NOS. 22-2139 & 23-1060

United States Court of Appeals for the Sixth Circuit

CATHOLIC HEALTHCARE INTERNATIONAL, INCORPORATED; JERE PALAZZOLO,

PLAINTIFFS-APPELLANTS CROSS-APPELLEES,

V.

GENOA CHARTER TOWNSHIP, MI; SHARON STONE, IN HER OFFICIAL CAPACITY AS ORDINANCE OFFICER, GENOA CHARTER TOWNSHIP,

DEFENDANTS-APPELLEES CROSS-APPELLANTS,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
HONORABLE SHALINA D. KUMAR
Civil Case No. 21-cv-11303

APPELLANTS/CROSS-APPELLEES BRIEF (FIRST BRIEF)

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and 6th Cir. R. 26.1, Plaintiffs-Appellants / Cross-Appellees state the following:

Plaintiff-Appellant / Cross-Appellee Catholic Healthcare International, Inc. is a nonprofit corporation. It does not have a parent corporation and no publicly held company owns 10% of its stock.

Plaintiff-Appellant / Cross-Appellee Jere Palazzolo is an individual, private party.

No party is a subsidiary or affiliate of a publicly owned corporation. There are no publicly owned corporations, not a party to the appeal, that have a financial interest in the outcome.

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq.

REASONS WHY ORAL ARGUMENT SHOULD BE PERMITTED

Plaintiffs previously filed a motion to expedite briefing and decision in this case. (Doc. No. 12). The former relief was granted and the latter was deferred to the merits panel. (Doc. No. 16-2 ["The decision as to when and whether oral argument will be conducted and whether to expedite the issuance of a decision are reserved to the merits panel to which this appeal will be assigned."]).

Consequently, pursuant to Rule 34(a) of the Federal Rules of Appellate Procedure and 6th Cir. R. 34(a), Plaintiffs would request oral argument only insofar as the Court deems it necessary to reach a fuller understanding of the issues and the underlying facts in this case, which raises important legal issues regarding religious exercise and expression on private property, and only so long as the timing for oral argument does not cause an extensive delay with the issuance of a decision.

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/s/ *Robert J. Muise*
Robert J. Muise, Esq.

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INTRODUCTION

This case presents a breathtaking attack on religious freedom. Through the enforcement of its Zoning Ordinance, Defendant Genoa Township ("Township") has cleansed Plaintiff Catholic Healthcare International, Inc.'s ("CHI") 40-acre private property of religious symbols (a small altar, Stations of the Cross, and a mural wall with the image of Our Lady of Grace), and it seeks to prohibit Plaintiffs, yet again, from engaging in peaceful outdoor religious assembly and worship on this property.[1]

"The principle that government may not enact laws that suppress religious belief or practice is . . . well understood." *Church of the Lukumi Babalu Aye, Inc v. City of Hialeah*, 508 U.S. 520, 523 (1993). Plaintiffs' expressive activity is fully protected by the First Amendment and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq*. ("RLUIPA").

The Township's enforcement of the Zoning Ordinance (permitting scheme) to halt Plaintiffs' religious exercise and expression is unlawful. This permitting scheme operates as a prior restraint on speech. It grants unbridled authority to the Township to grant or deny the right to religious worship. It unlawfully burdens and thus discriminates against religious organizations and religious expression and worship. And it is an unlawful content-based restriction on speech. Plaintiffs have already

[1] The district court granted in part Plaintiffs' motion for a preliminary injunction, enjoining the Township from enforcing its ban on "organized gatherings" (*i.e.*, its ban on Plaintiffs' religious assemblies). The Township is appealing this ruling. (R.81).

twice submitted costly and burdensome applications as demanded by the Township pursuant to its permitting scheme and have *twice* been rejected. Plaintiffs' challenge is ripe, and they are currently suffering irreparable harm.

Accordingly, this Court should proceed to the merits of Plaintiffs' request for a preliminary injunction, conclude that Plaintiffs have established a likelihood of success on the merits of their claims, and *immediately* enter the requested injunction.

STATEMENT OF JURISDICTION

On June 2, 2021, Plaintiffs filed this federal action, alleging violations arising under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, RLUIPA (42 U.S.C. § 2000cc *et seq*.), and the Michigan Constitution. (Compl., R.1, PageID.1-135). The district court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over the federal claims and supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367(a).

On September 19, 2021, Plaintiffs filed an emergency motion for a temporary restraining order / preliminary injunction. (Mot. for TRO / Prelim. Inj., R.23, PageID.1121-1349). On September 29, 2021, the district court denied Plaintiffs' motion for a preliminary injunction on *Younger* abstention and ripeness grounds (Order Denying Prelim. Inj., R.30, PageID.1495-96), prompting Plaintiffs to file a notice of interlocutory appeal the very next day (Notice of Appeal, R.31, PageID.1497-99).

This Court heard the case (without argument and full briefing), and on December 20, 2021, it issued its mandate, remanding for the district court to reconsider its *Younger* abstention conclusion, *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, No. 21-2987, 2021 U.S. App. LEXIS 33937, at *3 (6th Cir. Nov. 12, 2021), and it expanded the scope of its remand for the district court to reconsider its ripeness analysis, *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, No. 21-2987, 2021 U.S. App. LEXIS 36609, at *1 (6th Cir. Dec. 10, 2021).

On December 20, 2022, the district court finally ruled on Plaintiffs' motion,[2] concluding that *Younger* abstention does not apply but denying Plaintiffs' request to display the religious symbols at issue on ripeness grounds. (Order at 7-9, R.70, PageID.3508-10). The district court granted Plaintiffs' request to enjoin the Township's restriction on "organized gatherings." (*Id*. at 9-10, R.70, PageID.3510-11).

On December 21, 2022, Plaintiffs filed a timely notice of appeal, appealing that portion of the district court's order denying Plaintiffs' motion as it relates to the religious displays. (Notice of Appeal, R.71, PageID.3512-14). This Court has jurisdiction pursuant to 28 U.S.C. § 1292.

[2] *Twice* during this year-long wait Plaintiffs filed motions to expedite in an effort to get the district court to rule on the pending motion in light of the ongoing irreparable harm. (*See* R.48 [filed Apr. 7, 2022] and R.66 [filed Nov. 1, 2022]).

STATEMENT OF THE ISSUES FOR REVIEW

I. Whether this challenge to the Township's restriction on Plaintiffs' rights to religious exercise and expression on CHI's private property is ripe.

II. Whether the enforcement of the Township's Zoning Ordinance facially and as applied to restrict Plaintiffs' outdoor, expressive religious activity on CHI's private property deprives Plaintiffs of their rights protected by the First Amendment and RLUIPA, thereby causing irreparable harm and warranting the requested injunctive relief.

STATEMENT OF THE CASE

I. Procedural Background.

On September 19, 2021, Plaintiffs filed an emergency motion for a temporary restraining order (TRO) and for a preliminary injunction. (R.23). This motion was compelled by the fact that the Township filed an enforcement action on September 17, 2021 in state court, seeking an *ex parte* TRO to prohibit Plaintiffs from displaying religious symbols (an altar, Stations of the Cross, and a mural wall with the image of Our Lady of Grace) and from engaging in "organized gatherings"—religious assembly and worship—on their rural, 40-acre property in the Township. (Pls.' Mot. for TRO & Prelim. Inj. at 1-4, R.23, PageID.1122-25).

The district court held a hearing on Plaintiffs' motion on September 21, 2021. The court denied the TRO that same day (R.28), and on September 29, 2021, the court

denied the request for a preliminary injunction on *Younger* abstention and ripeness grounds. (R.30). The following day, Plaintiffs filed a notice of appeal (R.31), appealing the denial of the request for a preliminary injunction.

This Court heard the case, and on December 20, 2021, it issued its mandate, remanding for the district court to reconsider "whether this case involves a civil-enforcement action that is 'akin to a criminal prosecution' and thus eligible for *Younger* abstention," *Catholic Healthcare Int'l, Inc.*, No. 21-2987, 2021 U.S. App. LEXIS 33937, at *3, and it subsequently "expand[ed] the scope of [its] remand to include reconsideration of the district court's ripeness analysis," *Catholic Healthcare Int'l, Inc.*, No. 21-2987, 2021 U.S. App. LEXIS 36609, at *1.

In light of the Court's mandate, on January 6, 2022, the district court ordered the parties to file supplemental briefs on the *Younger* abstention and ripeness issues. (Briefing Schedule, R.38). Those briefs were filed.

On April 25, 2022, the state court stayed all proceedings pending final resolution of this federal case. (R.51-3). Consequently, as the district court correctly concluded, *Younger* abstention does not apply in this case. (Order at 7-8 [citing cases], R.70, PageID.3506-07).

On May 5, 2022, the district court ordered "the parties to submit supplemental briefs by May 26, 2022 on the applicability of *Rooker-Feldman* [23] to Plaintiffs' Emergency MOTION for Temporary Restraining Order/Preliminary Injunction."

(Text Order, May 5, 2022). Those briefs were filed. And as the district court also correctly concluded, "the *Rooker-Feldman* doctrine does not apply." (Order at 8 n.3, R.70, PageID.3509).

On December 20, 2022, the district court finally ruled on the motion, denying Plaintiffs' request to enjoin the Township's ban on Plaintiffs' religious displays, concluding that the challenge was not ripe.[3] (Order at 8-9, R.70, PageID.3509-10). The court failed to address any aspect of Plaintiffs' RLUIPA claim in its ruling on the request for a preliminary injunction. This decision is the subject of this appeal.

