coopered@michigan.gov

Ms. Carl Cooper  
Civil Rights Investigator  
Michigan Dept. of Civil Rights  
Cadillac Place, Suite 3-600  
3054 West Grand Boulevard  
Detroit, MI 48202

RE: UpRooted Electrolysis  
#496327 M. Wolfe

Dear Ms. Cooper:

I am writing on behalf of our client regarding the above-referenced complaint filed with your office. This complaint should be dismissed. It is meritless for numerous reasons. First, the complaint misunderstands, misapplies, and violates applicable state law standards on discrimination. Second, any Department efforts at prosecuting under these facts would violate the Michigan State Constitution's protections for religious exercise. And third, any attempted action would violate federal constitutional protections, and potentially expose state officials to damages.

As a preliminary matter, although the Complaint has sparse factual allegations, a few points must be noted. First, the complainant, Ms. Matissa Wolfe (hereafter "Wolfe") states "I am a woman and believe I was denied service. . . due to my sex." Accordingly, the Complaint appears to sound in sex discrimination. As the Department is likely aware, Wolfe was born biologically male, and has had a notable public and internet presence describing a female gender identity and purported sex transition (while we have no reason to doubt Wolfe's sincerity and public statements, our understanding is based at this point upon public information and Wolfe's conversation with our client and would need to be verified). Accordingly, Wolfe's claim rests not on "sex" discrimination, as that term was understood by the Michigan legislature when the relevant legislation was enacted. Rather, a claim by Wolfe would rest on alleged "transgender" status, which clearly is not protected under Michigan law. It is our starting assumption that any Departmental action would be based on an attempt to enforce the Michigan Civil Rights Commission's (MCRC) illegal and unenforceable Interpretive Statement that includes "gender identity" under the definition of "sex." Such an interpretation would trigger the multiple legal violations referenced above.

It should also be noted that our client is a devout Catholic and lives and conducts her business according to her faith. She holds the belief, from Christian Scripture and Catholic teaching, that sex is an immutable gift from God, and that efforts to deny or change one's sex are sinful and separate us from God. Under her sincerely held religious beliefs, assisting in the "transition" process in any way (which she sees this to be) would cause her to directly violate her faith and conscience.

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On our first point, even if all the facts alleged were to be true, our client has not violated the Elliott-Larsen Civil Rights Act (ELCRA). There is no development of facts, even in the light most favorable to the complainant, that would justify issuing charges against UpRooted Electrolysis under R37.6. In fact, there is no justification to investigate anything. Even accepting all the allegations as true, the Department cannot bring charges against our client because there is no protection under ELCRA for the categories of "sexual orientation," "gender identity," or related constructs on transgender and/or transitioning status. The complainant was not denied services because of being a female. Complainant is biologically a male, which is the relevant inquiry for determining "sex" discrimination. The claim in the complaint is for "not conforming to societal expectations for how women are expected to present themselves in my physical appearance, actions and/or behaviors." Such a claim for discrimination on the basis of gender identity or transitioning status is not cognizable under ELCRA.

ELCRA prohibits discrimination based on sex, which is controlled necessarily by an individual's chromosomal constitution. The law therefore contemplates "sex" as "an objective reality, and not a social construct, such as gender identity or perceived gender. It was enacted to protect everyone from discrimination based on their biological sex. The purpose of the law was to see that men and women were treated equally. Similar to the aims of the federal civil rights legislation of 1964, ELCRA recognized that women in particular often suffered from the effects of such discrimination, and the law was intended to remedy that same perceived inequity. Thus, as passed and implemented by the politically accountable branches of our state government, ELCRA: 1) requires employers to not discriminate on the basis of biological sex; and 2) includes no provisions, legal or otherwise, pertaining to special treatment for gender identity or transgenderism.

Accordingly, the complaint is not remedying "sex" discrimination, but rather involves the Department circumventing state law to advance its own peculiar notions of what the correct sexual state orthodoxy on "gender identity" should be. Government officials are not thought police. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). The Department cannot claim to promote "non-discrimination" by discriminating against, silencing, and punishing those who cannot and do not support a state-imposed sexual ethic. Such an illegal prosecution would create an environment that will undoubtedly chill the First Amendment freedoms of all citizens who disagree with complainant's transgender political agenda for valid religious, political, and cultural reasons. Fortunately, the Department and MCRC simply have no legal authority to do this.

