STATE OF MICHIGAN
IN THE COURT OF APPEALS

GENOA CHARTER TOWNSHIP

Plaintiff/Appellee,

vs.

CATHOLIC HEALTHCARE INTERNATIONAL, INC,

Defendant/Appellant.

COA No. _____

Circuit Court No. 21-31255-CZ

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DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL AND BRIEF IN SUPPORT

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Appellant/Defendant Catholic Healthcare International, Inc. ("CHI") seeks leave to appeal from the Livingston County Circuit Court's Order granting a preliminary injunction, which orders the removal of CHI's modest religious displays from its 40-acre property located within Genoa Charter Township ("Township") and prohibits CHI from using this property for religious worship (*i.e.*, "organized gatherings"). Action by this Court is necessary to preserve and protect CHI's fundamental rights to freedom of speech and religious exercise under the Michigan Constitution and to remedy the irreparable and substantial harm caused by the Circuit Court Order.

During a hearing held on April 21, 2022, the Circuit Court denied CHI's motion for summary disposition but stayed all proceedings until final resolution of CHI's claims advanced in its earlier-filed federal civil rights lawsuit against the Township (*Catholic Healthcare International, Inc. v. Genoa Charter Township*, No. 21-cv-11303 (E.D. Mich June 2, 2021)), which arises under the same operative facts. However, the preliminary injunction remains in force during this stay, thus further necessitating this appeal.

INTRODUCTION

Plaintiff/Appellee Genoa Charter Township ("Township") is engaging in an undisguised frontal attack on religious freedom that violates the Michigan Constitution.[1] The Township and its officials have demonstrated throughout their course of conduct with CHI a breathtaking and entirely unreasonable disregard for CHI's fundamental rights to freedom of speech and religious worship under the Michigan Constitution. The Township's actions, affirmed and ratified by the Circuit Court below, demonstrate a discriminatory and unconstitutional application and

[1] CHI reserves the right to raise any and all federal claims and defenses in federal court in the related case of *Catholic Healthcare International, Inc. v. Genoa Charter Township*, No. 21-cv-11303 (E.D. Mich. June 2, 2021), pursuant to *England v. Louisiana Board of Medical Examiners*, 375 U.S. 411, 421-22 (1964).

enforcement of its Zoning Ordinance, which includes its Sign Ordinance, to strip CHI's private property of religious symbols and to take the extraordinary step of prohibiting CHI from using its property for religious worship. For the reasons set forth in this application, CHI will suffer substantial harm by awaiting final judgment before taking an appeal. Consequently, the Court should reverse the Circuit Court's order granting the Township's motion for a preliminary injunction and vacate the injunction that prohibits CHI from displaying its religious symbols and using its property for religious worship. The Michigan Constitution demands it.

RULINGS AND ORDER APPEALED[2]

On April 6, 2022, the Circuit Court granted the Township's motion for a preliminary injunction and denied CHI's motion to dissolve the previously issued *ex parte* TRO, thereby extending the terms of the TRO via the preliminary injunction. (Order at Ex. B).

The injunction required CHI "to remove the structures on the Property, until [CHI] has applied for and obtained all necessary permits, including land use permits and building permits for the structures" and "prohibiting [CHI], anyone acting in concert with them, and/or CHI's agents or servants, to cease all unlawful use of the Property for organized gatherings" (sic). (TRO at Ex. C). The "structures" at issue are fourteen Stations of the Cross, a mural wall with the image of Our Lady of Grace, and a small altar. The alleged "unlawful use of the Property for organized gatherings" is based on a Livingston County Road Commission driveway permit that CHI has never executed and which expired on January 8, 2022, by its own terms.

On April 22, 2022, CHI timely filed this application, seeking review of the Circuit Court's Order granting the Township's motion for a preliminary injunction and denying CHI's motion to dissolve the TRO.

[2] The Register of Actions is attached at Exhibit A.

ALLEGATIONS OF ERROR AND RELIEF SOUGHT

The Circuit Court issued a preliminary injunction that violates CHI's rights to freedom of speech and religious exercise protected by the Michigan Constitution, thereby causing substantial and irreparable harm to CHI. CHI requests that the Court reverse the Circuit Court and vacate the unlawful injunction.

JURISDICTIONAL STATEMENT

The Circuit Court entered its order granting a preliminary injunction and denying CHI's motion to dissolve the TRO on April 6, 2022. CHI filed this application on April 22, 2022, which was within 21 days of the entry of the order. *See* MCR 7.105(A).

QUESTION PRESENTED

Does the preliminary injunction issued by the Circuit Court deprive CHI of its rights to freedom of speech and religious exercise protected by the Michigan Constitution, thereby causing substantial and irreparable harm to CHI and requiring the Court to reverse the Circuit Court's decision and vacate the injunction?

Circuit Court's Answer: No.

CHI's Answer: Yes.

STATEMENT OF FACTS

CHI is a nonprofit corporation that is formally recognized as a private association of the faithful by the Catholic Diocese of Lansing, Michigan. CHI uses its property located within Genoa Township ("CHI Property") for religious exercise, religious assembly, and religious expression. (Palazzolo Decl. ¶¶ 1-8, 13-27 at Ex. D).

The 40-acre CHI Property was acquired from the Catholic Diocese of Lansing. 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.[3] When CHI acquired the property, it too had a reasonable expectation of developing it into a prayer campus, which would include an adoration chapel (St. Pio Chapel), prayer trails, a small outdoor altar, and the display of religious images, icons, and symbols, including Stations of the Cross, religious statues, and the display of the image of Santa Maria delle Grazie ("Our Lady of Grace"). (Palazzolo Decl. ¶¶ 9, 11-14, 16-27 at Ex. D).

