

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

The Lyceum,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. _____
)	
The City of South Euclid, Ohio,)	
)	
<i>Defendant.</i>)	
_____)	

**VERIFIED COMPLAINT FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND DAMAGES**

COMES NOW the Plaintiff, THE LYCEUM, by counsel and for its causes of action against Defendant CITY OF SOUTH EUCLID, OHIO, alleges and states the following:

INTRODUCTION

1. This is a pre-enforcement civil rights action to stop the City of South Euclid, Ohio, from compelling a private Catholic school to communicate government messages that are antithetical to its religious beliefs, and from forcing this faith-based school to operate in violation of its deeply held religious beliefs, including its beliefs about marriage and human sexuality.
2. The Lyceum is a small, Catholic college preparatory school dedicated to providing its students with a faith-integrated, classical Catholic education.
3. The school draws members of its faculty from among those who share its religious beliefs and strive to live them out.
4. The school draws its students from among those who are willing to submit to the school’s Catholic teaching and conduct standards.

5. But the City of South Euclid, Ohio, recently passed an ordinance that bans “differential treatment” in employment, public accommodations, and housing on the basis of religion, creed, marital status, gender identity or expression, or sexual orientation, among other categories.

6. The ordinance also forbids employers and public accommodations from making statements indicating that individuals are “objectionable” or “unwelcome” on the basis of religion, creed, marital status, gender identity or expression, or sexual orientation.

7. Violations of the ordinance are punishable by up to five hundred dollars in fines, restitution, or up to sixty days in jail.

8. The Lyceum’s admissions policies, employment practices, and facility use policies appear to violate the ordinance.

9. The ordinance is vaguely written, making it impossible for The Lyceum to know with certainty whether its admissions policies, employment practices, and facility use policies violate the ordinance.

10. The Lyceum has made multiple attempts to obtain clarification from the City regarding whether the ordinance applies to the school and its policies and practices.

11. The City has twice illegally refused to answer The Lyceum’s public records request.

12. When The Lyceum wrote to the City attorney and asked whether the ordinance applied to The Lyceum, the City refused to say.

13. Having no other option in the face of significant fines and criminal penalties, The Lyceum now seeks clarification and relief from this Court.

14. The Lyceum therefore brings this action pursuant to 42 U.S.C. § 1983 for violation of its civil rights.

JURISDICTION AND VENUE

15. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, 42 U.S.C. § 1983, and the Ohio Constitution Article I.

16. This Court is vested with original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

17. This Court is vested with supplemental jurisdiction over the pendent state law claims by operation of 28 U.S.C. § 1367.

18. This Court is vested with authority to grant the requested declaratory judgment by operation of 28 U.S.C. § 2201, *et seq.*

19. This Court has jurisdiction to award the requested injunctive relief under 28 U.S.C. § 1343.

20. This Court has jurisdiction to award the requested damages under 28 U.S.C. § 1343.

21. This Court has jurisdiction to award reasonable costs and attorneys' fees under 42 U.S.C. § 1988.

22. Venue is proper in United States District Court for the Northern District of Ohio under 28 U.S.C. § 1391(b), because the Defendant resides in the Northern District of Ohio and the events giving rise to the claim occurred within the Northern District of Ohio.

PARTIES

23. The Lyceum is a Catholic college preparatory school, established and existing as a non-profit religious corporation under the laws of the State of Ohio.

24. The Lyceum's principal location is 1545 South Green Road, South Euclid, Ohio 44121.

25. The Defendant City of South Euclid, Ohio, is a public body corporately and politically established, organized, and authorized under the laws of the State of Ohio, with the authority to sue and be sued, and was at all times relevant herein, operating within the course and scope of its authority and under color of state law.

STATEMENT OF FACTS

The Lyceum's Religious Beliefs & Educational Philosophy

26. The Lyceum is a Catholic college preparatory school for students in grades six through twelve.

27. It was founded in 2003.

28. It is dedicated to providing students with a rigorous Catholic liberal arts education, and forming them to become “lifelong learners in a joyful pursuit of the Truth who is Christ.”

29. As a faith community in communion with the Catholic Church, The Lyceum abides by the teachings of the Catholic Church as set forth by the Magisterium and as articulated in the Holy Scriptures and the *Catechism of the Catholic Church*, including the Church's teachings on marriage and sexuality and the Church's vision of education.

30. The Lyceum, consistent with teachings of Holy Scripture and the Magisterium of the Catholic Church, believes that biological sex is objective and immutable.

31. The Lyceum, consistent with teachings of Holy Scripture and the Magisterium of the Catholic Church, believes that marriage is an exclusive, lifelong union between a man and woman that is ordered toward the procreation and education of children.

32. The Lyceum, consistent with teachings of Holy Scripture and the Magisterium of the Catholic Church, believes that sexual relations are properly reserved to such a marriage.

33. All members of The Lyceum community—including faculty, staff, parents, guardians, and students—are expected to strive to live a life of virtue guided by the teachings of the Catholic Church in all aspects of their lives.

34. All Catholic members of The Lyceum community—including faculty, staff, parents, guardians, and students—are expected to affirm and abide by Catholic teachings on marriage and human sexuality.

35. The Lyceum's community members must accordingly live lives of chastity appropriate to their respective situations (*e.g.*, as single, married, or consecrated religious people).

36. The Lyceum joyfully exercises its responsibility to teach Catholic faith and morals as expressed in the *Catechism of the Catholic Church*.

37. Accordingly, non-Catholics to whom the privilege of being part of The Lyceum is extended and whose religious beliefs and practices run counter to Church teaching might experience possible conflicts as The Lyceum maintains mission integrity.

38. Sincere questioning of the practices of the Catholic faith in order to more deeply understand them are welcome.

39. But openly hostile, public defiance and challenge of Catholic truths or morality (including the Church's teachings on marriage and human sexuality) are signs that a student, parent, staff, or faculty member are not a fit for The Lyceum's evangelical mission and may be denied admission or asked to leave The Lyceum.

40. The Lyceum is located in the Roman Catholic Diocese of Cleveland and the Byzantine Catholic Eparchy of Parma.

41. The school leases space from the Diocese on the Sacred Heart of Jesus Parish Campus.

42. The lease provides, in relevant part: “Lessee shall not use, or permit the Premises to be used, in any manner that is contradictory to the teachings or mission of the Roman Catholic Church, that promotes the espousal of any particular belief or viewpoint that is contradictory to the teachings of the Roman Catholic Church as determined by the Bishop of Cleveland, or that is otherwise injurious to the reputation of Sacred Heart of Jesus Parish, the Diocese of Cleveland, or the Bishop of the Diocese of Cleveland.”

43. The Lyceum is an independent school, governed by a Catholic board of directors who are committed to a Catholic vision of classical education.

44. The Lyceum’s motto is “Fiat lux,” which means “Let there be light.”

45. The school believes that a classical Catholic liberal arts education enables a person to seek the light of truth, especially “the truth of the Gospel of Jesus Christ and His Church.”

46. In keeping with its religious convictions, The Lyceum’s curriculum is ordered by and ordered to the study of theology (“the queen of the sciences”).

47. This study of theology is based on the Holy Scriptures, Catholic Tradition, the *Catechism of the Catholic Church*, the Magisterium, the Church Fathers, Doctors of the Church, and Catholic authors.

48. The school integrates Catholic faith and theology in all of its classes; no subject is divorced from the teachings of the Catholic Church.

49. The Lyceum’s Catholic emphasis is not limited to students’ intellectual life, but also forms students in their devotional life, specifically through the liturgy of the Catholic Church.

50. Students begin each school day singing and reciting lauds (a service of morning prayer) in Latin and English.

51. Each class begins and ends with prayer.

52. Every Thursday morning, The Lyceum (including faculty, staff, and students) attends Holy Mass or the Divine Liturgy of the Byzantine Rite.

53. The Lyceum participates in those liturgical celebrations by singing sacred music.

54. Daily Mass is available to students during the lunch hour at St. Gregory's Church of the Sacred Heart of Jesus Parish, next door to The Lyceum.

55. The Lyceum attends Holy Mass or the Divine Liturgy on Catholic holy days.

56. As a classical education program, the Lyceum infuses the Seven Liberal Arts, the trivium (grammar, logic, and rhetoric), and the quadrivium (arithmetic, geometry, astronomy, and music) into its curriculum.

57. It does so to order the students' minds, allowing them to think critically and to discern what is good, true, and beautiful in the world in which they live.

58. The Lyceum employs the Socratic method, a discussion-focused (rather than lecture-focused) style of teaching.

59. The school, throughout its curriculum, has students read directly from primary sources rather than textbooks.

60. All of The Lyceum's students participate in the "Schola Cantorum," (school of singers) which emphasizes the skill of choral singing and sacred liturgical music.

61. The Lyceum's students also participate in drama, performing Greek tragedy and Shakespearean comedy.

The Lyceum's School Admissions Policies and Practices

62. The Lyceum currently has 53 students enrolled for the 2018-2019 academic year.

63. Admission to The Lyceum is selective and based upon compatibility with the school's Catholic faith and mission, previous school records, personal interviews, teacher recommendations, and standardized testing.

64. The Lyceum accepts non-Catholic students.

65. Any student who disagrees with the teachings of the Catholic Church or whose parents disagree with these teachings may be denied admission to or be required to withdraw from The Lyceum.

66. Because of the school's uniquely Catholic and classical approach to education, The Lyceum draws students from outside Ohio.

67. The Lyceum has enrolled approximately a dozen out-of-state students over the course of the last six years.

68. The Lyceum has previously been asked to enroll a student whose family disagreed with Catholic beliefs and teaching, and The Lyceum did not allow the family to enroll.

69. Additionally, in the summer of 2018, The Lyceum was contacted by a woman who inquired about enrolling her child but expressed disagreement with The Lyceum's belief that biological sex is a fixed and immutable reality gifted by God to reflect His image.

70. The Lyceum would not allow the family to enroll.

The Lyceum's Employment Practices and Policies

71. The Lyceum employs, for compensation, seven full-time tutors.

72. The school also employs, for compensation, two part-time tutors.

73. All employees must be committed to the Catholic identity and mission of The Lyceum.

The City of Euclid's Nondiscrimination Ordinance

74. On April 9, 2018, the City Council of the City of South Euclid passed Ordinance No. 12-17 ("Ordinance"). *See* South Euclid Code of Ordinances, Chapter 552, *attached as* Exhibit 1.

75. The Ordinance prohibits discrimination based on religion, creed, marital status, sexual orientation, and gender identity or expression (among other things) in employment, housing, and public accommodations. *See id.* § 552.01, *et seq.*

76. The Ordinance defines "discrimination" as "any act, policy or practice that, regardless of intent, has the effect of subjecting any person to differential treatment" as a result of that person's religion, creed, marital status, sexual orientation, gender identity, or gender expression, among other things. *See id.* § 552.01(e).

77. The Ordinance defines "gender" as "actual or perceived sex." *Id.* § 552.01(i).

78. The Ordinance defines "gender identity or expression" as "having or being perceived as having a gender identity or expression whether or not that gender identity or expression is different from that traditionally associated with the sex assigned to that individual at birth." *Id.* § 552.01(j).

79. The Ordinance defines sexual orientation as "actual or perceived heterosexuality, homosexuality or bisexuality." *Id.* § 552.01(o).

80. The Ordinance defines public accommodations as:

inns, taverns, hotels, motels, restaurants, wholesale outlets, retail outlets, banks, savings and loan associations, other financial institutions, credit information bureaus, insurance companies, dispensaries, clinics, hospitals, theaters, recreational parks and facilities, trailer camps, garages, public halls, and all other establishments which offers goods, services, accommodations and entertainment to the public within the City. A place of public accommodation does not include any institution, club or other place of accommodation, which by its nature is distinctly private.

Id. § 552.01(n).

81. The Ordinance does not define religion or creed.

82. The Ordinance defines “employer” as “any person who, for compensation, regularly employs four or more individuals, not including the employer’s parents, spouse or children.” *Id.* § 552.01(h).

83. The Ordinance states that an employer may not “print or publish, or cause to be printed or published, any discriminatory notice or advertisement relating to employment.” *Id.* § 552.02(f).

84. The Ordinance states that a public accommodation may not “print, publish, circulate, post, or mail, directly or indirectly, a statement, advertisement, or sign . . . which indicates that an individual’s patronage of, or presence at, the business establishment or place of public accommodation is objectionable, unwelcome, unacceptable or undesirable.” *Id.* § 552.04(b).

85. The Ordinance contains a number of exceptions to its nondiscrimination requirements, including for certain promotional activities, affirmative action plans, and business purposes.

86. The promotional activities exception reads as follows: “Unless otherwise prohibited by law, nothing contained in this chapter shall be construed to prohibit promotional activities such as senior citizen discounts and other similar practices designed primarily to encourage participation by [a] protected group.” *Id.* § 552.06(b).

87. The bona fide occupational exception reads as follows:

Nothing contained in this chapter shall be deemed to prohibit selection or rejection based solely upon a bona fide occupational qualification or a bona fide physical requirement. Nothing contained in this chapter shall be deemed to prohibit a religious or denominational institution from preferring to employ an individual of a particular religion to perform work connected with the performance of religious activities by the institution. If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide occupational qualification, or a permissible bona fide physical requirement, that party shall have the burden of proving:

- (1) That the discrimination is in fact a necessary result of such a bona fide condition; and
- (2) That there exists no less discriminatory means of satisfying the bona fide requirement

If a party asserts that an otherwise lawful practice is justified as a permissible bona fide religious or denominational preference, that party shall have the burden of proving that the discrimination is in fact a necessary result of such a bona fide condition.

Id. §§ 552.06(e)-(f).

88. The Ordinance does not contain a religious exemption.

89. As a result, the Ordinance—and specifically its public accommodations and employment provisions—applies to faith-based institutions regardless of religious status.

90. Initial drafts of the Ordinance included an exemption for religious organizations, but that exemption was removed from the final text of the Ordinance.

91. The Ordinance created a Civil Rights Review Board, which has authority to enforce the Ordinance. *See id.* § 552.09.

92. The Civil Rights Review Board can enforce the Ordinance through investigation and conciliation. *See id.* §§ 552.13-14.

93. If the Board finds that the Ordinance was violated, it may issue a cease-and-desist order, recommend court proceedings, recommend license revocation, or order payment of civil penalties, damages, attorneys' fees, or costs. *See id.* § 552.19.

94. Any person may file a complaint with the Civil Rights Review Board, alleging a past, ongoing, or future violation of the Ordinance. *See id.* § 552.11.

