

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

CATHOLIC HEALTHCARE
INTERNATIONAL, INC., *et al.*,

Plaintiffs,

v.

GENOA CHARTER TOWNSHIP, *et al.*,

Defendants.

No. 21-cv-11303-SDK-DRG

Hon. Shalina D. Kumar

Magistrate Judge David R. Grand

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiffs Catholic Healthcare International, Inc. (“CHI”) and Jere Palazzolo (collectively referred to as “Plaintiffs”), hereby move this Court for summary judgment as set forth in the accompanying brief.

“Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (internal quotations and citation omitted). Accordingly, “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

In support of this motion, Plaintiffs rely upon the pleadings and papers of record, as well as their brief and exhibits filed with this motion.

For the reasons set forth more fully in Plaintiffs' brief, there is no genuine dispute as to any material fact and Plaintiffs are entitled to judgment as a matter of law on their claims, including their claims for certain damages. Fed. R. Civ. P. 56(a).

Pursuant to E.D. Mich. LR 7.1, on September 16, 2026, Plaintiffs' counsel sent an email to Defendants' counsel to "ascertain before filing whether the contemplated motion . . . will be opposed." As of this filing, Defendants' counsel have yet to respond.

WHEREFORE, Plaintiffs hereby request that the Court grant this motion, enter judgment in Plaintiffs' favor, and award Plaintiffs the requested relief.

Respectfully submitted,

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**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

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ISSUES PRESENTED

I. Whether the Court should grant Plaintiffs' motion for summary judgment when there is no genuine dispute of material fact that Defendants implemented a land use regulation in a manner that imposed a substantial burden on Plaintiffs' religious exercise, freedom of speech, and right to expressive association, that treats Plaintiff CHI, a religious assembly or institution, on less than equal terms with a nonreligious assembly or institution, and where Defendants cannot demonstrate that the imposition of this burden on Plaintiffs' fundamental rights is in furtherance of a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest as a matter of law.

II. Whether the Court should grant Plaintiffs' motion for summary judgment as to the relief requested, specifically including declaratory relief, injunctive relief, compensatory damages as to certain damages that are undisputed, and nominal damages, which are awarded as a matter of law.

CONTROLLING AND MOST APPROPRIATE AUTHORITY

Catholic Healthcare Int’l, Inc. v. Genoa Charter Twp., 82 F.4th 442 (6th Cir. 2023)

Church of the Lukumi Babalu Aye, Inc v. City of Hialeah, 508 U.S. 520 (1993)

Fulton v. City of Phila., 593 U.S. 522 (2021)

Livingston Christian Schs. v. Genoa Charter Twp., 858 F.3d 996 (6th Cir. 2017)

Widmar v. Vincent, 454 U.S. 263 (1981)

42 U.S.C. § 2000cc *et seq.*

Fed. R. Civ. P. 56

Mich. Const. 1963, art. I, § 4

STATEMENT OF MATERIAL FACTS

Plaintiff CHI is a nonprofit organization that is incorporated in Missouri; it is recognized as a private association of the faithful by the Catholic Diocese of Lansing, Michigan. (Jere Palazzolo [“JP”] Decl. ¶¶ 2, 5, 6, ECF No. 97-2, PageID.4164-65). In October 2020, the Diocese donated and conveyed to CHI a lot of land located at 3280 Chilson Road (“CHI Property”) in Genoa Charter Township (“Township”). (*Id.* ¶ 8, Ex. A [Warranty Deed], PageID.4165-66, 4185-87).¹ The CHI Property is an approximately 40-acre wooded lot. (*Id.* ¶ 8, PageID.4165-66). The natural, rural, and wooded nature of the CHI Property makes it uniquely suitable for a prayer campus and adoration chapel as the property reflects the natural beauty, peace, and serenity of God’s creation. (*Id.* ¶¶ 15, 33, PageID.4167, 4171; Ann O’Reilly [“AO”] Decl. ¶ 15, ECF No. 97-3, PageID.4369). Other than the CHI Property, CHI does not own any real property in the Township or anywhere else in the world.² (JP Suppl. Decl. ¶ 4, at Ex. A). And there is no property that is as suitable as the CHI Property for the prayer campus and adoration chapel.³ (AO Decl. ¶ 15, PageID.4369; AO Decl. ¶¶ 4, 7, ECF No. 113-2, PageID.5060-62).

¹ The warranty deed was corrected in March 2025 to extend the conveyance to 10 years from October 20, 2020 to October 2030. (JP Suppl. Decl. ¶ 2, Ex. 1 [Corrective Warranty Deed] at Ex. A).

² CHI’s “international” presence is virtual (*i.e.*, on the Internet); CHI does not own any real property overseas. (JP Suppl. Decl. ¶ 4, at Ex. A).

³ It is important to note that the purchase agreement for the hospital property in Howell, Michigan was terminated in early August 2026. Accordingly, even though

CHI engages in religious exercise through its work and use of the CHI Property for religious assembly, prayer, and worship. (JP Decl. ¶¶ 7, 9, 16-28, 32, ECF No. 97-2, PageID.4165, 4166, 4167-69, 4170-71). Palazzolo, a Catholic, is the President of CHI, and he engages in religious exercise through CHI's work and the use of the CHI Property for religious assembly, prayer, and worship. (*Id.* ¶¶ 1, 4, PageID.4164, 4165).

The CHI Property is zoned Country Estate (CE). (JP Decl. ¶ 13, ECF No. 97-2, PageID.4167; Scott Tousignant ["ST"] Decl. ¶ 2, ECF No. 97-4, PageID.4375). "Churches, temples and similar places of worship" are an allowed use on property zoned CE after special land use approval. (JP Decl. ¶ 13, PageID.4167; ST Decl. ¶ 3, PageID.4376). Accordingly, Plaintiffs had a reasonable expectation that their proposed development would be approved as it was an allowed use and no variance was required. (JP Decl. ¶¶ 12-14, 51, PageID.4166-67, 4175-76).