Moreover, such a prosecution under ELCRA would lead to substantial infringements on our client's Constitutional liberty and equal protection interests recognized by the Supreme Court in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). According to *Obergefell*, beyond the First Amendment religious liberty protections expressly enshrined in the Bill of Rights, the new substantive due process 'right to personal identity' now provides Christian and other religious people additional constitutional protection. Henceforth, government action not only must avoid compelling a religious citizen to facilitate or participate in policies that are contrary to their freedoms of expression and religious conscience protected by the First Amendment, but it must also refrain from violating their personal identity rights secured by substantive due process and equal protection. A Christian whose identity inheres in his or her religious faith orientation, is



entitled to at least as much constitutional protection as those who find their identity in their gender expression. There can be no doubt that this new right of personal identity protects against government authorities using a non-existent, made-up category under ELCRA to persecute, oppress, and discriminate against Christian people.

Neither the Department nor the MCRC have the authority to change or amend the meaning of the word "sex" under ELCRA. It appears the Department is seeking to prosecute "sex" discrimination on the basis of "gender identity," using the MCRC's Interpretive Statement. Any attempt to enforce the Interpretive Statement is illegal and an *ultra vires* act. This legal reality requires that the Department deny the complaint without investigation.

## I. MICHIGAN LAW

Although the MCRC may issue an Interpretive Statement on issues under its purview (R37.23), it does not have the authority to change or amend ELCRA. Article IV, Section 1 of the Michigan Constitution provides that "[t]he legislative power of the State of Michigan is vested in a senate and a house of representatives," not the MCRC. The MCRC is not the Legislature, nor is it politically accountable to the people. The Legislature has declined to add sexual orientation and gender identity as new categories under ELCRA numerous times over the past thirty years.

An Interpretive Statement is not binding law. It would not, therefore, make LGBTQ discrimination unlawful in Michigan, would not be legally binding on businesses and individuals in our state, and would not give any legal remedies to alleged victims. The following review and analysis of the statutes negates your attempt to enforce new, non-existent categories under ELCRA.

First, MCL 37.2601 says nothing about the authority of the MCRC to enact legislation or Interpretive Statements that carry the force of law. In fact, it clearly states the opposite. The MCRC can only make "recommendations" to the Governor "for legislative or other action necessary to effectuate" its constitutional mandate (MCL 37.2601(1)(e)). It holds no independent power or authority to enforce its recommendations in any way. Since the MCRC can only make recommendations to the Governor for legislation, it clearly does not have the right to amend statutes and enact new legislation on its own authority.

Second, the Administrative Procedures Act (APA) clearly states Interpretive Statements cannot be enforced by your office. The phrase "interpretive statement" is only used twice in the APA. MCL 24.207 defines "Rules" which are binding law on businesses and individuals. MCL 24.207(h) states that an "interpretive statement . . . in itself does not have the force and effect of law but is merely explanatory." (emphasis added). Any attempt to enforce an Interpretive Statement passed by the MCRC to add the new categories is unlawful and an *ultra vires* act. No businesses or individuals are legally required to comply with an Interpretive Statement, and it provides no new legal remedies to anyone.

Moreover, MCL 24.232(5) states that an "interpretive statement . . . is not enforceable by an agency, is considered merely advisory, and shall not be given the force and effect of law. . . . A court shall not rely upon a(n) . . . interpretive statement . . . to uphold an agency decision to act or refuse to act." (Emphasis added). Once again, this plain language makes it clear that an Interpretive Statement has no binding authority and cannot be enforced against our client.



As a matter of law, the Department has no authority to issue charges against our client. There is no basis to perform an investigation based upon new, non-existent categories under ELCRA.

## II. FEDERAL LAW

The claim that Title VII case law interpretations by federal courts around the country are binding and controlling law in Michigan is also not accurate and is very misleading. None of the federal cases cited by supporters of the Interpretive Statement apply to ELCRA, and none are binding in Michigan. Any claim that these federal cases and interpretations are equally applicable to Michigan's Elliott-Larsen Act is false.

Title VII, a federal statute that covers only employment discrimination in a business with 15 or more employees (42 U.S.C. 2000e-2), is not the same as ELCRA. Title VII is not even applicable to UpRooted Electrolysis. Nothing in Title VII has anything to do with our client's business. The sexual harassment sections of ELCRA are different from Title VII. Even though a few federal courts have unlawfully re-defined Title VII's definition of the word "sex" as applied to employment discrimination, this new court-created definition does not apply to Michigan's ELCRA. This very issue on Title VII is currently pending before the United States Supreme Court, which will hear arguments on it on October 8, 2019.<sup>1</sup>

Federal court decisions do not control the interpretation of Michigan statutes. Again, the cases from other states or from non-binding federal jurisdictions interpreting other state or federal statutes relate only to employment discrimination. Further, Equal Employment Opportunity Commission (EEOC) recommendations and decisions explicitly pertain to employer/employee relationships, not our client's business or the claims in this case.

