

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SACRED HEART OF JESUS PARISH,
GRAND RAPIDS, et al.,

Plaintiffs,

v.

DANA NESSEL, et al.,

Defendants.

Case No. 1:22-cv-1214

HON. JANE M. BECKERING

OPINION AND ORDER

Since its enactment in 1976, Michigan’s Elliott-Larsen Civil Rights Act (ELCRA) has “protected Michiganders from discrimination.” Plaintiff Sacred Heart of Jesus Parish, Grand Rapids (Sacred Heart) and six parents of Sacred Heart students (Parent-Plaintiffs) (collectively, Plaintiffs) filed this pre-enforcement civil rights action, alleging that enforcement of certain ELCRA provisions will violate Sacred Heart’s rights and, in a derivative way, Parent-Plaintiffs’ rights under the First and Fourteenth Amendments to the United States Constitution. Pending before the Court are the parties’ cross-motions for summary judgment (ECF Nos. 92 & 97). For the following reasons, the Court denies Plaintiffs’ motion, grants Defendants’ motion, and closes this case.

I. BACKGROUND

A. Factual Background & Statutory Context

1. The ELCRA

The ELCRA contains several prohibitions to “protect[] Michiganders from discrimination,” as recognized and set forth by the Sixth Circuit in *Christian Healthcare Centers*,

Inc. v. Nessel, 117 F.4th 826, 837–38 (6th Cir. 2024) (“*CHC*”). First, the ELCRA prohibits an employer from failing to “hire or recruit, discharge, or otherwise discriminate” against an individual because of the following enumerated protected characteristics: “religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.” MICH. COMP. LAWS § 37.2202(1)(a). Employers also may not use hiring applications that elicit information about, or express a preference based on, any protected characteristic. *Id.* § 37.2206(2)(a), (c). Consistent with the nomenclature in Plaintiffs’ Complaint and the parties’ briefing,¹ the Court collectively refers to these prohibitions as the “Employment Clause.” The ELCRA defines “employer” as “a person that has 1 or more employees.” *Id.* § 37.2201(a).

Second, the ELCRA prohibits any person from denying an individual the “full and equal enjoyment” of any goods, services, or facilities “of a place of public accommodation or public service” based on the same characteristics. *Id.* § 37.2302(a) (the “Public Accommodation Clause”). In pertinent part, the ELCRA defines a place of public accommodation as “an educational ... institution of any kind ... whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.” *Id.* § 37.2301(a).

¹ In briefing, the parties also reference “Article 2” of the ELCRA, which prohibits employment discrimination; “Article 3,” which prohibits discrimination by places of public accommodation; and “Article 4,” which prohibits discrimination by educational institutions. *See generally Rymal v. Baergen*, 686 N.W.2d 241, 271 (Mich. Ct. App. 2004) (K. F. Kelly, J., concurring in part and dissenting in part) (explaining that the ELCRA is composed of eight articles that serve distinct purposes). For ease of reference, the Court employs only the phrases “Employment Clause,” “Education Clause,” “Public Accommodation Clause,” and the corresponding publication clauses in its analysis.

Third, the ELCRA prevents educational institutions from discriminating with respect to educational benefits, admission, or the institution's terms and conditions because of specified characteristics, *id.* § 37.2402(a)–(b); and educational institutions also may not attempt to solicit information about these characteristics for admission purposes, *id.* § 37.2402(c) (the “Educational Clause”). The ELCRA defines an “educational institution” to which its educational provisions apply as “a public or private” educational entity. *Id.* § 37.2401.

Fourth, the ELCRA regulates publication of statements concerning its substantive provisions: employers, places of public accommodation, and educational institutions may not publish statements indicating preferences based on protected characteristics. *See id.* § 37.2206(1) (employers); *id.* § 37.2302(b) (public accommodations); *id.* § 37.2402(d) (educational institutions) (the “Employment Publication Clause,” “Public Accommodation Publication Clause,” and “Education Publication Clause,” respectively).

Last, the ELCRA contains language “qualifying its application.” *CHC*, 117 F.4th at 837. Most broadly, the Act is not to “be construed as preventing the [Michigan Civil Rights] [C]ommission from securing civil rights guaranteed by law.” MICH. COMP. LAWS § 37.2705(1). Additionally, employers may inquire about protected characteristics or express a preference based on those characteristics where “permitted” to do so “by applicable federal law,” *id.* § 37.2206(2); places of public accommodation may be exempted from the ELCRA's regulations “where permitted by law,” *id.* § 37.2302; and educational institutions may inquire about protected characteristics in admissions decisions if “required by federal law, rule, or regulation,” *id.* § 37.2402(c). Last, and notably for the issues at bar, the ELCRA's education provisions “related to religion” do not apply to religious schools. *Id.* § 37.2403 (“The provisions of section 402 related to religion shall not apply to a religious educational institution or an educational institution

operated, supervised, or controlled by a religious institution or organization which limits admission or gives preference to an applicant of the same religion.”).

Employers may also apply for an exemption from the ELCRA’s employment provisions if a certain protected characteristic “is a bona fide occupational qualification,” or “BFOQ,” “reasonably necessary to the normal operation of the business.” *Id.* § 37.2208. This BFOQ exemption can be either (1) obtained by application to Michigan’s Civil Rights Commission (the Commission), which is empowered to investigate the application and approve exemptions for up to five years; or (2) asserted as an affirmative defense in later proceedings. *Id.*; *see* MICH. ADMIN. CODE R. 37.25; BFOQ App., Ex. 8 to Verified Compl., ECF No. 1-9.

The ELCRA and Michigan’s administrative code set out the Act’s enforcement procedures. *CHC*, 117 F.4th at 838. Any “person”—a statutorily defined term including Michigan and its subagencies, *see* MICH. ADMIN. CODE R. 37.2(p)—who is “aggrieved by unlawful discrimination” may submit an ELCRA complaint to Michigan’s Department of Civil Rights (the Department). *Id.* R. 37.4(1). Certain commissioners, directors, and agents authorized by the Commission may also file complaints on the public’s behalf. *Id.* R. 37.4(2). The Department is empowered to investigate filed complaints, including by collecting evidence and requiring witness testimony that is “pertinent to a complaint.” MICH. COMP. LAWS § 37.2602(c)–(d); *see also* MICH. ADMIN. CODE R. 37.4(10), 37.14(1). The Department will issue a charge if, “after investigation,” it “determines that there are sufficient grounds” to do so. *Id.* R. 37.6(1). A person or entity charged with discrimination must “file a written verified answer”; if they do not, the charge’s allegations are considered admitted. *Id.* R. 37.11(1), (6). If, after a hearing, the Commission determines that the ELCRA was violated, then it may order monetary and equitable remedies. *See* MICH. COMP. LAWS

§ 37.2605. Parties may appeal a final order of the Commission to the circuit court of the state of Michigan having jurisdiction over the proceeding. *See id.* § 37.2606.

2. Sacred Heart

Sacred Heart is a parish-run Catholic school in the Diocese of Grand Rapids, Michigan. The purpose of the Sacred Heart curriculum is the pursuit of “truth,” including “the Catholic understanding of man and woman and the purpose of each” and “a proper understanding of human anthropology” (Verified Compl. [ECF No. 1] ¶¶ 46–47). Sacred Heart welcomes “any family desiring the formation offered in its Catholic classical setting” (Corr. Jt. Stips. [ECF No. 83] ¶ 28).

Following diocesan policy, Sacred Heart requires all school employees to become certified catechists, i.e., to be certified to teach the Catholic faith (*id.* ¶ 40). Sacred Heart employs religious and lay persons as teachers and other staff members (*id.* ¶ 65). Sacred Heart requires all of its employees to be Catholics who support the Church’s moral and doctrinal teachings, including its teachings on marriage and human sexuality (*id.* ¶ 42). Every year employees sign a “memorandum of understanding” outlining their religious and moral duties and they publicly swear an “oath of fidelity” to Church teaching at a Mass (*id.* ¶¶ 43–47, referencing Faculty Memo & Oath, Ex. 3 to Corr. Jt. Stips [ECF No. 83-3]; *see also* Sacred Heart Faculty Handbook, Ex. 4 to Corr. Jt. Stips [ECF No. 83-4]). Sacred Heart sincerely believes the Catholic doctrine that “[e]veryone, man and woman, should acknowledge and accept his sexual identity” and that “[e]ach of the two sexes is an image of the power and tenderness of God, with equal dignity though in a different way” (*id.* ¶ 59 (citation omitted)). Sacred Heart sincerely believes that the idea that a person’s identity can be inconsistent with his or her biological sex undercuts Catholic doctrine on basic structures of Catholic belief (*id.* ¶ 60).

Sacred Heart hires new teachers each year and advertises open employment positions on its website and on third-party sites as positions arise (*id.* ¶ 66). Sacred Heart's employment advertisements emphasize a requirement that employees believe, support, and model the Catholic faith and requires all employees to avoid all beliefs or practices inconsistent with Catholic doctrine or morals (*id.* ¶¶ 67–68). Sacred Heart would not approve an employee's request to use pronouns or bathrooms inconsistent with the employee's biological sex, because Sacred Heart sincerely believes that to do so would be incompatible with the Catholic vision of the human person and human flourishing (*id.* ¶ 69). Sacred Heart's job postings explain that employees are required to be practicing Catholics whose public lives are lived in conformity with the moral teachings of the Church (*id.* ¶¶ 70–72, referencing Sacred Heart's job postings, Ex. 6 to Corr. Jt. Stips [ECF No. 83-6]).