II. Decision Below.

In its order denying Plaintiffs' motion to preliminarily enjoin the Township's ban on Plaintiffs' religious displays, the district court concluded, yet again and despite additional and material factual developments, that the challenge was not ripe. (Order at 8-9, R.70, PageID.3509-10). The district court "adopt[ed] the ripeness analysis and holding found at section III.C of" its "recent opinion on defendants' motion to dismiss." (*Id*.). In that scant opinion, the district court concluded that Plaintiffs' challenge was not ripe because they "never sought approval from the Township to simply install or erect the desired religious symbols"; therefore, "the Township never reached a final decision on how the Zoning Ordinance applies to the installation or

[3] The district court granted Plaintiffs' request to preliminarily enjoin the Township's ban on "organized gatherings." (Order at 9-10, R.70, PageID.3510-11). As noted previously, the Township has appealed this ruling, which is the basis for the cross-appeal in case No. 23-1060. (R.81).

erection of the religiously symbolic structures CHI seeks to place on the Property." (Order on Mot. to Dismiss at 19, R.69, PageID.3485).

As set forth below, the district court is wrong factually and legally. This challenge is plainly ripe as Plaintiffs *twice* submitted a special land use application (a burdensome and costly submission), which, per the Township, is the *necessary* process to obtain the requisite permits. And *twice* the Township denied the requests. To assert that "the Township never reached a final decision on how the Zoning Ordinance applies to the installation or erection of the religiously symbolic structures CHI seeks to place on the Property" is patently false. This challenge is ripe.

III. Statement of Facts.[4]

A. Plaintiffs' Religious Exercise and Expression.

Plaintiff CHI is a Missouri, nonprofit corporation that is formally recognized as a private association of the faithful. The activities and work of CHI, including its proposed development and use of its property located within the Township (CHI Property) as a prayer campus, are religious exercise, religious assembly, and religious expression. (Palazzolo Decl. ¶¶ 2-4, 6-8, Ex. 2, R.23-3, PageID.1314-15). Plaintiff Jere Palazzolo is the Chairman, President, and Director of CHI. He engages in religious exercise, religious assembly, and religious expression through the activities

[4] A detailed statement of facts is necessary to show the extensive gamesmanship the Township has engaged in to stop Plaintiffs from using CHI's private property for any religious worship. And these facts, combined with a straightforward legal analysis, compel the granting of the requested injunction.

and work of CHI. This includes praying, worshiping, and assembling on the CHI Property for religious purposes. (Palazzolo Decl. ¶¶ 1, 5, 10, Ex. 2, R.23-3, PageID.1314-16).

CHI acquired 40 acres of property (CHI Property) located within the Township from the Catholic Diocese of Lansing, Michigan. The diocese originally acquired the property with the reasonable expectation of building a church on it since places of religious worship are allowed on this property by the Zoning Ordinance.[5] When CHI acquired the property, it too had a reasonable expectation of developing it into a prayer campus, which would include a modest adoration chapel (St. Pio Chapel), prayer trails, a small outdoor altar, and the display of religious symbols, including Stations of the Cross, religious statues, and the display of the image of Our Lady of Grace. (Palazzolo Decl. ¶¶ 9, 11-14, 16-27, Ex. 2, R.23-3, PageID.1315-20).

The Stations of the Cross, the image of Our Lady of Grace, and a small altar were displayed on the CHI Property beginning in September 2020, and they were used for prayer and worship and to celebrate St. Pio's Feast Day (September 23)—CHI's patron Saint. Neither wind nor rain nor any other factors caused any safety issues during the year in which the displays stood. Time and experience refute any claim that the displays were unsafe. Moreover, the displays were not erected along any

[5] The property is zoned Country Estate (CE), and "[c]hurches, temples and similar places of worship" are allowed by the Zoning Ordinance on property zoned CE after special land use approval by the Township. (Palazzolo Decl. ¶ 15, Ex. 2, R.23-3, PageID.1316).

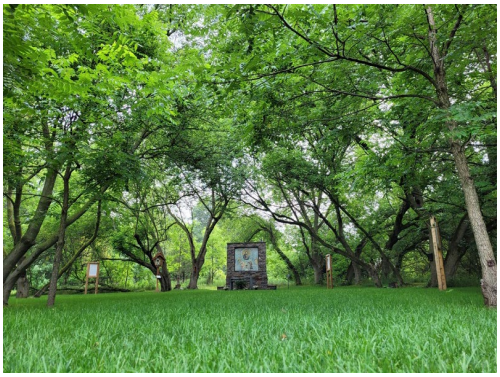
public right of way or thoroughfare. They could not be seen from the road; they were located in a wooded, isolated area. (Palazzolo Decl. ¶¶ 17-27, 78, Ex. 2, R.23-3, PageID.1317-20, 1333; O'Reilly Decl. ¶¶ 7-15, Ex.3, R.23-4, PageID.1341-43).

Image of Our Lady of Grace with Altar

Station of the Cross

The displays do not undermine any of the Township's stated objectives for restricting signage. The displays are not "distracting to motorists and pedestrians." They do not "create[] a traffic hazard" nor do they "reduce[] the effectiveness of signs needed to direct and warn the public." They do not "overwhelm the senses, impair sightlines and vistas, create confusion, reduce desired uniform traffic flow, create potential for accidents, affect the tranquility of residential areas, impair aesthetics [or] degrade the quality of a community." As noted, the religious displays were not placed within the public street right-of-way—they were not even visible from the road—and thus created no visibility or public safety issues whatsoever. And they created no visual blight. (Palazzolo Decl. ¶¶ 81-84, Ex. 2, R.23-3, PageID.1334-35; *see also* Muise Decl., Ex. C [Sign Standards], Ex. 1, R.23-2, PageID.1291-92).

In fact, the property is so wooded that the trees and their overhanging branches surrounding the image of Our Lady of Grace created a "grotto" effect. Of course, there is no natural or manmade cave on the CHI Property. An actual "grotto" is a small cave or an artificial recess or structure made to resemble a natural cave, and they ("grottoes") are often used as part of a Catholic shrine. In fact, the word "grotto" has become used almost exclusively to refer to Catholic shrines built into a rock formation. Consequently, the natural area created by the trees surrounding the image is often referred to as a "grotto" by CHI and Plaintiff Palazzolo. (Palazzolo Decl. ¶ 25, Ex. 2, R.23-3, PageID.1319-20).



"Grotto Effect" of Wooded Area

B. Township's October 2020 Demand to Remove the Religious Displays.

On or about October 9, 2020, the Township, through Defendant Sharon Stone, ordered Plaintiffs to remove the Stations of the Cross and the image of Our Lady of Grace, claiming that by displaying these religious symbols and using them for religious worship, Plaintiffs have now converted the secluded, wooded area where they were displayed into a "church or temple" under § 25.02 of the Zoning Ordinance,

which defines "church or temple" as "any structure *wherein* persons regularly assemble for religious activity." To comply with Defendants' demand, Plaintiffs would have had to undertake an extensive, costly (in excess of $20,000), and burdensome zoning process. Defendants' determination was factually inaccurate. There was no "structure" on the CHI Property "wherein" regular religious assemblies took place. (Palazzolo Decl. ¶¶ 29-32, Ex. 2, R.23-3, PageID.1320-22).

In November 2020, Plaintiffs, through counsel, rejected the Township's factual assertion that the display of these few religious symbols converted the 40-acre rural property into a "church or temple." (Verified Compl., Ex. 7 [Atty ltr. of 11/5/20], R.23-2, PageID 1210-12). Plaintiffs informed the Township that it would comply with any reasonable permitting request, but that the Township's position was patently unreasonable. Moreover, Plaintiffs informed the Township that it would soon be submitting a special land use application for the construction of a modest chapel (St. Pio chapel) and prayer campus, which would include the very religious symbols at issue. (*Id*.).

More specifically, Plaintiffs were preparing a special land use application for the development of the St. Pio Chapel and prayer campus—a development that would maintain the peaceful, rural nature of the property. The planned chapel is a modest, 95 seat, 6,090 square foot chapel/church with an associated 39-space parking lot, site lighting, and building lighting. (Palazzolo Decl. ¶¶ 34-44, Ex. 2, R.23-3,

PageID.1323-24).

The proposed St. Pio Chapel will be a place where people can come to pray, attend Mass, and adore Jesus Christ in the Eucharist. The prayer campus will not be a high-volume site. It will be a place where people can walk the trails and pray. One trail, for example, will allow visitors to pray the Stations of the Cross. The proposed development will retain the rural atmosphere of the area, and it will promote the quality of life. (Palazzolo Decl. ¶ 45, Ex. 2, R.23-3, PageID.1325).

The proposed chapel will be approximately 600 feet off of Chilson Road (the major road to the property). Plaintiffs are preserving most of the property to allow for trails and to allow people to find peace in the natural surroundings. Plaintiffs are only building on approximately 5 acres (out of 40), and this development is largely in the open area of the site, thereby maintaining the rural character of the property. (Palazzolo Decl. ¶ 46, Ex. 2, R.23-3, PageID.1325).

The modest size of the chapel and the limited parking (39 spaces) will necessarily limit the number of people who visit the religious property on a regular basis. (Palazzolo Decl. ¶ 47, Ex. 2, R.23-3, PageID.1325).

The St. Pio Chapel will contain a tabernacle, which is a liturgical furnishing used to house the Eucharist (the Body of Christ) outside of Mass. A tabernacle provides a safe location where the Eucharist can be kept for the adoration of the faithful and for later use. Canon Law requires a tabernacle to be in a secure location,

such as the St. Pio Chapel, because it helps prevent the profanation of the Eucharist. Without the St. Pio Chapel, there could be no tabernacle on the CHI Property. And without the tabernacle, the Eucharist could not be kept on the property. (Palazzolo Decl. ¶¶ 35-40, Ex. 2, R.23-3, PageID.1323-24).