The current entrance to the CHI Property is the same entrance that has been used by CHI since it acquired the property in October 2020, and it was the entrance used prior to that. CHI applied for a permit with the Livingston County Road Commission to make some modifications to this entrance—CHI simply wanted to add some additional gravel to the driveway. However, *CHI never took any action on this permit*, and the Township knew that before filing this action on September 17, 2021. (*See* Hr'g Tr. I at 85 ["Q. Do you have any information whatsoever that CHI has ever acted on that permit to construct a field driveway? A. No." (emphasis added)] at Ex. L). Consequently, CHI has *not* constructed a field driveway pursuant to the permit. The entrance, which the Township has been aware of since well before CHI owned the property, *has not changed nor has it been modified*. Township officials have used this entrance to enter the property to conduct inspections and have never complained. (Palazzolo Decl. ¶ 90 at Ex. D; O'Reilly Decl. ¶ 31 at Ex. E; *see also* Verified Compl. ¶ 62, Ex. 15 [Driveway Permit, Bates No. 000125] at Ex. K). Moreover, dirt/gravel driveways at private residences located near the CHI Property have been used for people to "gather" on these properties in numbers that far exceed the number of people

[3] 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. ¶¶ 12, 15 at Ex. D; *see also* Verified Compl. ¶ 7 at Ex. K).

who will gather for religious worship on the CHI Property. (O'Reilly Suppl. Decl. ¶ 5 at Ex. H; *see also id*. ¶¶ 12-14 [setting forth evidence regarding entrance to CHI Property and the entrance to Fillmore Park]). This permit *expired by its own terms on January 8, 2022*, but it remains the basis for prohibiting religious worship ("organized gatherings") on the property. (Verified Compl. ¶ 62, Ex. 15 [Driveway Permit, Bates No. 000125] at Ex. K).

Prior to the TRO, which was issued in September 2021, the Stations of the Cross, the mural wall with the image of Our Lady of Grace, and a small altar had been displayed on the CHI Property for approximately 12 months (*i.e.*, sin*ce September 2020*), and they were used for prayer and worship. *Neither wind nor rain nor any other factors caused any safety issues whatsoever. Time and experience refute any claim that the displays were unsafe*. Moreover, the displays were not erected along any public right of way or thoroughfare. They could not be seen from the road; they were located in a wooded, isolated area. (Palazzolo Decl. ¶¶ 27, 78 at Ex. D; O'Reilly Decl. ¶¶ 14-15 at Ex. E; O'Reilly Suppl. Decl. ¶ 11 at Ex. H).

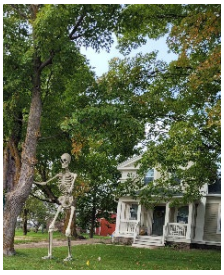
A picture of a Station of the Cross appears below:

(Palazzolo Decl. ¶ 17 at Ex. D; O'Reilly Decl. ¶ 7 at Ex. E). Birdhouses larger than a Station of the Cross are permitted on property in the Township without the need for any special land use approvals. (*Id*. ¶ 8 at Ex. E).

A picture of the mural wall with the image of Our Lady of Grace and the small altar appears below:

(Palazzolo Decl. ¶ 22 at Ex. D; O'Reilly Decl. ¶ 11 at Ex. E). A stone wall of the same size is permitted on residential property in the Township without the need for any special land use approvals. (*See* Hr'g Tr. I at 78 at Ex. L).

The Township permits the display of large, 12-foot skeletons and other holiday displays without the need for any special land use approvals. Pictures of recent displays appear below:



(O'Reilly Suppl. Decl. ¶ 6 at Ex. H; Hr'g Exs. 9a, 9b at Ex. N).

On or about October 9, 2020, the Township ordered CHI to remove the Stations of the Cross and the mural wall with the image of Our Lady of Grace, claiming that by displaying these religious symbols and using them for religious worship, CHI had now miraculously 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." (*See* Verified Compl. ¶ 24 [emphasis added] at Ex. K). To comply with the Township's (unlawful) demand, CHI would have had to undertake a costly (in excess of $20,000) and burdensome zoning process.[4] The Township's determination was unconstitutional and factually *inaccurate*, and the Township repeats these allegations in its Verified Compl. (*Id*.). There was no "structure" on the CHI Property "wherein" regular religious assemblies took place. Nor were any of these religious symbols "accessory structures" requiring Township approval. Consequently, CHI rejected the demand on its factual inaccuracies and on constitutional grounds. (Palazzolo Decl. ¶¶ 29-32 at Ex. D; Verified Compl., Exs. 5 & 7 [Bates Nos. 000045-49, 000055-58] at Ex. K).

As noted in correspondence from CHI's counsel to the Township dated October 23, 2020 (in response to the October 9 demand), the Township's Sign Ordinance

> expressly *exempts* certain *permanent* signs (§ 16.03.11), it *exempts* real estate signs (§ 16.03.15), it *exempts all* flags (§ 16.03.03), and it *exempts all* temporary political signs (§ 16.03.14) "provided such signs are not placed within the public street right-of-way line in a manner that obstructs visibility." CHI's religious "sign" is not placed within the public street right-of-way—it is not even visible from the road—and thus creates no visibility issues whatsoever. . . . By permitting unlimited, temporary political signs (subject to the "public street right-of-way line" limitation), but prohibiting CHI's temporary religious "sign," the Township is engaging in a form of content-based discrimination [in violation of the law, citing *Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015) and *Int'l Outdoor, Inc. v. City of Troy*, 974 F.3d 690 (6th Cir. 2020)].

[4] In October 2020, CHI did not have the benefit of the work that Boss Engineering had completed on its first special land use application (which the Township denied on May 3, 2021). Consequently, at that point in time (October 2020), the cost would have exceeded $20,000. The most recent demand by the Township to "appl[y] for and obtain[] all necessary permits, including land use permits and building permits for the structures" (Verified Compl. ¶ A(a.) at Ex. K), cost CHI nearly $10,000, as approximately $15,000 of the work already completed (and paid for) in the first failed attempt was used in the second failed attempt. (*See* Palazzolo Suppl. Decl. ¶¶ 4-6 at Ex. I).