Sacred Heart has a policy and practice of recruiting, offering positions for, hiring, and retaining only employees who adhere to and agree to abide by all tenets of the Catholic faith, including by:

- a. exclusively recruiting and hiring employees who adhere to Catholic doctrine, including doctrine on marriage and sexuality, in their lives;
- b. declining to recruit and hire employees who oppose Catholic doctrine, including doctrine on marriage and sexuality, and maintaining a policy or practice to this effect;
- c. publishing any statement expressing its Catholic beliefs when advertising open employment positions;
- d. making any written or oral inquiry about a job applicant's religious beliefs and commitment to Catholic doctrine;
- e. expressing a preference for Catholic employees living in accordance with Catholic doctrine;
- f. ensuring its employees live in accordance with Catholic doctrine by requiring them to sign the memorandum of understanding and swear the oath of fidelity to the Catholic faith; and

- g. disciplining or discharging any employee who fails to live in accordance with Catholic doctrine and maintaining any policy or practice to that effect

(*id.* ¶ 84).

Sacred Heart recruits, admits, and retains only students who agree to abide by Sacred Heart's faith-based policies, and Sacred Heart disciplines students who fail to abide by Sacred Heart's faith-based policies (*id.* ¶¶ 81–82). Sacred Heart maintains a student handbook, student agreement, and other student policies requiring students to live in conformity with Catholic doctrine (*id.* ¶ 80). Its handbook and “moral expectations” are derived from and rely on the Catechism of the Catholic Church (*id.* ¶ 23). In accordance with its sincerely held religious beliefs, Sacred Heart's student discipline policies seek to form students in virtue and are based in the Catechism of the Catholic Church (*id.* ¶ 24, referencing Sacred Heart's Student Handbook, Ex. 1 to Corr. Jt. Stips [ECF No. 83-1]).

Sacred Heart has offered an elective course on Pope St. John Paul II's teachings called the “Theology of the Body” (*id.* ¶ 35, referencing Ex. 2 to Corr. Jt. Stips [ECF No. 83-2]). The Theology of the Body course sets forth the Church's teaching on sexuality and marriage, but these teachings are also woven throughout the entire Sacred Heart curriculum (*id.* ¶ 36). Sacred Heart will not affirm any individual's “preferred pronouns” inconsistent with biological sex because Sacred Heart sincerely believes that “to do so would conflict with the Catholic faith and its doctrine, lie about the person's identity, and deter the person's authentic flourishing” (*id.* ¶¶ 79, 88). Additionally, Sacred Heart organizes its restrooms, sports teams, and high school “houses” by biological sex (*id.* ¶¶ 73–77).

It is not disputed that Sacred Heart is generally subject to the ECLRA's anti-discrimination clauses and corresponding publication clauses. *See* Corr. Jt. Stip. [ECF No. 83] ¶¶ 115–16; *see*

also *CHC*, 117 F.4th at 843–45 (concluding that Sacred Heart is arguably covered by these provisions).

B. Procedural Posture

On December 22, 2022, Plaintiffs initiated this action with the filing of a Verified Complaint against Defendants Dana Nessel, Michigan’s Attorney General; John E. Johnson, Jr., the Executive Director of Michigan’s Department of Civil Rights (“the Department” or MDCR); and individual members of Michigan’s Civil Rights Commission² (“the Commission” or MCRC) (collectively, “Defendants”).³ Sacred Heart alleges the following five claims:

- I. Violation of the First Amendment’s Free Exercise and Establishment Clauses: Religious Autonomy, Ministerial Exception, Co-Religionists, and Compelled Participation
- II. Violation of the First Amendment’s Free Exercise Clause: Lack of General Applicability, Individualized Exemptions, Hostility, and Compelled Participation
- III. Violation of the First Amendment’s Free Speech and Assembly Clauses: Freedom of Speech, Expressive Association, and Assembly
- IV. Violation of Parents’ Fourteenth Amendment’s fundamental right to direct their children’s education
- V. Violation of Parents’ First Amendment right to free exercise of religion

(ECF No. 1). Plaintiffs seek injunctive and declaratory relief, nominal damages for the violation of their constitutional rights, and costs and fees (*id.* at PageID.68–69). Plaintiffs did not identify any pending complaint, investigation, or prosecution against them; rather, Plaintiffs alleged that

² Luke R. Londo, Gloria E. Lara, Richard R. White III, Portia L. Roberson, Zenna Faraj Elhasan, Regina Gasco-Bentley, Rosann L. Barker, and Skot Welch (identified on initiating document as David Worthams)

³ In August 2022, Plaintiffs’ counsel filed similar claims in *Christian Healthcare Centers, Inc. v. Nessel, et al.*, 1:22-cv-787. The case at bar is also related to another pre-enforcement civil rights lawsuit brought in December 2022 on behalf of St. Joseph Parish against these same Defendants, *St. Joseph Parish St. Johns v. Nessel, et al.*, 1:22-cv-1154, again alleging similar claims. See Administrative Order 23-CA-008 (ECF No. 9).

“because of Defendants’ history of public hostility to the Catholic faith, its beliefs about marriage and human sexuality, and toward Catholic institutions, Plaintiffs face enforcement of the Act and penal code” (*id.* ¶ 346).

In lieu of answering the Verified Complaint, Defendants filed a Motion to Dismiss, arguing, in pertinent part, that no case or controversy existed for federal jurisdiction. On August 22, 2023, this Court issued an Opinion and Order granting the motion and issuing a corresponding Judgment to close this case (ECF Nos. 44–45). This Court also dismissed as moot Plaintiffs’ motion for a preliminary injunction (*id.*). Plaintiffs appealed to the Court of Appeals for the Sixth Circuit, which issued its decision on September 20, 2024, holding, in pertinent part, “no Plaintiff has established standing to challenge the EAA,” and “Sacred Heart” has plausibly established standing to challenge the ELCRA’s public-accommodation provision, employment provision, and the publication clauses of each provision; as well as the education provision, and the publication clause of that provision. *CHC*, 117 F.4th at 857.⁴ The Mandate issued on October 15, 2024 (ECF No. 51).

On remand, this Court issued a Case Management Order in November 2024, setting forth deadlines for discovery and dispositive motions (11/19/2024 CMO, ECF No. 59), which the Court extended in February 2025 (Order, ECF No. 74) and May 2025 (Order, ECF No. 79). This Court also extended the dispositive motion deadline in October 2025 (Order, ECF No. 86) and December 2025 (Order, ECF No. 96). The parties stipulated to a Preliminary Injunction (ECF No. 61) and engaged in discovery. Two of the six parents were dismissed by stipulation (ECF No. 64).

⁴ The Sixth Circuit, which consolidated the appeal in this case with the appeals in *Christian Healthcare* and *St. Joseph Parish*, affirmed this Court’s decision to dismiss *St. Joseph Parish* and affirmed in part and reversed in part this Court’s decision in *Christian Healthcare*.

On September 9, 2025, the parties agreed on a plethora of applications of the ELCRA to certain facts in this case, as follows:

117. Based upon the information contained in the Complaint and the job description, it would violate the Act for Sacred Heart to decline to hire an otherwise qualified person for its Facilities and Maintenance Supervisor (Sexton) position because the applicant refused to comply with Sacred Heart's requirement to abstain from same-sex sexual activity.

118. Based upon the information contained in the Complaint and the job description, it would violate the Act for Sacred Heart to decline to hire an otherwise qualified person for a custodian position because the applicant refused to comply with Sacred Heart's requirement to abstain from same-sex sexual activity.

119. Based upon the information contained in the Complaint and the job description, it would violate the Act for Sacred Heart to decline to hire an otherwise qualified person for the athletic coach position referenced in the Complaint at paragraph 279 because the applicant refused to comply with Sacred Heart's requirement to abstain from same-sex sexual activity.

120. It would violate the Employment Clause of the Act for Sacred Heart to decline to hire an otherwise qualified person for a non-ministerial position because the applicant refused to comply with Sacred Heart's requirement to abstain from same-sex sexual activity.

122. Sacred Heart's policy requiring non-ministerial employees to swear the oath of fidelity described in paragraph 56 of the Complaint (ECF No. 1) violates the Act's Employment Clause.

123. Sacred Heart's policy of requiring non-ministerial employees to sign and abide by the religious and moral duties outlined in the Faculty Memo and Oath (see Exhibit 3) violates the Act's Employment Clause.

124. Sacred Heart's policy requiring non-ministerial employees to publicly swear an "oath of fidelity" to Church teaching at a Mass ... violates the Employment Clause.

125. For non-ministerial positions, the Act prohibits Sacred Heart from limiting, segregating, or classifying employees or applicants for employment in a way that deprives or tends to deprive the employee or applicant of an employment opportunity, or otherwise adversely affects the status of an employee or applicant "because of," in part, religion, sex, sexual orientation or gender identity. MICH. COMP. LAWS § 37.2202(1)(b).

126. For non-ministerial positions, the Act prohibits Sacred Heart from exclusively recruiting and hiring candidates who commit to Catholic faith and doctrine or decline to recruit and hire prospective employees who are unable or refuse to do so.

127. For non-ministerial positions, the Act prohibits Sacred Heart from maintaining policies or practices of only recruiting and hiring candidates who support, live, and model Church teaching and declining to hire those who cannot or will not.

128. For non-ministerial positions, the Act prohibits Sacred Heart from imposing employment-related qualifications and responsibilities on any position and to treat candidates who do not support the Catholic faith and its doctrine differently from those who do—for example, by screening applications on that basis.

129. The Act prohibits Sacred Heart from asking candidates for non-ministerial positions about their commitment to supporting, living, modeling, and sharing the Catholic faith and its doctrine.

130. The Act prohibits Sacred Heart from asking candidates for non-ministerial positions whether they identify as a Catholic, the name of their Catholic parish, or their frequency of Mass attendance.

131. The Act prohibits Sacred Heart from posting employment opportunities for non-ministerial positions on its website or other job-hunting sites which indicate a desire to recruit and hire employees who share Sacred Heart's Catholic faith.

132. Based on the information contained in the Complaint and the job description, the art teacher position identified in the Complaint at paragraph 278 is a ministerial position exempt from the Employment Clause and Employment Publication Clause of the Act.

133. Based on the information contained in the Complaint and the job description, Defendants do not consider the athletic coach position identified in the Complaint at paragraph 279 to be a ministerial position exempt from the Employment Clause and Employment Publication Clause of the Act.