After Plaintiffs' counsel sent his letter to the Township's counsel on November 5, 2020, the Township remained silent and took no further action at that time, leading Plaintiffs to believe that the matter would be resolved via the special land use application.

C. Plaintiffs' *First* Special Land Use Application for Permits.

Per Plaintiffs' counsel's letter, in December 2020, CHI submitted a special land use application, ***which included the religious displays at issue***. (Muise Decl., Ex. C [Hr'g Tr. at 38, 54], Ex. 1, R.39-2, PageID.1566; Palazzolo Decl. ¶¶ 51-67, R.23-3, PageID.1326-31). This application *is what the Township demanded for the religious displays*, even without the chapel. This process (which requires professional expertise to complete) cost CHI in excess of $30,000. (Palazzolo Decl. ¶ 4, Ex. 2, R.39-3, PageID.1617).

Plaintiffs' application met all of the Zoning Ordinance requirements. A traffic study was not required for the development as the proposed use of the property did not meet the threshold traffic generated to require such a study. The negligible traffic caused by the proposed chapel and prayer campus would have little to no overall

impact, and Chilson Road, where the development would be located, has been shown to handle much larger traffic volumes in the past. The Township's engineering consultants did not require a traffic impact study. The Livingston County Road Commission did not require a traffic impact study. And the Planning Commission did not require a traffic impact study. (Palazzolo Decl. ¶¶ 48-53, Ex. 2, R.23-3, PageID.1325-27).

Chilson Road accommodated over 5,000 vehicles a day prior to the construction of the Latson Road interchange. After the Latson Road interchange construction, traffic on Chilson Road decreased significantly to approximately 2,500 vehicles a day. Thus, Chilson Road is plainly able to accommodate the proposed development and its very modest traffic impact. (O'Reilly Decl. ¶¶ 26-27, Ex. 3, R.23-4, PageID.1346-47).

Plaintiffs' application was ultimately approved by the Township Planning Commission. Plaintiffs went "above and beyond and addressed all of the concerns of the Planning Commission and the consultants." Nonetheless, the Township Board denied Plaintiffs' application (and thus denied the permits required to construct the chapel and erect the religious displays), citing traffic as the chief complaint.[6] (Palazzolo Decl. ¶¶ 51-68, Ex. 2, R.23-2, PageID.1326-31).

As noted in Plaintiffs' application, there are only *two* events all year (St. Pio's

[6] If the Township Board required a traffic impact study, it could have tabled the matter until one was conducted. But it didn't do that. It simply denied the application.

Feast Day and birthday) that Plaintiffs intend to hold on the CHI Property that may require an increase in parking above and beyond the 39 permitted parking spaces. To accommodate this, Plaintiffs proposed using the greenspace on their property for overflow parking. (*See* (Palazzolo Decl., ¶ 57 [citing to First Am. Compl., Ex. 2 (Resubmittal) PageID.276], R.23-3, PageID.1328). The Township denied this request even though (1) the Township permits private residences in the very same area to hold events that *far* exceed the number of people who will be visiting the CHI Property for these two *special* events (2) the Township would permit a *secular* park on this property, which, given the property area and a comparable park property within the Township, could have over 200 parking spaces, and (3) the Township's own "Assembly Ordinance" permits assemblies up to 1,000 people, and once that threshold is met, the host could apply for a special permit.[7] Plaintiffs' religious assembly scheduled for September 23, 2021, would have had far fewer people attending. (*See* O'Reilly Decl., ¶¶ 20-24, Ex. 3, R.23-4, PageID.1344-46; *see also* O'Reilly Supplemental Decl., ¶¶ 3-5 [photographs of cars for event held across the street from the CHI Property], R.52, PageID.2210-13).

Plaintiffs went above and beyond the legal requirements by proposing least restrictive measures to address traffic for these two *special* events by offering to

[7] *See* https://www.genoa.org/government/ordinances/ordinance-assembly (requiring special permitting for "outdoor assemblies of persons in excess of 1,000 in number"). (Muise Decl. ¶ 5, Ex. D [Assembly Ordinance], Ex. 1, R.23-2, PageID.1306-09).

provide a shuttle service or "staged/multiple receptions." (Palazzolo Decl., ¶ 57 [citing to First Am. Compl., Ex. 2 (Resubmittal) PageID.276], R.23-3, PageID.1328). The Township rejected these least restrictive alternatives, which would mitigate *any* traffic concerns.

D. Township's May 2021 Demand to Remove Religious Symbols.

Following the Township's denial of Plaintiffs' *first* request for permits to construct the chapel and prayer campus (which included the religious displays at issue), the Township sent CHI a letter dated May 7, 2021, demanding the removal of the religious displays by June 4, 2021, prompting Plaintiffs to file this federal lawsuit on June 2, 2021. (Compl., R.1; Palazzolo Decl. ¶¶ 72-73, R.23-3, PageID.1332).

As stated in the Township's letter, "After denial of the proposed project at 3280 Chilson Road, the *signs/temporary signs* are in violation of the ***sign ordinance*** and will need to be removed." The Township also stated that the display of the image of Our Lady of Grace is a "structure/grotto ***sign*** [that] does not have a permit and will also need to be removed." The Township included with the letter a copy of the Township's "sign standards and accessory structure ordinance," which are part of the Zoning Ordinance. (Palazzolo Decl., ¶¶ 72-74, R.23-3, PageID.1332; May 7 Ltr. (emphasis added), R.27-2, PageID.1426-27).

Unfortunately, there is *no permitting process* that would allow Plaintiffs to display the religious symbols at issue other than the full-blown special land use

application process, even though such activity would be less impactful than other similar secular activity permitted by the Township *in this very same neighborhood* without the owners having to undergo this burdensome, costly, and subjective process. (*See, e.g.,* O'Reilly Decl. ¶¶ 4-8, 20-25, R.23-4, PageID.1340-41, 1344-46).

E. Township's Enforcement Action.

On Friday, September 17, 2021, just days before a scheduled religious assembly in celebration of St. Pio's Feast Day (September 23, 2021) that Plaintiffs had been planning for many months (and which the Township had known about for at least 6 months),[8] the Township filed a verified complaint and *ex parte* TRO request in the 44th Circuit Court for Livingston County, asking the county circuit court to order Plaintiffs "to remove a 12-foot-tall stone structure [the image of Our Lady of Grace], altar, and 14 stations of the cross housing structures that have been installed at the [CHI] Property" and to prevent Plaintiffs from holding religious worship on the property, claiming that a Livingston County Road Commission permit (which Plaintiffs have never used and which has now expired) "forbids" this. (Verified Compl., ¶¶ 2, 62, Ex. 15 [Permit], R.23-2, PageID.1163, 1271).

On September 20, 2021, the state court judge signed the *ex parte* TRO, forcing CHI to immediately remove the religious symbols and to immediately "cease all unlawful use and occupancy of the Property for *organized gatherings*," thus

[8] (*See* Verified Compl., R.23-2, PageID.1223).

prohibiting religious expression, worship, and assembly on the property. (Muise Decl., Ex. A [TRO], Ex. 1, R.39-2, PageID.1550).

On September 21, 2021, Plaintiffs were notified that the state court judge signed the TRO, at which time CHI promptly filed a motion to dissolve the TRO as Plaintiffs had a religious assembly scheduled for September 23, 2021. (Emergency Mot., R.27-3, PageID.1428-48). The state court did not dissolve the TRO as requested (the court "denied" a proposed order that would have done so). Rather, the court set a hearing on CHI's motion to dissolve and the Township's motion for a preliminary injunction for September 28, 2021. By that time, the religious displays had been removed per the TRO's requirement that they be removed "immediately." (Palazzolo Decl. ¶¶ 6-9, Ex. 2, R.39-3, PageID.1617-20). To this day, the religious displays are off the property.

The hearing on CHI's motion to dissolve and the Township's motion for preliminary injunction commenced on September 28, 2021, but it was adjourned after nearly a full day of testimony from the Township's witness to determine whether the matter could be resolved between the parties. During cross-examination, the Township's witnessed testified, *inter alia*, that if the CHI property had been a private residence (like the adjacent property), Plaintiffs could erect 14 bird houses, display a picnic table, and construct a 12-foot stone wall outside of the setbacks for just a $50 permit per "structure" and without having to undergo the burdensome and costly

application for special land use process[9] (Muise Decl., Ex. C [Hr'g Tr. at 78], Ex. 1, R.39-2, PageID.1573)—a process which grants discretionary authority to the Township Board to grant or deny a request (*id*. at 103, PageID.1575). More specifically, the Township's witnessed testified as follows:

> Q: So looking at the property that CHI has, if it had been a private residence you could put up 14 bird houses, $50 per, a picnic table for $50 permit, and a ten foot by 12-foot stone wall outside of the setbacks for $50, correct?
> A: That's correct.
> Q: And it wouldn't require the $2,875 application fee, correct?
> A: Single family residential is a permitted use so they do not need to pay that fee.

(Muise Decl., Ex. C [Hr'g Tr. at 78], Ex. 1, R.39-2, PageID.1573). The witness also confirmed, *inter alia*, that there is no burdensome special land use application required prior to having 200 people at a home for a football party in the Township. Per the witness:

> Q: All right, but, but there's no special land use application required prior to having 200 people at your home for a football party in Genoa Township, correct?
> A: Correct.

(*Id*. at 62, PageID.1571).