The United States Supreme Court "repeatedly has held that state courts are the ultimate expositors of state law, see, e.g., *Murdock v. City of Memphis*, 20 Wall, 590 (1875) ...," *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975). Further, the Court has held that "Congress has explicitly disclaimed any intent categorically to preempt state law or to 'occupy the field' of employment discrimination law. See 42 U.S.C. §§ 2000e-7 and 2000h-4." *California Federal Savings & Loan Assn v. Guerra*, 479 U.S. 272, 281 (1987).

The Michigan Supreme Court has ruled multiple times on the issue of interpreting ELCRA in light of federal interpretations of Title VII. In *Chambers v. Tretco, Inc.*, 463 Mich 297 (2000), the Michigan Supreme Court reversed the Michigan Court of Appeals when it applied federal interpretations to ELCRA. The Michigan Supreme Court stated:

We hold that the principles stated in the federal cases relied on by the Court of Appeals do not apply to claims brought under Michigan's Civil Rights Act. Instead, we adhere to prior Michigan precedent and the specific language of the Michigan statute.

*Id.* at 303 (emphasis added). The opinion further held that although the Court can sometimes look at federal interpretations, Michigan courts are not compelled to do so.

<sup>1</sup> It is noteworthy that the Federal Department of Justice, which speaks for the United States government, has taken the position that the term "sex" under Title VII does not include either sexual orientation or gender identity.



However, we have generally been careful to make it clear that we are not compelled to follow those federal interpretations. See, e.g., *Radtke*, supra at 381-382, 501 N.W.2d 155. Instead, our primary obligation when interpreting Michigan law is always "to ascertain and give effect to the intent of the Legislature, ... 'as gathered from the act itself.'" *McJunkin v. Cellasto Plastic Corp.*, 461 Mich. 590, 598, 608 N.W.2d 57 (2000). . . . [W]e cannot defer to federal interpretations if doing so would nullify a portion of the Legislature's enactment.

*Id.* at 313-314 (emphasis added).

In *Haynie v State*, 468 Mich 302 (2003), the majority opinion explicitly held:

Even if, as the dissent states, the Michigan Legislature relied heavily on the federal civil rights act in drafting Michigan's Civil Rights Act, the Michigan Legislature was clearly not bound by the federal civil rights act. That is, the Michigan Legislature was free to adopt a civil rights act that differed from the federal civil rights act, and although, as the dissent points out, there are many similarities between the two acts, the Michigan Legislature did, in fact, choose to adopt an act that is different from the federal act. Despite the dissent's determination not to allow them to do so, the Michigan Legislature is allowed to determine for itself the extent to which it wishes to track the language of the federal law. In particular, Michigan's Civil Rights Act is different from the federal civil rights act with regard to its treatment of sexual harassment. The dissent fails to respect this difference and, instead, concludes that because these acts are nearly identical they must be construed to mean exactly the same thing. We cannot agree that any time the Michigan Legislature creates a law that is "similar" to a federal law, it must be made identical, and the two laws must be interpreted to mean exactly the same thing.

*Id.* at 319-320 (emphasis added).

Michigan courts are not bound by federal interpretations that might be analogously applied to ELCRA but are instead bound to comply with the Michigan Legislature's intent when it enacted the statute. It is for the Michigan Legislature to establish public policy for Michigan, not other state or federal court interpretations of a different statute.

In its strained and unauthorized attempt to bind Title VII to ELCRA, the MCRC now argues that the federal courts' re-definition of the word "sex" (which may soon be reversed by the United States Supreme Court) must be imposed as Michigan law. It appears that it is arguing that the Michigan Legislature intended that those additional classifications (i.e., sex stereotypes, gender identity, sexual orientation, etc.) must now be protected under ELCRA. However, in *Bush v Shabohang*, 484 Mich 156, 173 (2009), the Supreme Court held:

Where the Legislature has considered certain language and rejected it in favor of other language, the resulting statutory language should not be held to authorize what the Legislature explicitly rejected.