(Verified Compl. ¶ 28, Ex. 5 [2020-10-23 - Ltr. from CHI counsel, Bates No. 000048] at Ex. K).[5] Thus, the Township was using an unconstitutional Sign Ordinance to order the removal of CHI's religious symbols. CHI, through counsel, properly rejected the Township's efforts.[6] (*Id.*). The Township remained mute until May 7, 2021.

The Township's Zoning Ordinance broadly defines a "structure" as

> [a]nything constructed or erected, the use of which requires location on ground or attachment to something having location on the ground. Structures include, *but are not limited to*, principal and accessory buildings, radio, television and cellular phone towers, decks, fences, privacy screens, walls, antennae, swimming pools, signs, gas or liquid storage facility, mobile homes, street directional or street name sign (sic) and billboards.

(Verified Compl. ¶ 13 [emphasis added] at Ex. K). Thus, per the Zoning Ordinance, many things could be considered a "structure." For example, a deer hunter's tree stand fits this definition. A child's playset fits this definition. A shepherd's hook "constructed" with a flower pot fits this definition. A picnic table fits this definition. A birdhouse fits this definition. A *giant skeleton* displayed outside of a home fits this definition. (O'Reilly Suppl. Decl. ¶ 6 at Ex. H). Items that are currently on the property adjacent to CHI's Property fit this definition, specifically including this "structure" used to field dress deer:

[5] The Sign Ordinance in effect at the time CHI's religious symbols were first displayed is attached as Exhibit J.

[6] The Township amended its Sign Ordinance on November 2, 2020. (*See* Ex. F [Article 16, Sign Standards]). But the constitutional defects remain. *See infra*.

(O'Reilly Suppl. Decl., ¶ 3 at Ex. H). This structure is larger than any of the Stations of the Cross that the Township stripped from the CHI Property pursuant to the TRO/preliminary injunction. (*Id*.).

The altar on the CHI Property, which the Township claims is a "structure" (Verified Compl ¶ 52 at Ex. K), is approximately 33 inches tall, 56 1/4 inches long, and 24 inches wide. It is smaller than these picnic tables, which are currently located on the property adjacent to the CHI Property:


(O'Reilly Suppl. Decl. ¶¶ 3-4 at Ex. H; *see also id*. at ¶ 9 [Township picnic tables]). These picnic tables, unlike an altar used for religious worship, have no protection under the Michigan Constitution. However, neither the deer hanging structure nor these picnic tables require the burdensome and costly special application for land use process.

In order to develop the prayer campus and construct the St. Pio Chapel, CHI submitted an application for special land use. The 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 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 at Ex. D). Indeed, after the Latson Road interchange construction, traffic on Chilson Road decreased significantly from over 5,000 vehicles a day to approximately 2,500 vehicles a day. Chilson Road is able to adequately accommodate the proposed development. (O'Reilly Decl. ¶¶ 26-27 at Ex. E). CHI's application was ultimately

approved by the Township Planning Commission. CHI went "above and beyond and addressed all of the concerns of the Planning Commission and the consultants." (Palazzolo Decl. ¶¶ 59-60 at Ex. D). Nonetheless, the Township (unlawfully) ***denied*** CHI's application in its entirety on May 3, 2021.[7] (Palazzolo Decl. ¶¶ 61-67 at Ex. D).

As noted in CHI's application, there are only <u>*two*</u> events all year that CHI intends to hold on the CHI Property that may require an increase in parking above and beyond the 39 parking spaces proposed for the chapel.[8] To accommodate this, CHI proposed using the greenspace on its property for overflow parking. (Verified Compl., Ex. 9 [Impact Assessment/General Operations, Bates No. 000071] at Ex. K). The Township denied this request even though (1) the Township permits private residences in the very same area of the Township to hold events that *far* exceed the number of people who will be visiting the CHI property for these two *special* events—St. Pio's Feast Day (September 23rd) and St. Pio's Birthday (May 25th), (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.[9] CHI's religious assembly that was scheduled for September 23, 2021 (and its other special event) would have far less people attending. (O'Reilly Decl., ¶¶ 20-24 at Ex. E; O'Reilly Suppl. Decl. ¶ 5 at Ex. H). Finally, CHI went above and beyond the legal requirements

[7] 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. Rather, it simply denied CHI's application *in its entirety*.
[8] The Township was aware of these events at least since February 2021. (Verified Compl., Ex. 9 [Impact Assessment/General Operations, Bates No. 000071] at Ex. K).
[9] *See* https://www.genoa.org/government/ordinances/ordinance-assembly ("An ordinance to license, regulate and control, in the interest of the public health, safety and welfare, outdoor assemblies of persons in excess of 1,000 in number, to provide penalties for violations thereof and to repeal all ordinances or parts of ordinances inconsistent therewith.").

by proposing least restrictive measures to address traffic for these two *special* events by offering to provide a shuttle service or "staged/multiple receptions." (Palazzolo Decl., ¶ 57 at Ex. D; Verified Compl., Ex. 9 [Impact Assessment/General Operations, Bates No. 000071] at Ex. K). The Township rejected these measures and denied the application. Indeed, it again rejected this least restrictive alternative by seeking and obtaining the *ex parte* TRO and preliminary injunction even though these measures would mitigate traffic concerns for these special events.

Following the Township's first denial of CHI's special land use application on May 3, 2021, the Township, via a letter dated May 7, 2021, demanded that CHI remove the Stations of the Cross and the display of the image of Our Lady of Grace from the CHI property by June 4, 2021. In the May 7, 2021 letter from the Township—*which was the **last** demand from the Township regarding the religious displays **before** it filed its Verified Complaint and ex parte motion for a TRO*—the Township expressly stated the following:

> 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. Also, the structure/grotto *sign* does not have a permit and will also need to be removed. . . . Please have the *signs* and accessory structure removed by *June 4, 2021*.[10]

(Palazzolo Suppl. Decl., ¶¶ 2-3, Ex. A [Twp. Letter (emphasis added)] at Ex. I). This unlawful demand prompted CHI to file a federal civil rights lawsuit on June 2, 2021. (*Id*. ¶ 2 at Ex. I). The federal lawsuit is referenced in the Township's verified complaint, in which the Township states:

> There is another pending civil action arising out of the transaction or occurrence alleged in the complaint, in the United Stated District Court for the Eastern District of Michigan, under the name *Catholic Healthcare International, Inc. v. Genoa Township*, Case No. 21-cv-11303.

(Verified Compl., Bates No. 000001 at Ex. K; *see* First Am. Compl. at Ex. S).

[10] To argue that the Township's Sign Ordinance, which is part of its Zoning Ordinance, is not in play here is factually incorrect.

CHI's religious displays did not undermine any of the Township's stated objectives for restricting signage. The displays were not "distracting to motorists and pedestrians." They did not "create[] a traffic hazard" nor did they "reduce[] the effectiveness of signs needed to direct and warn the public." They did 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." (Sign Standards at Ex. F).[11] 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 at Ex. D). As argued further below, the Sign Ordinance (like the version in effect in October 2020) is unconstitutional.

Moreover, § 11.04.01(b) (Accessory Buildings, Structures and Uses in General) of the Township's Zoning Ordinance, provides as follows: "Permit Required: Any accessory *building* shall require a land use permit, *except* (1) accessory building one hundred twenty (120) square feet or less *shall be allowed without a land use permit*." (Zoning Ordinance § 11.04.01 [emphasis added]; *see* Palazzolo Suppl. Decl. ¶ 2, Ex. A [Twp. Letter with attachments] at Ex. I). Per the language of the ordinance, this is the *floor plan* of a building (*i.e.*, a structure).[12] The "floor plan" of the image of Our Lady of Grace is approximately 75 square feet. Moreover, this religious display could easily be reduced in height by reducing or removing the stone base. The image with the existing frame is 8 feet, 2 inches tall (without the base) and 9 feet wide (or just over 72 square

[11] These are the "sign standards" that were referenced in (and portions of which were attached to) the May 7, 2021, letter sent by the Township demanding removal of the religious displays by June 4, 2021. Also attached to this letter was a portion of the "accessory structure ordinance." The Township specifically relies upon this letter in its Verified Complaint. (*See* Verified Compl. ¶ 45, Ex. 13 [Twp. Letter, Bates No. 000115] at Ex. K; Palazzolo Suppl. Decl., ¶¶ 2-3, Ex. A [Twp. Letter with attachments] at Ex. I).

[12] "The word 'building' includes the word 'structure.'" (Zoning Ordinance, § 25.01(e)).

feet if measured on its face as opposed to its floor plan). The image without the frame is 6 feet by 6 feet (or only 36 square feet). Demanding removal of the display of this image (particularly in its entirety) as an "accessory structure" was contrary to the Zoning Ordinance (and the Michigan Constitution, as argued below). And ordering it or any of the other religious displays to be removed as signs was also improper because, *inter alia*, the sign ordinance facially and as applied violates the Michigan Constitution, as argued below.

In their filings in the Circuit Court, the Township affirms its position that the wooded area of the CHI property (the "grotto") "is considered a 'church or temple' because a grotto is typically a structure that is erected where people worship." (Verified Compl. ¶ 24 at Ex. K). Therefore, according to the Township, the small altar, the Stations of the Cross, and the image of Our Lady of Grace were "accessory structure[s] because they are usually incidental to a church." (*Id*.). But of course, the wooded area, which the Township asserts is a "church or temple" because it is a place where people worship, is not *physically a structure* that is a "church or temple." Thus, per the Township, these religious displays were now "accessory structures without a principal structure." (*Id*., ¶ 70). And the Township advances this argument after it unlawfully denied CHI's request to construct the modest "principal structure" (the St. Pio Chapel)—a denial that is a central aspect of CHI's challenge in its federal case.[13] (*See* First Am. Compl. at Ex. S). The Township further asserts that CHI's "proposed use of the Property for an organized gathering on September 23, 2021, is a violation of the Genoa Township Zoning Ordinance" (*id*., ¶ 79), relying on incorrect information that CHI has acted upon the Livingston County Road Commission permit.

[13] Per the Township, the "necessary permits, including land use permits and building permits for the structures" (Verified Complaint ¶ A at Ex. K) necessarily require the approval of CHI's special land use application to construct the St. Pio Chapel, which, of course, the Township unlawfully denied. Because of this denial, the Township has stripped the CHI Property of religious symbols, and it has prevented CHI from using the property for religious worship.

Consequently, the Township has improperly affected the removal of the small altar, Stations of the Cross, and the image of Our Lady of Grace and prevented CHI from using its property for religious worship by pursing the preliminary injunction with the Circuit Court.

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*, 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.

(Hr'g Tr. I at 78 at Ex. L). The witness further testified as follows:

> 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, had them inspected on the property, would the zoning ordinance permit that?
> A: No.

(Hr'g Tr. II at 94-95 at Ex. M). 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. (Hr'g Tr. I at 62 at Ex. L). More specifically, the witness testified as follows: "Q: [T]here'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.*).

In other words, unlike CHI's religious displays, which are structurally 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 10 people could not gather to pray at the CHI Property.

Unfortunately (but not surprising), there was no resolution available that would protect CHI's right to religious exercise. The only option for CHI was to engage, once again, in the burdensome special land use approval process, which itself is no guarantee as the Township Board retains the ability to deny the request on subjective grounds. Consequently, the parties stipulated to and submitted a proposed order to the Circuit Court, 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.

(Stipulation [emphasis added] at Ex. R).