134. Based on the information contained in the Complaint and the job description, Defendants do not consider Sacred Heart's Facilities and Maintenance Supervisor to be a ministerial position exempt from the Employment Clause and Employment Publication Clause of the Act.

135. Based on the information contained in the Complaint and the job description, Defendants do not consider a custodian position at Sacred Heart to be a ministerial position exempt from the Employment Clause and Employment Publication Clause of the Act.

136. Defendants do not consider non-ministerial positions at Sacred Heart to be exempt from the Employment Clause and Employment Publication Clause of the Act.

137. For non-ministerial positions, Defendants consider it a violation of the Employment Clause and Employment Publication Clause of the Act for Sacred Heart to have a policy of refusing to hire employees who identify as transgender.

138. For non-ministerial positions, Defendants consider it a violation of the Employment Clause and Employment Publication Clause of the Act for Sacred Heart to refuse to retain an employee who comes out as transgender.

139. For non-ministerial positions, Defendants consider it a violation of the Employment Clause and Employment Publication Clause of the Act for Sacred Heart to have a policy of refusing to hire anyone who is not a practicing Catholic whose public life is lived in conformity with all teachings of the church.

140. For non-ministerial positions, Defendants consider it a violation of the Employment Clause and Employment Publication Clause of the Act for Sacred Heart to refuse to hire an applicant because the applicant is lesbian, gay, bisexual, or transgender.

141. Defendants consider it a violation of the Employment Clause and Employment Publication Clause of the Act for Sacred Heart to refuse to hire an applicant for a non-ministerial position because that applicant is in a same-sex marriage that is not consistent with Catholic doctrine.

142. Defendants consider it to be a violation of the Act for Sacred Heart to refuse admission to a student because the student is in a homosexual relationship.

143. Under the Act, Sacred Heart is prohibited from requiring all of its nonministerial employees to adhere to the standard of conduct referenced in the Complaint at paragraphs 59 and 60.

On November 25, 2025, Plaintiffs filed their Motion for Summary Judgment (ECF No. 92).

Defendants⁵ filed a cross-motion on January 13, 2026 (ECF No. 97). This Court permitted the

⁵ Defendants indicate that the Attorney General “does not join the merits arguments advanced by the Commission and Department” because, according to Defendants, Plaintiffs “lack standing” to sue the Attorney General “simply for representing the Commission and Department” (ECF No. 98 at PageID.2711, 2716–2720). According to Defendants, the only appropriate disposition as to the Attorney General is dismissal (*id.* at PageID.2711, 2720). The Court disagrees. As Plaintiffs more fully set forth, the Attorney General is a proper defendant in this case, a proposition that does not rest on the office’s general enforcement authority or “representation alone” but on her specific

parties' submissions to exceed the page/word count limits set forth in this District's Local Rules (Orders, ECF Nos. 101 & 104). On February 10, 2026, Plaintiff filed a combined reply in support of its motion and response to Defendants' cross-motion (ECF No. 105). On February 24, 2026, Defendants filed a reply in support of their cross-motion (ECF No. 106). The parties have since filed three supplemental authorities (ECF Nos. 108, 110, & 115) and responses (ECF Nos. 112–114) for the Court's review. Having considered the parties' substantial submissions, the Court concludes that oral argument is not necessary to resolve the issues presented. *See* W.D. Mich. LCivR 7.2(d).

II. ANALYSIS

A. Motion Standard

The parties' motions are filed pursuant to Federal Rule of Civil Procedure 56. A party may move for summary judgment, identifying each claim on which summary judgment is sought. FED. R. CIV. P. 56(a). Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Id.*

In resolving a motion for summary judgment, a court must consider the evidence and all reasonable inferences in favor of the nonmoving party. *Burgess v. Fischer*, 735 F.3d 462, 471 (6th Cir. 2013); *S.E.C. v. Sierra Brokerage Servs., Inc.*, 712 F.3d 321, 327 (6th Cir. 2013) (citation omitted). The moving party has the initial burden of showing the absence of a genuine issue of material fact. *Jakubowski v. Christ Hosp., Inc.*, 627 F.3d 195, 200 (6th Cir. 2010). The burden

authority to enforce the ELCRA (ECF No. 105 at PageID.2793–2794). *See also* MICH. COMP. LAWS § 37.2602(b), (d) (indicating that the office of the Attorney General has authority to enforce compliance with orders issued by the Department and the Commission by filing enforcement motions with any state court with jurisdiction over the matter).

then “shifts to the nonmoving party, who must present some ‘specific facts showing that there is a genuine issue for trial.’” *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

In responding to a summary judgment motion, the plaintiff can no longer rest on “mere allegations” but must “set forth” by affidavit or other evidence “specific facts” necessary to support the claim. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). *See also Zakora v. Chrisman*, 44 F.4th 452, 464 (6th Cir. 2022) (“A party opposing a properly supported summary-judgment motion... ‘may not rest upon the mere allegations or denials of [their] pleading, but ... must set forth specific facts showing that there is a genuine issue for trial.’”) (citation omitted). However, a court may, as the Court does here, consider facts alleged in a verified complaint and about which the plaintiff has personal knowledge. *See El Bey v. Roop*, 530 F.3d 407, 414 (6th Cir. 2008) (a verified complaint “carries the same weight as would an affidavit for the purposes of summary judgment”) (citations omitted).

The function of the court is not “‘to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.’” *Moran v. Al Basit LLC*, 788 F.3d 201, 204 (6th Cir. 2015) (quoting *Anderson*, 477 U.S. at 249). “There is no genuine issue for trial where the record ‘taken as a whole could not lead a rational trier of fact to find for the non-moving party.’” *Burgess*, 735 F.3d at 471 (quoting *Matsushita Elec. Indus., Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). “The ultimate inquiry is ‘whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’” *Sierra Brokerage Servs.*, 712 F.3d at 327 (quoting *Anderson*, 477 U.S. at 251–52).

When evaluating cross-motions for summary judgment, the Court “must evaluate each motion on its own merits and view all facts and inferences in the light most favorable to the

nonmoving party.” *Westfield Ins. Co. v. Tech Dry, Inc.*, 336 F.3d 503, 506–07 (6th Cir. 2003); *see also Harris v. City of Saginaw, Mich.*, 62 F.4th 1028, 1032–33 (6th Cir. 2023) (describing the “hat switch courts perform when evaluating cross-motions for summary judgment”); *Parks v. LaFace Records*, 329 F.3d 437, 444 (6th Cir. 2003) (“[t]he fact that the parties have filed cross-motions for summary judgment does not mean, of course, that summary judgment for one side or the other is necessarily appropriate”).

B. Discussion

Plaintiffs’ claims are brought pursuant to 42 U.S.C. § 1983. Section 1983 does not confer substantive rights but merely provides a statutory vehicle for vindicating rights found in the United States Constitution. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Dibrell v. City of Knoxville, Tenn.*, 984 F.3d 1156, 1160 (6th Cir. 2021). A court’s threshold inquiry under § 1983 is always to identify the specific constitutional right at issue. *Dibrell, supra*. Once the right is identified, the court must then consider the statutory “elements of, and rules associated with, an action seeking damages for its violation” under § 1983. *Id.*

Here, Plaintiffs argue that enforcement of certain ELCRA provisions will violate their religious and expressive freedoms under the First and Fourteenth Amendments to the United States Constitution. A plaintiff can challenge the constitutionality of a statute in two ways. An “as-applied” challenge “argues that a law is unconstitutional as enforced against the plaintiffs before the court.” *Green Party of Tennessee v. Hargett*, 791 F.3d 684, 691 (6th Cir. 2015) (citation omitted). In contrast, a “facial” challenge to a law’s constitutionality is “an effort to invalidate the law in each of its applications, to take the law off the books completely.” *Id.* (citation omitted). The plaintiff must establish ““that no set of circumstances exist under which [the statute] would be valid.”” *Id.* (quoting *United States v. Stevens*, 559 U.S. 460, 472 (2010)).

Plaintiffs seek as-applied relief against the Employment, Employment Publication, Public Accommodation, and Public Accommodation Publication Clauses; and facial relief, only, against the Public Accommodation Publication's "Unwelcome Clause" (ECF No. 92 at PageID.2634). Plaintiffs argue that as applied, the Employment, Employment Publication, Public Accommodation, and Public Accommodation Publication Clauses of the ELCRA are per se unconstitutional because they (1) violate Sacred Heart's religious autonomy, (2) interfere with Sacred Heart's expressive association, (3) lack general applicability, and (4) violate Parent-Plaintiffs' fundamental parental and free exercise rights (ECF No. 93 at PageID.2660). And Plaintiffs argue that the Public Accommodation Publication's Unwelcome Clause, on its face, is vague and overbroad (*id.*). Specifically, Plaintiffs seek a declaration and permanent injunction that prevents Defendants from enforcing the ELCRA against Sacred Heart's (i) employment policies, including as applied to the Art Teacher, Athletic Coach, and Facilities and Maintenance Supervisor (Sexton) positions; (ii) pronoun policy; (iii) educational policies, including separation of facilities and activities by biological sex; and (iv) publications about those policies (ECF No. 105 at PageID.2789). Defendants argue that the ELCRA "already accommodates Sacred Heart's constitutional rights [and that] Sacred Heart simply wants more protection than the First Amendment provides" (ECF No. 98 at PageID.2711). Defendants ask this Court to deny Plaintiffs' motion and instead grant summary judgment in their favor. Consistent with the Sixth Circuit's directions on remand, *CHC*, 117 F.4th at 857, the Court analyzes each claim in turn.

1. Sacred Heart's As-Applied Challenge to the ELCRA's Employment, Education, and Public Accommodation Clauses as Burdening Its Religious Autonomy and Free Exercise

Sacred Heart first argues that the ELCRA's Employment, Education, and Public Accommodation Clauses violate its religious autonomy by interfering with its selection of

religious leaders, (2) interfering with its faith-based governance decision to operate as a ministry composed of co-religionists, and (3) requiring it to teach and operate in ways that violate its faith (ECF No. 93 at PageID.2661–2666). Emphasizing that all Sacred Heart staff must share the organization’s faith, Sacred Heart contends that “[t]he religious autonomy doctrine protects Sacred Heart’s employment decisions over ministerial *and* non-ministerial roles” (ECF No. 105 at PageID.2802–2805) (emphasis in briefing).