The Michigan Legislature has considered legislation at least eleven times since 1999 to add additional classifications to ELCRA such as gender identity, sexual orientation, etc. All eleven bills were rejected by our Legislature. See Michigan Legislature HB 5959 (2014), HB 5804 (2014), SB 1053 (2014), SB 1063 (2012), HB 4192 (2009), HB 4160 (2007), SB 0787 (2005), HB 4956 (2005), SB 0609 (2003), HB 4850 (2003), and HB 5107 (1999). Our Legislature has clearly refused to add to ELCRA the additional classifications that the MCRC is trying to sneak in through the back door as an alleged interpretation of the Legislature's intent. The MCRC cannot illegally "interpret" ELCRA to mean what our Legislature has explicitly rejected. Despite how other state or federal courts may re-define the word "sex" for other statutes, our Legislature has made its intent clear. Michigan courts, the Department, and the MCRC are bound to enforce *that* intent, not their own. The MCRC and the Department have the constitutional duty to enforce the laws passed by the Legislature, not make up its own laws. Having repeatedly failed to persuade the Legislature to amend ELCRA, the MCRC and the Department may not do an end run around the Legislature by improperly prosecuting our client under non-existent ELCRA categories, categories that were specifically rejected by the Legislature.

### III. CONSTITUTIONAL LAW

Due process entitles a person to fair proceedings and to fair notice of what law has been violated. Our client has violated no law by respectfully declining to participate in providing a personal service that would violate her conscience and require her to violate her sincerely held religious beliefs. Indeed, should the Department and MCRC attempt to coerce her to do so, it would be the Department and MCRC members who are violating long-established state and federal constitutional laws. It is unconscionable for the state to attempt to illegally force our client, under color of state law, to endorse a lifestyle and take actions with which she disagrees. Despite the Department's intent to violate the sincere religious convictions of our client and force her to violate her conscience, the law does not support such an oppressive and draconian prosecution. Tolerance is a two-way street.

Michigan's Constitution, Article I, Section 17 states, "No person shall be . . . deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed." If the Department insists on investigating alleged discrimination under non-existent categories in ELCRA, it is doing so in direct violation of our client's due process rights. Such an improper investigation and any subsequent hearing is not "fair and just treatment." No law in Michigan prohibits discrimination under these proposed new categories. Therefore, what exactly is the Department investigating? Even if the Department believes that our client discriminated against the complainant based on sexual orientation, gender identity, or transgenderism (which she did not), ELCRA provides no protection or remedy for such alleged discrimination. Further, UpRooted Electrolysis is also protected by the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

Article I, Section 2 of Michigan's Constitution states: "No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin." The Department and the MCRC, by accepting for filing and investigating this complaint, are denying our clients specifically protected constitutional rights.



The Michigan Department of Civil Rights and the MCRC should not be prosecuting individuals on the basis of what it may want the law to be. It must only proceed with complaints based on the actual law. Under ELCRA, religion is a specifically listed, protected category. Our client is also protected by the First Amendment and Michigan's Constitution Article I, Section 4:

Every person shall be at liberty to worship God according to the dictates of his own conscience. . . . The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.

It should be noted the Michigan Constitution's protections on the free exercise of religion are robust and place a high burden on state action such as that contemplated here. Michigan state courts apply strict scrutiny to government actions that burden religious exercise, which requires a compelling state interest test, the highest burden on government action. See *McCready v. Hoffus*, 586 N.W.2d 723 (Mich.1988); accord *Champion v. Secretary of State*, 761 N.W.2d 747 at 753 (Mich. App. 2008).

Your actions to investigate this complaint and to potentially issue charges clearly diminish the civil rights of our client on account of her religious belief. Further action may possibly implicate governmental religious animus of the type condemned by the U.S. Supreme Court in its *Masterpiece Cakeshop v. Colorado* decision. Your actions also arguably violate our client's Federal civil rights protections (42 USC 1983):

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

Our client is plainly acting based upon her sincerely held religious beliefs. Justice Kennedy, in the above-referenced *Masterpiece Cakeshop v. Colorado* case, affirmed that such beliefs are entitled to protection:

[T]he religious and philosophical objections to gay marriage are protected views and in some instances protected forms of expression. As this Court observed in *Obergefell v. Hodges*, 576 U. S. \_\_\_ (2015), "[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths." (emphasis supplied)

In *Obergefell* the Supreme Court more fully stated:

Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. 576 U.S. at \_\_\_ (2015).



Any attempt to investigate or issue charges against our client on the basis of gender identity as "sex" discrimination would be clearly at odds with the above cited law, and, is itself potentially an illegal and unconstitutional act. This is a legal issue, not a factual issue.