CE and AG (Agricultural District) are "[t]he two Agricultural Districts" established by the Zoning Ordinance ("ZO"). (Robert Muisse ["RM"] Decl. ¶ 8, Ex. E [Art. 3 of the ZO], ECF No. 97-5, PageID.4388, 4417-4432). Similar uses are allowed on property zoned CE and AG in that "Churches, temples and similar places

this property had no bearing on a proper substantial burden inquiry as it was a commercial property not suitable for a prayer campus (despite Defendants' claims to the contrary) (*see* AO Decl. ¶¶ 7-9, ECF No. 113-2, PageID.5060-63), it is plainly not relevant now as Plaintiff CHI has no interest in the property, not even a future proposal to purchase it. (JP Suppl. Decl. ¶ 9, at Ex. A).

of worship” and “elementary schools” are an allowed use after special land use approval and “publicly owned parks . . . and recreational areas” and “[p]rivate non-commercial parks, nature preserves and recreational areas owned and maintained by home-owners association” are permitted uses in these zones. (*Id.*). The Township even permits the keeping of “swine” on property zoned CE and AG. (*Id.*).

Three Fires Elementary School (“Three Fires”), which is located less than a mile from the CHI Property, is surrounded by and adjacent to property zoned CE. (AO Decl. ¶ 4, ECF No. 97-3, PageID.4362-63). Three Fires serves approximately 652 students, and the property includes a main school building, two paved parking lots, an athletic field with a surrounding track, and a dirt/gravel parking lot for overflow parking. (*Id.* ¶ 6, PageID.4364). At times, events held at Three Fires are so large that cars must park on the grass along the entranceway. (*Id.* ¶ 7, PageID.4365). Fillmore Park, which is located in the Township, is surrounded by and adjacent to property zoned AG and CE. (*Id.* ¶ 4, PageID.4362-63). A Chaldean “camp & retreat center,” which is located in the Township, is surrounded on two sides and adjacent to property zoned CE. (*Id.*). There is a church on the Chaldean property with seating for 240 people and associated parking. (*Id.*).

In December 2020, CHI, with the assistance of Boss Engineering, submitted to the Township for approval a special land use application, environmental impact assessment, and site plan for the construction of a prayer campus and adoration

chapel (St. Pio Chapel) on the CHI Property (“Original Submission”). (JP Decl. ¶ 39, Ex. B [Original Submission], ECF No. 97-2, PageID.4172, 4189-214; ST Decl. ¶ 4, ECF No. 97-4, PageID.4376). The proposed development (“CHI Project”) involved construction on approximately 5 of the 40 acres, and this construction is planned to occur mainly in the open spaces of the property to avoid removing trees and to maintain the property’s natural beauty, serenity, and rural nature. (JP Decl. ¶¶ 33, 48 Ex. F [Final Submission], PageID.4171, 4175, 4258-78).

The CHI Project includes a 95-seat, 6,090 square foot adoration chapel (St. Pio Chapel) and prayer campus with prayer trails and outdoor displays including the Stations of the Cross, a mural wall with the image of Our Lady of Grace, an outdoor altar, religious statues, a parking lot with 39 spaces, and a commercial driveway. (JP Decl. ¶¶ 17-28, 39, Ex. B [Original Submission], Ex. F [Final submission], ECF No. 97-2, PageID.4167-69, 4172, 4189-214, 4258-78; ST Decl. ¶ 4, ECF No. 97-4, PageID.4376). This is a low impact and low intensity development as it will be a place of adoration, prayer, and reflection, maintaining the natural features of the property. (JP Decl. ¶ 30, PageID.4170; ST Decl. ¶ 6, PageID.4376).

The St. Pio Chapel will contain a tabernacle, which is a liturgical furnishing used to house the Eucharist outside of Mass. A tabernacle provides a safe location where the Eucharist can be kept for adoration by the faithful and for later use and to prevent the profanation of the Eucharist. (JP Decl. ¶¶ 22, 23, ECF No. 97-2,

PageID.4168-69). The Catholic Church describes the Eucharist as the source and summit of the Christian life. (*Id.* ¶ 24, PageID.4169). 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 CHI Property. The chapel, therefore, is the central and critical element of the CHI Project; without it, Plaintiffs are unable to carry out a core function of their religious activities. (*Id.* ¶¶ 25-27, PageID.4169). The chapel will also allow people to engage in religious worship during inclement weather, including during Michigan winters. (*Id.* ¶ 28, PageID.4169).

The cost incurred by CHI to submit the Original Submission was \$24,988, which included engineering fees (\$21,663), the Township's application fee (\$3,175), and the County Road Commission's fee (\$150). (JP Decl. ¶ 40, Ex. C [Invoices/Payments], ECF No. 97-2, PageID.4172-73, 4216-20).

The Township, through its Planner and consultants, reviewed the Original Submission and sent back comments to Boss Engineering for revisions. (JP Decl. ¶ 41, ECF No. 97-2, PageID.4173). CHI, through Boss Engineering, made the requested revisions, and the application was scheduled for review by the Township Planning Commission at a public meeting on February 8, 2021. The Planning Commission meeting ended with the commissioners tabling the matter and offering additional comments regarding issues that they wanted CHI to address and include in a resubmission. (*Id.* ¶ 42, PageID.4173).

The Original Submission did not have curbs and gutters for the chapel parking lot because Boss Engineering determined that curbs and gutters were not necessary for proper management of stormwater, and adding them increased the cost of the proposal and created more of an environmental impact. Nonetheless, the Township demanded that CHI include curbs and gutters as part of the revisions, and CHI complied. (JP Decl. ¶ 43, ECF No. 97-2, PageID.4173; ST Decl. ¶ 5, ECF No. 97-4, PageID.4376).