In support of summary judgment in their favor, Defendants argue that Sacred Heart’s position would create a blanket “co-religionist exception” that would permit discrimination in hiring for every position regardless of function, a position that runs contrary to case law about the ministerial exception (ECF No. 98 at PageID.2733–2737; ECF No. 106 at PageID.2845–2846). Additionally, Defendants point out that the ELCRA incorporates the First Amendment’s ministerial exception through its BFOQ provision, which permits religious employers to make religion-based hiring decisions for employees who perform religious functions (ECF No. 98 at PageID.2721). Delineating the BFOQs that have been granted or denied consistent with judicial precedent interpreting the ministerial exception, Defendants indicate that based on the facts of this case, Sacred Heart could properly invoke the exception for its Art Teacher position,⁶ although not for a coach or a sexton (*id.* at PageID.2727–2732).

Sacred Heart’s argument lacks merit.

The First Amendment states, in pertinent part, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. CONST. amend I. The

⁶ Defendants admitted as much during discovery. *See* RFA No. 21, ECF No. 88-2 at PageID.2365; Defs.’ Supp. Resps. to Pls.’ First Set of Interrogs., ECF No. 88-2 at PageID.2374 (No. 4); Trevino Dep., ECF No. 88-1 at PageID.1985–1986; and Londo Dep., ECF No. 88-1 at PageID.2060.

United States Supreme Court has held that the First Amendment protects the right of religious institutions “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952). *Cf. Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (determining that the First Amendment’s Free Exercise Clause applies to States through the Fourteenth Amendment).

In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012), the Supreme Court held that the First Amendment barred a court from entertaining an employment discrimination claim brought by an elementary school teacher against the religious school where she taught. The Supreme Court’s decision in *Hosanna-Tabor* built on a line of lower court cases adopting what was dubbed the “ministerial exception” to laws governing the employment relationship between a religious institution and certain key employees. *Id.* at 188–89; *see also id.* at 181 (explaining that the religion protections in the First Amendment “bar the government from interfering with the decision of a religious group to [select] its ministers”). The Supreme Court expressly declined to announce “a rigid formula” for determining whether an employee falls within this exception, but the Court identified circumstances that it found relevant to the determination on the specific facts before it, including the teacher’s title as a “Minister of Religion, Commissioned,” her educational training, and her responsibility to teach religion and participate with students in religious activities. *Id.* at 190–91. The Court reasoned that although society’s interests “in the enforcement of employment discrimination statutes [are] undoubtedly important,” the First Amendment elevates above those interests the “interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission.” *Id.* at 196.

In *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732 (2020), also an employment discrimination case, the Supreme Court explained that “[t]he independence of religious institutions in matters of ‘faith and doctrine’ is closely linked to independence in what we have termed ‘matters of church government.’” *Id.* at 746 (citation omitted). The Supreme Court cautioned that “[t]his does not mean that religious institutions enjoy a general immunity from secular laws, but it does protect their autonomy with respect to internal management decisions that are essential to the institution’s central mission. And a component of this autonomy is the selection of the individuals who play certain key roles.” *Id.* The Court reiterated that under the so-called “ministerial exception,” “courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions.” *Id.* Examining the specific facts before it, the Supreme Court ultimately held that although the plaintiffs-teachers were not given the title of “minister” and had less religious training than the teacher in *Hosanna-Tabor*, their cases fell within the same rule that dictated the decision in *Hosanna-Tabor*. *Id.* at 738.

The Sixth Circuit has identified four factors to assist courts in assessing whether an employee is a minister covered by the exception: (1) whether the employee’s title “conveys a religious—as opposed to secular—meaning”; (2) whether the title reflects “a significant degree of religious training” that sets the employee “apart from laypersons”; (3) whether the employee serves “as an ambassador of the faith” and serves a “leadership role within [the] church, school, and community”; and (4) whether the employee performs “important religious functions ... for the religious organization.” *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 582–83 (6th Cir. 2018) (citation omitted), *aff’d sub nom. Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644 (2020).

Last year, in *Pulsifer v. Westshore Christian Academy*, 142 F.4th 859 (6th Cir. 2025), also a discrimination case, the Sixth Circuit observed that the “key question under modern doctrine, then, is how far that autonomy goes: which employees are so key to the institution’s religious function so as to place the employee within the ministerial exception?” *Id.* at 864. The Sixth Circuit agreed with this Court that the Constitution precluded review of the Academy’s employment actions vis-à-vis the plaintiff, who was the Dean of Students and Assistant Principal at the academy, where abundant record evidence demonstrated that he performed vital religious duties. *Id.* at 865. Even though the plaintiff performed other administrative tasks typical of secular administrators, his religious duties “place[d] his position within the ministerial exception.” *Id.* at 866.

This case is procedurally distinct from the above employment discrimination cases. In this pre-enforcement civil rights action, Sacred Heart is not seeking to shield—or “except”—itself from liability in a discrimination suit by an employee. Rather, Sacred Heart seeks to use the church autonomy doctrine in general, and the ministerial exception in particular, to support an affirmative right to hire only adherents to its Statement of Faith, i.e., “co-religionists.” But the ELCRA’s anti-discrimination clauses are not unconstitutional merely because Sacred Heart falls within their reach. The First Amendment does not provide religious entities “general immunity from secular laws.” *Our Lady of Guadalupe*, 591 U.S. at 746. And there is no dispute that Sacred Heart falls within the purview of the ELCRA such that its anti-discrimination requirements apply to its activities.⁷

⁷ Sacred Heart contends in its reply brief that Defendants’ statement that Sacred Heart could properly invoke the exception for positions like its Art Teacher is a “disguised mootness argument” (ECF No. 105 at PageID.2795), and Sacred Heart then devotes much attention to why the disputes about its Art Teacher position (and pronoun and educational policies) are “not moot” (*id.* at PageID.2795–2801; *see also* Notice of Supp. Auth., ECF No. 110 at PageID.2863 (“Michigan

Sacred Heart has not provided any binding authority to support its proposed application of a broader “co-religionist exception” or “co-religionist doctrine.” See ECF No. 105 at PageID.2803–2804. As Defendants emphasize (ECF No. 98 at PageID.2374–2735; ECF No. 106 at PageID.2847), the Supreme Court and Sixth Circuit decisions from which Sacred Heart gleans favorable language do not address the scope of religious autonomy protections.⁸

Sacred Heart references the Supreme Court’s decision in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), where the Supreme Court addressed whether the NLRB had jurisdiction to bring an unfair labor practice charge against a religious school regarding negotiations related to its teaching staff. The Supreme Court did not address therein whether any particular employment position was exempt from anti-discrimination laws.

Sacred Heart references *Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327 (1987), where the Supreme Court upheld Title VII’s express statutory exemption for religious organizations who discriminate based on religion, 42 U.S.C. § 2000e-1, as “rationally related to a legitimate purpose,” *id.* at 329–30, 339. The Supreme Court did not suggest therein that a state could not draw a narrower exemption to its own discrimination statute without running afoul of the First Amendment.

Sacred Heart also invokes Justice Alito’s concurrence in the denial of certiorari in *Seattle’s Union Gospel Mission v. Woods*, 142 S. Ct. 1094 (2022), but that concurrence did not decide

bears the heavy burden of proving mootness.”). The Court has not engaged in the proffered mootness analysis. As Defendants point out in their own reply brief, they are not *changing* or voluntarily ceasing their conduct to moot this litigation; rather, following discovery, they articulated their legal analysis of what the First Amendment requires as applied to specific positions and policies (ECF No. 106 at PageID.2840–2841).

⁸ In its reply brief, Sacred Heart also references a Ninth Circuit decision in support of a “co-religionist exception” (ECF No. 105 at PageID.2802–2805, citing *Union Gospel Mission of Yakima v. Brown*, 162 F.4th 1190 (9th Cir. 2026)). However, as Sacred Heart acknowledged (ECF No. 115), the Ninth Circuit has since vacated that opinion pending en banc review.

anything concerning the ability to hire co-religionists. Indeed, Justice Alito merely observed that the “day may soon come” when the Supreme Court must decide whether the First Amendment protects religious organizations’ freedom to hire co-religionists. *Id.* at 1094.

Last, Sacred Heart references the Sixth Circuit’s decision in *Hall v. Baptist Memorial Health Care Corp.*, 215 F.3d 618 (6th Cir. 2000), which addressed only whether a terminated employee stated a *prima facie* case of religious discrimination under Title VII, not the scope of religious autonomy protections.

In sum, Sacred Heart’s first as-applied challenge—that the ELCRA interferes with Sacred Heart’s faith-based employment policies and corresponding decisions by restricting its ability to hire employees who share its religious beliefs in violation of the “co-religionist doctrine”—expands the underlying religious autonomy doctrine and ministerial exception more broadly than the Supreme Court’s body of caselaw currently permits. The challenge therefore lacks merit.

2. Sacred Heart’s As-Applied Challenge to the ELCRA’s Employment and Education Clauses as Violating Its Expressive Association Rights

Next, relying on *Boy Scouts of America v. Dale*, 530 U.S. 640, 648 (2000), Sacred Heart argues that the ELCRA’s Employment and Education Clauses violate its purported right to expressive association by forcing it to associate with employees who do not share its religious views (ECF No. 93 at PageID.2675–2677).⁹

In support of summary judgment in their favor, Defendants argue that Sacred Heart’s argument fails for the simple reason that the expressive association doctrine applies to membership, not employment (ECF No. 98 at PageID.2737–2739). Alternatively, Defendants argue that even if the expressive association doctrine applies in the employment context, Sacred

⁹ Sacred Heart makes an isolated reference to the freedom of assembly, *see* Pls. Reply, ECF No. 105 at PageID.2802, but does not develop any argument in this regard.