In summary, the complaint filed with your office is based upon categories that do not exist under ELCRA or anywhere else in Michigan law. The MCRC's Interpretive Statement is not enforceable against our client. Therefore, this complaint must be dismissed based upon the clear protection of our client's religious beliefs, as specifically protected under ELCRA, the above-cited cases, and under the Michigan and United States Constitutions. The question is simple: can the Department issue charges for alleged discrimination based upon non-existent categories and thereby discriminate against our client for her religious beliefs, and for conducting herself consistent with clearly protected statutory and constitutional rights? The clear answer is *no*.

If you intend to proceed with the investigation of our client in blatant violation of the above-cited law and statutes, then respond to me, in writing, with the legal authority you are relying upon to investigate our client. There is no legal basis for this complaint. No factual development can possibly justify issuing charges for discrimination based upon non-existent categories under ELCRA.

The Department and the MCRC have been placed on notice that these complaints are baseless and devoid of legal merit. I am requesting that the Department dismiss this unfounded complaint without investigation. If your office proceeds with the investigation and issues charges, then understand that we will pursue all legal remedies available to our client to stop such an illegal prosecution, which may include holding all state actors involved personally liable for acting outside the scope of their legal authority and in violation of established constitutional protections for our client.

Thank you for your consideration in this matter.

Sincerely,

David A. Kallman  
Senior Legal Counsel  
Great Lakes Justice Center

DAK/cas

cc: UpRooting Electrolysis  
Michigan Civil Rights Commissioner  
Director Agustina V. Arbulu



Notice: You are not a lawyer. This form is not a contract. It is a statement of your complaint. It is not a substitute for a lawyer. It is not a guarantee of a favorable outcome. It is not a warranty of any kind. It is not a representation of any kind. It is not a statement of any kind. It is not a declaration of any kind. It is not a confession of any kind. It is not a statement of any kind. It is not a declaration of any kind. It is not a confession of any kind.

STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS  
**COMPLAINT**

FILE # 496327

FILE #

<b>CLAIMANT</b> Ms. Marissa Wolfe	<b>RESPONDENT</b> Uprooted Electromyola
<b>ADDRESS</b> 184 Co Road Ks Marquette, MI 49855	<b>ADDRESS</b> 607 North 3rd Street Marquette, MI 49855
<b>TELEPHONE</b> (906) 859-1107	<b>TELEPHONE</b> (906) 458-1558
<b>Area of Discrimination:</b> Public Accom / Service	<b>Date of Discrimination:</b> May 28, 2019

**Statement of Alleged Discrimination:**

I am a woman and believe I was denied service on or around May 28, 2019, due to my sex.

I was a potential patient of the respondent's medical facility located at 607 North 3rd Street in Marquette, Michigan.

**Denied service**                      **05/28/2019**      **Sex**

On or around May 28, 2019, I sought out services with the respondent's owner; however, she stated that she was uncomfortable working with me. I was discriminated against on the basis of my sex, female, for not conforming to societal expectations for how women are expected to present themselves in any physical appearance, actions and/or behaviors.

This complaint is based on the following law:

Elliott-Larsen Civil Rights Act No 453, Public Act of 1976, as amended

I swear or affirm that I have read the above complaint and that it is true to the best of my knowledge, information and belief. I have notified the department of all other civil or criminal actions pending with regard to the allegations in this complaint.

*Marissa James Wolfe*  
SIGNATURE OF CHARGING PARTY / CLAIMANT

Complaint Taken by: Torysa Barry

Subscribed and sworn to before me

THIS 28 day of June, 2019

at Marquette Michigan

My Commission expires (30 months) 08/04/2023

*Jennifer Lindsey*  
SIGNATURE OF NOTARY PUBLIC

Commissioned in Marquette County



*on Cal*

**STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS**  
 CADILLAC PLACE, SUITE 3-600, 3064 WEST GRAND BOULEVARD, DETROIT, MI, 48202  
 Tel: 313-458-3700

**ORDER**

**MDCR #:** 496327  
**Claimant:** Marissa Wolfe  
**Respondent:** Uprocted Electrolysis  
**To:**  
 607 North 3rd Street  
 Marquette, MI 49855

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN

YOU ARE ORDERED TO :

1. Appear personally to testify before the Michigan Department of Civil Rights on the date, time and place listed below.

2. Produce the following items, in person or by mail, on or before the date, time, and place listed below.

Notarized answers to interrogatories along with any and all relevant documents.