CHI, through Boss Engineering, made the requested changes and resubmitted for approval by the Planning Commission the application and supporting documents (hereinafter “Resubmission”) on or about February 16, 2021. (JP Decl. ¶ 44, Ex. D [Resubmission], ECF No. 97-2, PageID.4173-74, 4222-43; *see also* ST Decl. ¶¶ 4, 7, ECF No. 97-4, PageID.4376, 4377). The February 16, 2021 cover letter from Boss Engineering that was included with the Resubmission outlines the requested changes made to the proposed development. Also included with the Resubmission was an “operations manual . . . to illustrate more clearly the vision for uses and activity on the site.” (JP Decl. ¶ 45, Ex. D [Resubmission], ECF No. 97-2, PageID.4174, 4222-43; ST Decl. ¶ 4, ECF No. 97-4, PageID.4376). If the CHI Project did not substantially comply with the ZO, the Planning Commission would have never considered it in the first instance. (*Id.* ¶ 18, PageID.4381). On March 8, 2021, the Township Planning Commission approved the Resubmission by a vote of 4 to 3. (JP

Decl. ¶ 46, Ex. E [Planning Comm’n Mins.], PageID.4174, 4245-56). During the March 8, 2021 meeting, additional changes were suggested by the Planning Commission as part of its motion to approve CHI’s application. (*Id.* ¶ 46, Ex. E [Planning Comm’n Mins.], PageID.4174, 4245-56). During the hearing, Mr. Chris Grajek, the Chairman of the Planning Commission, noted that CHI “met all of the requests made by the Planning Commission,” and further noted that Plaintiffs “have gone above and beyond and addressed all of the concerns of the Planning Commission and the consultants.” (*Id.* ¶ 47, Ex. E [Planning Comm’n Mins.], PageID.4174, 4245-56).

CHI, through Boss Engineering, made the changes suggested by the Planning Commission during the March 8, 2021 meeting and finalized its application (“Final Submission”) for submission to the Township Board for final approval. (JP Decl. ¶ 48, Ex. F [Final Submission], ECF No. 97-2, PageID.4175, 4258--78; ST Decl. ¶ 4, ECF No. 97-4, PageID.4376). The revisions cost CHI \$5,400 (engineering fees). (JP Decl. ¶ 49, Ex. G [Invoices/Payments], PageID.4175, 4280-82). The Final Submission met all of the objective criteria for approval under the Township’s ZO. (ST Decl. ¶ 9, PageID.4377).

One of the changes required by the Planning Commission was the removal of the “curb drop for parking access to the greenspace north of the chapel.” This change ultimately restricted the number of vehicles that could park on the CHI Property for

the few (typically two) annual special events planned for the property. The greenspace could accommodate approximately 100 additional vehicles, but this option for additional parking was rejected. (JP Decl. ¶ 50, ECF No. 97-2, PageID.4175; ST Decl. ¶ 7, ECF No. 97-4, PageID.4377). Due to the Township's denial of the use of the greenspace for additional parking, the number of vehicles that can park on the CHI Property at any one time is limited to 39 (the parking lot size). (JP Decl. ¶ 50, PageID.4175; ST Decl. ¶ 8, PageID.4377). As noted, CHI's proposed development did not require a variance. (JP Decl. ¶ 51, PageID.4175-76). CHI made all of the changes and modifications requested by the Planning Commission, including the request to reduce the proposed use of the St. Pio Chapel bell even though the use did not violate any Township ordinance. (*Id.* ¶ 51, PageID.4175-76).

On May 3, 2021, the Township Board held a public hearing to consider the Final Submission, and the Board denied CHI's Final Submission by a 5 to 2 vote. (JP Decl. ¶¶ 52, 53, ECF No. 97-2, PageID.4176). The Township's denial of the Final Submission was not based on any measurable, objective criteria. Rather, the Township's denial was based upon amorphous, subjective considerations. (*Id.* ¶ 54, PageID.4176). The Township's stated reasons for rejecting the Final Submission are recorded in the official minutes. (*Id.* ¶¶ 55-57, Ex. H [Twp. Bd. Mins.],

PageID.4176-79, 4284-94; ST Decl. ¶¶ 10-12, ECF No. 97-4, PageID.4377-80). As stated in CHI's application with regard to the traffic issue:

The Institute of Transportation Engineers Trip Generation Manual 10th Edition Volume 2 Part 2 was used to calculate the number of trips generated by the proposed church. The scenario on sheet 187 using gross floor area and the peak hour on a Sunday produced 56 trips. The traffic counts section on Livingston County Road Commission's website was used to analyze Chilson Road annual average daily traffic [AADT]. The most recent data shows Chilson Road has an AADT of 2,500 between E Coon Lake Road and Beck Road. Chilson Road did experience an annual growth of -26% in 2014 due to the I-96 ramp on Latson Road being constructed. Chilson Road had an AADT of 4,505 prior to the construction of the ramp. The increased traffic caused by the proposed church will have little overall impact, and Chilson Road has been shown to handle much larger AADT volumes in the past. It is important to note that the anticipated mass times for this site generally do not line up with peak hour traffic times.