In other words, unlike Plaintiffs' religious displays, which are structurally no

[9] As stated throughout these proceedings, Plaintiffs would have no objection to paying for a $50 permit per religious display and having a building inspector inspect each display to ensure that it was safe. *Plaintiffs told the Township from the very beginning* that they were "willing to comply with reasonable permitting requirements." (Verified Compl., Ex. 7 [Atty ltr. of 11/5/20], R.23-2, PageID 1210-12). But the Township's answer has always been, "No."

different in size or scope, the secular "structures" identified could be constructed on the property *next door* to the CHI property for just a $50 permit per item and without the need to undergo the costly, burdensome, and subjective Planning Commission and Township Board approval process (the special land use application process), and 200 people could gather to watch football at the neighbor's property, but they could not come to pray at the CHI property. *See Miles Christi Religious Order v. Twp. of Northville*, 629 F.3d 533, 540 (6th Cir. 2010) ("While the United States Code contains a Religious Freedom and Restoration Act and a Religious Land Use and Institutionalized Persons Act, one will search in vain for a Freedom to Watch Football on a Sunday Afternoon Act.").

Unfortunately (but not surprising given the Township's position from the very beginning), there was no reasonable resolution/permitting process available that would protect Plaintiffs' right to religious exercise. The *only* option for Plaintiffs was to engage, once again, in the burdensome special land use approval process, which itself is no guarantee as the Township Board retains discretion to deny the request on subjective grounds.

F. Plaintiffs' *Second* Special Land Use Application for Permits.

Because the only option available to Plaintiffs for obtaining the necessary permits to display the religious symbols at issue was to submit yet another special land use application, the *parties stipulated to* and submitted a proposed order to the state

court judge, notifying the court of the following:

> The parties hereby advise the Court that [CHI] intends to submit, under protest and with a reservation of all rights, claims, and defenses, by October 15, 2021, a special application for land use, site plan, and associated documents to permit the display of religious symbols and the use of [CHI's] private property for religious worship. This submission will include the prayer trails with prayer stations, Stations of the Cross, altar, mural wall with the image of Our Lady of Grace, and a commercial driveway with parking.

(Muise Decl., ¶ 6, Ex. A [Consent Order / Stip. ¶ C], Ex. 1, R.39-2, PageID.1550-51, 1559). The stipulation accurately described what the parties agreed would need to be submitted and what CHI in fact submitted to obtain approval to use the property for religious exercise. Below are the relevant excerpts from the email exchange between Plaintiffs' counsel and the Township's counsel regarding precisely what Plaintiffs would be submitting *in order to comply with the Township's permitting requirements*:

> As a follow up to our prior discussion, CHI will submit, under protest and with a reservation of all rights, claims, and defenses, a special land use application, site plan, and associated documents to develop the *prayer campus portion* of its property located in Genoa Township ("CHI Property"). This submission will include the prayer trails with prayer stations, Stations of the Cross, altar, mural wall with the image of Our Lady of Grace, and a commercial driveway with parking. As noted, CHI will reserve all rights, claims, and defenses as set forth in the current federal litigation in *Catholic Healthcare International v. Genoa Township*, Case No. 5:21-cv-11303-JEL-DRG, specifically including the right to construct the St. Pio adoration chapel on the CHI Property should CHI ultimately prevail in the federal litigation.
>
> CHI, through Boss Engineering, will plan to have the application and associated documents submitted to the Township by next Friday, **October 15, 2021**. *Since the plans are substantially the same as before and the Planning Commission has already seen and approved them (with*

> *the chapel—these new plans will obviously **not** include the chapel*), we would ask that this matter be placed on the **November 8, 2021**, planning commission calendar. As I understand it, the Township would then have an opportunity to approve or reject the application at the November 15, 2021 board meeting. This would move the process along in an expedited fashion.
>
> * * *
>
> This plan (the submission) coincides with our prior discussion . . . .
>
> Let me know your thoughts as soon as possible as I am trying to get this moving quickly, and *I do not want CHI to waste additional resources on the new special land use application, modified site plan, etc. if it will be a futile effort*.

(Muise Decl. ¶ 2, Ex. A [emphasis added], Ex. 1, R.47, PageID.2138-39).

On October 15, 2021, CHI in fact submitted, yet again, another costly (in excess of $9,000) and burdensome application for special land use per the stipulation of the parties (*and the agreement of counsel*). This too proved to be a futile effort, and it caused *additional injury demonstrating ripeness*.

Shockingly, on December 13, 2021, the Planning Commission denied the application based on the Township Board's *previous* denial of CHI's application on May 3, 2021. (Muise Decl., Ex. A [Planning Comm'n Meeting Mins.], R.48-2, PageID.2168-78; *see also* Palazzolo Decl. ¶¶ 10-16, Ex. A [Oct. 15, 2021 submission], Ex. 2, R.39-3, PageID.1620-22, 1625-52). More specifically, the Planning Commission rejected the prayer campus submission, concluding that there were no new grounds or substantial new evidence presented to consider the new application *in light of the Township Board's denial on May 3, 2021 of CHI's original*

application—even though the main structure, the chapel, had been removed. (Muise Decl., Ex. A [Planning Comm'n Meeting Mins.], R.48-2, PageID.2168-78; Palazzolo Decl. ¶¶ 16, 17, Ex. 2, R.39-3, PageID.1622).

In its reply submission to the Planning Commission, CHI submitted a letter to Ms. Kelly VanMarter, the Township's Community Development Director/Assistant Township Manager, asking pertinent questions regarding the application of the Zoning Ordinance to CHI's property. The letter stated, in relevant part, the following:

> *Why is CHI's 40-acre property a "church[] or temple[or a] similar place[] of worship"?* The only applicable definition in the Zoning Ordinance defines a "Church or temple" as "[a]ny structure *wherein* persons regularly assemble for religious activity." § 25.02. *There is no "church or temple" or any other "similar" "structure" on the property nor proposed here, so why is a special land use application necessary? If people gathered at a private residence for the purpose of outdoor religious worship, does that transform that property into a church or temple or similar place of worship requiring this burdensome and costly application process that the Township is requiring CHI to undergo? If not, why not?*
>
> *How many people are permitted to gather outdoors on private property to engage in religious worship?* The Township's assembly ordinance permits assemblies up to 1,000 people before a special permit is necessary. . . .
>
> *Private residences in the same neighborhood as the CHI property are permitted to hold secular events with numbers that will far exceed the number of people who will be engaging in religious worship on CHI's property. What is the number of people that the Township will permit on CHI's 40-acre property for outdoor religious worship? And what is that number based upon*? Once we know that number, then we can explain more fully the events that CHI would like to hold in greater detail, and it will permit a better evaluation of the traffic issue. CHI should not be discriminated against nor treated less favorably because its assemblies or

> events are for the purpose of religious worship. The Township's Park, for example, is on a parcel of land that is smaller (38 acres) than CHI's property. Yet, there are over 200 parking spaces for this park. *How many people are permitted to gather at any one time at this park*? *That would be a good number to start with for CHI's property*.
>
> Here, CHI is proposing only 39 parking spaces. *There is no basis to question this limited parking or the traffic that it will generate on Chilson Road, particularly when the Township would permit neighboring property owners to hold a secular event (like a "Family Fun Day") with many times that number of cars going to the property*.
>
> CHI believes that secular events such as the recent "Family Fun Day" held at 3800 Chilson Road (approximately 1 mile away from CHI's property) this past September are great events and should continue. Similarly, *CHI should be permitted to hold religious assemblies on its private property that are at least similar in size and scope to the secular assemblies permitted on neighboring properties and other properties throughout the Township, and CHI should be permitted to do so under the same terms and conditions*. Upon information and belief, the owners of the property located at 3800 Chilson Road did not have to go through this burdensome and costly application process, nor should CHI have to. Similarly, CHI should not have to endure the burdens and costs associated with this current application in order for CHI to engage in its religious activity.
>
> * * *
>
> [D]isplaying . . . secular symbols/items on private residential property does not require a costly special land use application or the Township Board's prior approval as these secular items are "permitted." *Why isn't the display of religious symbols and associated outdoor religious worship a "permitted use" on private property like CHI's property*?

(Palazzolo Decl. ¶ 12, Ex. C [emphasis added], Ex. 2, R.39-3, PageID.1682-84). The Township refused to respond to CHI's inquiries. (*Id*. ¶ 13, Ex. D, Ex. 2, R.39-3, PageID.1704).

CHI appealed the Planning Commission's adverse decision to the ZBA, and the

ZBA affirmed. (Muise Decl., Ex. B [ZBA Mins.], R.48-2, PageID.2179-87). This is a final decision.

G. Continuation of the State Court Proceedings.

On April 5, 2021, the state court continued the hearing on CHI's motion to dissolve the TRO and the Township's motion for a preliminary injunction. At the close of the hearing, the state court judge denied CHI's motion and granted the Township's request for a preliminary injunction, thereby continuing the enforcement of the Zoning Ordinance to prohibit Plaintiffs' religious assembly, worship, and expression on the CHI property. (Muise Decl. ¶ 4, R.48-2, PageID.2167). During the hearing, the Township's witness testified as follows:

> Q: * * * If CHI was willing to pay a $50 permit per religious display, the religious displays at issue here, which is the mural wall, the altar, stations of the cross, make them permanent and would have a building inspector come out to inspect them, and on the CHI property, would the zoning ordinance permit that?
> A *After you've received site plan approval, yes*.
> Q: [M]y question is, if they, if they did this tomorrow, they went in as all, all things being equal as they are sitting here today, if they went in, applied for the $50 permits per items [the religious displays at issue], had them inspected on the property, would the zoning ordinance permit that?
> A: *No*.