Heart's claim would fail where Sacred Heart cannot demonstrate that hiring a non-Christian coach or sexton would burden its ability to provide a Catholic education consistent with its religious mission (*id.* at PageID.2739–2740).

Sacred Heart's argument lacks merit.

In addition to the religious protections discussed above, the First Amendment also prohibits government from “abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. CONST. amend I. In *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984), the Supreme Court indicated that “we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Id.* at 622. The Court held that by requiring the Jaycees to admit women as full voting members, the Minnesota statute under review, “[t]here can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire.” *Id.* at 623. The Court indicated that “[f]reedom of association ... plainly presupposes a freedom not to associate.” *Id.* (ultimately concluding, however, that Minnesota's compelling interest in eradicating discrimination against its female citizens justified the impact that application of the statute to the Jaycees may have on the male members' associational freedoms).

The Supreme Court's decision in *Boy Scouts of America v. Dale*, the case upon which Sacred Heart relies, likewise concerned a private organization's membership decision, to wit: the Boy Scouts' revocation of an adult's membership and his volunteer assistant scoutmaster position after learning that he was gay. 530 U.S. at 651. The question was whether applying New Jersey's

antidiscrimination law to the Boy Scouts' decision violated the private organization's "freedom not to associate." *Id.* at 644. A majority of the Supreme Court held that it did. *See id.* at 656.

Protected association furthers "a wide variety of political, social, economic, educational, religious, and cultural ends" and "is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority." *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 606 (2021). Hence, the Supreme Court has found government infringement of the freedom of association may be violated not only where groups like the Jaycees and Boy Scouts are required to take in members they do not want, but also where a group is compelled to disclose its list of members to a hostile audience, *see NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); where a group is prohibited from soliciting individuals (prospective clients) to associate with the group's lawyers for litigation purposes, *see NAACP v. Button*, 371 U.S. 415 (1963); where members of a group are denied benefits based on the organization's message, *see Healy v. James*, 408 U.S. 169 (1972); and where individuals are punished for their political affiliation, *see Elrod v. Burns*, 427 U.S. 347 (1976) (plurality opinion).

Sacred Heart asserts that based on the "thrust" of the opinion in *Boy Scouts of America v. Dale*, the right of expressive association likewise protects its employment decisions because "employing those who contradict its beliefs on marriage and sexuality would undermine Sacred Heart's mission" (ECF No. 105 at PageID.2809–2811). However, Sacred Heart has not supplied any authority applying the freedom to associate within the context of an employment relationship. Indeed, the Boy Scouts acknowledged that "'it would be necessary for the Boy Scouts of America to obey'" any law "'prohibit[ing] discrimination against individual's employment upon the basis of homosexuality.'" 530 U.S. at 672 (Stevens, J., dissenting) (quoting Boy Scouts' position statement in the record appendix). *Cf. Hishon v. King & Spalding*, 467 U.S. 69, 78 (1984)

(“Invidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment, but it has never been accorded affirmative constitutional protections.”). Thus, this challenge to the ELCRA’s Employment and Education Clauses suffers from the same deficit as Plaintiffs’ first challenge, to wit: Sacred Heart interprets the rights more broadly than the Supreme Court’s body of caselaw currently permits. This second as-applied challenge also lacks merit.

3. Sacred Heart’s As-Applied Challenge to the ELCRA’s Employment Clause as Lacking General Applicability

Third, Sacred Heart argues that the ELCRA’s Employment Clause lacks general applicability as evidenced by the ELCRA’s discretionary case-by-case authorization of individual exemptions in its BFOQ process (ECF No. 93 at PageID.2666–2668; ECF No. 105 at PageID.2806). Sacred Heart also argues that the ELCRA treats religious exercise worse than comparable conduct in that the Act allows schools, sports leagues, private clubs, and small landlords to discriminate (ECF No. 93 at PageID.2668–2669, pointing to Michigan laws allowing schools to serve members of only one sex, MICH. COMP. LAWS § 37.2404; sports leagues, MICH. COMP. LAWS § 37.2302a(4); and a housing accommodation exception, MICH. COMP. LAWS § 37.2503).

In support of summary judgment in their favor, Defendants argue that the ELCRA is a neutral, generally applicable law (ECF No. 98 at PageID.2722–2724). Defendants reject Sacred Heart’s characterization of the ELCRA’s BFOQ process, pointing out that the BFOQ inquiry is controlled by law and the mere fact that the Commission must engage in fact-specific inquiries to apply the legal standard does not render the law “discretionary” (*id.* at PageID.2725–2728). According to Defendants, Sacred Heart’s broad interpretation of what it means to exercise discretion would mean that any time a state agency makes decisions in the application of a statute,

the agency is exercising discretion, which would render the statute “not generally applicable,” a result that is not tenable (ECF No. 106 at PageID.2845).

Sacred Heart’s argument lacks merit.

Again, as first discussed, the First Amendment protects an individual’s “right to believe and profess whatever religious doctrine one desires.” *Emp. Div., Dep’t. of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 877 (1990) (“*Smith*”), superseded by statute on other grounds, Religious Freedom Restoration Act of 1993, Pub. L. No. 103–141, 107 Stat. 1488, as recognized in *Tanzin v. Tanvir*, 592 U.S. 43, 45 (2020). However, the Supreme Court has held that the right to free exercise does “not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).” *Id.* at 878–79, 882. The Supreme Court observed that “[o]ur cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any colliding duty fixed by a democratic government.” *Id.* at 882 (citation omitted). *See also Meriwether v. Hartop*, 992 F.3d 492, 512 (6th Cir. 2021) (reiterating the *Smith* proposition that laws that burden religious exercise are presumptively unconstitutional unless they are both neutral and generally applicable).

The respondents in *Smith* were two members of a Native American tribe found guilty of using a proscribed drug (peyote) for sacramental purposes. The Supreme Court rejected their attempt to “carry the meaning of ‘prohibiting the free exercise [of religion]’ one large step further” and held that their religious motivation for using peyote did not place them “beyond the reach of a criminal law that is not specifically directed at their religious practice, and that is concededly constitutional as applied to those who use the drug for other reasons.” 494 U.S. at 878; *see id.* at 890 (ultimately concluding that Oregon could therefore deny the respondents unemployment

benefits). *See also Ward v. Polite*, 667 F.3d 727, 738 (6th Cir. 2012) (similarly holding that “public authorities may enforce neutral and generally applicable rules and may do so even if they burden faith-based conduct in the process”).

The Supreme Court has instructed that a law lacks “facial neutrality” if it “refers to a religious practice without a secular meaning discernable from the language or context.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993) (“*Lukumi*”). And a law is “not generally applicable” if the law “prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 533–34 (2021) (citations omitted). Hence, in *Lukumi*, Florida could not enforce ordinances that purported to be neutral and generally applicable on their face—regulating the keeping and killing of animals—but in practice targeted the adherents of one faith (the Santeria religion) and the actions of one faith (animal sacrifices). *Ward*, 667 F.3d at 738. *See also Monclova Christian Acad. v. Toledo-Lucas Cnty. Health Dep’t*, 984 F.3d 477, 482 (6th Cir. 2020) (holding that a government order that simultaneously subjected religious schools to closure requirements while exempting gyms, tanning salons, casinos, and office buildings “impose[d] greater burdens on the plaintiffs’ conduct than on secular conduct”).

Additionally, a law is “not generally applicable” if the law includes “a formal mechanism for granting exceptions” that “‘invites’ the government to decide which reasons for not complying with the [law] are worthy of solicitude.” *Fulton*, 593 U.S. at 537 (citing *Smith*, 494 U.S. at 884) (referencing *Sherbert v. Verner*, 374 U.S. 398 (1963)). In *Fulton*, the Supreme Court considered a free exercise challenge to the City of Philadelphia’s refusal to continue a foster care placement contract with a Catholic foster care agency, after the agency would not certify same-sex couples to be foster parents. 593 U.S. at 527. Philadelphia’s contracts with foster care agencies prohibited

the agencies from rejecting a child or family based on sexual orientation “unless an exception is granted by the Commissioner or the Commissioner’s designee, in his/her sole discretion.” *Id.* at 534–35 (citation omitted). The *Fulton* Court held that the policy was not generally applicable because the contract provision “incorporate[d] a system of individual exemptions, made available ... at the ‘sole discretion’ of the Commissioner.” *Id.* at 535–38.

In reaching its holding, the *Fulton* Court cited its 1963 decision in *Sherbert*, 374 U.S. 398, which concerned a work requirement for public benefits that was only implicated if a citizen failed to accept work without “good cause.” *Fulton*, 593 U.S. at 534. The “good cause” exemption in *Sherbert* required—“invited”—an official to examine each applicant’s “particular circumstances,” *Smith*, 494 U.S. at 884, i.e., every unemployment compensation decision was made on a case-by-case basis. *See also Dahl v. Bd. of Trs. of W. Michigan Univ.*, 15 F.4th 728, 733–34 (6th Cir. 2021) (determining that where “[m]edical or religious exemptions and accommodations will be considered on an individual basis,” the university’s vaccine mandate, like the policy in *Fulton* and the unemployment compensation law in *Sherbert*, was not generally applicable and impermissibly left for the university to decide “which reasons for not complying with the policy are worthy of solicitude”).

The import of the neutrality or applicability of a law is that a law that is not facially neutral or not generally applicable must be justified by a compelling government interest and be narrowly tailored to advance that interest. *Fulton*, 593 U.S. at 541. In contrast, “a law that is neutral and of general applicability need not be justified by a compelling state interest even if the law has the incidental effect of burdening a particular religious practice.” *Lukumi*, 508 U.S. at 531.

Turning then to the ELCRA provision at hand, the Employment Clause prohibits an employer from failing to “hire or recruit, discharge, or otherwise discriminate” against an

individual because of enumerated protected characteristics (“religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status”), MICH. COMP. LAWS § 37.2202(1)(a), and from using hiring applications that elicit information about, or express a preference based on, any protected characteristic, *id.* § 37.2206(2)(a), (c).