(JP Decl. ¶ 58, Ex. F [Final Submission], PageID.4179, 4258-78; ST Decl. ¶ 13, PageID.4380). The scenario used by Boss Engineering set forth in the manual the Township recommends for calculating traffic trips was the *worst-case scenario* for this type of development. (*Id.* ¶¶ 14-15, PageID.4380-81). The County Road Commission did not require any additional traffic impact evaluation or study, nor did it object to the proposed development based on any concerns about traffic. In fact, the Road Commission approved the commercial driveway proposed by CHI as set forth in the Road Commission's approval letter of January 22, 2021. (*Id.* ¶ 17, Ex. A [Road Comm'n Letter], PageID.4381, 4384; *see also* JP Decl. ¶ 59, PageID.4179-80). The Planning Commission did not require any additional traffic

impact evaluation or study. It approved the development. (*Id.* ¶ 60, PageID.4180; ST Decl. ¶¶ 18-19, PageID.4381-82). As noted in the March 8, 2021 Planning Commission meeting minutes, the CHI Project’s “use does not warrant a traffic study.” And this was confirmed during the meeting by the Township’s engineering consultant. (JP Decl. ¶ 46, Ex. E [Planning Comm’n Mins.], PageID.4174, 4245-56; ST Decl. ¶¶ 19-20, PageID.4381-82).

To accommodate special events (typically two a year) that might require parking beyond the 39 parking spaces, CHI proposed in its application the following: “Approaching each event, interest levels will be gauged. Should excessive interest in an event warrant, staged/multiple receptions may occur to accommodate these additional people. It would be anticipated that on special event days, people will be shuttled into the site as necessary once parking accommodations on-site are full.” (JP Decl. ¶ 61, ECF No. 97-2, PageID.4180).

Under the ZO, the Township permits “[p]ublicly owned parks, parkways, scenic and recreational areas, and other public open spaces” and “[p]rivate non-commercial parks, nature preserves and recreational areas owned and maintained by a home-owners association” on property zoned CE. (RM Decl. ¶ 8, Ex. E [Article 3 of the ZO], ECF No. 97-5, PageID.4388, 4417-4432). Fillmore Park holds events that will have an unknown number of people attending. (AO Decl. ¶ 8, ECF No. 97-3, PageID.4366). The Township operates a park (“Genoa Park”) approximately 3

miles east of the CHI Property that is on a parcel of land that is smaller (38 acres) than the CHI Property (40 acres), and it permits events that will have an unknown number of people attending. (*Id.* ¶ 10, PageID.4367). Genoa Park has at least three playgrounds, a water misting feature, a sled hill, a .66-mile walking path, two regulation sized athletic fields, a swing set, picnic tables, and a pavilion with bathrooms and warming area. The park is supported by more than 200 parking spaces. (*Id.* ¶ 11, PageID.4367). Genoa Park is adjacent to property zoned AG. (*Id.* ¶ 4, PageID.4362-63). Genoa Park would be a permitted use in property zoned CE. (RM Decl. ¶ 8, Ex. E [Art. 3 of the ZO], PageID.4388, 4417-4432). In other words, it would be a permitted use for the CHI Property. (*See id.*).

The Township's assembly ordinance permits up to 1,000 people to attend an event on private property without requiring any special permits. (RM Decl. ¶ 11, Ex. H [Assembly Ordinance], ECF No. 97-5, PageID.4389, 4444-49). The Township admits that *a neighbor* to the CHI Property could host a football party with over 200 people attending without requiring any special zoning permits. (*Id.* ¶ 6, Ex. C [Tr. at 62:11-14], PageID.4388, 4409). A Family Fun Day with a large gathering of people at a private residence on Chilson Road is permitted by the Township. (AO Decl. ¶¶ 12-13, ECF No. 97-3, PageID.4367-68).

The traffic counts section on the County Road Commission's website was used to analyze Chilson Road's annual average daily traffic (AADT) and this data

shows that Chilson Road previously accommodated an AADT of 4,505, but now has an AADT of 2,500 at the relevant section. (ST Decl. ¶¶ 13, 16, ECF No. 97-4, PageID.4380, 4381).

The entire application was denied on May 3, 2021. No least restrictive means were proposed to address the Township's concerns. (JP Decl. ¶¶ 52, 53, ECF No. 97-2, PageID.4176).

On September 17, 2021, the Township filed a complaint in the 44th Circuit Court for Livingston County against CHI, and the Township sought an injunction to remove the Stations of the Cross, the Our Lady of Grace mural wall, and the outdoor altar from the CHI Property and for CHI to cease all "organized gatherings" on the property. (RM Decl. ¶¶ 2, 3, Ex. A [TRO], ECF No. 97-5, PageID.4387, 4392-94). The state court granted the Township's requests for a TRO and preliminary injunction.⁴ (*Id.* ¶¶ 3, 7, Ex. A [TRO], Ex. D [Prelim. Inj.], PageID.4387, 4388, 4392-94, 4415). On October 15, 2021 and pursuant to a stipulation entered into between CHI and the Township, CHI submitted a special land use application for approval of the prayer campus without the chapel ("Prayer Campus Submission") in an effort to comply with the demands of the state court injunction and therefore permit Plaintiffs to use the property for religious worship. (JP Decl. ¶ 66, Ex. I

⁴ The state court matter is stayed pending resolution of this case. (RM Decl. ¶ 7, PageID.4388).

[Prayer Campus Submission], ECF No. 97-2, PageID.4181, 4296-4323).⁵ As part of the documentation, Palazzolo submitted a letter to the Township, asking basic questions such as, “How many people are permitted to gather outdoors on private property to engage in religious worship?” The Township refused to answer. (*Id.* ¶ 69, Ex. K [CHI Ltr.], Ex. L [Twp. Resp.], PageID.4182, 4331-37, 4339). The Prayer Campus Submission cost \$9,423.80 (\$2,875 for the application fee and \$6,548.80 in engineering fees). (*Id.* ¶ 67, Ex. J [Invoices/Payments], PageID.4181, 4325-29). Had the Township approved the Final Submission, there would have been no need for the Prayer Campus Submission. (*Id.* ¶ 68 PageID.4182).