(Muise Decl. ¶ 1, Ex. A [Hr'g Tr. at 94-95 (emphasis added)] at Ex. 1). In other words, there *is no permit process available* to erect the religious displays at issue until the Township approves a special land use application. The Township has now twice denied Plaintiffs' applications—applications which expressly included the religious

displays at issue.[10] In short, it is factually incorrect—and patently so—to conclude, as the district court did in its order, that "plaintiffs have never sought approval from the Township to simply install or erect the desired religious symbols." (Order on Mot. to Dismiss at 19, R.69, PageID.3485).

As of today, and as a direct result of the Township's enforcement of its Zoning Ordinance, the religious displays at issue have been removed.[11] The harm caused by the Township is not speculative nor is it based on a subjective chill. The harm is real and irreparable. The issues are ripe. (*See* Palazzolo Decl. ¶ 19, Ex. 2, R.39-3, PageID.623).

STANDARD OF REVIEW

Issues of justiciability, including ripeness, are reviewed *de novo*. *NRA of Am. v. Magaw*, 132 F.3d 272, 278 (6th Cir. 1997). This Court also reviews the district court's preliminary injunction decision *de novo* because it involves the application of the First Amendment. "When a party seeks a preliminary injunction on the basis of a potential constitutional violation, 'the likelihood of success on the merits often will be the determinative factor.'" *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (quoting *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009)). "Because the

[10] There is <u>no</u> non-frivolous basis for claiming that Plaintiffs have not sought permits for their religious displays. The Township has rejected every attempt by Plaintiffs to do so.

[11] Per the Court's Order, Plaintiffs are able to use the property for outdoor religious worship once again; however, they cannot use temporary religious displays such as the Stations of the Cross as part of their prayer and religious worship. *See supra*.

determination of whether the movant is likely to succeed on the merits is a question of law and is accordingly reviewed *de novo*, the standard of review for a district court decision regarding a preliminary injunction with First Amendment implications is *de novo*." *Bays v. City of Fairborn*, 668 F.3d 814, 819 (6th Cir. 2012) (internal quotations and citations omitted).

Under *de novo* review, this Court is free to substitute the flawed judgment of the lower court with its own judgment and give the findings of the lower court "no form of appellate deference." *Salve Regina Coll. v. Russell*, 499 U.S. 225, 238 (1991).

Additionally, since this case implicates First Amendment rights, this Court must closely scrutinize the record "because the reaches of the First Amendment are ultimately defined by the facts it is held to embrace." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Bos.*, 515 U.S. 557, 567 (1995). Consequently, this Court should "conduct an independent examination of the record as a whole, without deference to the trial court." *Id.*; *see also Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984) (same).

SUMMARY OF THE ARGUMENT

The issues are ripe for review. Plaintiffs have twice submitted—at great cost—applications for special land use in order to obtain the necessary permits for the religious displays and were twice denied by the Township. This challenge to the

Township's discriminatory enforcement of its Zoning Ordinance to prohibit Plaintiffs' religious exercise and expression is unquestionably ripe.

The enforcement of the Township's Zoning Ordinance violates Plaintiffs' rights protected by the First Amendment and RLUIPA. The Zoning Ordinance operates as a prior restraint on speech. It is content-based facially and as applied. It is not a neutral law of general applicability. And its enforcement against Plaintiffs substantially burdens their religious expression and exercise. The Township's enforcement of the Zoning Ordinance in this case does not satisfy strict or intermediate scrutiny.

Because Plaintiffs have demonstrated a likelihood of success on their First Amendment and RLUIPA claims and are currently suffering irreparable harm, they are entitled to a preliminary injunction as a matter of fact and law. The Court should reverse the district court and issue the requested injunction.

ARGUMENT

The standard for issuing a preliminary injunction is well established:

> In determining whether or not to grant a preliminary injunction, a district court considers four factors: (1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff could suffer irreparable harm without the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of the injunction on the public interest.

Connection Distrib. Co. v. Reno, 154 F.3d 281, 288 (6th Cir. 1998); *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (same). Typically, the reviewing court will balance these factors, and no single factor will necessarily be determinative of

whether or not to grant the injunction. *Connection Distributing Co.*, 154 F.3d at 288. However, because this case deals with a violation of Plaintiffs' rights to religious exercise and expression, the crucial and dispositive factor is whether Plaintiffs are likely to prevail on the merits. *Id.*; *see also Jones v. Caruso*, 569 F.3d at 265.

We begin by addressing the ripeness issue.

I. The Issues Are Unquestionably Ripe for Review.

In a filing below, the Township (perhaps unwittingly) acknowledges that Plaintiffs' claims are ripe:

> CHI will not suffer irreparable harm in the absence of an injunction because its request to construct the altar, mural wall, and stations of the cross *is prohibited by the Zoning Ordinance* and the state court injunction.[12] *Special land use approval is required* for CHI's proposed structures . . . . *CHI must obtain special land use approval before its structures can be erected*, because it intends to use the property as a church, temple, or similar place of worship.

(Defs.' Resp. at 4-5 [emphasis added], R.74, PageID.3578-79).[13] As noted, Plaintiffs twice submitted applications for special land use approval and were twice denied by the Township. Ripeness is not an issue.

[12] The state court injunction is simply the way in which the Township is enforcing its Zoning Ordinance against Plaintiffs.

[13] The Township's understanding as to why the district court found the claims not ripe further confirms Plaintiffs' ripeness argument. Per the Township: "This Court has dismissed Plaintiffs' claims based upon its structures as unripe *because CHI knew the permit requirements*, and *admittedly failed to apply for special land use approval before erecting its structures*." (Twp.'s Resp. at 5 [emphasis added], R.74, PageID.3579). The Township is walking a tight rope here because it cannot deny the fact that Plaintiffs have now twice "appl[ied] for special land use approval" and have now twice been denied. The fact that Plaintiffs did not apply in early September 2020 (see the statement of facts to understand the history of this) is entirely irrelevant.

Ripeness requirements (for good reason) are relaxed in the First Amendment context. *See Norton v. Ashcroft*, 298 F.3d 547, 554 (6th Cir. 2002); *Steffel v. Thompson*, 415 U.S. 452, 462 (1974) (holding challenge ripe given that a contrary finding "may place the hapless plaintiff between the Scylla of intentionally flouting state law and the Charybdis of forgoing what he believes to be constitutionally protected activity").

The ripeness doctrine is intended to prevent courts from "entangling themselves in abstract disagreements" through premature adjudications. *Grace Cmty. Church v. Lenox Twp.*, 544 F.3d 609, 615 (6th Cir. 2008) (citation omitted). Per this Court:

> In ascertaining whether a claim is ripe for judicial resolution, we ask two basic questions: (1) is the claim "fit[] . . . for judicial decision" in the sense that it arises in a concrete factual context and concerns a dispute that is likely to come to pass? and (2) what is "the hardship to the parties of withholding court consideration"?

Warshak v. United States, 532 F.3d 521, 525 (6th Cir. 2008) (citations omitted); *see, e.g., Grace Cmty. Church*, 544 F.3d at 614-18 (finding case not ripe where the record was incomplete as the parties' positions were ill defined). As the statement of facts demonstrates, the record in this case is extensive and complete. The case is fit for judicial decision. And Plaintiffs are currently suffering irreparable harm (hardship) due to the loss of their rights to religious exercise and expression. (*See infra*). The issues are ripe.

In the land use context, courts will often consider a "finality" requirement. As

stated by the Supreme Court:

> [T]he finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position *on the issue that inflicts an actual, concrete injury*; the exhaustion requirement generally refers to administrative and judicial procedures by which an injured party may seek review of an adverse decision and obtain a remedy if the decision is found to be unlawful or otherwise inappropriate.

Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 193 (1985) (emphasis added).[14] This requirement is satisfied here.

In *Miles Christi Religious Order v. Township of Northville*, 629 F.3d 533 (6th Cir. 2010) ("*Miles Christi*"), for example, this Court found that the case was not ripe for review as there were unresolved questions as to *how* the regulations would apply to Miles Christi's five-bedroom house located within the township. As the Court noted, a "definitive statement from . . . the entity charged with interpreting Northville's zoning ordinances . . . about *which* ordinances apply to Miles Christi and about *whether Miles Christi must submit a site plan* under the ordinances" would assist the court with resolving the dispute. *Id*. at 539 (emphasis added). Per the Court, "As things now stand, 'we have no idea.'" *Id*. The Court further noted that there would be no hardship to Miles Christi if the court stayed its hand because "Miles Christi may potentially resolve the issue (at less expense) by appealing to the zoning

[14] As noted by this Court, "The finality rule . . . is a 'prudential requirement[],' and we need not follow it when its application 'would not accord with sound process.'" *Miles Christi Religious Order*, 629 F.3d at 541 (citation omitted).

board,[15] . . . a route that does *not* require Miles Christi to cancel any bible studies, masses or other religious activities and a route that does *not* require it to pay for an engineering study. . . .” *Id*. at 540 (emphasis added). Moreover, an appeal to the zoning board would stay all enforcement action. *Id*. at 542.