On October 15, 2021, and in an effort to satisfy the conditions of the TRO, CHI submitted the burdensome and costly (in excess of $8,000)[14] special application for land use to construct the prayer campus (the religious symbols at issue and a driveway/parking area to address the "field" driveway permit issue). (*See* Hr'g Tr. II at 26-27 at Ex. M; Hr'g Ex. 11 at Ex. O). During this

[14] The fee for the application is $2,875 (which is not a nominal amount—permits for similar sized items on residential property would only cost $50 and would not require Planning Commission and Township Board approval), but a complete application requires CHI to hire an engineering firm with the requisite expertise to prepare and submit the site plan and environmental impact statement, to respond to the Township's experts and consultants, and to interface with the Township's experts and consultants. (Hr'g Tr. at 55 at Ex. L). The *actual* cost for the resubmittal (Prayer Campus Submission) was $8,599.40 (and counting), and it was only this low because the engineers were able to use much of the same work from the original submission. Consequently, the permitting process that the Township requires ultimately costs in excess of $20,000, and with the current gamesmanship engaged in by the Township, CHI has now expended over $30,000 in just application and engineering fees in an effort to use its property for religious worship. (Palazzolo Suppl. Decl. ¶¶ 4-6 at Ex. I).

process, CHI attempted to get answers from the Township regarding its application of the Zoning Ordinance (Hr'g Ex. 12 at Ex. P), but the Township refused to respond (Hr'g Ex. 13 at Ex. Q).

The Planning Commission refused to consider CHI's latest (and second) submission based on the Township Board's previous denial of CHI's application on May 3, 2021, thereby causing further delay and forcing CHI to file a futile administrative appeal to the ZBA. The ZBA denied this appeal on February 15, 2022. (Hr'g Tr. II at 26-27 at Ex. M).

The approval process for the special land use application set forth above is costly, it takes many months to complete, approval is conditioned on the subjective determinations of the Township Board, and twice CHI's applications have been rejected.

As of today, and as a direct result of the Township's enforcement of its Zoning Ordinance through the preliminary injunction, the religious displays at issue have been removed, and CHI is prohibited from engaging in *outdoor* religious worship on its private property. The harm caused by the Township is not speculative nor is it based on a subjective chill. The harm to CHI is real, and it is irreparable. (*See* Palazzolo Suppl. Decl. ¶¶ 7-10 at Ex. I).

In sum, the evident goal of the Township is to prevent CHI from *ever* using this property for religious worship. CHI did not ask for this litigation. It is being forced into it by an unreasonable and demanding Township that continues to move (or hide) the goal posts and impose costly, unreasonable, and unlawful burdens on CHI's fundamental rights.

CIRCUIT COURT ORDER

In the Circuit Court's decision, which was read from the bench immediately following the arguments of counsel, the court failed to meaningfully or substantively address CHI's free speech and free exercise claims. (*See* Def.'s Resp. in Opp'n to Req. for Prelim. Inj. at Ex. T). The full extent of the court's constitutional analysis is as follows:

> CHI goes to great lengths to frame the issue as one of religious freedom, however, the free exercise clause does not relieve an individual from the obligation to comply with neutral laws of general applicability. Employment Division, Department of Human Resources of Oregon versus Smith, 497 US 872, pages 878 through 879, a 1990 case. A law is neutral if both on its (indecipherable) and in its imp-, implementation its object is something other than the infringement or restriction of religious practices. Church of the Lukumi Babalu Aye, Incorporated versus City of – it's H-I-A-L-E-A-H – 508 US 520, a 1993 case. Here, the Genoa Township Zoning Ordinances are facially neutral and constitute a legitimate exercise of state authority.

(Hr'g Tr. II at 146 at Ex. M). The errors of this scant constitutional analysis are set forth in greater detail in the Argument section below. (*See infra*).

As an initial matter, the Circuit Court's reference to (and failure to meaningfully analyze) *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993) ("*Lukumi*"), is telling.[15] To begin, the Supreme Court in *Lukumi* noted with importance that "[t]he principle that government may not enact laws that suppress religious belief or practice is . . . well understood." *Lukumi*, 508 U.S. at 523. Or at least it should be.

As the Supreme Court further noted, "Official action that targets religious conduct for distinctive treatment *cannot be shielded by mere compliance with the requirement of facial neutrality*." *Lukumi*, 508 U.S. at 534 (emphasis added); *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).

[15] The Circuit Court failed to mention (let alone address) *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021), the U.S. Supreme Court's most recent free exercise decision. CHI cited and relied upon *Fulton* and other case law in its opposition to the request for an injunction, and this case law demonstrates that the Township's Zoning Ordinance, particularly as it is implemented against CHI, is not a neutral law of general applicability as a matter of law, thereby triggering strict scrutiny. (*See* Def.'s Resp. in Opp'n to Req. for Prelim Inj. at Ex. T). The Circuit Court addressed none of this, nor did the court address the fact that free exercise jurisprudence under the Michigan Constitution does not follow *Smith*, and that Michigan courts at least recognizes the hybrid exception mentioned in *Smith*. (*See infra*). In sum, the Circuit Court gave short shrift to the Michigan Constitution, favoring the Township's Zoning Ordinance over fundamental rights.

In *Lukumi*, the Supreme Court stated that "[a] law burdening religious practice that is not neutral or not of general application must undergo the most rigorous scrutiny." *Id*. at 546. The Court reviewed several municipal ordinances regulating the slaughter of animals, one of which prescribed punishment for "whoever . . . unnecessarily . . . kills any animal"—*a facially neutral ordinance*. *Id*. at 537. The Court explained that this ordinance could not be applied to punish the ritual slaughter of animals by members of the Santeria religion when the ordinance was not applied to secular killings:

> [B]ecause [the ordinance] requires an evaluation of the particular justification for the killing, this ordinance represents a system of individualized governmental assessment of the reasons for the relevant conduct. As we noted in *Smith*, in circumstances in which individualized exemptions from a general requirement are available, the government may not refuse to extend that system to cases of "religious hardship" without compelling reason. *Respondent's application of the ordinance's test of necessity devalues religious reasons for killing by judging them to be of lesser import than nonreligious reasons. Thus, religious practice is being singled out for discriminatory treatment.*

Id. at 537-38 (emphasis added) (quotations and citations omitted). The same is true here in spades. The Zoning Ordinance permits a host of secular conduct on property within the Township that is at least as impactful, if not more, than the religious conduct that CHI seeks to engage in on its private property. Yet, this secular conduct is permitted without mandating the owner to undergo a costly, burdensome, and entirely subjective approval process. As the Supreme Court noted, "Where government restricts only conduct protected by the First Amendment and fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the interest given in justification of the restriction is not compelling." *Id*. at 546-47. In sum, under *Lukumi* (and *Fulton*), the Township's enforcement of its Zoning Ordinance against CHI violates CHI's right to religious exercise. It's not even a close call.