The Planning Commission refused to consider, and thus refused to approve, the Prayer Campus Submission based on the conclusion that “[i]t does not meet the criteria of Township ZO Section 19.07, specifically, the Planning Commission does not find there are new grounds or substantial new evidence to support changed intent of this application nor is there proof of any changed conditions based off all the reasons in the Township Board’s denial of May 3, 2021.” (JP Decl. ¶ 70, Ex. M [Planning Comm’n Mins.], ECF No. 97-2, PageID.4182, 4341-50). The ZBA

⁵ Defendant Stone, the Township’s Zoning Compliance/Ordinance Officer at the time, issued violation notice letters, demanding the removal of the religious displays from the CHI Property. (JP Suppl. Decl. ¶¶ 5, 6, Exs. 2 & 3. [Stone Ltrs.], at Ex. A; *see also* Defs.’ Answer ¶¶ 18, 22, ECF No. 78, PageID.3953, 3954). Upon information and belief, Defendant Stone is no longer employed by the Township. Consequently, Plaintiffs only seek nominal damages against her.

affirmed the Planning Commission's decision. (*Id.* ¶ 71, Ex. N [ZBA Mins.], PageID.4182, 4352-59).

On September 11, 2023, the Sixth Circuit granted Plaintiffs' request for a preliminary injunction under RLUIPA, thereby permitting the return of religious symbols to the CHI Property, and it affirmed this Court's order enjoining the Township's "organized gatherings" restriction. (6th Cir. Op. & J., ECF No. 87). On September 12, 2023, this Court entered the preliminary injunction, thereby mooted the state court injunction. (Prelim. Inj., ECF No. 88).

Plaintiffs have suffered damages that are a direct and proximate cause of Defendants' unlawful conduct. The damages Plaintiffs seek by way of this motion are set forth in section III, *infra*.

ARGUMENT

"Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (internal quotations and citation omitted). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1476-81 (6th Cir. 1989).

Plaintiffs have an initial burden of showing “the absence of a genuine issue of material fact.” *Celotex Corp.*, 477 U.S. at 323. A genuine issue of material fact exists if a reasonable juror could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). To survive Plaintiffs’ motion, the Township must “come forward with specific facts showing that there is a genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (cleaned up). “To demonstrate a genuine issue, the non-movant must present sufficient evidence upon which a jury could reasonably find for the non-movant.” *Klein v. City of Jackson*, 735 F. Supp. 2d 732, 736 (E.D. Mich. 2010) (citing *Liberty Lobby*, 477 U.S. at 252).

I. RLUIPA.

“RLUIPA was enacted to protect [religious organizations] like [CHI] from discrimination in zoning laws that ‘lurks behind such vague and universally applicable reasons as traffic, aesthetics,’ or ‘not consistent with the city’s land use plan.’ 146 Cong. Rec. 16698 (2000) (joint statement of Sens Hatch and Kennedy).” *United States v. City of Troy*, 592 F. Supp. 3d 591, 611 (E.D. Mich. 2022). The Township asserted similar reasons for denying Plaintiffs’ religious land use.

RLUIPA means what it says. And its application to the facts in this case is straightforward. For example, in *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), a RLUIPA case, the Court granted certiorari, vacated the adverse land use decision

against the Amish petitioners, and remanded for further consideration in light of *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), a free exercise case not involving RLUIPA but having obvious application.⁶ The *Mast* decision reflects what the Court stated in *Fulton*: “so long as the government can achieve its interests in a manner that does not burden religion, it must do so.” *Fulton*, 593 U.S. at 541. The Sixth Circuit’s unanimous decision in this case is a clear reminder of the strict demands of RLUIPA, *Catholic Healthcare Int’l, Inc. [“CHP”] v. Genoa Charter Twp.*, 82 F.4th 442 (6th Cir. 2023), which was enacted to prevent the very actions engaged in by Defendants here, *Troy*, 592 F. Supp. 3d at 611; *Miles Christi Religious Order v. Twp. of Northville*, 629 F.3d 533, 540 (6th Cir. 2010) (“While the United States Code contains [RLUIPA], one will search in vain for a Freedom to Watch Football on a Sunday Afternoon Act.”).

RLUIPA defines religious exercise to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief,” further stating that “[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity

⁶ *Mast* did not involve the government denying the right to build a place of religious worship—which clearly burdens the right to religious exercise under RLUIPA, 42 U.S.C. § 2000cc-5, and the First Amendment. Rather, the *Mast* “dispute [was] about plumbing.” *Id.* at 2431. In its decision, the Court sent a clear message: “RLUIPA prohibits governments from infringing sincerely held religious beliefs and practices except as a last resort.” 141 S. Ct. at 2433 (Gorsuch, J., concurring).

that uses or intends to use the property for that purpose.” 42 U.S.C. § 2000cc-5(7). RLUIPA “applies to an exercise of religion regardless of whether it is ‘compelled.’” *Holt v. Hobbs*, 574 U.S. 352, 362 (2015). And RLUIPA is construed *broadly* to protect religious exercise. 42 U.S.C. § 2000cc-3 (“This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.”); *Holt*, 574 U.S. at 356-58 (same).

A. Substantial Burden Provision.

Under the “substantial burden” provision of RLUIPA,

No 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.⁷

42 U.S.C. § 2000cc(a)(1)(A), (B).

1. Religious Exercise.

Plaintiffs’ religious use of the CHI Property is “religious exercise” protected by RLUIPA, 42 U.S.C. § 2000cc-5(7), and the First Amendment. *See infra*. The proposed chapel is a central and *necessary* component of this use because it will house the tabernacle where the Eucharist will be securely kept and adored. Without

⁷ The “substantial burden” provision applies here as the Township “has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved,” 42 U.S.C. § 2000cc(a)(2)(C), as evidenced by the special land use application process.

the chapel, Plaintiffs are unable to carry out a core function of their religious activities. And it is not the role of this Court (or the Township) to question the importance or religious significance of having the chapel on this property. *See Thomas v. Rev. Bd.*, 450 U.S. 707, 716 (1981) (“[I]t is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith.”).