The clause is neutral because it does not reference any religious practices or target religious conduct. Unlike the ordinances examined in *Lukumi*, which allowed animal killing for a number of secular reasons but not as part of a religious ritual, the clause does not reveal a value judgment that religious reasons for certain activities related to employment are less important than secular reasons for the same activities. The clause is also generally applicable to the extent that it does not differentiate between religious and secular conduct and does not prohibit religious conduct while permitting secular conduct that undermines the government’s asserted interest in a similar way. Sacred Heart does not engage with—let alone seriously dispute—these propositions. Rather, Sacred Heart focuses on the statutory exemptions to the ELCRA and the ELCRA’s BFOQ process, arguing that they “destroy general applicability and trigger strict scrutiny” (ECF No. 93 at PageID.2669).

The statutory exemptions that Sacred Heart identifies—for single-sex schools, private clubs, and senior-citizen housing—apply equally to religious and secular actors. *See* MICH. COMP. LAWS § 37.2404 (“The provisions of section 402 relating to sex shall not apply to a private educational institution not exempt under section 403, which now or hereafter provides an education to persons of 1 sex.”); *id.* § 37.2302a(4) (“This section does not prohibit a private club from sponsoring or permitting sports schools or leagues for children less than 18 years of age that are limited by age or to members of 1 sex, if comparable and equally convenient access to the club’s facilities is made available to both sexes and if these activities are not used as a subterfuge

to evade the purposes of this article.”); and *id.* § 37.2503(c) (indicating that § 502 does not apply, “[w]ith respect to the age provision and the familial status provision only, the sale, rental, or lease of housing accommodations meeting the requirements of federal, state, or local housing programs for senior citizens, or accommodations otherwise intended, advertised, designed or operated, bona fide, for the purpose of providing housing accommodations for persons 50 years of age or older.”). Therefore, the exemptions that Sacred Heart stitches together do not, either individually or cumulatively, demonstrate that religious schools are treated worse than secular schools. Moreover, the statutory exemptions do not “invite[] the government to consider the particular reasons for a person’s conduct,” *Fulton*, 593 U.S. at 523, but apply to broad categories. In other words, the statutory exceptions are “mandatory, not discretionary.” *Olympus Spa v. Armstrong*, 169 F.4th 817, 833 (9th Cir. 2026) (drawing a distinction between the mandatory exceptions in a Washington law and *Fulton*, “where the challenged foster care contract provision included ‘a formal system of entirely discretionary exceptions’”).

Turning then to the ELCRA’s BFOQ process, Sacred Heart attempts to analogize to *Fulton*, 593 U.S. at 533, 537, asserting that the ELCRA’s BFOQ process likewise impermissibly gives the Commission “unbridled discretion” to authorize “individualized exemptions” for some employment activities (ECF No. 93 at PageID.2667). However, the BFOQ inquiry is not based on an ad hoc assessment of “which reasons for not complying” with the law “are worthy of solicitude.” *Fulton*, 593 U.S. at 537. Rather, the BFOQ inquiry is controlled by law. Employers like Sacred Heart may apply for an exemption from the ELCRA’s regulations if a certain protected characteristic “is a bona fide occupational qualification” that is “reasonably necessary to the normal operation of the business.” MICH. COMP. LAWS § 37.2208. The BFOQ exemption can be either (1) obtained by application to the Commission or (2) asserted as an affirmative defense in

later proceedings. *Id.*; see MICH. ADMIN. CODE R. 37.25. Applicants must submit proposed findings of fact, “in-depth analysis of case law,” and responses to the following thirteen specific criteria:

1. Name of employer or entity seeking a bona fide occupation exemption.
2. Address and telephone number of principal location or place of business.
3. Addresses of all other locations within the State of Michigan.
4. Location, or locations, for which an exemption is sought.
5. Describe in detail the entity’s functions, operations and purposes.
6. Check basis for the BFOQ exemption: ☐ Religion ☐ National Origin ☐ Age
☐ Height ☐ Weight ☐ Sex
7. Title and description of position(s) for which exemption is sought.
8. Total number of positions in the classification(s) for which the exemption is being requested.
9. How long has this classification been used?
10. How many current employees, if any, would be affected by this exemption?
11. Describe in detail why a bona fide occupational qualification is necessary to the normal operation of the business or enterprise. Also discuss any compelling reason(s) why persons in the group for which exemption is being sought should be exempted or could not reasonably perform the duties of the position.
12. If the request for exemption is denied, please explain any possible alternatives which may be used and any others which the entity may have explored.
13. Have any civil rights complaints been filed against the entity on the basis for which a BFOQ is requested, i.e., sex, age, etc? If yes, list each and give the present status and the name of the local, state or federal civil rights agency involved.

BFOQ App., ECF No. 93 at PageID.2656, referencing 1:22-cv-787, Ex. A to Jt. Stips., ECF No. 109-1 at PageID.2102–2103. Unlike the contract provision in *Fulton* and the unemployment compensation law in *Sherbert*, the BFOQ process does not afford the Commission discretion to

reject an application “for any reason.” Rather, the Commission appropriately retains discretion to decide whether an application submitted in support of a BFOQ contains sufficient (or insufficient) information to support the exemption under the statute. The Court concludes that this structured process ensures that outcomes are dictated by the evidence and the First Amendment, rather than the discretion of individual commissioners.

In support of a contrary conclusion, Sacred Heart assigns much import to the fact that Defendants’ witnesses used the phrase “case by case” in their depositions (ECF No. 93 at PageID.2667–2668; ECF No. 105 at PageID.2814–2815). The Court observes that the word choice was often prompted by Sacred Heart’s counsel, as follows:

Q. And is whether something counts as a legitimate nondiscriminatory reason something that the department decides on a case by case basis?

A. That’s correct.

* * *

Q. Okay. The first bullet: Reasonably necessary qualification to perform the normal operations of respondent’s business. Fair to say, that’s a case by case determination?

A. Absolutely.

Q. And that the department has discretion to determine whether it regards the religious elements of the job as reasonably necessary?

A. Yes.

(Trevino Dep., ECF No. 88-1 at PageID.1872, 1889).

Q. And again, that [exemption determination] would be on a case by case basis?

A. That’s correct.

* * *

Q. And, in fact, the BFOQ system is designed to be decided on a case by case basis; is that right?

[Defense counsel]: Objection to form.

THE WITNESS: Yes.

(Londo Dep., ECF No. 88-1 at PageID.2026, 2029).

Whatever its origin in this litigation, the phrase “case by case” excerpted from the depositions does not reveal a systemic problem in Michigan’s civil rights law. That Commissioners must weigh facts and apply their collective judgment on individual BFOQ applications does not transform the legal standard into the kind of open-ended exemption authority that runs afoul of *Fulton* but is instead consistent with the Supreme Court’s own approach in *Hosanna-Tabor* and the Supreme Court’s instructions in *Our Lady of Guadalupe*. In *Our Lady of Guadalupe*, 591 U.S. at 757, the Supreme Court rejected a “rigid formula” approach and instructed “courts to take all relevant circumstances into account and to determine whether each particular position implicated the fundamental purpose of the exception” (citation omitted). *See also Hosanna-Tabor*, 565 U.S. at 191–92 (considering the teacher’s title, duties, religious training, appointment process, and how she held herself out to the public). The ELCRA entrusts a collective decision to the Commission under a specific statutory legal standard interpreted consistent with Supreme Court precedent. Application of the BFOQ exemption is appropriately context-specific and evidence-bound.

Indeed, such assessment by a state civil rights commission is not unusual. In *Ohio Civil Rights Commission v. Dayton Christian Schools*, 477 U.S. 619 (1986), the Supreme Court held that a state civil rights commission “violates no constitutional rights by merely investigating” a religious school’s employment decision “if only to ascertain whether the ascribed religious-based reason was in fact the reason for the discharge.” *Id.* at 628. The Court observed that it would

instead “seem an unusual doctrine ... to say that the Commission could *not* construe its own statutory mandate in the light of federal constitutional principles.” *Id.* at 628 (emphasis added).

The Court notes that while Sacred Heart does not identify any decision by the Sixth Circuit considering a comparable statutory exemption process, other circuits have approved similar exemption processes under *Fulton*. *See, e.g., Miller v. McDonald*, No. 24-681, 2026 WL 1871521, at *7–8 (2d Cir. June 30, 2026) (rejecting the plaintiffs’ argument that school officials have “the power to press the red or green light on each medical exemption request” and holding that New York’s medical exemption instead “fits neatly within the contours of other exemptions to immunization that we have held to be constitutionally permissible” where “a physician’s use of her professional medical judgment is limited by the statute and regulations”); *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 276 (3d Cir. 2007) (holding that the city’s zoning plan is “generally applicable,” despite certain allowances, and expressly “declin[ing] to hold that every zoning ordinance that includes a waiver or amendment provision is, solely by virtue of that fact, unconstitutional unless it can survive strict scrutiny, as this does not reflect existing precedent of the Supreme Court or of this Circuit and would be untenable as a practical matter”); *Perry v. Marteney*, 172 F.4th 315, 324 (4th Cir. 2026) (acknowledging that “[d]etermining whether an individual qualifies for an exemption will often require some individualized assessment” but holding that unlike the “sole discretion” standard in *Fulton*, West Virginia’s compulsory vaccination law does not provide an impermissible mechanism for granting individualized exemptions where the law “clearly articulates the circumstances in which state officials can grant them”); *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1298 (10th Cir. 2004) (considering a Mormon’s challenges to certain curricular requirements and opining that “[w]hile of course it takes some degree of individualized inquiry to determine whether a person is eligible for even a strictly defined

exemption, that kind of limited yes-or-no inquiry is qualitatively different from the kind of case-by-case system envisioned by the *Smith* Court in its discussion of *Sherbert* and related cases”); *Thai Meditation Ass’n of Alabama, Inc. v. City of Mobile, Alabama*, 83 F.4th 922, 929 (11th Cir. 2023) (considering a church’s challenge to a city’s zoning approval process and holding that the process satisfies *Smith*’s general-applicability requirements and the fact that the process “necessarily requires individual assessment” is not sufficient to establish an individualized exemption contrary to *Fulton* where “the criteria apply to all property uses eligible for approval, religious or secular”).

