

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN – SOUTHERN DIVISION

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PETER BORMUTH,

Plaintiff,  
v.

COUNTY OF JACKSON,

Defendant.

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Case No. 2:13-cv-13726

Honorable Marianne O. Battani

**DEFENDANT'S ANSWER TO  
AMENDED COMPLAINT AND  
AFFIRMATIVE DEFENSES**

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**DEFENDANT COUNTY OF JACKSON'S  
ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant, County of Jackson, by and through its attorneys, COHL, STOKER & TOSKEY, P.C., submits the following as its answer to Plaintiff's Complaint Amended Complaint:

1. Defendant admits that recently the County Commissioners open their meetings with an invocation. Defendant admits that a Commissioner has asked citizens who come to the meetings to rise and bow their heads. Defendant admits that a Commissioner is asked to lead the prayer. Defendant denies that every prayer is made in the name of Jesus Christ for the reason it is untrue. Defendant admits that the recent instances involve prayers that end with Amen. Defendant denies as untrue the

remaining allegations of fact set forth in paragraph 1 of Plaintiff's amended complaint not expressly admitted herein.

2. Defendant admits the allegation set forth in paragraph 2 of Plaintiff's amended complaint.

3. Defendant admits the allegation set forth in paragraph 3 of Plaintiff's amended complaint.

4. Defendant denies as untrue the allegations of fact and inferences in paragraph 4 of Plaintiff's amended complaint.

5. The allegations made by Plaintiff state a legal conclusion to which no response is required. If allegations of fact, Defendant denies as untrue the allegations and inferences in paragraph 5 of Plaintiff's amended complaint.

6. The allegations made by Plaintiff state a legal conclusion to which no response is required. If allegations of fact, Defendant denies as untrue the remaining allegations and inferences in paragraph 6 of Plaintiff's amended complaint.

7. Paragraph 7 of Plaintiff's amended complaint does not contain an allegation and therefore no response is required. Defendant denies as untrue the remaining inferences in paragraph 7 of Plaintiff's amended complaint.

8. Defendant denies as untrue the allegations set forth in paragraph 8 of Plaintiff's amended complaint.

9. Defendant denies as untrue the allegations set forth in paragraph 9 of Plaintiff's amended complaint.

10. Defendant admits that Declaratory Judgment Act is accurately cited in paragraph 10 of Plaintiff's amended complaint, but denies as untrue that Plaintiff is entitled to such relief.

11. The allegations made by Plaintiff state a legal conclusion to which no response is required; but if allegations of fact, Defendant denies as untrue the allegations and inferences in paragraph 11 of Plaintiff's amended complaint.

12. Defendant admits the allegation set forth in paragraph 12 of Plaintiff's amended complaint.

13. Defendant states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations set forth in paragraph 14 of Plaintiff's amended complaint and, therefore, neither admit nor deny same, but leave Plaintiff to his proofs.

14. Defendant admits the allegation set forth in paragraph 14 of Plaintiff's amended complaint.

15. The allegations made by Plaintiff state a legal conclusion to which no response is required; but if allegations of fact, Defendant denies as untrue the allegations and inferences in paragraph 15 of Plaintiff's amended complaint.

16. Defendant admits the allegation set forth in paragraph 16 of Plaintiff's amended complaint.

17. Defendant admits the allegation set forth in paragraph 17 of Plaintiff's amended complaint.

18. Defendant admits the allegation set forth in paragraph 18 of Plaintiff's amended complaint.

19. Defendant denies as untrue the characterization that the invocation was "completely Christian" and Defendant admits the remaining allegations of fact set forth in paragraph 19 of Plaintiff's amended complaint.

20. Defendant denies as untrue the characterization that the invocation was “completely Christian” and Defendant admits the remaining allegations of fact set forth in paragraph 20 of Plaintiff’s amended complaint.

21. Defendant denies as untrue the characterization that the invocation was “completely Christian” and Defendant admits the remaining allegations of fact set forth in paragraph 21 of Plaintiff’s amended complaint.