Miles Christi provides a good comparison. In this case, there is no question as to *how* the Township is enforcing its Zoning Ordinance. There is no question that Plaintiffs *must* submit to the onerous and subjective special land use application process—a costly process which requires a special land use application, site plan, and environmental impact study as well as approvals by the Planning Commission and the Township Board—to display any of the religious symbols at issue. Plaintiffs have already completed that process twice, and they were twice denied. There is no simple appeal to a zoning board that would have permitted Plaintiffs to continue with their expressive religious activity, as in *Miles Christi*. Indeed, the Township sought a state court enforcement action that removed the religious symbols and halted the outdoor religious worship. As a result of the state court filing, Plaintiffs were forced, yet again and under protest, to resubmit a special land use application for the religious symbols, driveway, and parking, and the Planning Commission denied it, citing § 19.07 of the

[15] Under the Northville Zoning Ordinance, the zoning board is “empowered . . . to participate in the . . . decision making process from the outset.” *Miles Christi*, 629 F.3d at 541. The same is not true under the Township’s Zoning Ordinance as the Township Board (and not the ZBA) has plenary and final authority over special land use decisions. (Muise Decl., Ex. D [Z.O. §§ 19.02.04(f) & 19.04], R.39-2, PageID.1578, 1580).

Zoning Ordinance. Plaintiffs appealed the Planning Commission's decision to the ZBA, which denied the appeal.[16] *Miles Christi* demonstrates that the issues presented are ripe for review.

Additionally, ripeness is found where the plaintiff is challenging the statutory scheme that is imposing a burden on his rights protected by the First Amendment, as in this case. *See Miller v. City of Cincinnati*, 622 F.3d 524, 532 (6th Cir. 2010) (finding that a challenge to the sponsorship or collaboration requirement, which imposed a burden on the right to free speech, was ripe for review even though the plaintiffs did not first seek collaboration with any individual official who could have sponsored the free speech activity and thus allowed the activity to occur); *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville*, 274 F.3d 377, 399-400 (6th Cir. 2001) (finding a challenge to a permitting scheme ripe, rejecting the claim "that the entertainers [were] not under any threat with regard to the Ordinance because the entertainers [had] not yet sought a permit" under the Ordinance, and acknowledging that a party not yet affected by the actual enforcement of an ordinance is allowed to challenge actions under the First Amendment to ensure that the ordinance does not chill the exercise of free speech, a constitutionally protected right).

In the final analysis, Plaintiffs are *currently* harmed by the Township's

[16] Unlike the situation presented in *Miles Christi*, the ZBA had no authority to grant Plaintiffs permission to display the religious symbols or to use the CHI Property for religious worship. The ZBA is not involved in this decision-making process. (*See* Muise Decl., Ex. D [Z.O. § 19.04], R.39-2, PageID.1580).

enforcement of the Zoning Ordinance. Plaintiffs have had to pay exorbitant fees and suffer long delays and uncertainty as a result of being forced to comply with the unconstitutional and discriminatory demands of the Township, and whether Plaintiffs can engage in their right to religious exercise and expression on CHI's private property is entirely dependent upon the subjective judgment of the Planning Commission and the Township Board. Thus, Plaintiffs are *currently* subject to and injured by the Township's permitting scheme, having been denied the right to engage in religious expression and worship on the CHI property as a result. The challenge is ripe.

II. Plaintiffs Satisfy the Standard for Granting Injunctive Relief.

A. Plaintiffs' Likelihood of Success on the Merits.

1. Freedom of Speech Claim.

"Religious worship" is a "form[] of speech and association protected by the First Amendment." *Widmar v. Vincent*, 454 U.S. 263, 269 (1981). And so too is the display of religious symbols. *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) ("Respondents' religious display in Capitol Square was private expression. Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression."); *Satawa v. Macomb Cty. Rd. Comm'n*, 689 F.3d 506, 529 (6th Cir. 2012) (observing that "[t]he crèche . . . is private religious expression, 'fully

protected under the Free Speech Clause'") (quoting *Pinette*, 515 U.S. at 760).

Accordingly, Plaintiffs' prayer, worship, religious assembly for purposes of prayer and worship, and the use of religious symbols are all forms of expression protected by the First Amendment, and the Township's enforcement of its Zoning Ordinance to restrict Plaintiffs' right to religious exercise and expression triggers First Amendment protection. *Reed v. Town of Gilbert*, 576 U.S. 155 (2015).

To begin, the *ordinance operates as a prior restraint on speech* as it requires Plaintiffs to obtain a permit through a burdensome, costly, time-consuming, and subjective approval process before being allowed to engage in their religious expression (assuming the Township Board approves the request). There is no such requirement if a neighbor wishes to display, as just one example, a 12-foot skeleton in his yard for Halloween (or any other holiday). (*See infra*). In *International Outdoor, Inc. v. City of Troy*, 974 F.3d 690, 698 (6th Cir. 2020), this Court held that "[t]he original City of Troy Sign Ordinance *imposed a prior restraint* because the right to display a sign that did not come within an exception as a flag or as a 'temporary sign' *depended on obtaining either a permit from the Troy Zoning Administrator or a variance from the Troy Building Code Board of Appeals*." (emphasis added). It is well established that "[*a*]*ny system* of prior restraints of expression comes to this Court bearing a *heavy presumption against its constitutional validity*." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) (collecting cases) (emphasis added). The

Township cannot overcome this heavy presumption in this case.

The Zoning Ordinance, facially and as applied to punish Plaintiffs' speech, is also content based, thereby triggering strict scrutiny. "Content-based laws . . . are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed*, 576 U.S. at 163. And "[a] law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech." *Id.* at 165.

In *International Outdoor, Inc.*, this Court concluded that the challenged sign ordinance "imposed a content-based restriction by exempting certain types of messages from the *permitting requirements*," such as "flags," "political signs," and "holiday or other seasonal signs," *inter alia*. 974 F.3d at 707-08 (emphasis added). As a result, the Court applied strict scrutiny.[17] *Id*. at 708.

The Township's Sign Ordinance (which was the stated reason for ordering the removal of the religious displays per the Township's letter of May 7, 2021) expressly

[17] *International Outdoor, Inc.*, which expressly relied on *Reed*, was not overruled by *City of Austin v. Reagan National Advertising of Austin, LLC*, 142 S. Ct. 1464, 1467 (2022). *City of Austin* addressed a challenge to an outdoor advertising ordinance that made distinctions between on-premises and off-premises signs. Unlike the sign ordinance at issue in *Reed*, the City of Austin's sign ordinances did not single out any topic or subject matter for differential treatment. Rather, a sign's message *only mattered* to the extent that it informed the sign's relative location. Thus, the City's on-/off-premises distinction was similar to time, place, or manner restrictions, which are content neutral and do not require the application of strict scrutiny.

exempts by way of its definition of a "sign" the following: "Legal notices," "Decorative displays in connection with a recognized holiday, provided that the display doesn't exceed 75 days" (an arbitrary number); "Signs required by law"; and "Flags of any country, state, municipality, university, college or school." (Muise Decl., Ex. C [Sign Standards, § 16.02.20], Ex. 1, R.23-2, PageID.1293-94). By its own terms, the ordinance exempts from its permit and fee requirement "Historical marker[s]," "Parking lot signs," "Street address signs," and "Temporary signs." (*Id*. § 16.03.02, PageID.1294-95). And secular displays (birdhouses, picnic tables, stone walls) of the same size as Plaintiffs' religious displays are allowed on private residential property without the burdensome, costly, and time-consuming approval process that the Township demands for Plaintiffs' displays.

Indeed, if a neighbor wants to display a 12-foot skeleton or other racy Halloween displays (see the two skeletons on the left in the below picture to the right), he could do so without having to obtain any permits even if the displays are clearly visible to the public and distracting to motorists. Below are some examples of recent displays that are permitted in the Township:


(O'Reilly Decl. ¶¶ 6-7, Ex. 3, R.39-4, PageID.1708-09). The Township exempts such displays from its sign ordinance—there are no size restrictions that apply. And the 75-day restriction is not only arbitrary, it is meaningless and discriminatory (why isn't St. Pio's Feast Day worthy of official recognition?). For example, after the 75-day Halloween period is over, the owner of the 12-foot skeleton could place a Santa hat on the skeleton (Christmas) and keep it up for another 75 days. After that, he could put a heart or flowers in its hand (Valentine's Day) and leave it for another 75 days. After that, he could put colored eggs at its feet (Easter) and leave it for another 75 days. And after that, he could put an American flag in its hand (4th of July) and leave it for yet another 75 days. The skeleton can stand in perpetuity (as it currently does) without running afoul of the Zoning Ordinance.

The district court concluded that Plaintiffs could not make a facial challenge to the Sign Ordinance (ignoring the as-applied challenge) because "the religiously symbolic structures violated unchallenged, constitutionally acceptable provisions of the Sign Ordinance," and thus "unchallenged, non-content-based restrictions would still preclude the approval and erection of the signs." (Order on Mot. to Dismiss at 12-13, R.69, PageID.3478-79). The court misses the point. The Township does not have a compelling interest for permitting, in the words of the Township's witness, a "very cool"[18] 12-foot skeleton but not the 6-foot Stations of the Cross or the 12-foot

[18] (Muise Decl., Ex. C [Hr'g Tr. at 65], R.39-2, PageID.1572).

mural wall with the image of Our Lady of Grace.[19] Moreover, there is no compelling reason for not applying this "holiday" exemption to the religious displays at issue. Under this exemption, Plaintiffs could assemble and disassemble the religious displays every 75 days (or simply carry them over to the next holiday as our skeleton example above illustrates). And, as noted, why isn't St. Pio's Feast Day a recognized holiday, thus permitting Plaintiffs' displays under this exemption? (*See* O'Reilly Decl. ¶ 24, Ex. 3, R.23-4, PageID.1346). In sum, all of this illustrates the fact that the ordinance is content based (facially and as applied) and thus unconstitutional. *See City of Ladue v. Gilleo,* 512 U.S. 43, 52 (1994) ("Exemptions from an otherwise legitimate regulation of a medium of speech may be noteworthy for a reason quite apart from the risks of viewpoint and content discrimination: They may diminish the credibility of the government's rationale for restricting speech in the first place.").