In its ruling, the Circuit Court made the remarkable claim that "CHI has shown little willingness to comply with the law, even after receiving written notice of its violations and repeatedly being instructed to bring the property into compliance and remove the structures" (Hr'g Tr. II at 144 at Ex. M), despite the fact that *twice* CHI submitted costly and burdensome special applications for land use—the very procedure demanded by the Township for the simple display of the religious symbols at issue—and has *twice* been denied by the Township. The fact remains that it is the Township that is unwilling to permit CHI to use its property for prayer and religious worship, in violation of the Michigan Constitution. In light of the undisputed record, it is shocking that the Circuit Court would claim that "[h]ad CHI simply followed the law and obtained the necessary permits, it would not have found itself in this situation." (*Id*. at 145). Indeed, the reason why CHI was forced to file a federal civil rights lawsuit on June 2, 2021 (months before this state action was filed), was to advance its rights under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq*. ("RLUIPA"), and the United States and Michigan Constitutions *after the Township prevented* CHI from "simply follow[ing] the law and obtain[ing] the necessary permits" by rejecting CHI's special application for land use (the Planning Commission approved it, but the Township Board denied it) on May 3, 2021. (*See* First Am. Compl. at Ex. S).

This legal charade has to end. The Michigan Constitution trumps the Township's Zoning Ordinance, and this Court must reaffirm this fundamental principle of law by reversing the Circuit Court and vacating the unlawful injunction.

STANDARD OF REVIEW

"[I]njunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Davis v City of Detroit Fin Review Team*, 296 Mich. App. 568, 613-614; 821 N.W.2d 896 (2012)

(quotation marks and citation omitted). The moving party has the burden of demonstrating that a preliminary injunction should be issued. MCR 3.310(A)(4).

"[A] trial court's decision to grant injunctive relief is reviewed for an abuse of discretion." *Dep't of Envtl. Quality v Gomez*, 318 Mich. App. 1, 32; 896 N.W.2d 39 (2016) (citations omitted). "An abuse of discretion occurs when the court's decision falls outside the range of reasonable and principled outcomes." *Id.* at 33-34 (quotation marks and citation omitted). However, "[q]uestions of constitutional interpretation . . . are questions of law reviewed de novo by this Court." *Mich Dep't of Transp v Tomkins*, 481 Mich. 184, 190; 749 N.W.2d 716 (2008).

When determining whether to grant a preliminary injunction, the trial court considers:

> (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued.

Hammel v. Speaker of the House of Representatives, 297 Mich. App. 641, 648, 825 N.W.2d 616, 620 (2012).

ARGUMENT

I. The Injunction Is Overbroad, Vague, and Unconstitutional.

Through the unlawful enforcement of its Zoning Ordinance, the Township is favoring secular "structures" over religious symbols. It is favoring secular "gatherings" over religious "gatherings." In short, the Township convinced the Circuit Court to enforce an overbroad and vague injunction based on the enforcement of the Township's Zoning Ordinance and a road commission permit in a manner that violates CHI's fundamental rights protected by the Michigan Constitution. As the U.S. Supreme Court noted about restrictions in the First Amendment context (law that is applicable to the Michigan Constitution's protection of the right to free speech),

"[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP v. Button*, 371 U.S. 415, 438 (1963). Indeed, "where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms," *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972), as in this case.

Indeed, the overbreadth of the injunction is breathtaking. Why remove the altar—it is smaller than a picnic table? Why remove the Stations of the Cross? Why not simply inspect the mural wall with the image of Our Lady of Grace? CHI is, and has been, willing to pay a $50 permit fee to make the "structures" permanent and to then have an inspector come to the property to inspect them to alleviate any of the Township's safety concerns. But the Township has always said "no" to this reasonable request.

Moreover, what constitutes an "organized gathering"? Is it two people praying together or ten? And why is this restriction even valid when CHI has never acted on the road commission's permit (the very basis for the restriction), and this permit has now expired? Moreover, secular "organized gatherings" much larger than any religious "gathering" held by CHI are permitted on the residential properties next door to the CHI Property. How is this permitted under the Michigan Constitution?

The Court should end this overbroad, frontal assault on religious freedom.

A. Right to Free Speech.

The injunction in this case plainly violates the right to free speech protected by the Michigan Constitution. The Circuit Court failed to address this claim.

The Michigan Constitution provides that "[e]very person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press." Const. 1963, art. 1, §

5. The rights of free speech under the Michigan and federal constitutions are coterminous. *Woodland v. Mich. Citizens Lobby,* 423 Mich. 188, 202, 378 N.W.2d 337 (1985). Therefore, federal authority construing the First Amendment may be considered when interpreting Michigan's guarantee of free speech. *Mich. Up & Out of Poverty Now Coalition v. Mich.,* 210 Mich. App. 162, 168-169, 533 N.W.2d 339 (1995); *In re Contempt of Dudzinski*, 257 Mich. App. 96, 100, 667 N.W.2d 68, 71–72 (2003). Accordingly, CHI relies on federal authority construing the First Amendment to advance its claims under the Michigan Constitution's guarantee of free speech, as CHI is expressly reserving its right to raise any and all federal claims and defenses in federal court pursuant to *England v. Louisiana Board of Medical Examiners*, 375 U.S. 411, 421-22 (1964).

"Religious worship" is a "form[] of speech and association protected by the First Amendment," *Widmar v. Vincent*, 454 U.S. 263, 269 (1981), and thus Michigan's guarantee of free speech. 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).

CHI's prayer, worship, religious assembly for purposes of prayer and worship, and the use of religious symbols are all forms of expression protected by the Michigan Constitution. The Township seeks to restrict CHI's right to freedom of speech through the unlawful enforcement of its Zoning Ordinance, including its Sign Ordinance, which is part of the zoning regulation.