22. Defendant denies as untrue the characterization that the invocation was “a Christian prayer” and Defendant admits the remaining allegations of fact set forth in paragraph 22 of Plaintiff’s amended complaint.

23. Defendant admits the allegations set forth in paragraph 23 of Plaintiff’s amended complaint.

24. Defendant states that it is without sufficient knowledge or information upon which to form a belief as to the truth of said allegations and, therefore, neither admit nor deny same, but leave Plaintiff to his proofs; however, if such allegations set forth in paragraph 24 of Plaintiff’s amended complaint are of fact the allegations are denied as untrue.

25. Defendant states that it is without sufficient knowledge or information upon which to form a belief as to the truth of said allegations and, therefore, neither admit nor deny same, but leave Plaintiff to his proofs; however, if such allegations set forth in paragraph 25 of Plaintiff’s amended complaint are of fact the allegations are denied as untrue.

26. Defendant admits that Plaintiff was provided a copy of Policy No. 4040; and Defendant avers the content of the policy cited by Plaintiff speaks for itself.

27. Defendant admits that the Plaintiff stopped the Jackson County Commissioner Chairman's place of business and that Plaintiff communicated his position regarding the invocation/prayer. Defendant denies as untrue the remaining allegations of fact set forth in paragraph 27 of Plaintiff's amended complaint not expressly admitted herein.

28. Defendant admits the allegations set forth in paragraph 28 of Plaintiff's amended complaint.

29. Defendant states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations regarding Plaintiff's state of mind or actions set forth in paragraph 29 of Plaintiff's amended complaint and, therefore, neither admit nor deny same, but leave Plaintiff to his proofs.

30. Defendant admits the allegations set forth in paragraph 30 of Plaintiff's amended complaint. Further, Defendant avers the content of the Board Agenda dated August 20, 2013 and the M-Live article dated August 20, 2013, speaks for itself.

31. Defendant states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations set forth in paragraph 31 of Plaintiff's amended complaint related to Plaintiff's feelings or perceptions and, therefore, neither admit nor deny same, but leave Plaintiff to his proofs. Defendant denies as untrue the remaining allegations of fact and inferences in paragraph 31.

32. Defendant admits that Plaintiff filed the complaint on August 30, 2013, which speaks for itself. Defendant denies as untrue the remaining allegations of fact and inferences in paragraph 32.

33. Defendant admits that on September 9, 2013 the Jackson County Affairs and Agencies Committee voted to approve nominees for appointment by the Jackson

County Board of Commissioners to the Solid Waste Planning Committee. Defendant denies as untrue the remaining allegations of fact and inferences set forth in paragraph 33 of Plaintiff's amended complaint not expressly admitted herein.

34. Defendant admits that on September 17, 2013 the Jackson County Board of Commissioners approved the nominees for appointment to the Solid Waste Planning Committee. Defendant denies as untrue the remaining allegations of fact and inferences set forth in paragraph 34 of Plaintiff's amended complaint not expressly admitted herein.

35. Defendant admits the allegations set forth in paragraph 35 of Plaintiff's amended complaint.

36. Defendant admits that David Rice led the Pledge of Allegiance at the Jackson County Board of Commissioner's Meeting on October 15, 2013. Defendant denies as untrue the remaining allegations of fact and inferences set forth in paragraph 36 of Plaintiff's amended complaint.

37. Defendant admits that the County Commissioners recent practice is to ask a Commissioner to lead the prayer. The allegations made by Plaintiff that state a legal conclusion require no response. Defendant states it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations regarding Plaintiff's beliefs or the historical record surrounding Christianity and, therefore, neither admit nor deny same, but leave Plaintiff to his proofs. If allegations of fact, Defendant denies as untrue the allegations and inferences set forth in paragraph 37 of Plaintiff's amended complaint not expressly admitted herein.

38. Defendant incorporates its prior responses to paragraphs 1 through 37 of Plaintiff's amended complaint herein.

39. The allegations made by Plaintiff state a legal conclusion to which no response is required. If allegations of fact, Defendant denies as untrue the allegations and inferences in paragraph 39 of Plaintiff's amended complaint.