Indeed, because Plaintiffs' "signs" are for the purpose of religious worship, the Township is imposing upon Plaintiffs the additional burden of having to go through an extensive, costly (in excess of $20,000), time-consuming, and utterly subjective zoning approval process. That is, because religious worship is involved, as opposed to some other secular activity (*see* O'Reilly Decl. ¶¶ 5-6, 19-23, Ex. 3, R.23-4, PageID.1340-41, 1344-46), Plaintiffs' religious displays have now converted the

[19] Given how the mural wall is constructed, its height could easily be lowered several feet. Indeed, the image itself is only 6' x 6'. (Palazzolo Decl. ¶ 77, R.23.3, PageID.1333).

wooded area of the CHI Property into a "church or temple," thereby requiring special and costly approvals.

In sum, the ordinance is content based on its face and as applied, *see Telescope Media Grp. v. Lucero*, 936 F.3d 740, 754 (8th Cir. 2019) ("In an as-applied challenge . . . , the focus of the strict-scrutiny test is on the *actual speech being regulated*, rather than how the law might affect others who are not before the court.") (emphasis added), requiring the application of strict scrutiny.

Strict scrutiny is the "most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). It "requires the State to further 'interests of the highest order' by means 'narrowly tailored in pursuit of those interests.' . . . That standard 'is not watered down'; it 'really means what it says.'" *Tandon v. Newsom*, 141 S. Ct. 1294, 1298 (2021) (internal citation omitted).

Under strict scrutiny, "so long as the government can achieve its interests in a manner that does not burden religion, it *must* do so." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1881 (2021) (emphasis added). "The question, then, is not whether the [Township] has a compelling interest in enforcing its [Zoning Ordinance] generally, but whether it has such an interest in" enforcing it against Plaintiffs under the circumstances of this case, *see id.*—circumstances where secular exemptions abound, (*see* O'Reilly Decl. ¶¶ 4-6, 19-23, R.23-4, PageID.1340-41, 1344-46; O'Reilly Decl. ¶¶ 2-10, Ex. 3, R.39-4, PageID.1706-11; Muise Decl., Ex. C [Hr'g Tr.

at 62, 65, 78], Ex. 1, R.39-2, PageID.1571-73).

Plaintiffs' religious displays satisfy all of the "interests" asserted by the Township for regulating signage. (Palazzolo Decl. ¶¶ 78-87, Ex. 2, R.23-3, PageID.1333-35). And any alleged interests in traffic or safety do not satisfy strict scrutiny as these are not compelling interests under the facts of this case nor is the Township's total ban on Plaintiffs' religious displays a least restrictive means of accomplishing any legitimate interest. The religious displays are not visible from any road, so they pose no sightline obstructions or other safety issues for motorists. And the religious "signs" themselves do not cause any safety issues as demonstrated by the fact that they were on display from September 2020 to September 2021 without incident. (O'Reilly Decl. ¶¶ 20-27, R.23-4, PageID.1344-47; Muise Decl., Ex. C [Tr. of Hr'g at 60], Ex. 1, R.39-2, PageID.1570). Moreover, if the Township is legitimately concerned about the safety of the image of Our Lady of Grace, it could simply permit Plaintiffs to construct the image with footings, cement, and mortar as the image "can easily be modified." (O'Reilly Decl. ¶ 28, R.23-4, PageID.1348). And CHI wouldn't object to having it inspected by a building inspector. But a simple $50 permit is not an option for Plaintiffs even though that would suffice for a similar sized stone wall constructed on the property *next door*. (*See* Muise Decl., Ex. C [Hr'g Tr. at 78], Ex. 1, R.39-2, PageID.1573).

In short, the Township cannot satisfy strict scrutiny. *Church of Lukumi Babalu*

Aye, 508 U.S. at 547 ("[Under strict scrutiny], a law cannot be regarded as protecting an interest 'of the highest order' . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.") (quotations and citation omitted). It is not a close call.

And even if the Zoning Ordinance and its application to Plaintiffs' speech were content neutral, the restrictions "still must be narrowly tailored to serve a significant governmental interest." *McCullen v. Coakley*, 573 U.S. 464, 486 (2014). And "[t]o meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, *not simply that the chosen route is easier*." *Id.* at 495 (emphasis added). Here, the Township does not have a "substantial interest" in ordering the removal of Plaintiffs' religious displays or imposing additional costs and burdens for displaying them. As set forth above, Plaintiffs' religious displays satisfy all of the "interests" asserted by the Township.

In sum, the Township violated Plaintiffs' rights protected by the Free Speech Clause.

2. Religious Exercise Claims.

a. First Amendment.

In *Bible Believers v. Wayne County*, 805 F.3d 228 (6th Cir. 2015), this Court, sitting *en banc*, stated:

> The right to free exercise of religion includes the right to engage in conduct that is motivated by the religious beliefs held by the individual asserting the claim. . . . The government cannot prohibit an individual from engaging in religious conduct that is protected by the First Amendment. . . .

Id. at 255-56. Moreover, "[f]ree exercise claims are often considered in tandem with free speech claims and may rely entirely on the same set of facts." *Id.* at 256. Accordingly, for the reasons demonstrating Defendants' violation of the Free Speech Clause, their actions similarly violate the Free Exercise Clause.

As recently stated by the Supreme Court in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021), "[a] law . . . lacks general applicability if it prohibits religious conduct *while permitting secular conduct that undermines the government's asserted interests in a similar way*." (emphasis added). And "[o]fficial action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality." *Church of Lukumi Babalu Aye,* 508 U.S. at 534; *see also id*. at 542-47 (invalidating city ordinances on free exercise grounds and concluding that the ordinances fail to prohibit nonreligious conduct that endangers the same governmental interests in a similar or greater degree than the religious conduct).

The Township is imposing upon Plaintiffs costly and unreasonable burdens for their displays because they are used for religious worship, and the Township does not have a compelling reason for doing so. The fact that the Township prohibits

Plaintiffs' religious conduct "while permitting [other] secular conduct that undermines the government's asserted interests in a similar way"—such as permitting birdhouses that are larger than the Stations of the Cross, picnic tables that are larger than the altar, stone walls that are similar in size and scope to the mural wall with the image of Our Lady of Grace, and large skeletons and other "holiday" decorations that are visible from the road and distracting to motorists—is fatal for the Township. In short, the challenged official action is *not* generally applicable, and it fails strict scrutiny. (*See supra* discussion on strict scrutiny).

One final point: it does not satisfy the most demanding test known to constitutional law (strict scrutiny) to argue that the property next door to the CHI Property can erect all sorts of displays, including the secular displays discussed above as well as landscape displays (*see infra*), all of which can be larger and in greater numbers than Plaintiffs' simple religious displays, because the neighboring property was approved for use as a residence. The approval process did not require the costly special land use application. But more to the point: the approval process did not require the homeowner to get pre-approval (or any approval) for the displays. What is so magical about the fact that there is a house on the property next door? When you review the stated objectives for the display of signs under the Zoning Ordinance, Plaintiffs' religious displays more than satisfy those interests. Additionally, pursuant to the Zoning Ordinance, "[m]anufactured landscape features and minor structures"

are permitted in all "yards" subject to certain location and size restrictions. (Ex. 13 [Z.O. § 11.04.03(e) & (f)], R.55-14, PageID.2473). All of Plaintiffs' religious displays, including the mural wall with the image of Our Lady of Grace, satisfy these location and size restrictions; yet, Plaintiffs' displays are still prohibited.

In the final analysis, the Township does not have a legitimate, let alone substantial or compelling, interest for such disparate treatment that burdens Plaintiffs' fundamental rights.

b. RLUIPA.

Plaintiffs' right to free exercise of religion in the land use context is also protected by federal statutory law. 42 U.S.C. § 2000cc *et seq*. RLUIPA defines religious exercise as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," including "[t]he use, building, or conversion of real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5(7). And this "shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." *Id*. Thus, RLUIPA "applies to an exercise of religion regardless of whether it is 'compelled.'" *Holt v. Hobbs*, 574 U.S. 352, 362 (2015).

Under RLUIPA, "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person . . . unless the government demonstrates that imposition of the burden on that

person, assembly, or institution—(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1)(A)(B). In other words, the Township's restriction on Plaintiffs' use of its property—Plaintiffs' religious exercise—must satisfy strict scrutiny—the most demanding test known to constitutional law. As set forth above and further below, the Township cannot meet its heavy burden.

Here, the Township is implementing its Zoning Ordinance to deny Plaintiffs the right to use the CHI Property for religious purposes, thereby placing a substantial burden on Plaintiffs' religious exercise. The *direct* burden of denying the right to religious exercise (subject to penalty) is clearly substantial, having caused significant costs, delays, and uncertainty, and this burden is not in furtherance of a compelling governmental interest nor the least restrictive means of furthering that governmental interest. *See Thomas v. Rev. Bd.,* 450 U.S. 707, 717-18 (1981) (holding that the denial of a benefit—an *indirect* burden—is substantial, stating that "[w]hile the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial"). The analysis under RLUIPA is straightforward. *See Mast v. Fillmore Cnty.*, 141 S. Ct. 2430, 2432 (2021) (Gorsuch, J., concurring) ("*Fulton* makes clear that the County and courts below misapprehended RLUIPA's demands.").