95. The Ordinance also authorizes the City, “the complainant, or any person aggrieved by a violation” to bring a lawsuit in court instead of bringing a complaint to the Board. *See id.* § 552.20.

96. Persons authorized to bring a lawsuit may seek injunctive relief, compensatory or punitive damages, and attorneys' fees and costs. *See id.*

97. Violations of the Ordinance are third degree misdemeanors. *See id.* § 552.99.

98. Under Ohio law, third degree misdemeanors are punishable by up to five hundred dollars in fines, restitution, or up to sixty days in jail. *See* Ohio Rev. Code Ann. § 2929.28(A) (fines, restitution), § 2929.24(A)(3) (jail).

99. Upon information and belief, the City of South Euclid's Ordinance was not prompted by evidence of widespread discrimination in South Euclid.

100. The Ordinance was prompted by the advocacy efforts of Equality Ohio. *See, e.g.*, Regular Meeting of South Euclid City Council, July 10, 2017 Meeting Minutes, *available at* <https://www.cityofsoutheuclid.com/wp-content/uploads/2017/07/CouncilMinutes07-10-17.pdf> (*last visited* March 28, 2019).

101. The City even co-branded a "Nondiscrimination Ordinance FAQs" document with Equality Ohio. *See* Ex. 2.

102. Upon information and belief, the Ordinance was prompted by hostility towards religion and religious beliefs, particularly toward the belief that marriage is exclusively the union of one man and one woman, and the belief that biological sex is immutable.

103. The Lyceum advocated against passage of the Ordinance at South Euclid City Council meetings, raising serious constitutional concerns.

104. In December 2017, The Lyceum (through counsel) sent a letter to the Mayor and City Council, notifying them that the proposed Ordinance would violate the legally protected rights of the school and other similarly situated institutions. *See* December 11, 2017, Letter from Greg Baylor to South Euclid Mayor and City Council, *attached as* Ex. 3.

105. In May 2018, The Lyceum sent a public records request to the City, attempting to obtain communications between Equality Ohio and the South Euclid City Council.

106. In violation of Ohio's public records law, the City has not responded to The Lyceum's public records request.

The Lyceum Likely Violates the City of South Euclid's Ordinance

107. The Lyceum is located within the city of limits of South Euclid, Ohio.

108. The Lyceum, for compensation, regularly employs more than four full-time employees who are not family members.

109. The Lyceum is a covered employer under the Ordinance.

110. The Lyceum cannot be certain whether its employment decisions might be exempted under the bona fide occupational exception.

111. The Lyceum is unclear about what "connected with the performance of religious activities" means or what employment positions it may apply to.

112. At least one Lyceum employee performs an administrative role that does not involve verbal communication of the Catholic faith but who is expected to provide a Catholic witness by example to The Lyceum students with whom she is in continual contact.

113. The Lyceum cannot be certain whether it is a covered "business establishment or place of public accommodation" under the Ordinance.

114. The Lyceum welcomes members of the general public to apply for admission to its school.

115. But admission to The Lyceum is selective and based upon agreement with the Catholic mission and faith of the school, previous school records, personal interviews, teacher recommendations, and standardized testing.

116. The Lyceum has attempted to gain clarification from the City regarding whether the Ordinance covers The Lyceum and its policies and practices.

117. On February 1, 2019, The Lyceum sent a letter to the City and Mayor regarding Chapter 552's application to a religious school. *See* February 1, 2019, Letter from The Lyceum to the South Euclid Mayor and Law Director, *attached as* Ex. 4.

118. Specifically, The Lyceum asked whether Chapter 552 of the City Code of Ordinances applies to The Lyceum, especially with respect to the employment and public accommodations/business establishment provisions.

119. On February 5, 2019, City Law Director Michael Lograsso responded that he could not advise The Lyceum regarding whether the Ordinance applies to the school, or not. *See* February 5, 2019, Email from City Law Director to The Lyceum, *attached as* Ex. 5.

120. As a result, The Lyceum has no way of knowing whether it is subject to the Ordinance and its criminal penalties.

121. In light of the Ordinance, The Lyceum has drafted a policy which explains these beliefs and their implications for the school's community, and provides in part:

Because our efforts at integral formation include the integrity of body, spirit, and moral development, The Lyceum has a proper concern for each student's behavior and development in the complex area of human sexuality. As a Catholic institution, we believe that human bodies are gifts from God and temples of the Holy Spirit. All men and women are called to a life of chastity appropriate to their vocation as single, married, or consecrated religious. The Church defines chastity as "the successful integration of sexuality within the person and thus the inner unity of man in his bodily and spiritual being."

The Church also teaches that "sexuality, in which man's belonging to the bodily and biological world is expressed, becomes personal and truly human when it is integrated into the relationship of one person to another, in the complete and lifelong mutual gift of a man and a woman." We believe that human sexual behavior is only properly oriented to the ends of love and life in the context of Holy Matrimony.

....

We believe that the body and soul are intimately united: the body does not contain the soul like water in a glass, but the two are intimately dependent upon each other to express man as the highest order of creation. We believe that the sexes are complementary and that as "male and female he made them." Our given biological

sex is part of the divine plan. The Church teaches that sexual identity is “a reality deeply inscribed in man and woman,” it constitutes but is more than one’s biological identity, and a person “should acknowledge and accept his sexual identity”. One’s biological sex and gender expression are not to be disaggregated, but should be seen in harmony, according to God’s plan.

....

Behaviors that are contrary to Catholic morality and the expectations of this school include but are not limited to: vulgar language and gestures of a sexual nature, immodest dress or deportment, expressions of lust, masturbation, pornography, fornication, homosexual activity, expressing a gender that is discordant with one’s biological sex, adultery, cohabitating in a sexual relationship outside of marriage, voluntary sterilization, artificial contraception, in vitro fertilization, procuring an abortion, and sexual harassment or abuse.

See “Catholic Educational Mission and Community Policies” (sexuality policy), *attached as Ex.*

6.

122. The Lyceum has also drafted an employment statement for its website, which provides:

The Lyceum, as a distinctly Catholic school, hires faculty who, in belief and practice, are committed to the teachings of the Catholic Church as set forth by the Magisterium and as articulated in the *Catechism of the Catholic Church*. The Lyceum’s faculty contributes not only to students’ intellectual life, but also forms students in their devotional life, so fidelity to Catholic beliefs is imperative to employment at The Lyceum.

See “The Lyceum Statement on Employment,” *attached as Ex. 7*.

123. However, The Lyceum’s board of trustees has not formally adopted the sexuality policy or the employment statement due to the Ordinance’s ban on discrimination in employment and public accommodations based on religion, creed, marital status, sexual orientation, and gender identity or expression. See Affidavit of Richard J. Wall, Jr., *attached as Ex. 8*.

124. The Lyceum wants to publish the sexuality policy and the employment statement on its website, www.TheLyceum.org. See *id.*

125. The Lyceum reasonably fears that formally adopting and publishing the written sexuality policy and employment statement would violate the Ordinance, subjecting The Lyceum to damages, costs, legal fees, and other remedial action.

126. Were it not for the Ordinance, The Lyceum's board of trustees would immediately pass the sexuality policy and employment statement and post them to the school's website.

127. The Lyceum reasonably fears that students or their parents who disagree with the school's Catholic beliefs and conduct expectations will apply for admission to the school.

128. The Lyceum reasonably fears that individuals who disagree with the school's Catholic beliefs and conduct policies will seek employment at The Lyceum.

129. Nevertheless, The Lyceum will not violate its deeply-held Catholic beliefs.

130. The Lyceum will not hire or retain employees if they reject – by stated belief or conduct – the Catholic Church's teachings, including its teachings on marriage, sexual identity, and sexual ethics.

131. Nor will The Lyceum permit students or their parents or guardians to join or remain part of the school community if they reject – by stated belief or conduct – the Catholic Church's teachings, including its teachings on marriage as the union of one man and one woman, sexual identity, and sexual ethics.

132. Moreover, The Lyceum will not permit employees, students, or parents or guardians to join or remain part of the school community if they wish to adopt a gender identity at variance with their sex.

133. The Lyceum will not permit sex-specific facilities to be accessed by members of the opposite sex, regardless of gender identity.

134. In its leased space, The Lyceum has two multi-user facilities for female students and one multi-user facility for male students.

135. The Lyceum also has two single user faculty restrooms.

136. Students are only eligible to participate on The Lyceum's sex-specific athletic teams and gym classes consistent with their biological sex, regardless of gender identity or expression.

137. The Lyceum reasonably fears that its existing practices do violate, and that its desired speech and conduct will violate the Ordinance, subjecting The Lyceum to damages, costs, legal fees, and other remedial action.

138. The Lyceum reasonably fears that the Ordinance is an existential threat to its existence, forcing the school to choose between its religious convictions and shutting its doors.

ALLEGATIONS OF LAW

139. All acts of the Defendant, its officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color and pretense of state law.

First Cause of Action: Violation of the Free Exercise Clause of the First Amendment to the U.S. Constitution

140. The Plaintiff realleges each allegation contained in ¶¶ 1-139 of this Complaint and incorporates them herein.

141. The Ordinance provisions, facially and as-applied to The Lyceum, violate The Lyceum's right to free exercise of religion under the First Amendment to the United States Constitution.

142. The Lyceum's sincerely held religious beliefs include beliefs that there are two immutable and complementary sexes; that marriage is the consensual, lifelong, exclusive union of one man and one woman; and that sexual relations must be reserved for marriage.

143. The Lyceum's religious beliefs about biological sex, marriage, and human sexuality and related practices are based on Holy Scripture and the teachings of the Roman Catholic Church.

144. The Lyceum's religious beliefs about biological sex, marriage, and human sexuality are summarized in its Catholic Educational Mission and Community Policies. *See* Ex. 6.

145. The Lyceum's religious beliefs—including its religious beliefs about biological sex, marriage, and human sexuality—are the foundation for its employment, admissions, and facility use policies.

146. The Lyceum will not hire employees if they reject – by stated belief or conduct – the Catholic Church's teachings, including its teachings on marriage as exclusively the union of one man and one woman, sexual identity, and sexual ethics.

147. Nor will The Lyceum permit students or their parents or guardians to join or remain part of the school community if they reject – by stated belief or conduct – the Catholic Church's teachings, including its teachings on marriage as the union of one man and one woman, sexual identity, and sexual ethics.

148. Moreover, The Lyceum will not permit employees, students, or parents or guardians to remain part of the school community if they wish to adopt a gender identity at variance with their sex.

149. The Lyceum will not permit sex-specific facilities to be accessed by members of the opposite sex, regardless of gender identity.

150. Students are only eligible to participate on The Lyceum's sports teams consistent with their biological sex, regardless of gender identity.

151. The Lyceum's continued compliance with its religious beliefs in its employment, admissions, and facility use is religious exercise under the First Amendment.

152. The First Amendment protects The Lyceum's right to freely exercise its religion.

153. The First Amendment protects the belief that marriage is the union of one man and one woman. *See, e.g., Obergefell v. Hodges*, 135 S. Ct. 2584, 2607 (2015); *see also Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1727 (2018).

154. The First Amendment protects The Lyceum from government hostility, targeting, and discrimination because of its religious beliefs and practices.

155. The City's passage and implementation of The Ordinance targets, shows hostility towards, and discriminates against The Lyceum because of its religious beliefs and practices.

156. The Ordinance is neither neutral nor generally applicable because it contains multiple exceptions, for among other things, discrimination based on business necessity, affirmative action programs, and promotional activities for protected groups, yet imposes special disabilities on The Lyceum due its religious beliefs about biological sex, marriage, and human sexuality. *See Ex. 1, City of South Euclid Code of Ordinances § 552.06.*

157. Laws that violate religious exercise rights as well as other constitutional rights are also subject to strict scrutiny.

158. Absent its fear of investigation and prosecution under the Ordinance, The Lyceum would immediately announce and promote its Catholic Educational Mission and Community Policies.

159. The Ordinance imposes severe coercive pressure, including jail time, on The Lyceum to change or violate its religious beliefs and chills, deters, and restricts The Lyceum's religious exercise by suppressing its religiously motivated messages and practices.

160. Plaintiffs currently suffer the ongoing harm of self-censorship of their desired, protected free exercise rights in order to avoid investigation and prosecution under The Ordinance.

161. The Ordinance substantially burdens The Lyceum's religious exercise.

162. Because the Ordinance substantially burdens The Lyceum's free exercise rights, the Ordinance must further a compelling government interest in a narrowly tailored way.

163. The City has no compelling interest that is served by infringing on The Lyceum's religious exercise rights, nor can any such interest be achieved by the least restrictive means available.

164. Thus, the Ordinance violates The Lyceum's' right to free exercise of religion under the First Amendment to the United States Constitution as incorporated and applied to the States through the Fourteenth Amendment.

**Second Cause of Action: Violation of the Free Speech Clause
of the First Amendment to the U.S. Constitution**

165. Plaintiff realleges each allegation contained in ¶¶ 1-139 of this Complaint and incorporates them herein.

166. The Ordinance provisions, on their face and as-applied, are an unconstitutional abridgment of The Lyceum's free speech because they: 1) are content-based speech restrictions; 2) are viewpoint-based speech restrictions; 3) compel The Lyceum to speak messages that violate its religious beliefs; and 4) force The Lyceum to engage in self-censorship.

167. Religious speech is fully protected by the First Amendment.

168. The Lyceum engages in religious speech in every aspect of its educational mission and operations.

169. This religious speech includes disseminating Catholic teaching on biological sex, marriage, and human sexuality, and extends to classroom instruction, school website postings, employment policies, community conduct standards, and admissions and retention policies.

The Ordinance is Content-Based

170. The Ordinance contains two provisions that restrict speech, for both employers, § 552.02(f), and public accommodations, § 552.04(b) (collectively, the publication bans).

171. The Ordinance states that an employer may not “print or publish, or cause to be printed or published, any discriminatory notice or advertisement relating to employment.” § 552.02(f).

172. The Ordinance states that a public accommodation may not “print, publish, circulate, post, or mail, directly or indirectly, a statement, advertisement, or sign . . . which indicates that an individual’s patronage of, or presence at, the business establishment or place of public accommodation is objectionable, unwelcome, unacceptable or undesirable.” § 552.04(b).

173. The Ordinance draws distinctions based on the idea or message a speaker conveys.

174. The Civil Rights Review Board must examine a statement’s content to determine whether it is objectionable and so punishable under the Ordinance.