The Township's enforcement of its Zoning Ordinance to restrict CHI's right to freedom of speech triggers constitutional protection. *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). Moreover, the *ordinance operates as a prior restraint on speech* as it requires CHI to obtain a permit before being allowed to engage in its religious expression—there is no honest or reasonable dispute about this fact.[16] *See Alexander v. United States*, 509 U.S. 544, 550 (1993) ("The term 'prior restraint' is used to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.") (internal quotations and citation omitted); *Int'l Outdoor, Inc. v. City of Troy*, 974 F.3d 690, 698 (6th Cir. 2020) ("The 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). As stated by the Supreme Court, "[*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. In fact, the Township never tried, and the Circuit Court did not require it to do so.

Moreover, the Zoning Ordinance, facially and as applied to punish CHI's religious expression, is content based, thereby triggering strict scrutiny. As stated by the Supreme Court, "[c]ontent-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

[16] (*See* Hr'g Tr. II at 144-45 [chastising CHI for failing to get prior approval and permission from the Township before displaying its modest religious symbols on its private property] at Ex. M).

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. v. City of Troy*, 974 F.3d 690, 707-08 (6th Cir. 2020), the Sixth Circuit concluded, in relevant part, as follows:

> [T]he Sign Ordinance imposed a content-based restriction by exempting certain types of messages from the permitting requirements, such as flags and "temporary signs" that included on- and off-premises real-estate signs, "garage, estate or yard sale" signs, "non-commercial signs[,]" "[p]olitical signs[,]" "holiday or other seasonal signs[,]" and "constructions signs . . . ." Thus, the ordinance regulated both commercial and non-commercial speech but treated them differently, requiring the City of Troy to consider the content of the message before deciding which treatment it should be afforded. But for content-based restrictions on speech, strict and not intermediate scrutiny applies pursuant to *Reed* . . . .

The Township's Sign Ordinance as enforced in the May 7, 2021 letter, expressly *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);[17] "Signs required by law"; and "Flags of any country, state, municipality, university, college or school." (Sign Standards, § 16.02.20 at Ex. F).[18] By its own terms, the Township's Sign Ordinance exempts from its permit and fee requirement "Historical marker[s]," "Parking lot signs," "Street address signs," and "Temporary signs." (*Id*. § 16.03.02); *see also City of Ladue v. Gilleo,* 512 U.S. 43, 52 (1994) ("Exemptions from an otherwise legitimate regulation . . . may diminish the credibility of the government's rationale for restricting speech in the first place."); (*see* O'Reilly Suppl. Decl. ¶ 6 [depicting holiday decoration] at Ex. H).

[17] Under this exemption, CHI could assemble and disassemble the religious displays every 75 days. Why isn't the St. Pio Feast Day Celebration a recognized holiday, thus permitting CHI's displays under this exemption? (*See* O'Reilly Decl. ¶ 24 at Ex. E). This further illustrates the fact that the ordinance is content based and unconstitutional.

[18] As noted, the religious symbols were originally displayed under the Sign Standards set forth in Exhibit J. (*See* Verified Compl. ¶ 28, Ex. 5 [2020-10-23 - Ltr. from CHI counsel, Bates Nos. 000046-49] at Ex. K). These standards are similarly content based and unlawful.

Moreover, because CHI's "signs" are for the purpose of religious worship, the Township is imposing upon CHI the additional burden of having to go through an extensive, costly (in excess of $20,000 in total, *see* nn. 4 & 14 *supra*), and burdensome zoning process—treating the displays as creating a "church or temple." That is, because religious worship is involved (as opposed to hanging and field dressing a deer or displaying a skeleton during Halloween or using a picnic table during a "Family Fun Day"), CHI's religious displays have now converted the wooded area of the CHI property into a "church or temple," thereby requiring special and costly approvals. In the final analysis, 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."). It cannot satisfy strict scrutiny. *See infra*. Indeed, the Township has never attempted to meet this burden nor did the Circuit Court require it to do so.

As the record reveals, CHI's religious displays satisfy all of the "interests" asserted by the Township for regulating signage. Thus, the Township does not have a compelling interest in ordering the removal of these symbols from the CHI Property or imposing additional costs and burdens for displaying them.

Even if the Zoning Ordinance and its application here were content neutral, the restrictions "still must be narrowly tailored to serve a significant governmental interest"—known as intermediate scrutiny. *McCullen v. Coakley*, 573 U.S. 464, 486 (2014). The Circuit Court also failed to address whether the Zoning Ordinance, facially and as applied, met this standard. 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*."[19] *Id.* at 495 (emphasis added).

Here, the Township does not have a "substantial interest" in ordering the removal of the religious displays or imposing additional costs and burdens for displaying them. The Township could grant CHI $50 permits and inspect the displays pursuant to those permits to alleviate any concerns or to satisfy any legitimate interests it may have. But the Township refuses to do so.

This Court should reverse the Circuit Court, vacate the preliminary injunction, and restore CHI's right to free speech by ordering the return of the religious symbols to CHI's property.