While this Court did not have the benefit of *Fulton* (or *Mast*) when it decided

Livingston Christian Schools v. Genoa Charter Township, 858 F.3d 996 (6th Cir. 2017), the factors outlined in that case for determining a "substantial burden" under RLUIPA clearly demonstrate that Plaintiffs have satisfied that element here. *Id*. at 1001-04 (finding a "substantial burden" when (1) the challenged action "places significant pressure on an institutional plaintiff to modify its behavior," particularly where "the plaintiffs had demonstrated that they were unable to carry out some core function of their religious activities due to the inadequacy of their current facilities"; (2) a religious institution does not have "a feasible alternative location from which it can carry on its mission"; (3) "the religious institution will suffer substantial delay, uncertainty, and expense due to the imposition of the regulation"; and (4) "an institutional plaintiff has obtained an interest in land [with] a reasonable expectation of being able to use that land for religious purposes"); *see also Bethel World Outreach Ministries v. Montgomery Cty. Council*, 706 F.3d 548, 557-58 (4th Cir. 2013) ("When a religious organization buys property reasonably expecting to build a church, governmental action impeding the building of that church may impose a substantial burden. . . . This is so even though other suitable properties might be available, because the 'delay, uncertainty, and expense' of selling the current property and finding a new one are themselves burdensome."); *Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007) ("What is true is that . . . once the organization has bought property reasonably expecting to obtain a permit, the denial

of the permit may inflict a hardship on it.").

CHI acquired the property from the Catholic Diocese of Lansing with the expectation of building its prayer campus and modest chapel as this use is an allowed use under the Zoning Ordinance. CHI, a Missouri corporation, "does not have any alternative locations for the construction and development of the St. Pio Chapel and prayer campus. In other words, there is no feasible alternative location from which [Plaintiffs] can carry on [their] religious mission." (Palazzolo Decl. ¶ 68, R.23-3, PageID.1331). And Plaintiffs have certainly "suffer[ed] substantial delay, uncertainty, and expense due to the" Township's enforcement of its Zoning Ordinance. In short, the Township's violation of RLUIPA is apparent.

B. Irreparable Harm to Plaintiffs.

Plaintiffs have been irreparably harmed, and this harm will continue without the preliminary injunction. Defendants' restrictions on Plaintiffs' religious exercise and expression deprive Plaintiffs of their fundamental rights protected by the First Amendment and RLUIPA. It is well established that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). And this injury is sufficient to justify the requested injunctive relief. *Newsome v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989) ("The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to

justify injunctive relief.") (citing *Elrod*); *see also Heid v. Mohr*, No. 2:18-CV-311, 2019 U.S. Dist. LEXIS 33895, at *33 (S.D. Ohio Mar. 4, 2019) ("RLUIPA provides statutory protection for First Amendment values. Therefore, the likelihood of success on the merits is also key in the RLUIPA context. . . . Supreme Court precedent is clear that 'even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.'"); *Roman Catholic Archdiocese of Kan. City in Kan. v. City of Mission Woods*, 385 F. Supp. 3d 1171, 1175-76 (D. Kan. 2019) (concluding that "a RLUIPA violation . . . infringes on the free exercise of religion" and thus establishes irreparable harm); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (concluding that "although the plaintiff's free exercise claim is statutory rather than constitutional, the denial of the plaintiff's right to the free exercise of his religious beliefs" is "irreparable harm").

Indeed, a finding of irreparable harm is "mandated" in this case. *Bonnell v. Lorenzo,* 241 F.3d 800, 809 (6th Cir. 2001) ("[W]hen reviewing a motion for preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated.").

C. Harm to Others.

The likelihood of harm to Plaintiffs is substantial because Plaintiffs intend only to exercise their rights to religious exercise and expression on CHI's private property, and the deprivation of these rights, even for minimal periods, constitutes irreparable

injury. *See supra*. On the other hand, if Defendants are restrained from unlawfully enforcing their Zoning Ordinance, they will suffer no harm because the exercise of constitutionally protected rights can never harm any of Defendants' or others' legitimate interests. *See Connection Distributing Co.*, 154 F. 3d at 288. Indeed, as noted previously, there was no harm caused by Plaintiffs' religious symbols, which had been displayed on the CHI Property for over a year without incident prior to the Township's enforcement action.

In the final analysis, the question of harm to others as well as the impact on the public interest "generally cannot be addressed properly in the First Amendment context without first determining if there is a constitutional violation. . . ." *Connection Distribution Co.*, 154 F.3d at 288. For if Plaintiffs show that their constitutional rights have been violated (which they have shown here), then the harm to others is inconsequential. *See infra*.

D. The Public Interest.

The impact of the preliminary injunction on the public interest turns on whether the Township violated Plaintiffs' rights protected by the First Amendment and RLUIPA. As this Court noted, "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994); *see also Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1490 (6th Cir. 1995) (stating that "the

public as a whole has a significant interest in ensuring equal protection of the laws and protection of First Amendment liberties").

As set forth above, the Township's actions violate Plaintiffs' rights to religious exercise and expression in violation of the First Amendment and RLUIPA. It is in the public interest to reverse the lower court and grant the preliminary injunction.

CONCLUSION

Plaintiffs request that the Court immediately issue the requested injunction to allow the display of the religious symbols on the CHI Property.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 32(a), the foregoing Brief is proportionally spaced, has a typeface of 14 points Times New Roman, and contains 12,765 words, excluding those sections identified in Fed. R. App. P. 32(f).

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that all of the participants in this case are registered CM/ECF users.

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise (P62849)

ADDENDUM: DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

No.	Page ID	Description
R.1	1-149	Complaint
R.14	192-351	First Amended Complaint
R.23	1121-55	Emergency Motion for Temporary Restraining Order / Preliminary Injunction
R.23-2	1157-1312	Exhibit 1: Declaration of Robert J. Muise
	1160-1287	Exhibit A: Email from Township Attorney David Burress with attachments (verified complaint with attachments filed in the 44th Circuit Court for Livingston County)
	1288-89	Exhibit B: Read Receipt
	1290-1304	Exhibit C: Article 16 Sign Standards, Genoa Township Zoning Ordinance
	1305-09	Exhibit D: Township Assembly Ordinance
	1310-12	Exhibit E: §3.03, Genoa Township Zoning Ordinance
R.23-3	1313-37	Exhibit 2: Declaration of Jere Palazzolo
R.23-4	1338-49	Exhibit 3: Declaration of Ann O'Reilly
R.27	1417-24	Plaintiffs' Reply in Support of Emergency Motion for Temporary Restraining Order / Preliminary Injunction
R.27-2	1426-27	Exhibit 4: May 7, 2021 letter from Township to CHI
R.27-3	1428-48	Exhibit 5: Emergency Motion to Dissolve *Ex Parte* TRO Issued on September 20, 2021

R.28	1449-50	Order denying in part Motion for TRO and Preliminary Injunction
R.29	1451-94	Transcript of Hearing on Motion for TRO / Preliminary Injunction
R.30	1495-96	Order Denying the Remainder of Emergency Motion for Temporary Restraining Order and Preliminary Injunction
R.31	1497-99	Notice of Interlocutory Appeal
R.37		Mandate
R.38	1515-17	Order Setting Briefing Schedule
R.39	1518-46	Plaintiffs' Brief on Issues Following Remand
R.39-2	1548-52	Exhibit 1: Declaration of Robert J. Muise
	1553-57	Exhibit A: TRO Issued by State Court
	1557-61	Exhibit B: Consent Order / Stipulation
	1562-75	Exhibit C: Hearing Transcript (excerpts), State Court
	1576-81	Exhibit D: Article 19, Township Zoning Ordinance
	1582-94	Exhibit E: Article 16, Township Zoning Ordinance (sign standards in effect in September 2020)
	1595-1609	Exhibit F: Article 16, Township Zoning Ordinance (sign standards amended November 2020)
	1610-14	Exhibit G: Article 3, Township Zoning Ordinance
R.39-3	1615-23	Exhibit 2: Declaration of Jere Palazzolo
	1624-52	Exhibit A: Prayer Campus Submission

	1653-74	Exhibit B: Review Letters
	1675-1702	Exhibit C: CHI's Response to Review Letters
	1703-04	Exhibit D: Letter from Township Declining to Respond
R.39-4	1705-15	Exhibit 3: Declaration of Ann O'Reilly
	1716-19	Exhibit A: Road Commission Application for Field/Temporary Driveway Permit
R.48	2140-63	Emergency Motion to Expedite Ruling on Plaintiffs' Motion for Preliminary Injunction
R.51	2191-96	Request for Judicial Notice
R.51-2	2198-2206	Exhibit 1: ZBA Minutes of Feb. 15, 2022
R.51-3	2207-09	Exhibit 2: State Court Stay Order
R.52	2210-14	Declaration of Ann O'Reilly
R.55	2234-98	Supplemented First Amended Complaint
R.55-14	2467-73	Exhibit 13: Article 11, Township Zoning Ordinance
R.66	3378-3406	Renewed Motion to Expedite Ruling on Plaintiffs' Motion for Preliminary Injunction
R.69	3467-3501	Order Granting in Part and Denying in Part Motion to Dismiss
R.70	3502-11	Order Granting in Part and Denying in Part Motion for Preliminary Injunction
R.71	3512-14	Notice of Interlocutory Appeal
R.73	3516-51	Motion for Injunction Pending Appeal

R-74	3568-82	Defendants' Response to Motion for Injunction Pending Appeal
R.80	4002-13	Motion to Expedite Ruling on Plaintiffs' Motion for Injunction Pending Appeal
R.81	4014-15	Defendants' Notice of Appeal