Last, to the extent state officials must exercise discretion when deciding whether sufficient evidence exists in a particular application for a bona fide occupational qualification that is “reasonably necessary to the normal operation of the business,” MICH. COMP. LAWS § 37.2208, the ELCRA cabins such discretion by judicial review. *See* MICH. COMP. LAWS § 37.2606. *See also Perry v. Marteney*, 172 F.4th 315, 324 (4th Cir. 2026) (finding similar import in the fact that the West Virginia exception process is subject to appeal).

In sum, neither the ELCRA’s exemptions nor its embedded ministerial exception demonstrate that the ELCRA’s Education Clause lacks general applicability, and, under *Smith*, 494 U.S. at 878–79, religious beliefs do not excuse compliance with an otherwise valid law. Therefore, Sacred Heart’s third challenge lacks merit.

4. Sacred Heart’s As-Applied Challenge to the ELCRA’s Education and Public Accommodation Clauses as Compelling Sacred Heart to Speak a Viewpoint About Gender Identity to Which It Objects

Next, Sacred Heart argues that the ELCRA’s Education and Public Accommodation Clauses require Sacred Heart to contradict its religious beliefs by forcing it to “speak a message on gender identity that contradicts Catholic doctrine by mandating the use of pronouns” and prohibiting it from speaking its Catholic beliefs in classroom instruction (ECF No. 93 at

PageID.2669–2673 [Public Accommodation Clause]; ECF No. 105 at PageID.2811–2812 [Education Clauses]). Accordingly, Sacred Heart also argues that the ELCRA’s corresponding Publication Clauses restrict its constitutionally protected right to communicate its Catholic message on marriage and sexuality to students, families, employees, and the public and instead forces it to be “associate[d] with messages that violate Catholic doctrine” (ECF No. 93 at PageID.2673–2675).

In support of summary judgment in their favor, Defendants emphasize that the ELCRA expressly exempts private religious schools from the provisions regarding religious discrimination, avoiding government entanglement in religious entities’ faith and doctrine (ECF No. 98 at PageID.2748). Specifically, Defendants indicate that under the facts of this case, Sacred Heart’s school policies related to restrooms, uniforms, sports teams, and pronouns are directly related to its religious beliefs and fall within § 403’s exception from § 402’s discrimination provisions on the basis of religion (ECF No. 98 at PageID.2752; ECF No. 106 at PageID.2849–2850). Defendants further indicate that Sacred Heart’s policies would also likely be excluded from enforcement based on the “permitted-by-law” framework of the ELCRA, which provides that Michigan’s interest in eradicating discrimination must yield when the First Amendment protects the challenged conduct (ECF No. 98 at PageID.2752, n.7; ECF No. 106 at PageID.2842, 2848–2850). Defendants indicate that the ELCRA’s Publication Clauses are therefore not implicated (ECF No. 98 at PageID.2753–2754).

Sacred Heart’s argument lacks merit.

It is not disputed that Sacred Heart is subject to the ELCRA's prohibitions against discrimination in education and public accommodation.¹⁰ The prohibitions against discrimination in education, set forth in MICH. COMP. LAWS § 37.2402(a), are circumscribed by § 403, which provides that "[t]he provisions of Section 402 related to religion shall not apply to a religious educational institution or an educational institution operated, supervised, or controlled by a religious institution or organization which limits admission or gives preference to an applicant of the same religion." MICH. COMP. LAWS § 37.2403. As Defendants astutely point out (ECF No. 106 at PageID.2849–2850), Sacred Heart's policies are grounded in, and turn on adherence to, its religious doctrine and therefore fall within the protection of § 403.

Application of the ELCRA's prohibitions against discrimination in public accommodation are also expressly cabined by the phrase "except where permitted by law." Quoting the Sixth Circuit's earlier opinion, Sacred Heart argues that the Sixth Circuit already determined that the phrase "except where permitted by law" is "not so clear" that it renders the law obviously inapplicable to its activities (ECF No. 106 at PageID.2789, referencing *CHC*, 117 F.4th at 847). But the Sixth Circuit's statement was made within the context of its decision on standing and the threat of enforcement against Sacred Heart, which is an inquiry different from whether Sacred

¹⁰ Defendants argue that Sacred Heart has not established standing to challenge the Public Accommodation Clause as it has "not alleged or shown any circumstances in which it is functioning as a 'public accommodation'" (ECF No. 98 at PageID.2740–2743). However, Sacred Heart points out that Defendants admitted in written discovery responses that they consider Sacred Heart "a 'place of public accommodation'" subject to the ELCRA (ECF No. 105 at PageID.2812, citing Defs.' Suppl. Resps. to Pls.' First Set of RFA, No. 1, ECF No. 88-2, PageID.2365). Moreover, the Sixth Circuit has determined from its review of Supreme Court and Sixth Circuit case law that "standing does not have to be maintained throughout all stages of litigation. Instead, it is to be determined as of the time the complaint is filed." *Cleveland Branch, N.A.A.C.P. v. City of Parma, OH*, 263 F.3d 513, 524–26 (6th Cir. 2001) (citing, in pertinent part, *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 191 (2000)). Therefore, the Court declines to decide this issue based on standing (or lack thereof).

Heart should succeed on the merits of its constitutional claims. *See CHC*, 117 F.4th at 847 (“[T]he language of exemptions within the ELCRA and the EAA is not so clear that it renders the laws obviously inapplicable to Plaintiffs’ conduct—as is necessary to defeat standing.”) (emphasis added); *see generally Gerber v. Herskovitz*, 14 F.4th 500, 505 (6th Cir. 2021) (“The standing inquiry is not a merits inquiry.”). The Sixth Circuit did not otherwise elaborate on the “permitted by law” phrase in the ELCRA.

In *Cheeseman v. American Multi-Cinema*, the Michigan Court of Appeals interpreted the “except where permitted by law” language in the context of an age discrimination claim—a movie theater had denied minor children entrance to an R-rated movie. 310 N.W.2d 408 (Mich. Ct. App. 1981). The *Cheeseman* court found the language to be a “clear indication of the intent of the Legislature to retain and apply a practical rule of reason to the prohibition against discrimination on the basis of age.” *Id.* at 411. *See also Dep’t of Civil Rights v. Beznos*, 365 N.W.2d 82 (Mich. 1984) (similarly determining that what might otherwise be unlawful age discrimination for purposes of a claim under Article 5 of the ELCRA relating to real estate transactions is “permitted by law”). With respect to the word “law,” the *Cheeseman* court determined the term included common law, statutes, and the constitution. 310 N.W.2d at 411. The *Cheeseman* court concluded that the common law and state statutes permitted the theater to discriminate: “[U]nder Michigan law, theatres have a right to treat children differently than adults. Under the Michigan Civil Rights Act, what might otherwise be unlawful age discrimination is permitted by law where, as here, it is designed for the protection of children.” *Id.* at 413.

Applying *Cheeseman*’s counsel here, the phrase “except where permitted by law” is a key qualifier, carving out space for Sacred Heart’s activities that may otherwise constitute prohibited discrimination when separately authorized by the First Amendment. *See In re Certified Questions*

from United States Dist. Ct., W. Dist. of Michigan, S. Div., 958 N.W.2d 1, 7, 51 (Mich. 2020) (“[S]tatutes are presumed to be constitutional, and [courts] have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent.”) (citation omitted). *See also* MICH. COMP. LAWS § 37.2705 (providing that the ELCRA “shall not be construed as preventing the commission from securing civil rights guaranteed by law other than the civil rights set forth” in the Act).

Defendants do not dispute that Sacred Heart’s religiously motivated policies are permitted by the First Amendment (ECF No. 106 at PageID.2849–2850). Defendants confirmed as much not only during briefing but during discovery. *See, e.g.*, Londo Dep., ECF No. 88-1 at PageID.2064–2065 (disavowing enforcement of the ELCRA against Sacred Heart regarding disciplining students on the basis of sexual orientation or gender identity, maintaining its pronoun policy, and publishing its policies). *See generally* *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (The First Amendment protects “the right to speak freely and the right to refrain from speaking at all.”); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995) (The government “may not compel affirmance of a belief with which the speaker disagrees.”); *see also* *Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, 158 F.4th 732, 753–57 (6th Cir. 2025) (en banc) (specifically holding that the First Amendment protects the right to express one’s views on sex through the use of gender-specific pronouns); and *Meriwether*, 992 F.3d at 508 (holding that gender-specific pronouns “convey a powerful message implicating a sensitive topic of public concern”—gender identity).

Sacred Heart argues that Defendants’ reliance on the “permitted by law” phrase included in the ELCRA is merely Defendants’ attempt to avoid the merits of its constitutional claims (ECF No. 105 at PageID.2789). The Court disagrees. Every word in a statute is presumed to have

meaning. Courts must give effect to “every word, phrase, and clause” in a statute, avoiding a construction that would render any part of a statute surplusage or nugatory. *Sinicropi v. Mazurek*, 729 N.W.2d 256, 261 (Mich. Ct. App. 2006) (citing, in part, *Shinholster v. Annapolis Hosp.*, 685 N.W.2d 275 (Mich. 2004)).

Sacred Heart also complains, with some fervor, that it took Defendants too long to reach their position in this case and that their position will not bind future enforcement officials in future administrations or future cases (ECF No. 105 at PageID.2796–2780).¹¹ While the path of litigation in this 2022 case has been long and the discovery was complicated, the Court submits that the investment of time was commensurate with the importance of the constitutional issues at stake. And Defendants have been fully transparent that their agreement that certain Sacred Heart policies fall within First Amendment protection (and that at least one position qualifies for the ministerial exception) reflects the specific facts of this case and should, in fact, *not* be read as a template for future disputes.