175. The Ordinance’s publication bans are content-based speech restrictions.

176. Content-based speech restrictions are presumptively unconstitutional and can survive only if they serve a compelling government interest that is advanced by the least restrictive means available.

177. The City has no compelling government interest that justifies punishing The Lyceum’s protected religious speech.

178. Any interest the government may have in punishing The Lyceum’s protected speech is not advanced in the least restrictive means available, nor is it narrowly tailored.

The Ordinance is Viewpoint-Based

179. The Ordinance permits religious schools and others to distribute and disseminate religious and non-religious statements that, for example, promote same-sex marriage, or support or condone policies permitting access to restrooms and showers based on one’s gender identity,

but punishes religious statements that promote only Catholic teaching on marriage and sexuality, or that support or condone access to restrooms and showers based solely on one's biological sex.

180. The Ordinance's preference for certain religious statements that favor, among other things, same-sex marriage, and access to restrooms and showers based on gender identity, while punishing religious statements conditioning access on biological sex, violates the First Amendment's Free Speech Clause, which prohibits viewpoint discrimination.

181. Viewpoint-based speech restrictions are presumptively unconstitutional.

The Ordinance Compels Speech

182. Through the threat of sanctions and jail time, the Ordinance compels The Lyceum to communicate two distinct government messages: 1) that The Lyceum's restrooms and athletic teams are open to persons of the opposite biological sex, and 2) that The Lyceum's community is open to persons who reject (by belief, conduct, or both) Catholic teaching on marriage and human sexuality.

183. The Lyceum objects to both messages.

184. It believes that its school should be operated in a manner consistent with its religious beliefs, including beliefs that there are two immutable and complementary sexes, that marriage is the consensual, lifelong, exclusive union of one man and one woman, and that sexual relations must be reserved for marriage.

185. Government-compelled speech is subject to strict scrutiny.

186. The City lacks a compelling interest to force The Lyceum to communicate its favored messages, nor does the compulsion of speech serve any interest the government may possess in the least restrictive means available, nor is it narrowly tailored.

The Ordinance Results in Self-Censored Speech

187. The Lyceum has refrained from declaring the teaching of Holy Scriptures and the Roman Catholic Church regarding God's design of two immutable and complementary sexes, institution of marriage, and related requirements for sexual conduct in its school website postings, and formal, written employment policies, community conduct standards, admissions and retention policies, and public statements from school officials.

188. The Lyceum's Board of Trustees has agreed upon Catholic Educational Mission and Community Policies and the Statement on Employment for adoption, followed by distribution and dissemination to its members and to the public, but has declined to adopt, implement, distribute, or disseminate the Policies and Statement out of a reasonable fear that the Civil Rights Review Board and the City would prosecute it for doing so.

189. The Ordinance's imposition of sanctions on public statements that may be viewed as unwelcome in violation of the publication bans, places a direct and substantial burden on The Lyceum's free speech rights, including the school's freedom to teach its religious beliefs regarding God's design for human sexuality and to publicly distribute and implement its related policy and employment statement.

190. The Lyceum is objectively, reasonably chilled from exercising its First Amendment right to free speech due to the risk of the Board's enforcement of the Ordinance and the substantial penalties available under it.

191. The Lyceum's free speech rights are violated by the Ordinance, on its face, and as applied to The Lyceum.

192. Because the Ordinance violates Plaintiff's right to free speech, it must further a compelling interest in a narrowly tailored way.

193. The City has no compelling interest that is served by infringing on The Lyceum's freedom of speech, nor can any such interest be achieved by the least restrictive means available.

194. Thus, the Ordinance violates The Lyceum's right to free speech under the First Amendment to the United States Constitution as incorporated and applied to the States through the Fourteenth Amendment.

**Third Cause of Action: Violation of the Right to Expressive Association
of the First Amendment to the U.S. Constitution**

195. Plaintiff realleges each allegation contained in ¶¶ 1-139 of this Complaint and incorporates them herein.

196. The Lyceum engages in extensive expressive activity as a religious school.

197. The Lyceum has a strong theological interest in engaging in communal expression that reflects fidelity to Catholic teachings on biological sex, marriage, and human sexuality.

198. The Lyceum also has a strong theological interest in ensuring that members of its community hold and maintain fidelity to Catholic teachings on biological sex, marriage, and human sexuality.

199. The First Amendment protects the right of persons to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.

200. The First Amendment bars the government from compelling persons to expressively associate with others in the process of creating and disseminating speech.

201. The First Amendment also prohibits the government from banning people from expressively associating with others in the process of creating and disseminating speech.

202. The Lyceum engages in expressive association when it hires faculty or other employees, admits students, or otherwise seeks to maintain a religious community formed around shared theological convictions and conduct standards.

203. The Ordinance harms Plaintiff's ability to promote its religious beliefs about biological sex, marriage, and human sexuality by requiring them to either decline to associate with persons who share their expressive purpose of promoting their religious beliefs, or to willingly associate with persons who hold or desire to promote views of biological sex, marriage, or human sexuality that directly contradict The Lyceum's own.

204. Absent its fear of investigation and prosecution under the Ordinance, The Lyceum would immediately announce, promote, and implement its Catholic Educational Mission and Community Policies and Statement on Employment.

205. The Ordinance imposes severe coercive pressure, up to and including jail time, on The Lyceum to change or violate its religious beliefs and chills, deters, and restricts The Lyceum's expressive association by suppressing its religiously motivated messages and practices.

206. Plaintiffs currently suffer the ongoing harm of self-censorship of their desired, protected expressive association in order to avoid prosecution under The Ordinance.

207. Because the Ordinance violates Plaintiff's right to expressive association, it must further a compelling interest in a narrowly tailored way.

208. The City has no compelling interest that is served by infringing on The Lyceum's expressive associational rights, nor can any such interest be achieved by the least restrictive means available.

209. Thus, the Ordinance violates The Lyceum's right to expressive association under the First Amendment to the United States Constitution as incorporated and applied to the States through the Fourteenth Amendment.

**Fourth Cause of Action: Violation of the Due Process Clause
of the Fourteenth Amendment to the U.S. Constitution
(Void for Vagueness)**

210. Plaintiff realleges each allegation contained in ¶¶ 1-139 of this Complaint and incorporates them herein.

211. The Fourteenth Amendment to the United States Constitution guarantees The Lyceum the right to due process of law.

212. The Fourteenth Amendment prohibits Defendants from censoring speech or penalizing behavior based on vague standards.

213. Laws that interfere with First Amendment freedoms require a high level of specificity.

214. Laws that impose criminal penalties require a high level of specificity.

215. The Ordinance defines public accommodations to include “all . . . establishments which offers goods, services, accommodations and entertainment to the public within the City”, but not an “institution, club or other place of accommodation, which by its nature is distinctly private.” Ex. 1, City of South Euclid Code of Ordinances § 552.01(n).

216. The Ordinance does not define the vague phrase “by its nature is distinctly private.”

217. The Ordinance does not offer any narrowing context for the phrase “by its nature distinctly private.”

218. It is unclear whether schools, including private schools such as The Lyceum, are public accommodations under the Ordinance.

219. The Ordinance also fails to sufficiently define the vague terms “gender identity or expression.”

220. The Ordinance insufficiently defines “gender identity or expression” as “having or being perceived as having a gender identity or expression whether or not that gender identity or

expression is different from that traditionally associated with the sex assigned to that individual at birth.” *See id.* § 552.01(j).

221. This definition is circular; it states that a person’s gender identity or expression may differ from that person’s sex, but does not explain what gender identity and gender expression mean.

222. According to some internet sources, there are over 100 gender identities and expressions.

223. It is impossible to know what a person’s gender identity or expression may be, or how it applies.

224. The Ordinance states that a public accommodation may not “print, publish, circulate, post, or mail, directly or indirectly, a statement, advertisement, or sign . . . which indicates that an individual’s patronage of, or presence at, the business establishment or place of public accommodation is objectionable, unwelcome, unacceptable or undesirable.” *See id.* § 552.04(b).

225. The Ordinance does not define the vague terms “objectionable, unwelcome, unacceptable or undesirable.”

226. The Ordinance offers no narrowing context for the terms “objectionable, unwelcome, unacceptable or undesirable.”

227. The terms “objectionable, unwelcome, unacceptable or undesirable” have no settled legal meaning.

228. As a result, neither The Lyceum nor anyone else can know what statements might qualify as “objectionable, unwelcome, unacceptable or undesirable.”

229. The Ordinance states that “[n]othing contained in this chapter shall be deemed to prohibit a religious or denominational institution from preferring to employ an individual of a

particular religion to perform work connected with the performance of religious activities by the institution.” *Id.* § 552.06(e).

230. The Ordinance goes on to state: “If a party asserts that an otherwise lawful practice is justified as a permissible bona fide religious or denominational preference, that party shall have the burden of proving that the discrimination is in fact a necessary result of such a bona fide condition.” *Id.* § 552.06(f).

231. The Ordinance does not define or offer a narrowing context for the vague terms “individual of a particular religion,” “perform work connected with the performance of religious activities by the institution,” “bona fide religious or denominational preference,” or “necessary result of such a bona fide condition.”

232. As a result, The Lyceum cannot know whether the bona fide religious or denominational preference applies to its employment decisions.

233. The Lyceum and its leaders are left to guess which statements and practices will violate the Ordinance, and so may differ in their understanding as to what constitutes: 1) a public accommodation, 2) discrimination based on sexual orientation, gender identity, or gender expression, 3) statements indicating that a person’s presence is “objectionable, unwelcome, unacceptable or undesirable” and 4) a bona fide religious or denominational preference.

234. The Ordinance provides no warning or notice as to what the terms described above mean, and therefore, what conduct and expression will and will not be penalized under the Ordinance.

235. The Lyceum’s board of trustees have agreed upon written policies consistent with The Lyceum’s religious beliefs regarding human sexuality, but have refrained from formally adopting and publishing those policies out of the reasonable fear of the publication bans.

236. The Lyceum fears that publishing its Catholic Educational Mission and Community Policies and its Statement on Employment will subject it to enforcement proceedings and substantial penalties.

237. Any person claiming to be aggrieved by The Lyceum's actions can file a complaint with the City's Civil Rights Review Board.

238. Both the City itself and any person claiming to be aggrieved by The Lyceum's actions can file a complaint in court instead of going through the administrative process.

239. The Ordinance is thus vague facially and as applied to The Lyceum, and accordingly violates the Fourteenth Amendment's Due Process Clause.

**Fifth Cause of Action: Violation of the Due Process Clause
of the Fourteenth Amendment to the U.S. Constitution
(Parental Rights)**

240. Plaintiff realleges each allegation contained in ¶¶ 1-139 of this Complaint and incorporates them herein.

241. Religious schools are protected by the Due Process Clause of the Fourteenth Amendment from the government's unwarranted interference with the rights of parents, and the rights of the school selected by parents, to direct the upbringing and education of the parents' children.

242. The Ordinance, as applied, deprives the students' parents of fair opportunity to procure for their children instruction consistent with their sincerely held religious beliefs concerning biological sex, marriage, and human sexuality and that they have selected, at least in part, for religious reasons.

243. The Fourteenth Amendment protects The Lyceum from deprivation of its property rights without due process of law.

244. The right to conduct schools in a certain manner is a due process right under *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925).

245. Parents and guardians, as a part of their liberty, may direct the education of their children by selecting schools that are intentionally Catholic and affirm Catholic teachings on biological sex, marriage, and human sexuality.

246. The Ordinance infringes on the rights of The Lyceum to conduct its school in a distinctly religious manner consistent with its Catholic beliefs.

247. The Ordinance infringes on the rights of parents to choose Catholic schools where their children will receive a distinctly Catholic education.

248. The Ordinance therefore violates the Fourteenth Amendment.

Sixth Cause of Action: Violation of the Free Exercise of Religion
Ohio Constitution Article I, Section 7

249. Plaintiff realleges each allegation contained in ¶¶ 1-139 of this Complaint and incorporates them herein.

250. The Ordinance provisions, facially and as-applied to The Lyceum, violate The Lyceum's right to free exercise of religion as guaranteed by Article I, Section 7 of the Ohio Constitution.

251. Ohio's free exercise provision offers greater protection to religious exercise than the First Amendment to the U.S. Constitution.

252. The Lyceum's sincerely held religious beliefs include beliefs that there are two immutable and complementary sexes; that marriage is the consensual, lifelong, exclusive union of one man and one woman; and that sexual relations must be reserved for marriage.

253. The Ordinance substantially burdens The Lyceum's sincerely held religious beliefs because it forces the school to choose between adhering to its religious beliefs regarding marriage and human sexuality, or suffering severe fines and even jail time.

254. Because the Ordinance substantially burdens The Lyceum's free exercise rights, it must further a compelling government interest in a narrowly tailored way.

255. The City has no compelling interest that is served by infringing The Lyceum's religious exercise rights, nor can any such interest be achieved by the least restrictive means available.

256. Thus, the Ordinance violates The Lyceum's right to free exercise of religion under Ohio Constitution Article I, Section 7.

PRAYER FOR RELIEF

WHEREFORE, The Lyceum prays for judgment as follows:

1. That this Court enter a preliminary and permanent injunction restraining The City of South Euclid, its officers, agents, employees, and all others acting in concert with them, from enforcing or applying South Euclid, Ohio, Code § 552.01 *et. seq.* to prohibit or chill The Lyceum's statements and policies regarding its religious beliefs about biological sex, marriage, and human sexuality;
2. That this Court enter a declaratory judgment declaring that South Euclid, Ohio, Code § 552.01 *et. seq.* violates the First and Fourteenth Amendments of the United States Constitution both facially and as applied;
3. That this Court issue the requested injunctive relief without a condition of bond or other security being required of Plaintiff;
4. That this Court award Plaintiff damages;

5. That this Court award Plaintiff's costs and expenses, including its attorneys' fees, pursuant to 42 U.S.C. § 1988; and

6. For such other relief as the Court deems just and equitable.

Dated this 3rd day of April, 2019.

Respectfully submitted,

s/ Matthew M. Nee

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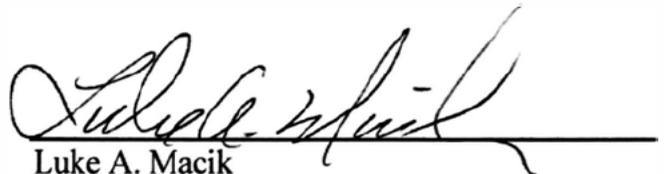
Counsel for Plaintiff

**Pro Hac Vice Motions filed contemporaneously
herewith*

VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 1st day of April, 2019.