2. Substantial Burden.⁸

“RLUIPA’s ‘substantial burden’ inquiry asks whether the government has substantially burdened religious exercise . . . , *not* whether the RLUIPA claimant is able to engage in other forms of religious exercise.” *Holt*, 574 U.S. at 361-62 (emphasis added). The substantial-burden analysis involves a straightforward, two-part inquiry: (1) identify the religious exercise at issue, and (2) determine whether the government has placed a substantial burden on that exercise. *See id.* at 362. And while the Sixth Circuit did not have the benefit of *Fulton* (or *Mast*) when it decided *Livingston Christian Schools*, the factors it outlines for determining a “substantial burden” demonstrate that Plaintiffs have easily satisfied that element here. *See CHI*, 82 F.4th at 453 (analyzing factors and concluding that “Plaintiffs are likely to be able to show that the Township’s application of its zoning ordinances as to Catholic

⁸ Whether the government has imposed a “substantial burden” on religious exercise is a “question of law.” *Livingston Christian Sch. v. Genoa Charter Twp.*, 858 F.3d 996, 1001 (6th Cir. 2017).

Healthcare imposes a substantial burden”) (Clay, J., concurring). As noted by the Sixth Circuit, “land-use regulations can prohibit a plaintiff from engaging in desired religious behaviors” *Livingston Christian Schs.*, 858 F.3d at 1004. In such cases, “the plaintiffs [] demonstrated that they were unable to carry out some core function of their religious activities due to the inadequacy of their current facilities.” *Id.* at 1006 (emphasis added). Here, the Township banned Plaintiffs from using the CHI Property for all religious activities, establishing a substantial burden. And other than the CHI Property, Plaintiffs own no other “facilities” for religious exercise. Another “factor” considered by the Sixth Circuit “is whether the religious institution has *a feasible alternative location* from which it can carry on its mission.” *Id.* at 1004 (emphasis added). Plaintiffs do not own any alternative locations for the construction and development of the St. Pio Chapel and prayer campus. And this is particularly so in light of the unique and rural nature of the CHI Property. There is no *feasible* alternative location. And even more to the point, the Sixth Circuit also asks “[w]hether the religious institution will suffer substantial delay, uncertainty, and expense due to the imposition of the regulation” *Id.* at 1004 (internal quotation marks omitted). Consequently, a substantial burden still exists even if alternative properties are identified if those alternatives will result in delay, uncertainty, and expense, which they obviously will as the CHI Property was donated. *Id.*; see also *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007)

(“When [a religious organization] has no ready alternatives, or where the alternatives require substantial ‘delay, uncertainty, and expense,’ a complete denial of the [religious organization’s] application might be indicative of a substantial burden.”) (emphasis added). **This factor is dispositive.** Plaintiffs have plainly suffered “substantial delay, uncertainty, and expense” in this case. *See CHI*, 82 F.4th at 449 (“One factor in determining substantiality, for purposes of 42 U.S.C. § 2000cc(a)(1), is whether ‘the religious institution will suffer substantial delay, uncertainty, and expense due to the imposition of the regulation.’ Plaintiffs undisputedly have suffered all those things: after two years of administrative proceedings and considerable expense, they remain unable to place the religious displays on their prayer trail.”) (internal citation and punctuation omitted) (emphasis added). The delay in the construction of the chapel and prayer campus has resulted in the loss of Plaintiffs’ right to religious exercise and ongoing delays to their ability to worship. As a result of the Township’s denial, Plaintiffs have been forced to litigate over five years in this Court and in a separate state court action, all at great expense and delay. And Plaintiffs have no alternatives. They do not own other properties to carry out their religious mission. It is undisputable that Plaintiffs will suffer further delays, uncertainty, and expense if they are forced to purchase another suitable rural property (there are none like the CHI Property) and then try to develop it as a result of the Township’s denial here. CHI is a nonprofit organization. The CHI

Property was donated to CHI at no cost. It would impose an unnecessary financial burden (and uncertainty) to require Plaintiffs to purchase new property and to go through, yet again, the extensive and costly process of getting their development approved by the Township (or some other governmental entity) and ultimately completed. Plaintiffs “undisputedly” satisfy this “substantial delay, uncertainty, and expense” factor, which is dispositive. *CHI*, 82 F.4th at 449. Finally, the Sixth Circuit also considers whether “an institutional plaintiff has obtained an interest in land without a reasonable expectation of being able to use that land for religious purposes.” *Livingston Christian Schs.*, 858 F.3d at 1004. Per the Fourth Circuit:

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.*

Bethel World Outreach Ministries v. Montgomery Cty. Council, 706 F.3d 548, 557-58 (4th Cir. 2013) (emphasis added); *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 Diocese with the expectation of building its prayer campus and chapel as this use is

an allowed use under the ZO, and no variance is required.⁹ Indeed, the development was not rejected on its face, and the Planning Commission approved it.¹⁰ The burden now shifts to the Township to satisfy strict scrutiny, which it cannot.

3. Strict Scrutiny.

The Township cannot satisfy strict scrutiny, which is the “most demanding test known to constitutional law.” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997); *Tandon v. Newsom*, 141 S. Ct. 1294, 1297 (2021) (“[S]trict scrutiny 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.’”) (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*, 593 U.S. at 541. The *Township* bears the burden of proof, and it cannot satisfy its burden through unsubstantiated statements or general and vague assertions. Rather, it must offer specific evidence demonstrating how its rejection of the proposed development furthers a compelling government interest and why it is

⁹ In *United States v. City of Troy*, 592 F. Supp. 3d 591 (E.D. Mich. 2022), a case in which the court found a RLUIPA violation on summary judgment, the property at issue was a restaurant that required a variance for it to be used as a place of religious worship. No variance is required here. Moreover, under the Township’s ZO, there is no place where a “church, temple or similar place of worship” can be constructed on any comparable 40-acre wooded lot without first obtaining a special land use approval or obtaining the more difficult variance to the ZO.

