

STATE OF MICHIGAN
IN THE 39TH CIRCUIT COURT FOR THE COUNTY OF LENAWEE

**LENAWEE COUNTY HEALTH
DEPARTMENT,
By Lenawee County Health Officer,
An administrative body that operates
as Lenawee County**

Plaintiff

v.

JOSEPH GRABER, et al.

Defendants

* File No. 19-6385-CE

* Judge Anzalone

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ANSWER AND COUNTERCLAIM

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Now come Defendants, Joseph and Rosa Graber (“Defendants”), by and through counsel, and for their Answer to the Complaint, states as follows:

1. Defendants admit the allegations contained in paragraphs 1 through 6 of the Complaint.
2. Defendants admit that this Court has jurisdiction for Plaintiff’s claims, as alleged in paragraph 7 of the Complaint. All remaining allegations, if any, of paragraph 7 of the Complaint are denied.
3. Defendants reincorporate the preceding responses to the allegations of the Complaint as if fully re-written herein.
4. Defendants admit that Lenawee County has adopted a Lenawee County Environmental Health Code as alleged in paragraph 9 of the Complaint. All remaining allegations, if any, of paragraph 9 of the Complaint are denied.
5. Defendants admit that the Health Code sets forth certain requirements, as alleged in paragraph 10 of the Complaint. Further answering, these requirements are provided for in the Code, the interpretation and/or enforceability of which is, or may be, disputed in this litigation. The remaining allegations of paragraph 10 of the Complaint, if any, are denied.

6. Concerning paragraphs 11 through 16 of the Complaint, Defendants admit that Plaintiff has correctly recited the language of the stated provisions of the Health Code. All remaining allegations, if any, of paragraphs 11 through 16 of the Complaint are denied.
7. Defendants admit the allegations of paragraph 17 of the Complaint.
8. Defendants are without knowledge sufficient to admit or deny the allegations of paragraph 18 of the Complaint, and accordingly, deny same.
9. Defendants are without knowledge sufficient to admit or deny what Cindy Merritt did or claims to have observed, as alleged at paragraph 19 of the Complaint, and accordingly deny same. The remaining allegations of paragraph 19 of the Complaint are denied.
10. Defendants are without knowledge sufficient to admit or deny the allegations of paragraph 20 of the Complaint, and accordingly deny same. Further answering, there is no Exhibit B attached to Defendants' copy of the Complaint¹.
11. Defendants admit that a meeting was planned as alleged in paragraph 21 of the Complaint. Further answering, Defendants deny the remaining allegations of paragraph 21
12. Defendants are without knowledge sufficient to admit or deny the allegations of paragraph 22 of the Complaint, and accordingly deny same. Further answering, Defendants believe such a letter was sent on a date unknown to Defendants. To the extent a further answer is required, the allegations of the letter are denied.
13. Defendants deny the allegations of paragraph 23 of the Complaint.
14. Defendants are without knowledge sufficient to admit or deny the allegations of paragraph 24 of the Complaint, and accordingly deny same. Further answering, Defendants believe such a letter was sent on a date unknown to Defendants. To the extent a further answer is required, the allegations of the letter are denied.
15. Defendants are without knowledge sufficient to admit or deny the allegations of paragraph 25 of the Complaint, and accordingly deny same. Further answering, Defendants are aware that a letter was sent to the County on or about this date purporting to speak on behalf of Mr. and Ms. Graber. Further answering, Defendants respond that the letter in question specifically explained to Plaintiff the religious concerns that the Amish community had with the manner in which the County

¹ Undersigned counsel has reviewed one copy of the Complaint that states there is an Exhibit B and another copy that has no such reference.

proposed to enforce the Health Code. As set forth elsewhere herein, Mr. and Ms. Grange seek only to have the County enforce the Code consistent with the United States and Michigan Constitutions.

16. Defendants are without knowledge sufficient to admit or deny the allegations of paragraphs 26 through 28 of the Complaint and accordingly deny same. Further answering, Defendants believe the Health Department sent correspondence like that described in paragraphs 26 through 28 of the Complaint. To the extent a further answer is required, the allegations of the letters are denied.
17. Defendants are without knowledge sufficient to admit or deny the allegations of paragraph 29 of the Complaint, and accordingly deny same.
18. Defendants are without knowledge sufficient to admit or deny the allegations of paragraph 30 of the Complaint, and accordingly deny same.
19. Defendants deny the allegations contained in paragraphs 31 through 33 of the Complaint.
20. Defendants reincorporate the preceding responses to the allegations of the Complaint as if fully re-written herein.
21. Defendants deny the allegations contained in paragraphs 35 through 37 of the Complaint.
22. Defendants are without knowledge sufficient to admit or deny the allegations of paragraph 38 of the Complaint, and accordingly deny same. To the extent a further response is required, Defendants deny Plaintiff is prepared to comply with applicable law in its dealings with the Defendants in this matter.
23. Defendants admit, as alleged in paragraph 39 of the Complaint, that this Court has the authority to grant an injunction but vehemently deny it should or that such injunctive relief is appropriate or lawful in this case.
24. Defendants deny the allegations of paragraph 40 of the Complaint.

DEFENSES AND AFFIRMATIVE DEFENSES

25. Plaintiff's Complaint fails to state a claim for which relief may be granted.
26. Plaintiff has violated applicable provisions of the United States Constitution, including but not necessarily limited to the free exercise clause contained in the First Amendment to the United States Constitution.

27. The relief Plaintiff seeks violates applicable provisions of the United States Constitution, including but not necessarily limited to the free exercise clause contained in the First Amendment to the United States Constitution.
28. Plaintiff has violated applicable provisions of the Michigan Constitution, including but not necessarily limited Article I, Section 4 of the Michigan Constitution.
29. The relief Plaintiff seeks violates applicable provisions of the Michigan Constitution, including but not necessarily limited to the religious liberty clause contained in Article I, Section 4 of the Michigan Constitution..
30. Plaintiff has violated applicable provisions of the Fair Housing Act.
31. The relief Plaintiff seeks violates applicable provisions of the Fair Housing Act.
32. One or more of the applicable provisions of the Lenawee County Environmental Health Code are not enforceable for, *inter alia*, violation of the United States and Michigan Constitutions.
33. Defendants reserve the right to raise and assert additional defenses and affirmative defenses during the course of discovery and litigation in this case.

WHEREFORE, having answered the Complaint, Defendants pray that it be dismissed at Plaintiff's costs.

COUNTERCLAIM

Introduction and General Statement of the Claims

1. Defendants Joseph Graber and Rosa Graber (hereinafter, collectively, the "Defendants" or "Mr. and Mrs. Graber") are the owners of real property located at 9253 Ranger Highway, Morenci, Lenawee County, Michigan where they live (hereinafter, the "Premises").
2. Plaintiff Lenawee County Health Department (hereinafter, "Plaintiff" or the "County") is an administrative body that operates in Lenawee County, Michigan, that claims jurisdiction to enforce the Lenawee County Environmental Health Code (the "Health Code").
3. On October 31, 2019, Plaintiff filed a pleading it entitled "Complaint to Abate a Nuisance and Request for Order to Show Cause" (hereinafter, the "Complaint").
4. In the Complaint, Plaintiff asks to "demolish" Mr. and Mrs. Graber's home. *See*, Wherefore clause, ¶ B.