Please see the Attachment

Place : Michigan Department of Civil Rights CADILLAC PLACE, SUITE 3-600, 3064 WEST GRAND BOULEVARD, DETROIT, MI-48202	
Date : March 19, 2020	Attn: Keasha M. Garrett
Time : 5:00pm	

Failure to comply with this order may subject you to enforcement proceedings in the Circuit Court of the State of Michigan.



Issued By

*Justice Furest*

Date

FEB 20 2020

RECEIVED by MCOA 12/28/2020 11:46:52 AM

**PROOF OF SERVICE**

**SERVICE BY MAIL**

I, Alicia Powers, swear or affirm that I am a legally competent adult and that I served a copy of this order, together with any required fees for attendance and mileage, upon the following person or entity:

Name and Complete Address Of Service:

Uprooted Electrolysis  
607 North 3rd Street  
Marquette, MI 49855

Day, Date and Time Of Service:

Thursday, Feb 20, 2020 @ 9:05 AM

Service was made by ordinary mail addressed to the person served at their last known address.

Alicia Powers  
Signature of Server  
Admin Support  
Title

Signed before me this 20th Day of February at Detroit MI

My Commission expires: 12/31/2025

Angela D. Hall  
Notary Public

Commissioned in Oakland County

ANGELA D. HALL  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF OAKLAND  
MY COMMISSION EXPIRES 12/31/2025  
ACTING IN COUNTY OF Washtenaw

**PERSONAL SERVICE**

I, \_\_\_\_\_, swear or affirm that I am a legally competent adult and that I served a copy of this order, together with any required fees for attendance and mileage, upon the following person or entity:

Name and Complete Address Of Service:

607 North 3rd Street  
Marquette, MI 49855

Day, Date and Time Of Service:

Service was made through personal delivery by informing the served person of the nature of the Order, offering it to that person, and leaving it within that person's physical control.

[Signature]  
Signature of Server  
[Title]  
Title

Signed before me this \_\_\_\_\_ Day of \_\_\_\_\_ at \_\_\_\_\_ MI

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Commissioned in \_\_\_\_\_ County

STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS

CADILLAC PLACE, SUITE 3-600, 3054 WEST GRAND BOULEVARD, DETROIT, MI, 48202  
Tel: 313-456-3700

**ORDER ATTACHMENT**

MDCR #: 496327  
Claimant: Merissa Wolfe  
Respondent: Uprooted Electrolysis

**YOU ARE ORDERED TO:**

Produce the following items, in person or by mail, on or before the date, time, and place listed on the order.

Notarized answers to interrogatories along with any and all relevant documents.

*[Faint, illegible text]*

RECEIVED by MCOA 12/28/2020 11:46:52 AM

MDCR 496327 - Marissa Wolfe v Uprooted Electrolysis

STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS

DETROIT ENFORCEMENT UNIT, Cadillac Building - 3504 West Grand Blvd., Suite 3-600, Detroit, MI 48202  
Phone: (313) 458-3704

MICHIGAN DEPARTMENT OF CIVIL RIGHTS,  
ex rel, MARISSA WOLFE

Claimant,

Complaint No. #496327

v.

UPROOTED ELECTROLYSIS

Respondent

\_\_\_\_\_  
Attorney for Respondent  
Uprooted Electrolysis

INTERROGATORIES

These Interrogatories are authorized under the provisions of the Elliott-Larsen Civil Rights Act, No. 453, Section 602(d) and/or the Persons with Disabilities Civil Rights Act No. 220, Section 605, Public Acts of 1976, as amended. They must be answered and returned to the department within 28 days of receipt. The Interrogatories must be signed by the person answering them in the presence of a notary public.

DEMAND FOR PRESERVATION OF EVIDENCE

The Department of Civil Rights demands that you preserve all writings, documents and any information that is recorded or retained, including, without limitation, originals, non-identical copies, drafts, or electronic or computer data storage. "Documents" also refers to microfilm, microfiche, videotape, motion pictures, audio tape and any other electronic or mechanical recording. "Writings" shall include, without limitation, all materials of any kind including, but not limited to, orders, instructions, directives, regulations, reports, interviews, statements, summaries, complaints, transcripts, memoranda, notes, correspondence, and logs.

The answers must be true and include information available to the respondent and/or its employees, agents or representatives. Repeat the question or sub-question immediately before the answer to it on a separate sheet. Attach the questions and answers to these interrogatories. Submit documentation to support your

## MDCR 496327 – Marissa Wolfe v Uprooted Electrolysis

responses to each question.

These Interrogatories are continuing. Supplemental answers are required immediately if the respondent obtains further or different information from the time the answers are provided to the time of hearing or disposition of the complaint.

## DEFINITIONS

1. The term "incident" shall refer to the entire series of interactions between the Claimant and Respondent, or any other employers of Respondent, as described in the Complaint.
2. The term "document" shall have the meaning set forth in Rule 34 of the Federal Rules of Civil Procedure and shall refer to any means by which information is recorded or retained, including, without limitation, originals, non-identical copies, drafts, or electronic or computer data storage. "Writings" shall include, without limitation, all materials of any kind including, but not limited to, orders, instructions, directives, regulations, reports, interviews, statements, summaries, complaints, transcripts, memoranda, notes, correspondence, and logs. "Documents" also refers to microfilm, microfiche, videotape, motion pictures, audio tape and any other electronic or mechanical recording.
3. The term "identify" or "identity" when used with respect to persons is a request to supply the full name, employee/badge number, address, height, weight, race, national origin, age, gender and length of employment of the person to be identified.
4. The term "identify" or "identity" when used with respect to documents is a request to supply the date of the document, the author, the addressee, if any, the length in pages, the title and a brief description of the contents of the document.

## INTERROGATORIES

1. Please state the name, address, job title, and employer of the person(s) answering these Interrogatories.
2. Describe the nature of the business and/or services the Respondent provides to the public.
3. Does the Respondent provide electrolysis? If yes, does the Respondent service, male, female, and non-binary customers?
4. Identify and provide the type of licenses the Respondent holds and state:
  - a. type of license, e.g. electrology, cosmetology, etc;
  - b. issued by what state, city, county or political subdivision.

## MDCR 496327 – Marissa Wolfe v Uprooted Electrolysis

5. Identify and provide any applications required of Respondent to operate and state:
  - a. type of application;
  - b. state any nondiscriminatory clauses in the application;
  - c. state any Human Rights Ordinances that you are subject to and the jurisdiction.
6. Identify the nature of the services that Claimant requested. Please state:
  - a. the contractual services and duties that would have been provided;
  - b. any personal services that would have been provided by the Respondent;
  - c. specific duties/procedures performed by Respondent, such as number of treatments, equipment used, etc.
7. Identify the person who made the decision to deny service to the Claimant and their reason for not renting the facilities or venue to Claimant. If this decision was based on a religious belief, please state:
  - a. any specific name of a religious organization they belong to;
  - b. the sincerity of that religious belief;
  - c. the religious doctrine that supports that belief;
  - d. how serving the Claimant would violate that belief;
  - e. how serving the Claimant would have a personal effect on the person having to do so.
8. Identify if there were other employees available and/or willing to provide the service Claimant requested whose religious beliefs would have not been affected by the request.
9. Identify all persons who, to your knowledge; or the knowledge of your agents or attorneys, witnessed or purport to have knowledge of facts relevant to this incident. For each, state:
  - a. the date, time, and place on which the person was involved;
  - b. the substance of any conversations or reports with such person regarding the Claimant or the incident;
  - c. the name, phone number and address of each person having any involvement concerning the alleged incidents stated in the complaint number MDCR #496327.
10. Has the Respondent ever been named as defendants in any suit or claim involving civil rights violations? If so, state for each suit:
  - a. the name and address of each party and each party's attorney;
  - b. the nature of the cause of action;
  - c. the date on which the suit was instituted;
  - d. the result of each suit that has been concluded by judgment or settlement.

MDCR 496327 – Marissa Wolfe v Uprooted Electrolysis

11. Please describe in detail how Respondent was trained and if the Respondent has staff, how does the Respondent train its staff and employees on deciding what members of the public violate the Respondent's religious beliefs if they were served? In particular, please state:

- a. the nature and substance of the training he/she/they received;
- b. the name and address of each specialized school he/she/they attended to receive such training
- c. the degree or certificate, if any, each employee received from each specialized school.

12. Give the date upon which the employee(s) involved in this complaint commenced employment with Respondent, whether he/she remains employed today, and the date of and reason for any termination or interruption of his/her employment.

13. Please state any complaints made to Respondent regarding failure to provide service to the public based on your religious beliefs. Give the name and address of the complainant, the substance of the complaint, and the ultimate disposition of the complaint.

14. State the title and substance of any document(s) created in preparation for or in response to this incident.

15. Were there in existence at the times of these incidents, internal administrative procedures designed to assist the Respondent in determining when their religious beliefs would require refusing service to members of the public?