¹⁰ To make out a substantial burden claim, Plaintiffs need not prove religious animus on the part of the Township. *Bethel World Outreach Ministries*, 706 F.3d at 556-57.

the least restrictive means of doing so. In short, to prevail, the Township must rely on *evidence* that shows that the complete rejection of Plaintiffs' proposed development was the only effective and feasible way to advance a compelling interest. Defendants cannot meet this burden, and it's not a close call. The fact that the proposed development was approved by the Planning Commission undermines any claim that the Township's interests were "interests of the highest order." But there are many more reasons demonstrating that the stated governmental interests for denying the development are not compelling nor was a complete denial the least restrictive means available to promote any such interest. Per 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." *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 547 (1993) (internal quotations and citation omitted). As *Fulton* explains, strict scrutiny demands a "precise analysis." Courts cannot "rely on 'broadly formulated'" governmental interests, but must "'scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants.'" *Fulton*, 593 U.S. at 541 (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006)); *CHI*, 82 F.4th at 454 ("In analyzing a RLUIPA claim, courts cannot rely on broadly formulated interests, but rather must scrutinize the asserted harm as it applies to particular religious claimants.") (cleaned up). Thus, the

question in this case “is not whether the [Township] has a compelling interest in enforcing its [ZO] *generally*, but whether it has such an interest in denying” Plaintiffs’ proposed use of the CHI Property. *Fulton*, 593 U.S. at 541.

The Township’s reasons for denying Plaintiffs’ development are not compelling nor is complete denial a least restrictive means. The Township’s claim that this modest, low impact development is contrary to the arbitrary, broadly construed, general, and subjective interests of its ZO is belied for multiple reasons (any one of which undermines any claim that the interest meets the demanding “compelling interest” standard). First, the ZO expressly allows such developments in property zoned CE (as well as AG). Second, public parks, such as Fillmore Park and Genoa Park, which have a far greater impact on adjacent and surrounding properties, are a permitted use in property zoned CE. Third, Three Fires is an “allowed” use in property zoned CE and AG; this development is less than a mile from the CHI Property, and it has a far greater impact on adjacent and surrounding properties (which are zoned CE and AG) than the CHI Property ever will. Fourth, Fillmore Park, Genoa Park, the large Chaldean Church development, and Three Fires have all been permitted by the Township in areas that are adjacent to properties zoned CE and AG and thus impact these adjacent and surrounding properties. Fifth, a neighbor to the CHI Property could have 200 visitors to his home to watch a football game or hold a Family Fun Day with numerous guests without requiring any

special permits even though the property is zoned CE. Sixth, the Township's assembly ordinance allows up to 1,000 people on property (including CE) before requiring any special permits. And finally, Plaintiffs' development maintains the rural nature of the property and is thus entirely compatible with the Township's asserted interests for property zoned CE.

The other interest asserted by the Township is traffic. Defendants cannot satisfy the compelling interest standard here for multiple reasons. Indeed, the facts demonstrate that traffic is not an issue for Plaintiffs' modest development. First, Chilson Road has been shown to handle far more traffic than Plaintiffs' development will ever generate. Second, Defendants permit other uses for this land (such as a public park with 200 parking spaces) that would generate far more traffic than Plaintiffs' proposed use. Third, Defendants permit other uses of neighboring land for large events that will far exceed the traffic generated by Plaintiffs' proposed use (such as social gatherings for a Family Fun Day or watching a football game with 200 people attending). Fourth, Plaintiffs' engineers applied the standards for determining traffic impact based on the manual for calculating such standards *recommended by the Township*, and this calculation showed such minimal traffic as to not warrant a traffic study. Fifth, the Planning Commission did not reject the proposed development based on traffic concerns, and specifically noted that the "use does not warrant a traffic study," and this was confirmed by the Township's own

engineering consultant. Sixth, the Road Commission did not oppose the proposed development based on traffic concerns. Seventh, other properties zoned in the Agricultural Districts, including Fillmore Park, Genoa Park, and the Chaldean church, are permitted and yet produce far more traffic than the modest CHI Project with only 39 parking spaces. And eighth, Three Fires, which is located less than a mile from the CHI Property and which is adjacent to properties zoned CE, generates far more traffic than the CHI Property ever will.

Similarly, Defendants cannot meet the “least restrictive means” requirement. Under that “exceptionally demanding” test, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014), “if there are other, reasonable ways to achieve those [interests] with a lesser burden on constitutionally protected activity, [the government] may not choose the way of greater interference. If it acts at all, it must choose less drastic means,” *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972) (internal quotations and citation omitted) (emphasis added). A regulation is the least restrictive means only if “no alternative forms of regulation would [accomplish the compelling interest] without infringing [religious exercise] rights.” *Sherbert v. Verner*, 374 U.S. 398, 407 (1963) (emphasis added). This test is particularly demanding here, because RLUIPA “did more than merely restore the balancing test used in the *Sherbert* line of cases; it provided even broader protection for religious liberty than was available under those decisions.” *Hobby Lobby*, 573 U.S. at 695 n.3