B. Right to Free Exercise of Religion.

The injunction in this case plainly violates the right to free exercise of religion protected by the Michigan Constitution. "The first sentence of article I, section 4 [of the Michigan Constitution] guarantees the free exercise of religion." *Alexander v. Bartlett*, 14 Mich. App. 177, 181, 165 N.W.2d 445, 448 (1968). "The Michigan Constitution is at least as protective of religious liberty as the United States Constitution." *People v. Dejonge*, 442 Mich. 266, 273 n.9, 501 N.W.2d 127, 131 (1993). As noted by the Michigan Court of Appeals, courts "apply the compelling state interest test (strict scrutiny) to challenges under the free exercise language in Const. 1963, art. I, § 4, *regardless of whether the statute at issue is generally applicable and religion-neutral*." *Champion v. Sec'y of State*, 281 Mich. App. 307, 314, 761 N.W.2d 747, 753 (2008) (emphasis added); *see id*. at 314 n.5 (noting also that "under Michigan and federal constitutional analysis, strict scrutiny is applicable in hybrid cases, *i.e*., cases in which a free exercise claim is made in conjunction with other constitutional protections such as freedom of speech"). Here, there can be

[19] The Township could have simply requested an inspection of the mural wall as a least restrictive means of satisfying its safety interest. And that could still be accomplished, under the Circuit Court's supervision, upon ordering the return of the religious symbols.

no question that the enforcement of the Township's Zoning Ordinance—the basis for the preliminary injunction—infringes CHI's right to religious exercise (and free speech), thereby requiring the application of strict scrutiny, the most demanding test known to constitutional law. For the reasons argued above and further below, the application of the Township's Zoning Ordinance has restricted (indeed, it is prohibiting) CHI's free exercise of religion *and* religious expression, and these restrictions cannot survive strict scrutiny.

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*, 141 S. Ct. at 1881 (emphasis added). In *Fulton*, the Court held that Philadelphia's refusal to contract with Catholic Social Services for the provision of foster care services unless CSS agrees to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. The Court affirmed that "[a] government policy can survive strict scrutiny only if it advances 'interests of the highest order' and is narrowly tailored to achieve those interests. . . ." *Id*. at 1881 (internal citation omitted). The Court clarified that "[t]he question, then, is not whether the City has a compelling interest in enforcing its non-discrimination policies *generally*, *but whether it has such an interest in denying an exception to CSS*." *Id*. (emphasis added). Thus, the question here 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 CHI under the circumstances of this case—circumstances where *secular* exemptions abound.

The Zoning Ordinance is also ***not*** generally applicable as a result of these exemptions, thus providing another basis for triggering strict scrutiny. As the Supreme Court stated in *Fulton*, "A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." 141 S. Ct. at 1877.

For example, many people (and the Township itself) within the Township have patio tables or picnic tables that are the same size or larger than the small altar that was located on the CHI Property. There is no special or burdensome permit requirement to have these patio or picnic tables on private property. Birdhouses larger than the Stations of the Cross are allowed in the Township without the need for a special or burdensome permit process. Giant skeletons can be displayed without the need for a special or burdensome permit process. At times, more people will attend a graduation party, a football party, or other allowed secular events in the Township, including such events held on property zoned CE, than will visit the CHI Property during special events or regular use. Many large-scale events are held at private residences located near the CHI Property. On September 18, 2021, a "Family Fun Day" was held on property located near the CHI Property. There were approximately 100 people or more that attended this event, and there were numerous picnic tables. A flyer announcing the "Family Fun Day" and pictures of this event appear below:


(O'Reilly Decl. ¶¶ 20-21 at Ex. E). The Township did not require any special permits (nor a special land use application) for this event. In fact, secular events with up to 1,000 people have been held at residences located near the CHI Property without the Township requiring any permits or other official approvals for the events. (*Id.* ¶¶ 20-23 at Ex. E). The Township operates a park just 3 miles east of the CHI Property. It is on a parcel of land that is smaller (38 acres) than the CHI Property (40 acres). It includes two playgrounds, a water misting feature, a sled hill, a .66-mile

walking path, two regulation sized athletic fields, a swing set for all ages, picnic tables, and a pavilion with accessible heated bathrooms and warming area. It is supported by more than 200 parking spaces. (*Id*. ¶ 4 at Ex. E). Consequently, this very park with its *200 plus parking spaces*—whether constructed by the Township or as a "private non-commercial park . . . owned and maintained by a home-owners association"—could be constructed *on the CHI Property* without requiring a special land use approval as it is a permitted use under the Zoning Ordinance. (Zoning Ordinance, § 3.03 at Ex. G). However, CHI's religious "park" was denied by the Township (twice), and because it was denied, the Township has now affected the removal of religious symbols from the CHI Property (because, according to the Township, they are a "nuisance"), and the Township has prevented CHI from using the property for religious gatherings and worship based on a permit that CHI never executed and which expired on January 8, 2022—months before the Circuit Court issued the preliminary injunction.

As stated by the Supreme Court, "It is established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an interest 'of the highest order' . . . when it leaves appreciable damage to that supposedly vital interest unprohibited." *Lukumi*, 508 U.S. at 547 (internal quotations and citation omitted). The Township's restrictions, enforced by the Circuit Court injunction, do not satisfy this demanding test. This Court should reverse the Circuit Court and vacate the injunction.

II. Irreparable and Substantial Harm to CHI.

"The loss of First Amendment freedoms [and thus the guarantee of free speech under the Michigan Constitution], for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Bonnell v. Lorenzo,* 241 F.3d 800, 809 (6th

Cir. 2001) ("[I]f it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated."); *see, e.g.,* Palazzolo Suppl. Decl. ¶¶ 7-10 at Ex. I).

There is no question that, as a matter of law, it is CHI that is suffering irreparable harm due to the preliminary injunction and *not* the Township, which waited approximately 12 months before taking this enforcement action to remove the religious displays and to prevent "organized gatherings" on the CHI Property.

III. The Public Interest Favors Protecting CHI's Constitutional Rights.

Upholding the unlawful enforcement of the Township's Zoning Ordinance in this case is *contrary* to the public interest. "[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). "[N]either the Government nor the public generally can claim an interest in the enforcement of an unconstitutional law." *ACLU v. Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir. 2003); *K.A. v. Pocono Mt. Sch. Dist.*, 710 F.3d 99, 114 (3d Cir. 2013) ("[T]he enforcement of an unconstitutional law vindicates no public interest."); *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("[E]nforcement of an unconstitutional law is always contrary to the public interest.").

CONCLUSION

The Court should reverse the Circuit Court, vacate the preliminary injunction, and issue an order returning CHI's property to the *status quo ante*, thus permitting the return of the religious displays and religious assembly, expression, and worship to CHI's private property. Justice and the Michigan Constitution demand it.

Respectfully submitted,

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