In sum, Defendants agree that the anti-discrimination prohibitions relevant to Sacred Heart’s policies regarding admissions, pronouns, sexual orientation, restrooms, uniforms, and sports teams yield to Sacred Heart’s rights under § 403, as well as its rights under the First Amendment, which is a “law” for purposes of § 302(a)’s exception. *Cheeseman*, 310 N.W.2d at 411. Because Sacred Heart’s policies are permitted by the ELCRA, the publication of these

¹¹ Sacred Heart points to MDCR complaints made against beauty salons (Studio 8 and Uprooted Electrolysis) for refusing to provide services to transgender customers, but, unlike the policies of a religious school, the policies of a beauty salon do not implicate the First Amendment or the “permitted by law” phrase included in the ELCRA. Sacred Heart also references a complaint filed against a Lutheran church and school (ECF No. 105-1). As Defendants point out (ECF No. 106 at PageID.2842), the complaint is distinguishable from the issues at bar inasmuch as it concerns a parent’s public-accommodations claim that “[the respondent] did not allow me to sit on the bench during a game” (ECF No. 105-1 at PageID.2829).

policies does not violate the corresponding Publication Clauses of the ELCRA. In sum, Sacred Heart's constitutional challenge fails.

5. Parent-Plaintiffs' Derivative Challenge to the ELCRA as Violating their Fundamental Parental Rights and Free Exercise Rights

For their part, Parent-Plaintiffs argue that “[a]pplying Michigan’s laws to Sacred Heart also harms the Parent-Plaintiffs” (ECF No. 93 at PageID.2677), specifically their “fundamental parental rights” (*id.* at PageID.2677–2679) and their free exercise rights (*id.* at PageID.2679–2681).

In response, Defendants point out that “[t]he Sacred Heart parents have not provided any authority indicating that Sacred Heart does not generally have to comply with ELCRA” (ECF No. 98 at PageID.2755–2756). According to Defendants, the Parent-Plaintiffs’ claim is “wholly depend[ent] on the Defendants taking a position that Sacred Heart cannot implement school policies consistent with their religious beliefs, which has not occurred in this case” (ECF No. 106 at PageID.2851).¹²

Parent-Plaintiffs’ arguments are premised on the success of Sacred Heart’s challenges. *See* ECF No. 93 at PageID.2678 (“[The] ELCRA interferes with this parental choice by prohibiting *Sacred Heart* from operating consistent with Catholic doctrine on issues of sex and gender.”) (emphasis added); PageID.2680 (“[T]he Act interferes with Parent Plaintiffs raising their children

¹² Defendants also argue that the Parent-Plaintiffs’ claim “did not survive appeal” inasmuch as the Sixth Circuit’s opinion “did not expressly reverse or disturb this Court’s dismissal of the parents’ claims for lack of standing” (ECF No. 98 at PageID.2754). Although the Sixth Circuit referenced the Parent-Plaintiffs only once, in indicating that their claim was “joined” with Sacred Heart’s claims, *CHC*, F.4th at 836, the Sixth Circuit also did not expressly indicate that the Parent-Plaintiffs *lacked* standing. *See United States v. Dale*, 156 F.4th 757, 766 (6th Cir. 2025) (indicating that an issue is implicitly decided when it is “so closely related to the earlier appeal [that] its resolution involves no additional consideration and so might have been resolved but unstated”) (citation omitted). Therefore, the Court declines to decide this issue on the basis of standing (or lack thereof).

in the Catholic faith by forcing *Sacred Heart* to teach discordance with its faith.”) (emphasis added); PageID.2680–2681 (describing what the ELCRA forbids *Sacred Heart* from teaching or conveying); *see also* ECF No. 105 at PageID.2820 (“By forcing *Sacred Heart* to change its policies and communicate false messages about gender identity and sexuality, the Act directly undermines Parent Plaintiffs’ children’s spiritual development.”) (emphasis added). Inasmuch as *Sacred Heart*’s as-applied challenges lack merit, Parent-Plaintiffs’ claim concomitantly fails.

6. Plaintiffs’ Challenge to the ELCRA’s “Unwelcome Clause” as Facially Violating the First and Fourteenth Amendment as Vague and Overbroad

Last, Plaintiffs argue that the words “objectionable, unwelcome, unacceptable, or undesirable” in the “Unwelcome Clause” of the ELCRA’s Public Accommodation Publication Clause renders the clause facially vague and overbroad and grants Michigan officials “unbridled enforcement discretion” (ECF No. 93 at PageID.2684–2685; ECF No. 105 at PageID.2817–2818).

In support of summary judgment in their favor, Defendants argue that Plaintiffs’ facial challenge fails because the terms therein are satisfactory to provide places of public accommodation with “fair notice” of what the ELCRA prohibits and thereby prevent arbitrary enforcement (ECF No. 98 at PageID.2744–2746). Defendants argue that even assuming the Unwelcome Clause captures speech protected by the First Amendment, the provision is applicable “except as permitted by law,” which includes the First Amendment (*id.* at PageID.2746–2747).

Plaintiffs’ argument lacks merit.

The ELCRA’s Public Accommodation Publication Clause has two parts—a Denial Clause and an Unwelcome Clause (Jt. Stips. ¶ 16). The Denial Clause prohibits public accommodations from “[p]rint[ing] ... or otherwise caus[ing] to be published a statement, advertisement, notice, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations” will be “refused, withheld from, or denied an individual because

of” sexual orientation, gender identity, and other protected classes (*id.* ¶ 17, quoting MICH. COMP. LAWS § 37.2302(b)). The Unwelcome Clause prohibits public accommodations from “[p]rint[ing] ... or otherwise caus[ing] to be published a statement, advertisement, notice, or sign which indicates ... that an individual’s patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because of” sexual orientation, gender identity, and other protected classes (*id.* ¶ 18, quoting MICH. COMP. LAWS § 37.2302(b)).

In constitutional challenges reaching beyond the plaintiff’s circumstances, the plaintiff must satisfy the “standards for a facial challenge to the extent of that reach.” *Green Party*, 791 F.3d at 692 (quoting *John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010)). “Due process requires a court to hold an ordinance or statute ‘void for vagueness if its prohibitive terms are not clearly defined such that a person of ordinary intelligence can readily identify the applicable standard for inclusion and exclusion.’” *Brown v. City of Albion*, 136 F.4th 331, 344 (6th Cir. 2025) (citation omitted). “When determining whether a law provides a reasonable opportunity to understand its prohibitions, courts begin with the plain text of the statute.” *Id.* at 345. “Courts should not require ‘mathematical certainty’ regarding the precise extent of the statute.” *Id.* (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972)). Rather, “when the common meaning of a term makes clear what conduct is prohibited, failure to further define the term will not render the statute void for vagueness.” *Id.* For example, in *Grayned*, the Supreme Court found that the City of Rockford’s anti-noise ordinance, prohibiting a person while on grounds “adjacent to any building in which a school or any class thereof is in session” from “willfully” making “any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class,” was not unconstitutionally vague but was instead marked by “flexibility and reasonable breadth, rather than meticulous specificity[.]” 408 U.S. at 110–11 (citation omitted).

According to Plaintiffs, the words “objectionable, unwelcome, unacceptable, or undesirable” in the Unwelcome Clause render the provision unconstitutionally vague. However, these words have “ordinary meanings.” *Brown*, 136 F.4th at 345. Given the “particular context” within which the words fall, the Unwelcome Clause gives “fair notice to those to whom (it) is directed.” *Grayned*, 408 U.S. at 112. The words “objectionable,” “unwelcome,” “unacceptable,” and “undesirable” are “near-synonyms” that convey a single, understandable meaning: a place of public accommodation may not publish statements indicating that patrons will be denied service or treated unequally because of a protected characteristic. In support of a contrary conclusion, Sacred Heart emphasizes that the Commission’s witness could not, “off the top of [his] head,” define the words during his deposition (ECF No. 93 at PageID.2685, citing Londo Dep., ECF No. 88-1 at PageID.2034), but Defendants aptly point out that one commissioner’s uncertainty about how to answer a question during a deposition does not render a statute unconstitutionally vague (ECF No. 98 at PageID.2746).

Plaintiffs argue that the Unwelcome Clause is also overbroad because the words “objectionable, unwelcome, unacceptable, or undesirable” ban too much speech. However, to succeed on a facial overbreadth claim, a plaintiff must show “that a substantial number of instances exist in which the law cannot be applied constitutionally.” *Speet v. Schuette*, 726 F.3d 867, 872 (6th Cir. 2013). “[T]he mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge.” *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984). Rather, “there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds.” *Id.* at 801 (citations omitted).

Moreover, “[f]acial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged statute.” *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973). “[W]hatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which its sanctions, assertedly, may not be applied.” *Id.* at 615–16. For the reasons previously stated, because the ELCRA is “readily susceptible” to a narrowing construction that renders it constitutional, it must be upheld. *See Virginia v Am. Booksellers Ass’n*, 484 U.S. 383, 397 (1988) (indicating that “[i]t has long been a tenet of First Amendment law that in determining a facial challenge to a statute, if it be ‘readily susceptible’ to a narrowing construction that would make it constitutional, it will be upheld.”).

III. CONCLUSION

In summary, the ELCRA survives the challenges posed in this case. Sacred Heart has not demonstrated that either the “co-religionist doctrine” or the right to expressive association protect its employment choices. Conversely, the ELCRA, via § 403 and the First Amendment, adequately protects Sacred Heart, including its policies regarding admissions, pronouns, sexual orientation, restrooms, uniforms, and sports teams. Consequently, the relief Plaintiffs seek is not warranted. Defendants, in contrast, are entitled to judgment as a matter of law on these issues. Accordingly:

IT IS HEREBY ORDERED that Plaintiffs’ Motion for Summary Judgment (ECF No. 92) is DENIED.

IT IS FURTHER ORDERED that Defendants’ Cross-Motion for Summary Judgment (ECF No. 97) is GRANTED.

Because this Opinion and Order resolves all pending claims, the Court will also issue a corresponding Judgment. *See* FED. R. CIV. P. 58.

Dated: August 5, 2026

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge