

STATE OF MICHIGAN  
IN THE 39<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF LENAWEЕ

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

Plaintiff

v.

**JOHN W. SCHWARTZ, et al.**

Defendants

\* File No. 19-6397-CE

\* Judge Anzalone

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**ANSWER AND COUNTERCLAIM**

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Now comes Defendant, John W. Schwartz (“Defendant”), by and through counsel, and for their Answer to the Complaint, states as follows:

1. Defendant admits the allegations contained in paragraphs 1 through 2 of the Complaint.
2. Defendant is without knowledge sufficient to admit or deny the specific allegations of paragraphs 3 through 4 of the Complaint but admits the public records are consistent with these allegations.
3. Defendant is without knowledge sufficient to admit or deny the allegations of paragraph 5 of the Complaint and accordingly denies same.
4. Defendant admits the allegations contained in paragraphs 6 through 10 of the Complaint.
5. Defendant admits that this Court has jurisdiction for Plaintiff’s claims, as alleged in paragraph 11 of the Complaint. All remaining allegations, if any, of paragraph 11 of the Complaint are denied.
6. Defendant reincorporates the preceding responses to the allegations of the Complaint as if fully re-written herein.

7. Defendant admits that Lenawee County has adopted a Lenawee County Environmental Health Code as alleged in paragraph 13 of the Complaint. All remaining allegations, if any, of paragraph 13 of the Complaint are denied.
8. Defendant admits that the Health Code sets forth certain requirements, as alleged in paragraph 14 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 14 of the Complaint, if any, are denied.
9. Concerning paragraphs 15 through 20 of the Complaint, Defendant admits that Plaintiff has correctly recited the language of the stated provisions of the Health Code. All remaining allegations, if any, of paragraphs 15 through 20 of the Complaint are denied.
10. Defendant admits the allegations of paragraphs 21 through 22 of the Complaint.
11. Defendant is without knowledge sufficient to admit or deny the allegations of paragraph 23 through 24 of the Complaint, and accordingly, denies same.
12. Defendant is without knowledge sufficient to admit or deny the allegations of paragraph 25 of the Complaint, and accordingly denies same. Further answering, Defendant is aware that a letter was sent to the County on or about this date purporting to speak on behalf of Mr. Schwartz. Further answering, Defendant responds that the letter in question specifically explained to Plaintiff the religious concerns that the Amish community had with the manner in which the County proposed to enforce the Health Code. As set forth elsewhere herein, Mr. Schwartz seeks only to have the County enforce the Code consistent with the United States and Michigan Constitutions.
13. Defendant is without knowledge sufficient to admit or deny the allegations of paragraph 26 of the Complaint, and accordingly denies same. Further answering, Defendant admits he sent an application as described in paragraph 26 of the Complaint.
14. Defendant is without knowledge sufficient to admit or deny the allegations of paragraph 27 through 30 of the Complaint, and accordingly denies same.
15. Defendant is without knowledge sufficient to admit or deny the allegations of paragraphs 31 through 32 of the Complaint, and accordingly denies same. Further answering, Defendant admits he sent an application as described in paragraphs 31 through 32 of the Complaint.

16. Defendant is without knowledge sufficient to admit or deny the allegations of paragraph 33 of the Complaint, and accordingly denies same.
17. Defendant denies the allegations of paragraphs 34 through 36 of the Complaint,
18. Defendant reincorporates the preceding responses to the allegations of the Complaint as if fully re-written herein.
19. Defendant denies the allegations contained in paragraphs 38 through 40 of the Complaint.
20. Defendant is without knowledge sufficient to admit or deny the allegations of paragraph 41 of the Complaint, and accordingly denies same. To the extent a further response is required, Defendant denies Plaintiff is prepared to comply with applicable law in its dealings with the Defendants in this matter.
21. Defendant admits, as alleged in paragraph 42 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.
22. Defendant denies the allegations of paragraph 43 of the Complaint.

### **DEFENSES AND AFFIRMATIVE DEFENSES**

23. Plaintiff's Complaint fails to state a claim for which relief may be granted.
24. 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.
25. 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.
26. Plaintiff has violated applicable provisions of the Michigan Constitution, including but not necessarily limited Article I, Section 4 of the Michigan Constitution.
27. 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..
28. Plaintiff has violated applicable provisions of the Fair Housing Act.
29. The relief Plaintiff seeks violates applicable provisions of the Fair Housing Act.

30. 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.
31. Defendant reserves 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, Defendant prays that it be dismissed at Plaintiff's costs.

## **COUNTERCLAIM**

### **Introduction and General Statement of the Claims**

1. Defendant John Schwartz (hereinafter, "Defendant" or "Mr. Schwartz") is the owner of real property located at 15877 Packard Road, Hudson, Lenawee County, Michigan where he lives and 15479 Packard Road, Hudson, Lenawee County, Michigan (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. Schwartz's home and the other property. *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. Schwartz is practicing, bona fide members of the Amish religion.
7. Mr. Schwartz's religious beliefs are sincerely held, and reflect beliefs that have been followed by Amish communities for centuries.
8. In this Counterclaim, Defendant seeks no compensatory or punitive damages.
9. Instead, Mr. Schwartz 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 Defendant's method of "sewage" disposal, as well as the water supply system at the Premises, is a nuisance and/or violative of the Health Code<sup>1</sup>.
11. Since Plaintiff's purported enforcement of such laws interferes with the Mr. Schwartz's practice of his 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. Schwartz, 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. Schwartz in this matter.
14. As such, Mr. Schwartz invokes 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. Schwartz invokes 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. Schwartz: 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]."

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<sup>1</sup> 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.

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. Schwartz, like all Michigan residents, enjoys 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 his religious beliefs, Mr. Schwartz obtains all of the water used in his 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. Schwartz also does not utilize modern indoor plumbing; instead Mr. Schwartz 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. Schwartz provides 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 Defendant, and other members of the Amish community, of his religious views.
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 Defendant to include system design, mechanical equipment, or other devices, construction techniques, or implementation methods that would violate Mr. Schwartz’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 Defendant 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 his 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. Schwartz'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. Schwartz to include system design, mechanical equipment, or other devices, construction techniques, or implementation methods in violation of his religious beliefs and practices.
29. Upon information and belief, Plaintiff further seeks to impose plumbing requirements at the Premises that would require Mr. Schwartz to include system design, mechanical equipment, or other devices, construction techniques, or implementation methods in violation of his 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. Schwartz to include system design, mechanical equipment, or other devices, construction techniques, or implementation methods in violation of his 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. Schwartz and Plaintiff concerning the constitutionality of the Health Code Provisions as applied by the County.
34. The Premises include Mr. Schwartz's home and primary residence.
35. The method by which Mr. Schwartz has chosen to address black water and grey water disposal is consistent with his 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 Mr. Schwartz's 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 Mr. Schwartz's 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 Mr. Schwartz's 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 Mr. Schwartz's minimalist and religiously mandated lifestyle.
40. Additionally, or in the alternative to the preceding four paragraphs, the Plaintiff's refusal to permit Mr. Schwartz to address plumbing, black water disposal, grey water disposal, and plumbing in the manner he has requested does not serve a compelling state interest.
41. The method by which Mr. Schwartz has chosen to address black water disposal, grey water disposal, plumbing, and water supply does not, and will not, adversely affect the Defendant 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. Schwartz has 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. Schwartz has violated the Health Code Provisions.
44. As set forth herein, the Health Code Provisions as Plaintiff purports to apply them violate Mr. Schwartz's right to the free exercise of their religion guaranteed under the First Amendment to the United States Constitution.
45. Mr. Schwartz 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. Schwartz.
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 Defendant's exercise of his sincerely held religious beliefs.

47. Lenawee County health officials have threatened to condemn and/or destroy Mr. Schwartz's home and other property unless Defendant utilizes black water disposal, grey water disposal, plumbing, and water supply systems that violate his 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 Defendant's 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 Defendant 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 Defendant's Free Exercise of his 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 Defendant's home and other edifices violates Defendant's First Amendment right to freely exercise their sincerely held religious beliefs.
53. Defendant seeks the following relief:
  - a. Dismissal of Plaintiff's complaint;
  - b. A declaration and injunction ordering that: (1) that Plaintiff may not insist that Defendant install alternate black water disposal, grey water disposal, plumbing, and water supply systems that are unaffordable, unnecessary, or impractical or that conflict with Defendant's sincerely held religious beliefs unless such alternate systems represent the most narrowly tailored way of protecting public health; and (2) Defendant's home and edifice 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. Defendant restates 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 Defendant in the manner set forth in the Complaint in the context of Mr. Schwartz's minimalist and religiously mandated lifestyle.
- 58. Plaintiff's insistence that Defendant 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 Defendant's home and other edifices violates Defendant's rights under Article I, Section 4.
- 60. Defendant seeks 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 Defendant's sincerely held religious beliefs unless such alternate systems represent the most narrowly tailored way of protecting public health; and (2) Defendant's home 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. Defendant re-states 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 Defendant rely upon unnecessary alternative systems that violate their sincerely held religious beliefs and are neither practical nor affordable effectively renders it impossible for Defendant to continue to reside in Lenawee County while hewing to his 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 Defendant 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 Defendant's home and edifices exist and are already being used by Defendant.
66. Plaintiff's threats to condemn and/or demolish Defendant's home and other edifices violates the Fair Housing Act and will have a disparate impact on Defendant and other adherents of the Amish faith because of their religion.
67. Defendant seeks the following relief:
  - a. Dismissal of Plaintiff's complaint;

- b. A declaration and injunction ordering that: (1) that Plaintiff may not insist that Defendant install alternate black water disposal, grey water disposal, plumbing, and water supply systems that are unaffordable, unnecessary, or impractical or that conflict with Defendant's sincerely held religious beliefs unless such alternate systems represent the most narrowly tailored way of protecting public health; and (2) Defendant's home 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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\* Pro Hac Vice Motions to be filed

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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)