A handwritten signature in black ink, appearing to read "Luke A. Macik", written over a horizontal line.

Luke A. Macik
Headmaster, The Lyceum

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

The Lyceum

(b) County of Residence of First Listed Plaintiff Cuyahoga County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Matthew Nee 26032 Detroit Road, Suite 5 Westlake, OH 44145

DEFENDANTS

The City of South Euclid, Ohio

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known) Michael Lograsso, Law Director

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. 1983

Brief description of cause: Violation of Plaintiff's First and Fourteenth Amendment rights based on Plaintiff's religious beliefs.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/03/2019 SIGNATURE OF ATTORNEY OF RECORD s/ Matthew M. Nee

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

- 1. General Civil
- 2. Administrative Review/Social Security
- 3. Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action: is **RELATED** to another **PENDING** civil case is a **REFILED** case was **PREVIOUSLY REMANDED**

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county
COUNTY: Cuyahoga County
Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.
COUNTY:

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.
COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

- AKRON (Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)
- CLEVELAND (Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)
- YOUNGSTOWN (Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

- TOLEDO (Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

The Lyceum

Plaintiff

v.

The City of South Euclid, Ohio

Defendant

Civil Action No. 1:19-cv-00731

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The City of South Euclid
Michael Lograsso, Law Director
1349 South Green Road
South Euclid, Ohio 44121

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Matthew M. Nee
Regency Centre
26032 Detroit Road, Suite 5
Westlake, OH 44145

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SANDY OPACICH, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

EXHIBIT 1

CHAPTER 552
Discrimination Prohibited

- 552.01 Definitions.
- 552.02 Prohibited acts of discrimination relating to employment.
- 552.03 Prohibited acts of discrimination relating to housing and real estate transactions.
- 552.04 Prohibited acts of discrimination relating to business establishments or public accommodations.
- 552.05 City services, facilities, transactions and contracts.
- 552.06 General exceptions.
- 552.07 Correction or retaliation.
- 552.08 Preservation of business records.
- 552.09 Civil Rights Review Board.
- 552.10 Administrator.
- 552.11 Complaints.
- 552.12 Notice.
- 552.13 Investigation.
- 552.14 Conciliation.
- 552.15 Injunctive relief.
- 552.16 Hearings.
- 552.17 Hearing decisions.
- 552.18 Hearing officer.
- 552.19 Remedial actions.
- 552.20 Judicial relief.
- 552.21 Additional remedies.
- 552.22 Severability.
- 552.23 Equal opportunity.
- 552.24 Establishment; purpose.
- 552.25 Intimidation.
- 552.99 Penalty.

552.01 DEFINITIONS.

(a) "Advertising" means to make, print, publish, advertise or otherwise disseminate any notice, statement or advertisement, with respect to any employment activity, any business activity, or any educational activity.

(b) "Age" means 18 years of age or older except as otherwise provided by law.

(c) "Business establishment" means any entity, however organized, which furnishes goods, services or accommodations to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements consist only of payment of fees or consist only of requirements under which a substantial portion of the residents of the City could qualify.

(d) "Disability" or "disabled" means, with respect to an individual, a physical or mental impairment, a record of such an impairment, or being perceived or regarded as having such impairment. For purposes of this chapter discrimination on the basis of disability means that no covered entity shall discriminate against a qualified individual with a disability because of that individual's disability. The term "qualified individual with a disability" shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment positions that the individual holds or desires.

(e) "Discriminate, discrimination or discriminatory" means any act, policy or practice that, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's age, race, color, creed, religion, national origin, ancestry, disability, marital status, military status, gender, gender identity or expression, sexual orientation, source of income, ethnic group, or physical characteristic.

(f) "Educational institution" means any public or private educational institution including an academy, college, elementary or secondary school, extension course, kindergarten, pre-school, nursery school, university, and any business, nursing, professional, secretarial, technical or vocational school.

(g) "Employee" means any individual employed or seeking employment from an employer.

(h) "Employer" means any person who, for compensation, regularly employs four or more individuals, not including the employer's parents, spouse or children. For purposes of this chapter an employer "regularly" employs four individuals when the employer employs four or more individuals for each working day in any 20 or more calendar weeks in the current or previous calendar year. For purposes of this chapter an "employer" is also any person acting on behalf of an employer, directly or indirectly, or any employment agency.

(i) "Gender" means actual or perceived sex.

(j) "Gender identity or expression" means having or being perceived as having a gender identity or expression whether or not that gender identity or expression is different from that traditionally associated with the sex assigned to that individual at birth.

(k) "Labor organization" means any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection on behalf of employees.

(l) "Person" means a natural person, firm, corporation, partnership or other organization, association or group of persons however arranged.

(m) "Physical characteristic" means a bodily condition or bodily characteristic of any person that is from birth, accident, or disease, or from any natural physical development, including individual physical mannerisms including but not limited to height and weight. Physical characteristic shall not relate to those situations where a bodily condition or characteristic will present a danger to the health, welfare or safety of any individual.

(n) "Place of public accommodation" means inns, taverns, hotels, motels, restaurants, wholesale outlets, retail outlets, banks, savings and loan associations, other financial institutions, credit information bureaus, insurance companies, dispensaries, clinics, hospitals, theaters, recreational parks and facilities, trailer camps, garages, public halls, and all other establishments which offers goods, services, accommodations and entertainment to the public within the City. A place of public accommodation does not include any institution, club or other place of accommodation, which by its nature is distinctly private.

(o) "Sexual orientation" means actual or perceived heterosexuality, homosexuality or bisexuality.

(p) "Transaction in real estate" means the exhibiting, listing, advertising, negotiating, agreeing to transfer or transferring, whether by sale, lease, sublease, rent, assignment or other agreement, of any interest in real property or improvements thereon.

(q) "Religious organization" as defined by R.C. § 2915.01, means any church, body of communicants, or group that is not organized or operated for profit and that gathers in common membership for regular worship and religious observances, and is officially recognized as a religious organization by the Internal Revenue Service.

(Ord. 12-17. Passed 4-9-18.)

With regard to employment, it shall be unlawful for any employers or labor organizations to engage in any of the following acts, wholly or partially for a discriminatory reason:

- (a) To fail to hire, refuse to hire or discharge an individual;
- (b) To discriminate against any individual, with respect to compensation, terms, conditions, or privileges of employment, including promotion.
- (c) To limit, segregate, or classify employees in any way which would deprive or tend to deprive any employee of employment opportunities, or which would otherwise tend to adversely affect his or her status as an employee;
- (d) To fail or refuse to refer for employment any individual in such a manner that would deprive an individual of employment opportunities, that would limit an individual's employment opportunities or that would otherwise adversely affect an individual's status as a prospective employee or as an applicant for employment;
- (e) To discriminate against an individual in admission to, or employment in, any program established to provide apprenticeship or other job training, including an on-the-job training program;
- (f) To print or publish, or cause to be printed or published, any discriminatory notice or advertisement relating to employment. This division shall not be construed so as to expose the person who prints or publishes the notice or advertisement, such as a newspaper, to liability;
- (g) To discriminate in referring an individual for employment whether the referral is by an employment agency, labor organization or any other person.

(Ord. 12-17. Passed 4-9-18.)

552.03 PROHIBITED ACTS OF DISCRIMINATION RELATING TO HOUSING AND REAL ESTATE TRANSACTIONS.

(a) With regard to housing and real estate transactions, it shall be unlawful to engage in any of the following acts wholly or partially for a discriminatory reason:

- (1) To discriminate by impeding, delaying, discouraging or otherwise limiting or restricting any transaction in real estate;
- (2) To discriminate by imposing different terms on a real estate transaction;
- (3) To represent falsely that an interest in real estate is not available for transaction;
- (4) To include in the terms or conditions of a real estate transaction any discriminatory clause, condition or restriction;
- (5) To discriminate in performing, or refusing to perform, any act necessary to determine an individual's financial ability to engage in a real estate transaction;
- (6) For a property manager to discriminate by refusing to provide equal treatment of, or services to, occupants of any real estate which he or she manages;
- (7) To make, print or publish, or cause to be made, printed or published any discriminatory notice, statement, or advertisement with respect to a real estate transaction or proposed real estate transaction, or financing relating thereto. This division shall not be construed to prohibit advertising directed to physically disabled persons or persons over the age of 55 for the purpose of calling to their attention the existence or absence of housing accommodations or services for the physically disabled or elderly;
- (8) To discriminate in any financial transaction involving real estate, on account of the location of the real estate be it residential or non-residential ("red-lining");

(9) For a real estate operator, a real estate broker, a real estate salesperson, a financial institution, an employee of any of these, or any other person, for the purposes of inducing a real estate transaction from which such person may benefit financially to represent that a change has occurred or will or may occur in the composition with respect to age, race, color, creed, religion, national origin, ancestry, disability, marital status, military status, gender, gender identity or expression, sexual orientation, income, ethnic group, or physical characteristic of the owners or occupants in the block, neighborhood or area in which the real property is located or

to represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood or area in which the real property is located ("block-busting");

(b) Notwithstanding the provisions of divisions (a)(1) through (a)(9) of this section, it shall not be an unlawful discriminatory practice for an owner to limit occupancy on the basis of a person's low-income, age over 50 years or disability status in accordance with Federal or State law.

(c) Notwithstanding the provisions of divisions (a)(1) through (a) (9) of this section, it shall not be an unlawful discriminatory practice for an owner, lessor or renter to refuse to rent, lease or sublease a portion of a single family dwelling unit to a person as a tenant, roomer or boarder where it is anticipated that the owner, lessor or renter will be occupying any portion of the single-family dwelling or to refuse to rent, lease or sublease where it is anticipated that the owner, lessor or renter will be sharing either a kitchen or a bathroom with the tenant, roomer or boarder.

(Ord. 12-17. Passed 4-9-18.)

552.04 PROHIBITED ACTS OF DISCRIMINATION RELATING TO BUSINESS ESTABLISHMENTS OR PUBLIC ACCOMMODATIONS.

It shall be unlawful for a business establishment or place of public accommodation to engage in any of the following acts wholly or partially for a discriminatory reason:

(a) To deny, directly or indirectly, any person the full enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment or place of public accommodation;

(b) To print, publish, circulate, post, or mail, directly or indirectly, a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a business establishment or place of public accommodation will be unlawfully refused, withheld from or denied an individual, or which indicates that an individual's patronage of, or presence at, the business establishment or place of public accommodation is objectionable, unwelcome, unacceptable or undesirable.

(Ord. 12-17. Passed 4-9-18.)

552.05 CITY SERVICES, FACILITIES, TRANSACTIONS AND CONTRACTS.

The City shall be bound by the provisions of this chapter to the same extent as private individuals. All contractors proposing to, or currently doing business with the City, shall abide by this chapter.

(Ord. 12-17. Passed 4-9-18.)

552.06 GENERAL EXCEPTIONS.

(a) Any practice which has a discriminatory effect and which would otherwise be prohibited by this chapter shall not be deemed unlawful if it can be established that the practice is not intentionally devised to contravene the prohibitions of this chapter and there exists no less discriminatory means of satisfying a business purpose.

(b) Unless otherwise prohibited by law, nothing contained in this chapter shall be construed to prohibit promotional activities such as senior citizen discounts and other similar practices designed primarily to encourage participation by protected group.

(c) It shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system such as a retirement, pension or insurance plan which is not a subterfuge or pretext to evade the purposes of this chapter.

(d) It shall not be an unlawful discriminatory practice for any person to carry out an affirmative action plan. An affirmative action plan is any plan devised to effectuate remedial or corrective action taken in response to past discriminatory practices, or as otherwise required by State or Federal law.

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(e) Nothing contained in this chapter shall be deemed to prohibit selection or rejection based solely upon a bona fide occupational qualification or a bona fide physical requirement. Nothing contained in this chapter shall be deemed to prohibit a religious or

denominational institution from preferring to employ an individual of a particular religion to perform work connected with the performance of religious activities by the institution. If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide occupational qualification, or a permissible bona fide physical requirement, that party shall have the burden of proving:

- (1) That the discrimination is in fact a necessary result of such a bona fide condition; and
- (2) That there exists no less discriminatory means of satisfying the bona fide requirement.

(f) If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide religious or denominational preference, that party shall have the burden of proving that the discrimination is in fact a necessary result of such a bona fide condition.

(Ord. 12-17. Passed 4-9-18.)

552.07 CORRECTION OR RETALIATION.

(a) It shall be an unlawful discriminatory practice to coerce, threaten, retaliate against or interfere with any person in the exercise of, or on account of having exercised, or on account of having aided or encouraged any other person in the exercise of, any right granted or protected under this chapter, or on account of having expressed opposition to any practice prohibited by this chapter.

(b) It shall be an unlawful discriminatory practice for any person to require, request, or suggest that a person retaliate against, interfere with, intimidate or discriminate against a person, because that person has opposed any practice made unlawful by this chapter, or because that person has made a charge, or because that person has testified, assisted or participated in any manner in an investigation, proceeding or hearing authorized under this chapter.

(c) It shall be an unlawful discriminatory practice for any person to cause or coerce, or attempt to cause or coerce, directly or indirectly, any person in order to prevent that person from complying with the provisions of this chapter.

(Ord. 12-17. Passed 4-9-18.)

552.08 PRESERVATION OF BUSINESS RECORDS.

Where a complaint of discrimination has been filed against a person under this chapter, such person shall preserve all records relevant to the complaint, until a final disposition of the complaint.

(Ord. 12-17. Passed 4-9-18.)

552.09 CIVIL RIGHTS REVIEW BOARD.

(a) There is hereby created a Civil Rights Review Board, which shall consist of five members, including the Mayor or his or her designee, a member of City Council, and three citizen members appointed by the Mayor and confirmed by City Council. Of the citizen members first appointed, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, and thereafter appointments shall be for three years.

(b) The Civil Rights Review Board shall have the responsibility to administer the provisions of this chapter and to adjudicate complaints alleging violations of Chapter 552. All administrative proceedings prescribed in this chapter shall be conducted at the Board's expense. The Board shall have and fully exercise the following powers to implement the purposes of this chapter:

- (1) To hold adjudicative hearings, make findings of fact, issue orders, enforce such orders, and seek judicial and/or administrative relief with respect to any such complaints in accordance with the provisions of this chapter;
- (2) To subpoena witnesses, compel their attendance, administer oaths, take sworn testimony, and, in connection therewith, to require the production for examination of any documents relating to any matter under investigation or in question before the Board, and enforce such powers by proper petition to any court of competent jurisdiction;
- (3) To adopt such rules and regulations as the Board may deem necessary, ~~The Board for the City of Southfield~~ and to carry out the purposes of this chapter; and
- (4) To do such other acts as are necessary and proper to perform those duties with which the Board is charged under this

552.10 ADMINISTRATOR.

The Mayor, with approval by City Council and upon the recommendation of the Civil Rights Review Board, shall appoint an Administrator who may be a City employee. The Administrator shall have such duties, responsibilities and powers as may be provided by the Board, including, but not limited to, receipt and processing of complaints on behalf of the Board.

(Ord. 12-17. Passed 4-9-18.)

552.11 COMPLAINTS.

Any person may allege that a violation of Chapter 552 has occurred, or that a violation will occur and cause injury, by filing with the Civil Rights Review Board, within one year of the alleged violation, a written complaint setting forth his or her grievance. The complaint shall state, on a printed form made available by the Board, the name and address of the complainant, the name and address of the person(s) alleged to have committed a violation of Chapter 552 and the particular facts thereof, and such other information as may be required by the Board. A complaint may be amended at any time. Upon the filing of a complaint, the Administrator shall acknowledge the receipt of the complaint, serving notice thereof to the complainant, which notice shall also contain information as to the time limits and choice of forum provided in this chapter.

(Ord. 12-17. Passed 4-9-18.)

552.12 NOTICE.

Within fifteen calendar days after a complaint has been received by the Board, the Administrator shall serve, or cause to be served, in person, or by certified mail, a copy of the complaint on the person (hereinafter referred to as the "respondent") alleged to have violated Chapter 552. Along with the service of the complaint, the Administrator shall advise the respondent in writing of his or her procedural rights and obligations pursuant to this chapter. The respondent may file with the Board an answer to the complaint.

(Ord. 12-17. Passed 4-9-18.)

552.13 INVESTIGATION.

(a) Within 30 calendar days after a complaint has been received by the Board, the Administrator shall conduct an investigation of the complaint and shall determine either that:

(1) There are reasonable grounds to believe that a violation of Chapter 552 has occurred, in which case the Administrator shall then initiate the conciliation process of Chapter 552; or

(2) There are reasonable grounds to believe that a violation of Chapter 552 has not occurred, in which case the Administrator shall then dismiss the complaint by preparing a written notice of dismissal, including the reasons therefore, and notify the parties of the dismissal, within five days, by serving a copy of the notice of dismissal by certified mail on the parties. A copy of the notice shall also be filed with the Board. The notice of dismissal shall advise the complainant of his or her right of appeal under this section. Within 14 days of receipt of the notice of dismissal, the complainant may appeal by filing a written request with the Board for a review of the complaint. By a majority vote, the Board may overrule the dismissal and refer the complaint to the Administrator for conciliation pursuant to Chapter 552.

(b) The Administrator shall complete the investigation within 100 days after receipt of the complaint, unless impracticable, in which case the Administrator shall inform, in writing, the complainant and the respondent of the reasons why the investigation cannot be completed within the time prescribed.

(Ord. 12-17. Passed 4-9-18.)

552.14 CONCILIATION.

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If the Administrator has made a determination pursuant to Chapter 552 that there are reasonable grounds to believe that a violation of Chapter 552 has occurred, or at such other time after a complaint has been filed, as appropriate, the Administrator shall:

(a) Notify the complainant and respondent of the time, place and date of the conciliation conference at least ten days prior thereto, and both parties shall appear at the conciliation conference in person or by attorney; and

(b) Attempt to resolve the complaint by methods of conference, conciliation and persuasion with all interested parties and such representatives as the parties may choose to assist them. Conciliation conferences shall be informal and nothing said or done during such conferences shall be made public unless the parties agree thereto in writing. The terms of conciliation agreed to by the parties shall be reduced to writing and incorporated into a consent agreement to be signed by the parties, subject to approval by the Civil Rights Review Board. The terms of the conciliation agreement shall be made public unless the complainant and the respondent agree otherwise, and the Board determines that disclosure is not required to further the purposes of this chapter.

If the complaint has not been resolved by conciliation within 60 calendar days after it has been received, the Administrator shall refer the complaint to the Civil Rights Review Board for an adjudicative hearing.

(Ord. 12-17. Passed 4-9-18.)

552.15 INJUNCTIVE RELIEF.

At any time after the filing of a complaint, the Administrator may request the Director of Law to petition the appropriate court for temporary or preliminary relief pending final determination of the proceedings under this chapter, or as otherwise necessary to carry out the purposes of this chapter, including an order or decree restraining the respondent from doing or causing any act which would render ineffectual any order or action by the Civil Rights Review Board.

(Ord. 12-17. Passed 4-9-18.)

552.16 HEARINGS.

Within 30 calendar days after the complaint is referred to the Civil Rights Review Board, the Board shall, upon due and reasonable notice to all parties, conduct a hearing on the complaint. Parties to the hearing shall be the complainant and respondent, and such other persons as the Board may deem appropriate. The hearing shall be open to the public. At least seven days before the hearing, the Board shall serve upon the respondent a statement of charges and a summons requiring the attendance of named persons and the production of relevant documents and records. The parties may apply to the Board to have subpoenas issued in the Board's name. Failure to comply with a summons or subpoena shall constitute a violation of this chapter. The parties may file such statements with the Board as they deem necessary. No fewer than three of the same members of the Board must be present at all times during a hearing. The parties may appear before the Board in person or by duly authorized representative, and may be represented by legal counsel. The parties shall have the right to present witnesses and cross-examine witnesses, and all testimony and evidence shall be given under oath or by affirmation, administered by the Civil Rights Review Board and all proceedings to be written or audio recorded to be considered its formal record of proceedings.

(Ord. 12-17. Passed 4-9-18.)

552.17 HEARING DECISIONS.

Where hearings have been held before the Board, only those members of the Board who have attended all hearings on the complaint shall participate in the determination of the complaint. Within 15 days of the close of the hearing, the decision shall be rendered, in the form of a written order which shall include findings of fact, a statement of whether the respondent has violated Chapter 552, and such remedial actions as the Board may order pursuant to Chapter 552. The order shall be served upon the parties by certified mail within 15 days of the date of the decision. The order shall be available for public inspection, and a copy shall be provided to any person upon request and payment of reproduction costs.

(Ord. 12-17. Passed 4-9-18.)

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The Civil Rights Review Board, in lieu of conducting a hearing upon complaint, may appoint a hearing officer for the purpose of conducting hearings and reporting the findings thereof to the Board. In conducting such hearings, the hearing officer shall be delegated all powers conferred upon the Board pursuant to this chapter as to subpoenaing witnesses, compelling their attendance, administering oaths, taking sworn testimony, and requiring the production for examination of any documents relating to any matter under investigation or question before the Board. Notice of hearing and the procedures therefore shall be in accordance with Chapter 552. After the conclusion of any hearing, the hearing officer shall report his or her findings to the Board within seven days. Within 15 days after receipt of the findings of the hearing officer, the Board shall render its decision in accordance with Chapter 552.

(Ord. 12-17. Passed 4-9-18.)

552.19 REMEDIAL ACTIONS.

(a) If the Board finds that the respondent has not violated Chapter 552 its order under Chapter 552 shall dismiss the complaint. If the Commission finds the complaint to be frivolous or vindictive, then the costs of these proceedings may be assessed against the complainant.

(b) If the Board finds that the respondent has violated Chapter 552 its order under Chapter 552 shall provide for the taking of such remedial action(s) as it deems appropriate, which may include, but need not be limited to:

(1) Directing the respondent to cease and desist from violations of Chapter 552 and to take such affirmative steps as necessary to effectuate the purposes of this chapter;

(2) Recommending to the City's Law Director an appropriate court action for the enforcement of Chapter 552, and for such other or further relief as the court may deem appropriate, including, but not limited to, injunctive relief, compensatory damages, punitive damages, and/or attorneys' fees and costs for award to the complainant; such court action shall be required in the event the respondent does not voluntarily comply with the remedial actions ordered by the Board.

(3) Recommending to the Law Director the proceedings for a violation of Federal or State law and/or regulations.

(4) Recommending to the Law Director proceedings with any contracting agency, in the case of any violation of Chapter 552 by a respondent in the course of performing under a contract or sub-contract with the State or any political subdivision or agency thereof, or with the United States of America or any agency or instrumentality thereof, for the purpose of causing a termination of such contract or any portion thereof, or obtaining other relief.

(5) Recommending to the Law Director proceedings with the State of Ohio where applicable, to revoke, suspend or refuse to renew the license of any person found to have violated any provision of Chapter 552.

(6) Directing the respondent to reimburse the complainant for his or her actual and reasonable expenses incurred and to be incurred as a result of each violation found, including, but not limited to, expenses for moving and temporary storage of household furnishings, additional expenses in connection with the purchase or rental of a dwelling for alternative accommodations, and reasonable attorneys' fees and costs.

(7) Assessing compensatory damages, as appropriate, or arrange to have adjudicated in court at the Board's expense the award of compensatory damages against the respondent.

(8) Assessing civil penalties, as appropriate, or arrange to have adjudicated in court at the Board's expense the award of a civil penalty against the respondent.

(9) Directing the respondent to comply with such other further relief as the Board may deem appropriate for the enforcement of Chapter 552.

(10) The Civil Rights Review Board shall make a final administrative disposition of a complaint within one year after the complaint has been filed, unless it is impracticable to do so, in which case the complainant and the respondent shall be notified in writing of the reasons why disposition of the complaint cannot be made within the time prescribed.

(c) Nothing herein shall be construed to prevent the City, upon recommendation from the Board, from initiating appropriate court action on behalf of the complainant in order to enforce the provisions of this chapter. In addition, upon a finding by the Administrator that there are reasonable grounds to believe that a violation of Chapter 552 has occurred, as provided in Chapter 552 either the complainant or the respondent, in lieu of participating in the administrative hearing process before the Civil Rights Review Board, or at

(d) The complainant and the respondent shall have the right to appeal an adverse final determination by the Board to the Cuyahoga County Common Pleas Court pursuant to R.C. Chapter 2506, or in such other forum or court of competent jurisdiction as provided by law.

(Ord. 12-17. Passed 4-9-18.)

552.20 JUDICIAL RELIEF.

The City, or the complainant, or any person aggrieved by a violation of any provision of this chapter may, at any time within one year from the date of the alleged violation, and in lieu of proceeding with the administrative process set forth in this chapter, apply to any court of competent jurisdiction for appropriate relief, including, but not limited to:

- (a) Injunctive relief or an order otherwise compelling compliance with this chapter;
- (b) Compensatory damages, and/or punitive damages;
- (c) Reasonable attorneys' fees and costs, provided that said complainant, in the opinion of the court, is not financially able to assume said attorneys' fees; and/or
- (d) Such other or further relief as is appropriate for the enforcement of this chapter and the elimination of violations hereof.

(Ord. 12-17. Passed 4-9-18.)

552.21 ADDITIONAL REMEDIES.

This chapter shall not prevent the City or any person from exercising any right or seeking any remedy to which that person might otherwise be entitled, or from filing any complaint with any other agency or court of law or equity.

(Ord. 12-17. Passed 4-9-18.)

552.22 SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this chapter, or the application thereof to any person, firm, corporation or circumstance, is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion thereof. The City Council hereby declares that it would have adopted this chapter and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

(Ord. 12-17. Passed 4-9-18.)

552.23 EQUAL OPPORTUNITY.

No person shall be denied the right to purchase or lease a condominium unit in the City because of age, race, color, creed, religion, national origin, ancestry, disability, marital status, military status, gender, gender identity or expression, sexual orientation, source of income, ethnic group, recipient of public assistance or physical characteristic.

(Ord. 12-17. Passed 4-9-18.)

552.24 ESTABLISHMENT; PURPOSE.

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The South Euclid Community Relations Advisory Commission is hereby established to serve in an advisory capacity for the purpose of educating, informing and making recommendations to City officials, departments, boards and commissions on matters relating to

(a) Respect for Diversity: Acknowledge we live in a dynamic community with an ever-changing variety of group and individual experiences, and affirm values derived from the understanding of our differences (whether based on age, race, creed, color, religious belief, religion, sex, national origin, ancestry, disability, familial status, marital status, sexual orientation, gender identity or expression, recipient of public assistance, ethnic group, military status, or physical characteristic).

(b) Bonds of Mutuality: Recognize the interdependence of our different interests as we work toward serving the common good, and ensure community relations have substantive meaning by acknowledging, as Martin Luther King Jr. stated, "Whatever affects one directly affects all indirectly."

(c) Equity: Affirm our commitment to social justice, and assure all groups and individuals have the opportunity to participate fully in civic affairs with equal access to employment, community resources, and decision-making processes.

(Ord. 12-17. Passed 4-9-18.)

552.25 INTIMIDATION.

(a) No person shall violate Section 537.05, 537.051, 537.06, 537.10(a)(3), (a)(4) or (a)(5), 541.03 or 541.04 by reason of age, race, creed, color, religious belief, religion, sex, national origin, ancestry, disability, familial status, marital status, sexual orientation, gender identity or expression, recipient of public assistance, ethnic group, military status, or physical characteristic.

(b) Whoever violates division (a) of this section is guilty of intimidation. A violation of intimidation under division (a) of this section is an offense of the next higher degree than the offense the commission of which is a necessary element of intimidation. In case of an offense that is a misdemeanor of the first degree, whoever violates this section may be prosecuted under R.C. § 2927.12.

(Ord. 12-17. Passed 4-9-18.)

552.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the third degree.

(Ord. 12-17. Passed 4-9-18.)

EXHIBIT 2



Nondiscrimination Ordinance FAQs

- 1. What is the goal of this ordinance?**
 - To prevent unlawful discrimination in South Euclid.
 - To affirm South Euclid's identity as welcoming city that values diversity.
 - To help South Euclid businesses thrive and attract new workers and jobs to our City.
- 2. What is prohibited?**
 - Discrimination on the basis of: age, race, color, creed, religion, national origin, ancestry, disability, marital status, familial status, sex, gender identity or expression, sexual orientation, or military status.
- 3. What is covered?**
 - Housing (sale, lease, rental, financing, etc)
 - Employment (hiring, promotion, discipline, working conditions, salary etc)
 - Public Accommodations (defined below)
 - Ethnic Intimidation
- 4. What is not affected?**
 - Certain religious spaces/facilities (churches, etc)
 - Public schools with an elected governing board
 - Certain religious positions (clergy, etc)
- 5. What is the proposed Human Rights Commission?**
 - Members to be appointed by the Mayor and approved by City Council
 - Will hear complaints of discrimination prohibited by the new ordinance
 - Can mediate complaints and issue penalties and remedies to correct discriminatory practices.
- 6. Why is this needed?**
 - Some forms of discrimination are not currently prohibited by state and federal law
 - This law will make addressing alleged discrimination less burdensome for individuals by providing a local forum for complaints.
- 7. How will this affect my business?**
 - This ordinance enhances the South Euclid business community's ability to attract and retain the best talent by providing an inclusive environment for everybody.
 - This ordinance will ensure our region's competitiveness. There are several examples from around the country of discriminatory legislation hurting business:
 - Texas:** it is estimated that discriminatory legislation would cause losses of \$964 million to \$8.5 billion in the state's GDP and as many as 185,000 lost jobs.
 - North Carolina:** discriminatory legislation was estimated to have "cost the state at least \$630 million in lost business" in 8 months since passage.
 - Indiana:** discriminatory legislation caused the state to lose "more than \$60 million in future convention business" alone.
- 8. Who is this going to affect?**
 - This ordinance sends a message that everybody is welcome in South Euclid: to work, to live, and to play. People who do the right thing and aren't in the business of discrimination won't be affected at all. However, sometimes people need a rule on the books to do the right thing.
 - Anyone who works, lives, or plays in South Euclid will now have legal protections based on their protected characteristic.

9. Where does South Euclid currently stand?

- There are no legal protections against discrimination currently in place at the local level in the areas of employment and public accommodations. There are some protections in the area of housing and ethnic intimidation.

10. What will this ordinance do?

- It will establish protections against discrimination based on the following characteristics: race, creed, color, religious belief, sex, national origin, age, ancestry, handicap, disability, familial status, marital status, sexual orientation, gender identity, gender expression, recipient of public assistance, ethnic group, military status, or physical characteristic. It will establish consistent and comprehensive protections of the aforementioned groups in employment, public accommodation, housing.
- The ordinance will provide a local civil remedy through the South Euclid Human Rights Commission for individuals who have experienced discrimination.

11. What does public accommodation mean?

- In general public accommodations are inns, taverns, hotels, motels, restaurants, wholesale outlets, retail outlets, banks, savings and loan associations, other financial institutions, credit information bureaus, insurance companies, dispensaries, clinics, hospitals, theaters, recreational parks and facilities, trailer camps, garages, public halls, and all other establishments which offer goods, services, accommodations and entertainment to the public within the city.

12. I thought these were protected under the State and Federal governments?

- Though race, color, creed, national origin, sex, religion, and disability are included in state and federal protections, sexual orientation and gender identity or expression are not protected characteristics under state or federal law.
- For those who experience discrimination, they will have the option a civil remedy from the South Euclid Human Rights Commission locally in addition to the limited protections at the state or federal level.

13. Where else is this type of legislation in effect?

- There are 18 other cities in Ohio that have fully comprehensive non-discrimination protections in the area of housing, employment, and public accommodations for all of the protected characteristics listed above. Visit www.equalityohio.org/city-map for the full list of cities and protections.
- Ohio is one of 28 states that does not provide these protections based on sexual orientation and gender identity or expression. Other states are doing this municipal work as well.

14. How can I support the cause? What else can I do?

- Write a letter of support.
- Follow Equality Ohio and the city of South Euclid for opportunities to get engaged and volunteer.
- Speak about the ordinance to friends, family co-workers, neighbors, fellow business owners.
- Update company policies for inclusivity for all.

15. How does this change my business practices? Do I need to change employee handbook or policies?

- This ordinance does not require businesses to change internal policies. It is best practice to update employee handbooks to reflect changes but it is not required.
- There is no need to change any other policies, practices, or facilities within your business because of this ordinance.
- If you are interested in inclusion training for your staff, contact gwen@equalityohio.org.

16. What's next?

- We will continue to build community support and raise awareness of the ordinance and of legal and lived equality for all South Euclid community members.

17. Where can I find the full text of the ordinance

- Contact Keith Benjamin at the City of South Euclid kbenjamin@seuclid.com or Gwen Stern at Equality Ohio gwen@equalityohio.org

EXHIBIT 3



December 11, 2017

Ms. Georgine Welo, Mayor
Ms. Jane Goodman, Council President
Mr. Dennis Fiorelli, President Pro Tem
Ms. Ruth Gray, Councilperson
Mr. Joseph Frank, Councilperson
Mr. Ed Icove, Councilperson
Mr. Marty Gelfand, Councilperson
Mr. Jason Russell, Councilperson
City of South Euclid
South Euclid Municipal Complex
1349 South Green Road
South Euclid, OH 44121

Re: Proposed Ordinance No. 12-17

Dear Mayor Welo and Members of the City Council:

The undersigned represents The Lyceum with respect to City of South Euclid proposed ordinance No. 12-17. The purposes of this letter are (1) to explain how the proposed ordinance will, if adopted, likely violate the legally protected rights of The Lyceum and similarly situated organizations; and (2) inform the council that The Lyceum will likely file suit against the city and city officials if the council enacts the proposed ordinance in its current form.

A. The Proposed Ordinance

As we understand it, the proposed ordinance would outlaw discrimination in employment, housing, and public accommodations.¹ The Lyceum is concerned about the potential impact of a number of the ordinance's provisions, discussed below.

Section 552(e) of the proposed ordinance states as follows:

“Discriminate, discrimination or discriminatory” means any act, policy or practice that, regardless of intent, has the effect of

¹ As we understand it, the original version of the ordinance imposed its non-discrimination obligations on educational institutions, but the provision pertaining to educational institutions (Section 552.04) has been removed. Please let us know if this understanding is incorrect.

Letter to South Euclid City Council

December 11, 2017

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subjecting any person to differential treatment as a result of that person's age, race, color, creed, religion, national origin, ancestry, disability, marital status, military status, gender, gender identity or expression, sexual orientation, source of income, ethnic group, or physical characteristic

Section 552(j) provides as follows:

“Gender identity or expression” means having or being perceived as having a gender identity or expression whether or not that gender identity or expression is different from that traditionally associated with the sex assigned to that individual at birth.

Section 552(p) of the proposed ordinance declares:

“Sexual orientation” means actual or perceived heterosexuality, homosexuality, or bisexuality.

Section 552.06(e) provides as follows:

Nothing contained in this chapter shall be deemed to prohibit selection or rejection based solely upon a bona fide occupational qualification or a bona fide physical requirement. Nothing contained in this chapter shall be deemed to prohibit a religious or denominational institution from preferring to employ an individual of a particular religion to perform work connected with the performance of religious activities by the institution. If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide occupational qualification, or a permissible bona fide physical requirement, that party shall have the burden of proving:

1. That the discrimination is in fact a necessary result of such a bona fide condition; and;
2. That there exists no less discriminatory means of satisfying the bona fide requirement.

Section 552.06(f) of the proposed ordinance states:

If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide religious or denominational preference, that party shall have the burden of proving that the discrimination is in fact a necessary result of such a bona fide condition.

B. The Lyceum's Employment Policies and Practices

Letter to South Euclid City Council

December 11, 2017

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The Lyceum describes its mission as follows:

The Lyceum has as its mission nothing less than the formation of a liberally educated Catholic lady or gentleman. Broadly stated, The Lyceum aims to produce graduates who, having been formed by Catholic western civilization, then become bearers and guardians of that civilization. In more specific terms, the Lyceum aims to prepare its students not only for successful performance in excellent colleges, but to prepare students who will be a “leaven” in the world. Most importantly The Lyceum seeks to form students who will become lifelong learners in a joyful pursuit of the Truth who is Christ.

It describes the role of Catholic teaching as follows:

Aside from regular instruction in Theology from The Catechism of The Catholic Church (as well as from Fathers and Doctors of the Church and excellent Catholic Authors), Lyceum students receive an education that proceeds from an integration of faith and reason. There is no academic subject that is able to be taught divorced from the teachings of the faith or split off from the mind of the church. The school holds fast to the principle that all the sciences, philosophical disciplines, and arts are ultimately handmaidens to Theology. Ultimately to form students who are able to live, defend, and grow in the faith, demands that they study all subjects grounded in the habit of scientific and philosophical thinking that is most properly the mind of the Catholic.

In order to pursue its distinctly religious educational mission, The Lyceum draws its faculty and administrators from among those whose beliefs and behavior support and are consistent with the teachings of the Catholic Church. The Lyceum’s leadership draws inspiration for its employment practices from, among other things, The Holy See’s Teaching on Catholic Schools, by Archbishop J. Michael Miller, CSB. According to the Holy See, one indicator of a school’s authentic catholicity is “the vital witness of its teachers and administrators.” Archbishop Miller continues:

With them lies the primary responsibility for creating a Christian school climate, as individuals and as a community. Indeed, “it depends chiefly on them whether the Catholic school achieves its purpose.” Consequently the Holy See’s documents pay a great deal of attention to the vocation of teachers and their participation in the Church’s evangelizing mission. There is a supernatural calling and not simply the exercise of a profession. “The nobility of the task to which teachers are called demands that, in imitation

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of Christ, the only Teacher, they reveal the Christian message not only by word but also by every gesture of their behavior.” More than a master who teaches, a Catholic educator is a person who gives testimony by his or her life. . . . To fulfill their responsibility of speaking about the Father, educators in Catholic schools, with very few exceptions, should be practicing Catholics who are committed to the Church and living her sacramental life. . . . When such a policy is ignored, it is inevitable that children will absorb, even if they are not explicitly taught, a soft indifferentism that will sustain neither their practice of the faith nor their ability to imbue society with Christian values. Principals, pastors, school-board members, parents, and bishops share in the serious duty of hiring teachers who meet the standards of doctrine and integrity of life essential to a flourishing Catholic school. The Holy See shares the solicitude of the American bishops about employing teachers with a clear understanding of and commitment to Catholic education. A primary way to foster a school’s catholicity is by carefully hiring men and women who enthusiastically endorse its distinctive ethos, for Catholic education is strengthened by witnesses to the gospel.

As well as fostering a Catholic worldview across the curriculum, even in so-called secular subjects, “if students in Catholic schools are to gain a genuine experience of the Church, the example of teachers and others responsible for their formation is crucial: the witness of adults in the school community is a vital part of the school’s identity.” Children will pick up far more by the example of their educators than by masterful pedagogical techniques, especially in the practice of Christian virtues. In the words of Pope Benedict XVI: The central figure in the work of educating, and especially in education in the faith, which is the summit of the person’s formation and is his or her most appropriate horizon, is specifically the form of witness. This witness becomes a proper reference point to the extent that the person can account for the hope that nourishes his life [cf. 1 Pet. 3:15] and is personally involved in the truth that he proposes.

The prophetic words of Pope Paul VI ring as true today as they did more than thirty years ago: “Modern man listens more willingly to witnesses than to teachers, and if he does listen to teachers, it is because they are witnesses.” What educators do and how they act are more significant than what they say — inside and outside the classroom. This is how the Church evangelizes. “The more completely an educator can give concrete witness to the model of the ideal person [Christ] that is being presented to the students, the more this ideal will be believed and imitated.” Hypocrisy turns off

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today's students. While their demands are high, perhaps sometimes even unreasonably so, if teachers fail to model fidelity to the truth and virtuous behavior, then even the best of curricula cannot successfully embody a Catholic school's distinctive ethos. For example, if teachers and administrators demonstrate the individualistic and competitive ethic that now marks so much public education, they will fail to inspire students with the values of solidarity and community, even if they praise those values verbally. The same can be said about a failure to give clear witness to the Church's teaching on the sanctity of marriage and the inviolability of human life. Catholic educators are expected to be models for their students by bearing transparent witness to Christ and to the beauty of the gospel. If boys and girls are to experience the splendor of the Church, the Christian example of teachers and others responsible for their formation is indispensable, and no effort should be spared in guaranteeing the presence of such witness in every Catholic school.

In light of these teachings, The Lyceum expects its faculty and administrators to respect and follow Catholic teaching regarding sexual morality, marriage, and gender, among other things. It also draws its faculty and administrators from among those who enthusiastically embrace fundamental Catholic theological and doctrinal commitments.

C. Application of the Proposed Ordinance to The Lyceum

The question, then, is whether the proposed ordinance imposes any limits upon the The Lyceum's employment practices described in the proceeding section.

As noted above, Section 552(e) of the proposed ordinance defines "discrimination" to refer to "any act, policy or practice that, regardless of intent, has the effect of subjecting any person to differential treatment" based on one or more of the listed protected characteristics, which include creed, religion, marital status, gender, gender identity or expression, and sexual orientation.

Given this expansive definition, it is conceivable—even likely—that the City will interpret the ordinance to restrain The Lyceum's ability to maintain certain of its current employment practices, especially those that impose belief and conduct expectations upon faculty and administrators.

In light of this, the scope of the exemption set forth in Section 552.06(e) takes on particular importance. The exemption states in part that "[n]othing contained in this chapter shall be deemed to prohibit a religious or denominational institution from preferring to employ an individual of a particular religion to perform work connected with the performance of religious activities by the institution."

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This language raises a number of significant questions:

1. Is The Lyceum a “religious or denominational institution”?
2. What functions of The Lyceum, if any, do not constitute “religious activities”?
3. What employee labor, if any, is not “connected with the performance of religious activities by the institution”?
4. What does the phrase “of a particular religion” mean? Does it refer exclusively to adherence to particular beliefs, or does it include behavioral standards as well? Does it permit The Lyceum to decline to employ an individual who is engaged unrepentantly and persistently in homosexual conduct or adultery? Does it permit The Lyceum to require employees to use private facilities consistent with their biological sex (as opposed to their self-perceived “gender identity”)?

The ordinance requires an employer invoking the exemption to prove “[t]hat the discrimination is in fact a necessary result of such a bona fide condition.” How will the City determine whether alleged discrimination is “necessary” or not?

Given these significant ambiguities, it is likely that the ordinance, if adopted in its current form, will violate The Lyceum’s legally protected rights. These include its right of expressive association,² its right to select ministerial employees without government interference,³ and its right to freely exercise its religion, all of which are protected by the First Amendment to the United States Constitution and comparable provisions of the Ohio Constitution. The City’s enforcement of the ordinance will almost certainly involve it in impermissible examination of inherently religious questions, something also prohibited by the First Amendment.⁴

In light of the foregoing, The Lyceum respectfully requests that the city council not adopt the proposed ordinance. If the council does elect to adopt the ordinance in its current form, The Lyceum will consider litigation against the city and city officials.⁵

Very truly yours,

/s Gregory S. Baylor

Gregory S. Baylor

cc: Luke Macik, Headmaster, The Lyceum

² *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000); *Hurley v. Irish-American Gay, Lesbian, & Bisexual Group of Boston*, 515 U.S. 557 (1995).

³ *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012).

⁴ *See Colorado Christian Univ. v. Weaver*, 534 F.3d 1245 (10th Cir. 2008).

⁵ Such a lawsuit would be filed under 42 U.S.C. § 1983. In section 1983 lawsuits, prevailing plaintiffs are entitled to recover their attorneys’ fees and costs. *See* 42 U.S.C. § 1988.

EXHIBIT 4



February 1, 2019

Ms. Georgine Welo
Office of the Mayor
Mr. Michael Lograsso
Law Director
City of South Euclid
1349 South Green Road
South Euclid, OH 44121
Via electronic mail

RE: Chapter 552's Application to a Religious School

Dear Ms. Welo:

I am the headmaster of The Lyceum, a classical Catholic school, located at 1545 South Green Road in the City of South Euclid. I write to inquire whether Chapter 552 of the City Code of Ordinances (the Ordinance) applies to The Lyceum, especially with respect to the employment and public accommodations/business establishment provisions.

The Ordinance creates a Civil Rights Review Board, which is charged with enforcing the Ordinance. *Id* § 552.09. The Lyceum was unable to find contact information for the Board on the City of South Euclid's website. Accordingly, The Lyceum requests that copies of this letter be sent to the Board members for their review and response as well.

The Lyceum is a nonprofit, private religious school that employs more than four people, and is dedicated to providing students in grades six through twelve with a rigorous Catholic liberal arts education. As a faith community in communion with the Catholic Church, The Lyceum abides by the teachings of the Catholic Church as set forth by the Magisterium and as articulated in the *Catechism of the Catholic Church*, including the Church's teachings on marriage and sexuality and the Church's vision of education.

The Lyceum, consistent with teachings of Holy Scripture and the Magisterium of the Catholic Church, believes that biological sex is objective and immutable, that marriage is an exclusive, lifelong union between a man and woman, and that sexual relations are properly reserved to such a marriage.

The school integrates faith in all of its classes; no subject is divorced from the teachings of Catholic Church. The Lyceum's Catholic emphasis is not limited to students' intellectual life, but also forms students in their devotional life, especially through Mass and prayer. All members of The Lyceum community—including faculty, staff, parents, guardians, and students—are expected to abide by Catholic teachings in all aspects of their lives.

The Ordinance prohibits discrimination based on religion, creed, marital status, sexual orientation, and gender identity or expression (among other things) in employment, housing, and public accommodations.

The Lyceum is unsure about whether the City considers it to be a public accommodation; specifically, whether it is an “institution . . . which by its nature is distinctly private.” *See id* § 552.01(n).

The Ordinance defines public accommodations as follows

“Place of public accommodation” means inns, taverns, hotels, motels, restaurants, wholesale outlets, retail outlets, banks, savings and loan associations, other financial institutions, credit information bureaus, insurance companies, dispensaries, clinics, hospitals, theaters, recreational parks and facilities, trailer camps, garages, public halls, and all other establishments which offers goods, services, accommodations and entertainment to the public within the City. A place of public accommodation does not include any institution, club or other place of accommodation, which by its nature is distinctly private.

Id § 552.01(n).

The Lyceum is likewise unsure about whether the City considers it to be a “business establishment” as defined in section 552.01(c) of the Ordinance. Is it the City's position that The Lyceum offers educational services “to the general public”?

It is also unclear whether the City considers The Lyceum's religious hiring practices to violate the Ordinance. The Lyceum is unsure whether the City considers its employment practices to be inconsistent with section 552.02 of the Ordinance. If it does, the next question is whether the City considers those practices to be legally permissible under section 552.06(e) and (f). Section 552.06(e) reads as follows:

Nothing contained in this chapter shall be deemed to prohibit selection or rejection based solely upon a bona fide occupational qualification or a bona fide physical requirement. Nothing contained in this chapter shall be deemed to prohibit a religious or denominational institution from preferring to employ an individual of a particular religion to perform work connected with the performance of religious activities by the institution. If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide occupational qualification, or a permissible bona fide physical requirement, that party shall have the burden of proving:

- (1) That the discrimination is in fact a necessary result of such a bona fide condition; and
- (2) That there exists no less discriminatory means of satisfying the bona fide requirement.

Id § 552.06(e). And section 552.06(f) provides with respect to proof: “If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide religious or denominational preference, that party shall have the burden of proving that the discrimination is in fact a necessary result of such a bona fide condition.” *Id* § 552.06 (f).

Please respond in writing no later than Thursday, February 15, 2019. If we do not hear from the City by such date, we will take such silence or nonresponse by the City to mean that the City does intend on applying the entire Ordinance to The Lyceum.

Thank you for your consideration and assistance.

Sincerely,

s/ Luke Macik

Luke Macik
Headmaster
The Lyceum
1545 South Green Road
South Euclid, OH 44121
(216) 707-1121
lmacik@thelyceum.org

EXHIBIT 5

From: [MLograsso](#)
To: Imacik@thelyceum.org; mayor@seuclid.com
Subject: RE: Chapter 552's Application to a Religious School
Date: Tuesday, February 5, 2019 1:33:27 PM

Dear Mr. Macik,

I am in receipt of your email/letter which you sent on February 1, 2019. Thank you for reaching out to the Mayor and myself. In your letter you ask that the city advise you whether or not Chapter 552 of the South Euclid Codified Ordinances applies to the Lyceum. As the legal counsel for the City of South Euclid I cannot provide you a legal interpretation of that or any other ordinance or provide you legal advice as I do not represent the Lyceum. I would suggest you contact your legal counsel and ask them to review the ordinance and give you their opinion on how it applies to the Lyceum.

I am not aware of any complaint filed against your organization at this time. I would also point you to section 552.06 "General Exceptions" paragraph (e) to be specific and review that paragraph as you noted in your letter. You also asked whether the City considers The Lyceum's religious hiring practices to be in violation of the Ordinance. I have no knowledge of The Lyceum's hiring practices and would again advise you to speak with your legal counsel to get their opinion on how the Ordinance applies to the Lyceum's hiring practices.

I would suggest the same discourse with your legal counsel about the interpretation of 552.01 as to whether or not The Lyceum would be considered a public accommodation within that definition stated.

I would also advise you that the Cuyahoga County Council passed its own anti-discrimination ordinance which I believe is very similar if not identical to South Euclid's. You may want to ask your counsel about that ordinance as well to be safe. Should you have any other questions or I can be of service to you or the Lyceum in any other way please feel free to contact me or the Mayor.

Very Truly Yours,

Michael Lograsso

From: The Lyceum [mailto:Imacik@thelyceum.org]
Sent: Friday, February 01, 2019 12:16 PM
To: mayor@seuclid.com
Cc: mlograsso@seuclid.com
Subject: Chapter 552's Application to a Religious School

February 1, 2019

Ms. Georgine Welo
Office of the Mayor
Mr. Michael Lograsso
Law Director

The Lyceum v. City of South Euclid
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0022

City of South Euclid
1349 South Green Road
South Euclid, OH 44121
Via electronic mail

RE: Chapter 552's Application to a Religious School

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Dear Mayor Welo:

I am the headmaster of The Lyceum, a classical Catholic school, located at 1545 South Green Road in the City of South Euclid. I write to inquire whether Chapter 552 of the City Code of Ordinances (the Ordinance) applies to The Lyceum, especially with respect to the employment and public accommodations/business establishment provisions.

The Ordinance creates a Civil Rights Review Board, which is charged with enforcing the Ordinance. *Id* § 552.09. The Lyceum was unable to find contact information for the Board on the City of South Euclid's website. Accordingly, The Lyceum requests that copies of this letter be sent to the Board members for their review and response as well.

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The Lyceum, consistent with teachings of Holy Scripture and the Magisterium of the Catholic Church, believes that biological sex is objective and immutable, that marriage is an exclusive, lifelong union between a man and woman, and that sexual relations are properly reserved to such a marriage.

The school integrates faith in all of its classes; no subject is divorced from the teachings of Catholic Church. The Lyceum's Catholic emphasis is not limited to students' intellectual life, but also forms students in their devotional life, especially through Mass and prayer. All members of The Lyceum community—including faculty, staff, parents, guardians, and students—are expected to abide by Catholic teachings in all aspects of their lives.

The Ordinance prohibits discrimination based on religion, creed, marital status, sexual orientation, and gender identity or expression (among other things) in employment, housing, and public accommodations.

The Lyceum is unsure about whether the City considers it to be a public accommodation; specifically, whether it is an "institution . . . which by its nature is distinctly private." *See id* § 552.01(n).

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"Place of public accommodation" means inns, taverns, hotels, motels, restaurants, wholesale outlets, retail outlets, banks, savings and loan associations, other financial institutions, credit information bureaus, insurance companies, dispensaries, clinics, hospitals, theaters, recreational parks and facilities, trailer camps, garages, public halls, and all other establishments which offers goods, services, accommodations and entertainment to the public within the City. A place of public accommodation does not include any institution, club or other place of accommodation, which by its nature is

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0023

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Id § 552.01(n).

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Please respond in writing no later than Thursday, February 15, 2019. If we do not hear from the City by such date, we will take such silence or nonresponse by the City to mean that the City does intend on applying the entire Ordinance to The Lyceum.

Thank you for your consideration and assistance. A pdf copy of this letter is attached.

Sincerely,

s/ Luke Macik

Luke Macik
Headmaster
The Lyceum
1545 South Green Road
South Euclid, OH 44121
(216) 707-1121

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lmacik@thelyceum.org

EXHIBIT 6



Catholic Educational Mission and Community Policies

The Mission of Catholic Education

Catholic education is an expression of the Church's mission of salvation and an instrument of evangelization: to make disciples of Christ and to teach them to observe all that He has commanded.¹ Through Catholic education, students encounter God, who in Jesus Christ reveals His transforming love and truth.² Christ is the foundation of Catholic education;³ He is the Master who journeys with students through school and life as genuine Teacher and perfect Man.⁴

As a faith community in communion with the Church, all its members give witness to Christ's teachings as set forth by the Magisterium and especially as articulated in the *Catechism of the Catholic Church*. With a Christian vision, Catholic education fulfills its purpose of the critical transmission of culture in the light of faith⁷ and integral formation of students in body, mind, and spirit.⁵

Evangelization. The Lyceum assists in the salvific mission of the Catholic Church by preparing all students to seek and proclaim the Good News through education and formation in the Catholic faith.⁶

Encounter with Christ. Through daily interaction, prayer, liturgies, and participation in the sacraments,⁷ all members of The Lyceum's community encounter Christ and His transforming love and truth and in so doing are drawn to proclaim and fulfill His calling for them and for the Christian community.⁸ Through this encounter, students are moved toward the fullness of their humanity, becoming more aware of the gift of Faith given them at Baptism,⁹ to mature into adults who will bear witness to the Mystical Body of

¹ [Matthew 28: 19-20](#).

² Pope Benedict XVI, [Meeting With Catholic Educators, Washington, DC](#), 2008; Pope Benedict XVI, [Spe Salvi](#), 2007, #4.

³ Sacred Congregation for Catholic Education, [The Catholic School](#), 1977, #34.

⁴ Congregation for Catholic Education, [The Religious Dimension of Education in a Catholic School](#), 1988, #25.

⁵ Congregation for Catholic Education, [Circular Letter to the Presidents of Bishops' Conferences on Religious Education in Schools](#), 2009 #1.

⁶ [The Catholic School](#), 1977, #5.

⁷ [The Catholic School](#), 1977, #54, 55.

⁸ Pope St. John Paul II, [Catechesi Tradendae](#), 1979, #23.

⁹ [The Religious Dimension of Education in a Catholic School](#), #98.

Christ, respect the dignity of the human person, provide service, lead apostolic lives, and build the Kingdom of God.¹⁰

Community of faith. As members of a Catholic educational community, we are all called to model confident and joyful public witness in both word and deed and to live by the moral demands of the Gospel¹¹ in order to model for students the integration of faith and life and to assist in the development of virtues characteristic of the Catholic Christian.¹² We do this by living in communion with the Church and its teachings. Faculty and staff in particular are expected to abide by the Church's official teachings and by the vision of education set forth in *The Holy See's Teaching on Catholic Schools*, and The Lyceum accordingly will hire for Catholic mission as described in the same document.¹³

Believing in the mercy and forgiveness of Christ, we acknowledge our sinful and fallen nature and look to Christ and to the Sacraments He has given us as sources of grace and strength, particularly when striving to live according to the Ten Commandments given to us in the Old Testament and the Beatitudes given to us by Christ in the New.

Authority for teaching. We profess that all authority for our moral and spiritual teaching is based on the Gospels of Jesus Christ¹⁴ and the traditions of the Catholic Church as taught by its ordinary and extraordinary Magisterium, and especially as contained within the *Catechism of the Catholic Church*.

Transmission of culture. Permeated by an evangelical spirit of authentic freedom and charity,¹⁵ The Lyceum provides a unique setting where everyone is aware of the living presence of Jesus Christ as evidenced throughout the daily rituals of prayer and Sacraments, harmonious and friendly relationships,¹⁶ and curricular selections where faith and culture are intertwined in all areas of school life.¹⁷ Cultivating within students their intellectual, creative, and aesthetic faculties in order to develop the right use of reason, promote a sense of values, and encouraging just attitudes and prudent behavior,¹⁸ The Lyceum strives to hand down the cultural patrimony of previous generations, in particular a Christian anthropology which teaches that man was made in the image and likeness of God.

¹⁰ [The Religious Dimension of Education in a Catholic School](#), #95; [The Catholic School](#), #7.

¹¹ Sacred Congregation for Catholic Education, [Lay Catholics in Schools: Witnesses to Faith](#), 1982, #6.

¹² Congregation for Catholic Education, [Educating Together in Catholic Schools: A Shared Mission Between Consecrated Persons and the Lay Faithful](#), 2007, #24.

¹³ Archbishop J. Michael Miller, CSB, Secretary, Congregation for Catholic Education, *The Holy See's Teaching on Catholic Schools*.

¹⁴ [The Catholic School](#), #34.

¹⁵ Pope Paul VI, [Gravissimum Educationis](#), 1965, #8.

¹⁶ [The Religious Dimension of Education in a Catholic School](#), #26, 27.

¹⁷ United States Conference of Catholic Bishops, [Renewing our Commitment to Catholic Elementary and Secondary Schools in the Third Millennium](#), 2005.

¹⁸ [Gravissimum Educationis](#), #5; [Lay Catholics in Schools: Witnesses to Faith](#), #8.

Catholic Teaching and Human Sexuality

All members of The Lyceum community, including faculty, staff, parents, guardians, and students, are expected to strive to live a life of virtue guided by the teachings of the Catholic Church in all aspects of their lives. The Lyceum's pastoral and policy practices are written in fidelity to the moral guidance and teachings of the Catholic Church in all areas that touch on human flourishing. The Lyceum establishes an environment of encouragement, mercy, healing, and love to accompany its members as we journey on the path toward holiness.

At the heart of a Catholic school's unique educational charism is integral formation of the whole human person. The Church instructs us,

Since true education must strive for complete formation of the human person that looks to his or her final end as well as to the common good of societies, children and youth are to be nurtured in such a way that they are able to develop their physical, moral, and intellectual talents harmoniously, acquire a more perfect sense of responsibility and right use of freedom, and are formed to participate actively in social life.¹⁹

Because our efforts at integral formation include the integrity of body, spirit, and moral development, The Lyceum has a proper concern for each student's behavior and development in the complex area of human sexuality. As a Catholic institution, we believe that human bodies are gifts from God and temples of the Holy Spirit.²⁰ All men and women are called to a life of chastity appropriate to their vocation as single, married, or consecrated religious. The Church defines chastity as "the successful integration of sexuality within the person and thus the inner unity of man in his bodily and spiritual being".²¹

The Church also teaches that "sexuality, in which man's belonging to the bodily and biological world is expressed, becomes personal and truly human when it is integrated into the relationship of one person to another, in the complete and lifelong mutual gift of a man and a woman".²² We believe that human sexual behavior is only properly oriented to the ends of love and life in the context of Holy Matrimony.²³

The proper understanding of human sexuality requires personal integrity and full integration of body and soul as created by God. According to the Church, "the chaste person maintains the integrity of the powers of life and love placed in him. This integrity ensures the unity of the person; it is opposed to any behavior that would impair it. It tolerates neither a double life nor duplicity in speech."²⁴

¹⁹ Libreria Editrice Vaticana, [Code of Canon Law](#), Canon 795.

²⁰ [1 Cor 6:19](#).

²¹ [Catechism of the Catholic Church](#), #2337.

²² [Ibid.](#) See also [Canon 20 of the Code of Canon Law for the Oriental Churches](#): "The Christian faithful since they are called by baptism to lead a life in conformity with the teaching of the gospel, have the right to a Christian education by which they will be properly instructed so as to develop the maturity of a human person and at the same time come to know and live the mystery of salvation."

²³ [Catechism of the Catholic Church](#), #2360.

²⁴ [Ibid.](#)

We believe that the body and soul are intimately united: the body does not contain the soul like water in a glass, but the two are intimately dependent upon each other to express man as the highest order of creation.²⁵ We believe that the sexes are complementary and that as “male and female he made them”.²⁶ Our given biological sex is part of the divine plan.²⁷ The Church teaches that sexual identity is “a reality deeply inscribed in man and woman,”²⁸ it constitutes but is more than one’s biological identity,²⁹ and a person “should acknowledge and accept his sexual identity”.³⁰ One’s biological sex and gender expression are not to be disaggregated,³¹ but should be seen in harmony, according to God’s plan.

As a Catholic educational institution, we understand truth to be the correspondence of mind to reality:³² a reality which is created by and held in existence by God and which entails the fullness of God’s creation and divine plan. We also affirm that reality is knowable through the use of properly functioning senses and reason, as well as through the aid of divine revelation and the teaching of the Church.³³

We believe that man and woman share the same humanity³⁴ and “inalienable dignity which comes to them immediately from God their Creator.”³⁵ We believe “they are equal as persons (“bone of my bones...”) and complementary as masculine and feminine.” Therefore they are deserving of respect, and no harassment, violence, or discrimination because of one’s sex will be tolerated.

Offenses against chastity and marriage, including those described in the *Catechism of the Catholic Church*, will not be tolerated. Members of the Lyceum community may not advocate for such behaviors, share conversations or publications of a prurient nature, or otherwise impede chastity in the context of our Catholic school classes, activities, or events.

Behaviors that are contrary to Catholic morality and the expectations of this school include but are not limited to: vulgar language and gestures of a sexual nature, immodest dress or deportment, expressions of lust, masturbation, pornography, fornication, homosexual activity, expressing a gender that is discordant with one’s biological sex, adultery, cohabitating in a sexual relationship outside of marriage, voluntary sterilization, artificial contraception, in vitro fertilization, procuring an abortion, and sexual harassment or abuse.

²⁵ [Catechism of the Catholic Church](#), #358, 365; [Catechism of the Catholic Church](#), #2332.

²⁶ [Catechism of the Catholic Church](#), #369-373; [Gen 1:27](#).

²⁷ [Gen. 1:27](#); [Matthew 19:4](#); [Mark 10:6](#).

²⁸ Congregation for the Doctrine of Faith, [Letter to Bishops of the Catholic Church on the Collaboration of Men and Woman in the Church and the World](#), 2004, #8.

²⁹ [Catechism of the Catholic Church](#), #2332-2333; [Catechism of the Catholic Church](#), #2361; Pontifical Council for the Family, [Family, Marriage and ‘De Facto’ Unions](#), 2000, #8.

³⁰ [Catechism of the Catholic Church](#), #2393.

³¹ [Family, Marriage and ‘De Facto’ Unions](#), #8.

³² St. Thomas Aquinas, [Summa Theologica](#), First Part, Question 16.

³³ Pope St. John Paul II, [Fides et Ratio](#), 1998, #22.

³⁴ [Catechism of the Catholic Church](#), #371.

³⁵ [Catechism of the Catholic Church](#), #369.

Community Policies

The Lyceum has adopted the following terminology and policies in fidelity to its Catholic educational mission as described above:

Definition of Terms

“Sex” means the biological condition of being male or female as based upon physical differences at birth.³⁶ “Gender” is a person’s identity as male or female, harmonious with one’s biological sex upon birth.³⁷ “Chastity” is the successful integration of sexuality within the person and thus the inner unity of man in his bodily and spiritual being.³⁸ “Marriage” is the Sacrament of Holy Matrimony, by which one man and one woman unite in a lifelong partnership for the good of the spouses and the procreation and education of children.³⁹

Athletic Policy

Students are only eligible to participate on The Lyceum’s sport teams consistent with their biological sex. In order to maintain dignity, modesty, and respect for forms of physical contact between members of the opposite sex, at no time will members of the opposite sex wrestle each other in intra-school or inter-school activities.

Bullying Policy

The common good and Christian justice and charity demand a school environment that is safe and affirming of the dignity of all persons. Bullying of any kind will not be tolerated.

Chastity

All members of this Catholic school community are called to a life of chastity appropriate to their vocation as single, married, or consecrated religious. This requires modesty in language, appearance, and behavior.

Dance Policy

In keeping with the Christian mission and moral standards of The Lyceum, student dress and behavior is to conform to those characteristics of a virtuous and Christ-centered person at all times, including dances and social activities. Consistent with these expectations, students are to refrain from any sexually suggestive behavior both on and off the dance floor. Because the

³⁶ Physical differences at birth include chromosomal levels. In the unlikely event that a biological sex determination made at birth is uncertain or inaccurate (a situation affecting less than .1% of the human population) chromosomal levels may need be taken into consideration.

³⁷ [*Catechism of the Catholic Church*, #2333.](#)

³⁸ [*Catechism of the Catholic Church*, #2337.](#)

³⁹ [*Catechism of the Catholic Church*, #1601.](#)

Church teaches that same-sex attractions are disordered,⁴⁰ advocating for or expressing same-sex attractions, including same-sex couples at dances, is not permitted.

Dress Code/Uniform Code

In order to maintain uniform appearance and proper comportment throughout the school day and at school events, all students, staff, and faculty must follow the dress code expectations of their biological sex while on campus and while representing The Lyceum at outside functions. Modesty is expected at all times.

Facilities Use Policy

Chaste behavior and modesty in dress and deportment is expected at all times on school property and at school events. All students, staff, faculty, and visitors are to observe modesty when using changing facilities, locker rooms, showers, and restrooms and may only use facilities that conform to the individual's biological sex. The latter policy applies in any state of undress in front of others.

School facilities are dedicated to the mission of Catholic education and may not be used by any member of The Lyceum community or any external organization or individual for any purpose or cause that is contrary to Catholic teaching or otherwise opposed to the Catholic Church.

Formal Titles and Names

Students will address all adults by their proper titles as based on The Lyceum's employment documents (Mr., Mrs., Miss, Dr., Sr., Brother, etc.) and surname (last name). School personnel will address students by the original name with which the student was registered (or its common derivative) and correlating pronouns.

Gender Identity

The Lyceum will interact with students according to their biological sex as based upon physical differences at birth. A member of The Lyceum community who wishes to express a gender other than his or her biological sex is understood as operating outside of the "reality deeply inscribed"⁴¹ within. Assisting the person in his or her disconnect with this reality, however sincerely experienced, by agreeing to participate in any efforts to change natural gender expression is contrary to the pursuit of the truth. Authentic love, a gift of the self for the good of the other, requires that we compassionately dwell in the truth and assist those we love to do the same.

The Lyceum recognizes that occasionally there may be instances where young people experience dissonance between their biological sex and the roles and norms advocated by

⁴⁰ [*Catechism of the Catholic Church*, #2357.](#)

⁴¹ [*Letter to Bishops of the Catholic Church on the Collaboration of Men and Woman in the Church and the World*, #8.](#)

society.⁴² Some young people might feel drawn to dress, act, and even manipulate their physical bodies in ways contrary to God’s plan. The Lyceum advocates that young people, working with their parents, bring these types of issues to their pastor as well as to other trained professionals who might best assist them in clarifying and defining issues of self (and sexual) identity in accord with Catholic teaching and God’s natural plan.

Mission Integrity

The Lyceum joyfully exercises its responsibility to teach Catholic faith and morals in all fullness and especially as expressed in the *Catechism of the Catholic Church*. Parents or guardians and non-Catholics whose religious practices and beliefs run counter to Church teaching might experience possible conflicts as we maintain mission integrity. Sincere questioning of the practices of the Catholic faith in order to more deeply understand them are welcome, but openly hostile, public defiance and challenge of Catholic truths or morality, are signs that a student, parent, staff or faculty member may not be a fit for The Lyceum’s primary evangelical mission and, thus, may be denied admission or may be asked to leave The Lyceum.

Public Displays of Affection

In order to maintain a professional atmosphere of learning, romantic displays of affection, such as romantic hugging, kissing, hand-holding, sitting on laps, etc., are not permitted at school or at school-sponsored events.

Same-Sex Attraction

Because the Catholic Church teaches that same-sex attraction is inherently disordered⁴³ and that sexual activity is only appropriate for the purposes of love and life within Holy Matrimony⁴⁴, individuals experiencing this disordered inclination may not advocate, celebrate, or express it in the context of our Catholic school classes, activities, or events.

The use of the term “same-sex attraction” in discussing homosexual inclinations is preferred, since there is only one proper sexual orientation: that which orients a man to a woman in the bonds of matrimony. Because labels can falsely promote a lasting identification or enduring notion of self, The Lyceum avoids labeling individuals with such terms as “gay,” “lesbian,” “bisexual,” or “queer,” even when the individual might desire such identification.

The Church encourages individuals experiencing same-sex attraction to pursue the virtues of chastity, self-mastery, and friendship instead of acting upon those inclinations romantically or sexually.⁴⁵

⁴² Pontifical Council for the Family, *Family, Marriage and ‘De Facto’ Unions*, 2000, #8.

⁴³ *Catechism of the Catholic Church*, #2357.

⁴⁴ *Catechism of the Catholic Church*, #2360.

⁴⁵ Sacred Congregation for the Doctrine of the Faith, *Persona Humana*, 1975, #8; Synod of Bishops, *The Pastoral Challenges of the Family in the Context of Evangelization: Instrumentum Laboris*, 2014, #110-112.

EXHIBIT 7



The Lyceum Employment Statement

The Lyceum, as a distinctly Catholic school, hires faculty and staff who, in belief and practice, are committed to the teachings of the Catholic Church as set forth by the Magisterium and as articulated in the *Catechism of the Catholic Church*. The Lyceum's faculty and staff contribute not only to students' intellectual life, but also form students in their devotional life, so fidelity to Catholic beliefs is imperative to employment at The Lyceum.

EXHIBIT 8

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

The Lyceum,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. _____
)	
The City of South Euclid, Ohio)	
)	
<i>Defendant.</i>)	
_____)	

AFFIDAVIT OF RICHARD J. WALL, Jr.

I, Richard J. Wall, Jr., hereby declare as follows:

1. I am over the age of 21 and am capable of making this declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or crime involving dishonesty. I make this declaration based on my personal knowledge and experience of The Lyceum and our religious beliefs and practices.

2. I am a member and Chairman of the Board of Trustees of The Lyceum, and I assumed the role of Chairman on June 12, 2017, and the role of member on August 20, 2013.

3. The Lyceum is an independent school, governed by a Catholic board of directors who are committed to a Catholic vision of classical education.

4. The Lyceum, consistent with teachings of Holy Scripture and the Magisterium of the Catholic Church, believes that biological sex is objective and immutable; that marriage is an exclusive, lifelong union between a man and woman; and that sexual relations are properly reserved to such a marriage.

5. In light of the Ordinance, The Lyceum has drafted a policy which explains these beliefs and their implications for the school's community.

6. The Lyceum has also drafted an employment statement for its website.

7. The Lyceum's Board of Trustees, however, has not formally adopted the sexuality policy or the employment statement due to the Ordinance's ban on discrimination in employment and public accommodations based on religion, creed, marital status, sexual orientation, and gender identity or expression.

8. The Lyceum wants to publish the sexuality policy and the employment statement on its website, www.TheLyceum.org.

9. The Lyceum reasonably fears that formally adopting and publishing the written sexuality policy and employment statement would violate the Ordinance, subjecting The Lyceum to damages, costs, legal fees, and other remedial action.

10. Were it not for the Ordinance, The Lyceum's Board of Trustees would immediately pass the sexuality policy and the employment statement and post them to the school's website.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 1st day of April, 2019.



Richard J. Wall, Jr.
Member and Chairman of the Board of Trustees
The Lyceum