40. The allegations made by Plaintiff state a legal conclusion to which no response is required. If allegations of fact, Defendant denies as untrue the allegations and inferences in paragraph 40 of Plaintiff's amended complaint.

41. Defendant denies as untrue the allegations set forth in paragraph 41 of Plaintiff's amended complaint.

42. Defendant denies as untrue the allegations set forth in paragraph 42 of Plaintiff's amended complaint.

43. Defendant denies as untrue the allegations set forth in paragraph 43 of Plaintiff's amended complaint.

44. Defendant incorporates its prior responses to paragraphs 1 through 43 of Plaintiff's amended complaint herein.

45. The allegations made by Plaintiff state a legal conclusion to which no response is required. If allegations of fact, Defendant denies as untrue the allegations and inferences in paragraph 45 of Plaintiff's amended complaint.

46. The allegations made by Plaintiff state a legal conclusion to which no response is required. If allegations of fact, Defendant denies as untrue the allegations and inferences in paragraph 46 of Plaintiff's amended complaint.

47. Defendant admits that Plaintiff seeks a declaratory judgment, but denies as untrue that he is entitled to the relief requested in paragraph 47 of Plaintiff's amended complaint.

48. Defendant admits that Plaintiff seeks injunctive relief, but denies as untrue that he is entitled to the relief requested in paragraph 48 of Plaintiff's amended complaint.

49. Defendant admits that Plaintiff seeks nominal damages, but denies as untrue that he is entitled to such relief. Further, Defendant denies as untrue the remaining allegations of fact and inferences in paragraph 49 of Plaintiff's amended complaint.

50. Defendant admits that Plaintiff seeks other relief, but denies as untrue that he is entitled to the relief requested in paragraph 50 of Plaintiff's amended complaint.

**WHEREFORE**, Defendant respectfully requests that this Honorable Court dismiss Plaintiff's Amended Complaint, and grant Defendant such other and further relief as may be required, including an award of costs and attorney fees incurred.

Respectfully submitted,  
COHL, STOKER & TOSKEY, P.C.

Date: November 27, 2013

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### **AFFIRMATIVE DEFENSES**

Defendant, County of Jackson, by and through its attorneys, COHL, STOKER & TOSKEY, P.C., submit the following affirmative defenses to Plaintiff's Complaint:

1. Plaintiff has failed to state a claim for which relief can be granted.



2. Plaintiff has failed to present a case or controversy, thus lacks standing and this Court lacks subject matter jurisdiction.

3. Plaintiff's claim is barred by the First Amendment to the United States Constitution as it relates to free exercise of religion.

4. Plaintiff's claim is barred by the First Amendment to the United States Constitution as it relates to freedom of speech.

5. Plaintiff's claim is barred by governmental immunity, whether it be statutory, common law, absolute, or qualified immunity.

6. Defendant currently does not have a policy or rule requiring prayer at any county function, including but not limited to a meeting of the Board of Commissioners.

7. Defendant does not have a policy or rule prohibiting prayer at any county function, including but not limited to a meeting of the Board of Commissioners.

8. Defendant did not require Plaintiff to participate in any prayers at any County Commissioner meeting.

9. Plaintiff's Complaint fails to state a custom, policy, practice or procedure of the Defendant sufficient to violate the constitutional rights of the Plaintiff.

10. Defendant has acted in conformity with all applicable statutes, regulations, ordinances, common law, and the United States Constitution.

11. Defendant is entitled to good faith immunity in that no action was taken with malice or in violation of state or federal law.

12. Plaintiff's allegations are insufficient to constitute "impermissible motive" to "proselytize to advance one or disparage any other faith." "Infrequent references to specific deities standing alone, do not make out a constitutional case."

13. Defendant reserves the right to raise additional affirmative defenses as may become known during the course of discovery or otherwise.

**WHEREFORE**, Defendant respectfully requests that this Honorable Court dismiss Plaintiff's Complaint, and grant Defendant such other and further relief as may be required, including an award of costs and attorney fees incurred.

Respectfully submitted,  
COHL, STOKER & TOSKEY, P.C.

Date: November 27, 2013

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