5. Upon information and belief, Plaintiff has filed similar complaints against every member of the Amish religion who owns a home in Lenawee County. Accordingly, Plaintiff has asked the Court for permission to demolish every Amish home in Lenawee County, which would have the effect of essentially banishing an entire religious community from the County.
6. Mr. and Mrs. Graber are practicing, bona fide members of the Amish religion.
7. Mr. and Mrs. Graber's religious beliefs are sincerely held, and reflect beliefs that have been followed by Amish communities for centuries.
8. In this Counterclaim, Defendants seek no compensatory or punitive damages.
9. Instead, Mr. and Mrs. Graber simply ask to stay in their home and enjoy the right to freely exercise their religion, as guaranteed by the Michigan and United States Constitutions.
10. Although the Complaint is as vague as the Health Code, it appears that Plaintiff alleges Defendants' method of "sewage" disposal, as well as the water supply system at the Premises, is a nuisance and/or violative of the Health Code².
11. Since Plaintiff's purported enforcement of such laws interferes with the Mr. and Mrs. Graber's practice of their sincerely held religious beliefs, Plaintiff must establish it has a compelling state interest in doing so and that it has chosen the least restrictive means available.
12. As set forth below, the County does not have a compelling state interest in enforcement against Mr. and Mrs. Graber, in the manner proposed by the County, of the laws pertaining to black water disposal, grey water disposal, plumbing, and/or the water supply.
13. As set forth below, even if the County has a compelling state interest, it has not chosen the least restrictive means of enforcing the laws regarding black water disposal, grey water disposal, plumbing and the water supply in its dealings and interactions with Mr. and Mrs. Graber in this matter.

² Upon information and belief, the parties dispute what liquids, materials or water constitutes 'sewage' as Plaintiff uses that term in its Complaint. For reference sake only, and to preserve their arguments and claims concerning that issue, in this Answer and Counterclaim, Defendants shall use the term "black water" for human excreta and "grey water" for all other liquid and related materials (such as water used in sinks or for other household uses) of which the disposal is, or may be, at issue in this litigation.

14. As such, Mr. and Mrs. Graber invoke Michigan law including but not necessarily limited to Michigan Court Rule 2.605 and ask the Court to declare that Plaintiff's actions violate the Constitution of the United States and the State of Michigan.
15. As such, Mr. and Mrs. Graber invoke Michigan law including but not necessarily limited to Michigan Court Rule 2.605 and ask the Court to declare that the following provision of the Health Code, as the County has sought to enforce them, are unconstitutional infringements on religious freedoms as applied to Mr. and Mrs. Graber: Chapter 1, Sections 2f, 3u and 3v; Chapter 2, Section 1, Paragraphs 2.1(a), 2.1(l); Chapter 2, Section 3, Paragraph 2.3b; Chapter 3, Section 3.2; Chapter 5, Sections 5.1 and 5.2 (collectively, the "Health Code Provisions"). The Health Code Provisions shall further include any provisions of the Health Code specifically relied upon by the Plaintiff in its unconstitutional enforcement actions.

Statement of Facts

16. The First Amendment to the United States Constitution states, in relevant part for these proceedings, as follows: "Congress shall make no law...prohibiting the free exercise [of religion]."
17. Article I, Section 4 of the Michigan Constitution states, in relevant part for these proceedings, that all Michiganders "shall be at Liberty to worship God according to the dictates of [their] own conscience" and guarantees that the "privileges and capacities of no person shall be diminished or enlarged on account of [their] religious belief."
18. Mr. and Mrs. Graber, like all Michigan residents, enjoy these Constitutional rights under Michigan and American law to freely practice their religion according to their sincerely held religious beliefs.
19. Amish religious observances include simple living and rejection of modern technology.
20. Because of their religious beliefs, Mr. and Mrs. Graber obtain all of the water used in their home from a manually operated well on their property. Consistent with these beliefs and methods, they use a minimal amount of water in their homes, far less than is common among most modern homeowners.
21. Consistent with these beliefs, Mr. and Mrs. Graber also do not utilize modern indoor plumbing; instead Mr. and Mrs. Graber use what is commonly referred to as an outhouse, or outdoor privy, for elimination of human waste/black water.
22. The method by which Mr. and Mrs. Graber provide water to their home and dispose of their black water and grey water is sufficient for their and their family's needs and does not present a health or safety threat to them, their family, their neighbors, or the public at large.

23. Lenawee County health officials have been made aware by Defendants, and other members of the Amish community, of their religious views.
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24. Upon information and belief, Plaintiff seeks to impose certain black water disposal, grey water disposal, plumbing, and water supply requirements at the Premises that would require Defendants to include system design, mechanical equipment, or other devices, construction techniques, or implementation methods that would violate Mr. and Mrs. Graber's religious beliefs and practices.
25. Upon information and belief, Plaintiff seeks to impose certain black water disposal, grey water disposal, plumbing, and water supply requirements at the Premises that would require Defendants to include system design, mechanical equipment, or other devices, construction techniques, or implementation methods that are wholly unnecessary, especially when properly viewed in conjunction with their religious beliefs and practices.
26. Among other things, removal of human excreta from their outdoor privy through mechanical means such as pumping would violate Mr. and Mrs. Graber's sincerely held religious beliefs and practices; instead, their religion dictates that they remove the human excreta through their own toil.
27. Upon information and belief, Plaintiff seeks to impose requirements concerning the construction and usage of their outdoor privy that is inconsistent with their sincerely held, and Constitutionally protected, religious beliefs.
28. Upon information and belief, Plaintiff further seeks to impose a grey water disposal and/or grey water recycling system at the Premises that would require Mr. and Mrs. Graber to include system design, mechanical equipment, or other devices, construction techniques, or implementation methods in violation of their religious beliefs and practices.
29. Upon information and belief, Plaintiff further seeks to impose plumbing requirements at the Premises that would require Mr. and Mrs. Graber to include system design, mechanical equipment, or other devices, construction techniques, or implementation methods in violation of their religious belief and practices.
30. Upon information and belief, Plaintiff has made, and continues to make, vague, unsubstantiated (and incorrect) allegations that the water supply at the Premises is unsafe.
31. Upon information and belief, Plaintiff further seeks to impose water supply requirements at the Premises that would require Mr. and Mrs. Graber to include system design, mechanical equipment, or other devices, construction techniques, or implementation methods in violation of their religious belief and practices.

FIRST CLAIM FOR RELIEF
U.S. CONSTITUTION, AMEND. I; 42 U.S.C. § 1983
Violation of Free Exercise Clause

32. Defendants re-state the preceding paragraphs of the Counterclaim as if fully re-stated herein.
33. A real and justiciable controversy exists between Mr. and Mrs. Graber and Plaintiff concerning the constitutionality of the Health Code Provisions as applied by the County.
34. The Premises include Mr. and Mrs. Graber's home and primary residence.
35. The method by which Mr. and Mrs. Graber have chosen to address black water and grey water disposal is consistent with their religious beliefs.
36. The Plaintiff does not have a compelling state interest to enforce the black water disposal regulations in the manner set forth in the Complaint in the context of the Grabers' minimalist and religiously mandated lifestyle.
37. The Plaintiff does not have a compelling state interest to enforce the grey water disposal regulations in the manner set forth in the Complaint in the context of the Grabers' minimalist and religiously mandated lifestyle.
38. The Plaintiff does not have a compelling state interest to enforce the plumbing regulations in the manner set forth in the Complaint in the context of the Grabers' minimalist and religiously mandated lifestyle.
39. The Plaintiff does not have a compelling state interest to enforce the water supply regulations in the manner set forth in the Complaint in the context of the Grabers' minimalist and religiously mandated lifestyle.
40. Additionally, or in the alternative to the preceding four paragraphs, the Plaintiff's refusal to permit Mr. and Mrs. Graber to address plumbing, black water disposal, grey water disposal, and plumbing in the manner they have requested does not serve a compelling state interest.
41. The method by which Mr. and Mrs. Graber have chosen to address black water disposal, grey water disposal, plumbing, and water supply does not, and will not, adversely affect the Defendants or any other citizens or visitors of Lenawee County, Michigan or elsewhere.
42. Even to the extent that Plaintiff has a compelling state interest in these matters, its attack upon the religiously mandated and non-harmful methods by which Mr. and Mrs. Graber have chosen to address plumbing, sewage, water supply, and grey water

- disposal is not the least restrictive means of enforcing these laws or of protecting the public.
43. Plaintiff alleges in its Complaint that Mr. and Mrs. Graber have violated the Health Code Provisions.
 44. As set forth herein, the Health Code Provisions as Plaintiff purports to apply them violate Mr. and Mrs. Graber's right to the free exercise of their religion guaranteed under the First Amendment to the United States Constitution.
 45. Mr. and Mrs. Graber ask the Court to declare the Health Code Provisions, as interpreted and applied by Plaintiff, to be unconstitutional under the Constitution of the United States and the Constitution of the State of Michigan as applied to Mr. and Ms. Graber.
 46. Even if the Court finds the Health Code Provisions serve a compelling governmental interest, they are not neutral generally applicable requirements under the free exercise clause of the United States constitution, and they are not narrowly tailored to avoid interference with the Defendants' exercise of their exercise of their sincerely held religious beliefs.
 47. Lenawee County health officials have threatened to condemn and/or destroy Mr. and Mrs. Graber's home and other property unless Defendants utilize black water disposal, grey water disposal, plumbing, and water supply systems that violate their religious views and practices.
 48. The Health Code provides that the Lenawee County Health Officer may permit variations in the Code's standards in response to "sufficient evidence of special factors warranting such variance" in the opinion of the Health Officer. LCHC, Ch. 1, § 1(m). The County Board of Health is similarly empowered to grant variances from the Code's standards where alternate approaches are safe and where "strict compliance with the code requirements would result in unnecessary or unreasonable hardship." Health Code, Ch. 1, § 1(o).
 49. Plaintiff has failed to consider Defendants' religious objections to installing the type of black water disposal, grey water disposal, plumbing and water supply that Plaintiff would prefer for Defendants to use.
 50. In light of the broadly framed requirements of the Health Code and the even broader discretion vested in the Lenawee County Health Officer and Board of Health, the County does not have any neutral and generally applicable legal requirement that Defendants use any particular type of black water disposal, grey water disposal, plumbing or water supply system.
 51. The First Amendment to the United States Constitution protects Defendants' Free Exercise of their Amish religion.

52. Plaintiff's enforcement actions as described in the Complaint and this Counterclaim as well as its threats to condemn and/or demolish Defendants' homes and other edifices violates Defendants' First Amendment right to freely exercise their sincerely held religious beliefs.

53. Defendants seek the following relief:

- a. Dismissal of Plaintiff's complaint;
- b. A declaration and injunction ordering that: (1) that Plaintiff may not insist that Defendants install alternate black water disposal, grey water disposal, plumbing, and water supply systems that are unaffordable, unnecessary, or impractical or that conflict with Defendants' sincerely held religious beliefs unless such alternate systems represent the most narrowly tailored way of protecting public health; and (2) Defendants' homes and edifices may not be destroyed, condemned, or otherwise threatened for failure to install other alternate systems that are not the most narrowly tailored way of protecting public health;
- c. An order granting reasonable attorneys' fees and costs under 42 U.S.C. § 1988; and
- d. Any other relief this Court deems just and proper.

SECOND CLAIM FOR RELIEF
MICHIGAN CONSTITUTION, ARTICLE I, SECTION 4
Violation of the Religious Liberty

54. Defendants restate the preceding allegations of the Counterclaim as if fully re-stated herein.

55. Article I, Section 4 assures that all Michiganders "shall be at Liberty to worship God according to the dictates of [their] own conscience" and guarantees that the "privileges and capacities of no person shall be diminished or enlarged on account of [their] religious belief."

56. A regulation that burdens an individual's religious belief or conduct is invalid under Article I, Section 4 as applied to that individual unless a compelling state interest justifies the burden and there is no less obtrusive form of regulation available to the state.

57. Plaintiff does not have a compelling state interest in applying the Lenawee County Environmental Health Code against Defendants in the manner set forth in the Complaint in the context of the Grabers' minimalist and religiously mandated lifestyle.

58. Plaintiff's insistence that Defendants utilize black water disposal, grey water disposal, plumbing, and water supply systems in the manner required by it is not the least obtrusive means of accomplishing any compelling state interest that Plaintiff may have.
59. Plaintiff's enforcement actions as described in the Complaint and this Counterclaim as well as its threats to condemn and/or demolish Defendants homes and other edifices violates Defendants' rights under Article I, Section 4.
60. Defendants seek the following relief:
- a. Dismissal of Plaintiff's complaint;
 - b. A declaration and injunction ordering that: (1) that Plaintiff may not insist that Defendants install alternate black water disposal, grey water disposal, plumbing, and water supply systems that are unaffordable, unnecessary, or impractical or that conflict with Defendants' sincerely held religious beliefs unless such alternate systems represent the most narrowly tailored way of protecting public health; and (2) Defendants' homes and edifices may not be destroyed, condemned, or otherwise threatened for failure to install other alternate systems that are not the most narrowly tailored way of protecting public health;
 - c. Any other relief this Court deems just and proper.

THIRD CLAIM FOR RELIEF
FAIR HOUSING ACT, 42 U.S.C. § 3613
Discrimination By Imposition of Disparate Impact Based on Religion

61. Defendants re-state the preceding paragraphs of the Counterclaim as if fully re-stated herein.
62. The Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, prohibits municipal governmental entities from "otherwise mak[ing] unavailable or deny[ing] a dwelling to any person because of . . . religion . . ." including municipal actions that have a disparate impact on religious adherents.
63. Plaintiff's insistence that Defendants rely upon unnecessary alternative systems that violate their sincerely held religious beliefs and are neither practical nor affordable effectively renders it impossible for Defendants to continue to reside in Lenawee County while hewing to their religious beliefs.
64. Plaintiff has sought to enforce the same requirements in the same manner against every Amish landowner in Lenawee County. If permitted to proceed, Plaintiff's

actions will essentially result in the wholesale expulsion of the County's entire Amish community.

65. Plaintiff's insistence that Defendants rely upon unnecessary alternative systems that violate their sincerely held religious beliefs and are neither practical nor affordable is not a necessary means of achieving a valid governmental interest, as other, practical and safe methods of providing black water disposal, grey water disposal, plumbing and water supply systems in Defendants' home and edifice exist and are already being used by Defendants.
66. Plaintiff's threats to condemn and/or demolish Defendants' home and other edifices violates the Fair Housing Act and will have a disparate impact on Defendants and other adherents of the Amish faith because of their religion.
67. Defendants seek the following relief:
 - a. Dismissal of Plaintiff's complaint;
 - b. A declaration and injunction ordering that: (1) that Plaintiff may not insist that Defendants install alternate black water disposal, grey water disposal, plumbing, and water supply systems that are unaffordable, unnecessary, or impractical or that conflict with Defendants' sincerely held religious beliefs unless such alternate systems represent the most narrowly tailored way of protecting public health; and (2) Defendants' homes and edifices may not be destroyed, condemned, or otherwise threatened for failure to install other alternate systems that are not the most narrowly tailored way of protecting public health;
 - c. An order granting reasonable attorneys' fees and costs under 42 U.S.C. § 3613(c)(2); and
 - d. Any other relief this Court deems just and proper.

/s/ Daniel S. Korobkin
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Dated: December 18, 2019

PROOF OF SERVICE

On December 18, 2019, I caused a copy of this Answer and Counterclaim to be served by hand delivery to Dale L. Smith, Attorney for Plaintiff, 1893 W. Maumee Street, Adrian, MI 49221.

/s/ Daniel S. Korobkin
Daniel S. Korobkin (P72842)