If yes, state:

- a. the nature of such policies and/or procedures;
- b. the person who is responsible for implementing such policies and/or procedures.

16. Were you insured at the time of this incident against judgments of personal or business liability based on civil rights violations, or were you a party to any bonding agreement by which you were held free of liability or by which an insurance company will stand as a guarantor or surety in connection with any state judgment based on violating civil rights laws?

If yes, state:

- a. the name and address of the insurer;
- b. the name and address of the person or persons who pay the premiums;
- c. the identification number of the policy;
- d. the effective dates of each policy;
- e. the policy limits, or amount of any bond;
- f. the substance of disclaimers of liability contained in the policy.

17. For each expert witness you intend to call at a public hearing, please state the expert's name and present address, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of grounds for each such opinion.

MDCR 496327 - Marissa Wolfe v Uprooted Electrolysis

## REQUESTS FOR PRODUCTION OF DOCUMENTS DEFINITIONS

1. These requests are directed to the Respondent and involved person(s) who will hereinafter be referred to collectively as "you" or "your." The requests require you to produce to the MDCR all requested documents that are in your possession, custody, or control or in the possession, custody, or control of any of your attorneys, agents, representatives, financial advisors, accountants, or consultants.
2. The term "document" shall have the meaning set forth in Rule 34 of the Federal Rules of Civil Procedure and shall refer to any means by which information is recorded or retained, including, without limitation, originals, non-identical copies, drafts, or electronic or computer data storage. "Writings" shall include, without limitation, all materials of any kind including, but not limited to, orders, instructions, directives, regulations, reports, interviews, statements, summaries, complaints, transcripts, memoranda, notes, correspondence, and logs. "Documents" also refers to microfilm, microfiche, videotape, motion pictures, audio tape and any other electronic or mechanical recording.
3. For any requested document that you claim to be protected by privilege or immunity, state as to each such document the privilege or immunity asserted and the following information:
  - a. the author(s);
  - b. the recipient(s) (including those copied);
  - c. the date;
  - d. the subject matter of the document; and
  - e. the basis for the claim of privilege or immunity.
4. As used herein, "or" shall include "and/or".
5. As used herein, the singular shall include the plural, and vice versa.
6. The term "concerning" means referring to, describing, evidencing, or constituting.
7. If documents responsive to a particular request no longer exist, but are known to have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they are responsive, and identify any person having knowledge of the content of such documents.



MDCR 496327 – Marissa Wolfe v Uprooted Electrolysis

### REQUESTS FOR PRODUCTION

1. Any and all documents which are in your possession concerning the incident(s) described in the Complaint.  
This includes, but is not limited to:
  - a. any and all reports or forms describing any aspects of these events;
  - b. any and all incident reports; and
  - c. statements and/or interviews of witnesses, the Claimant, and any other persons who had any role or contact with the case.
2. Any licenses Respondent has regarding the operations of the Respondent.
3. Any applications and/or certificates Respondent has regarding the operations of the Respondent.
4. Copies of all contracts used since 4/1/18 that Respondent used in renting out the facilities or venue.
5. All materials which are in your possession and relevant to this incident, including, but not limited to, guidelines, directives, policy statements, procedures, and training materials, in any form and of any type, concerning policy, custom or practice regarding:
  - a. providing electrolysis service;
  - b. determining who can receive service;
  - c. the procedure for denying someone service.
6. Copies of all papers involving denial of service from May 28, 2019, to date.
7. Provide Respondent's non-discrimination policies.
8. Provide all written communications between Claimant and Respondent regarding her request/denial of service, including texts and online messages through any medium.
9. Any and all audio, video or other electronic recording in your possession and relevant to this incident, including, but not limited to camera recordings, security recordings or any other audio, video or electronic recording, from any source.

MDCR 496327 – Marissa Wolfe v Uprooted Electrolysis

The answers to these interrogatories must be signed by an officer or agent of the respondent. The signature of the authorized representative is to be notarized, using the space provided below. I have read the answers to the Michigan Department of Civil Rights Interrogatories. I swear or affirm that they are true, except where stated that the answers given are based on information and belief, and those answers I believe to be true.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Signed before me this \_\_\_\_\_  
 \_\_\_\_\_ Day of \_\_\_\_\_  
 at \_\_\_\_\_, MI  
 My Commission expires \_\_\_\_\_  
 \_\_\_\_\_  
 Notary Public  
 Commissioned in \_\_\_\_\_ County, State: \_\_\_\_\_