(citation omitted). As noted, the CHI Property has a very large greenspace that could be used for overflow parking if necessary (similar to Three Fires). The Township could permit the “curb drop” (as in the Original Submission) and the use of greenspace on the property to assist with any additional parking needs, or the Township could simply approve a larger parking lot, like the 200-space parking lot it has at its own public park (Genoa Park) a few miles away from the CHI Property (or the large parking lots at Three Fires, which is less than a mile away). The Township could permit Plaintiffs to provide a shuttle service or “staged/multiple receptions” to alleviate any overflow parking/traffic issues for events exceeding the 39 parking spaces. The Township could arrange police services during special events to help control traffic, and if cars were illegally parked, the Township could enforce its traffic code or the police could ticket the violators. The Township could work with the Road Commission to make any necessary adjustments to the proposed commercial driveway, which already contains an acceleration taper and deceleration taper and lane, to improve traffic flow (again, assuming facts exist to require such a condition, which they don’t). For example, a center turn lane or a left turn bypass lane could be added if necessary. If noise were ever an issue, the Township could enforce its noise ordinance. Indeed, there are many less restrictive means available to the Township. Completely denying Plaintiffs’ application is not one.¹¹

¹¹ If the Township were to enforce any of these “less restrictive”

B. Equal Terms Provision.

The Equal Terms provision of RLUIPA provides that “[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” 42 U.S.C. §2000cc(b)(1). “[A] prima facie case under RLUIPA’s equal terms provision requires proof that (1) the plaintiff [is] a religious assembly or institution, (2) subject to a land use regulation, that (3) treats the [plaintiff] on less than equal terms, [compared] with (4) a nonreligious assembly or institution.” *Tree of Life Christian Sch. v. City of Upper Arlington*, 905 F.3d 357, 367 (6th Cir. 2018) (internal quotations and citation omitted). Elements (1) and (2) are straightforward. With regard to the comparison required by elements (3) and (4), “[t]here is no need . . . for the religious institution to show that there exists a secular comparator that performs the same functions.” *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 266 (3d Cir. 2007). And the “Equal Terms provision operates on a strict liability standard; strict scrutiny does not come into play.” *Id.* at 269. Thus, once a *prima facie* case is established under the Equal Terms provision, liability attaches. Here, the CHI Property is compatible with and suitable for the development of the proposed place of religious worship, an allowed use. Additionally, under the

conditions/measures, it must explain why (*i.e.*, “compelling interest”) it is enforcing them against the CHI Property.

ZO, the Township permits “[p]ublicly owned parks, parkways, scenic and recreational areas, and other public open spaces” and “[p]rivate non-commercial parks, nature preserves and recreational areas owned and maintained by a home-owners association” on property zoned CE. In fact, the Township operates a park just 3 miles east of the CHI Property that is on a parcel of land that is smaller (38 acres) than the CHI Property (40 acres) and that is supported by more than 200 parking spaces (more than five times the number of spaces in the CHI Project). Consequently, this very park, 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 any special land use approval as it is a permitted use under the ZO. In sum, the Township violated this provision of RLUIPA as well as the substantial burden provision.

II. Constitutional Claims.

Applying traditional principles of constitutional avoidance,¹² the Court need not reach the constitutional claims because Plaintiffs are entitled to relief under RLUIPA. *CHI*, 82 F.4th 442 at 452 (“Where, as in this case, Plaintiffs’ statutory claim under RLUIPA justifies the injunction, we need not address Plaintiffs’ constitutional claims.”). As noted by this Court, “If plaintiffs can prevail on their

¹² The 35-page limit further counsels for the application of this principle as Plaintiffs’ discussion of their constitutional claims, which overlap with the RLUIPA claims and are alternative ways to plead the harm, will not be as full-throated.

substantial burden RLUIPA claim as a matter of law. . . , then all that will remain before this Court will be the determination of the relief available to plaintiffs.” (Order, ECF No. 165, PageID.5860-61). Nonetheless, as argued below, Plaintiffs are entitled to relief on these alternative claims as they rely upon the same undisputed evidence set forth above.

A. Freedom of Speech.

“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); *Satawa v. Macomb Cty. Rd. Comm’n*, 689 F.3d 506, 529 (6th Cir. 2012). Plaintiffs’ prayer, worship, and use of religious symbols are protected by the First Amendment. Defendants restricted Plaintiffs’ speech through the enforcement of its ZO in violation of the First Amendment.

B. Free Exercise.

“The principle that government may not enact laws that suppress religious belief or practice is . . . well understood.” *Lukumi*, 508 U.S. at 523; *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255-56 (6th Cir. 2015). “Free exercise claims are often considered in tandem with free speech claims and may rely entirely on the same set of facts.” *Id.* at 256. For the reasons demonstrating Defendants’ violation of the Free Speech Clause, their actions similarly violated the Free Exercise Clause.

C. Right to Association.

“Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs.” *Healy v. James*, 408 U.S. 169, 181 (1972) (citations omitted); *Connection Distributing Co. v. Reno*, 154 F.3d 281, 295 (6th Cir. 1998) (stating that freedom of association “is an inseparable aspect of freedom of speech”) (citing *NAACP v. Ala.*, 357 U.S. 449, 460 (1958)). And “[t]he risk of a chilling effect on association is enough [to advance a claim] because First Amendment freedoms need breathing space to survive.” *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 618-19 (2021) (internal quotations and citation omitted). Plaintiffs want to assemble on the CHI Property for religious worship, but Defendants denied Plaintiffs this right and prohibited “organized” gatherings on the property, in violation of the right to freedom of association.

D. Equal Protection

When the government treats an individual disparately “as compared to similarly situated persons and that such disparate treatment . . . burdens a fundamental right,” such treatment violates the equal protection guarantee of the Fourteenth Amendment. *Bible Believers*, 805 F.3d at 256 (internal quotations and citation omitted). “In determining whether individuals are ‘similarly situated,’ a court should not demand exact correlation, but should instead seek relevant similarity.” *Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 987 (6th Cir.

2012) (internal quotation marks omitted). Such disparate treatment is “subject to strict scrutiny.” *Bible Believers*, 805 F.3d at 256. The rights to free exercise of religion and freedom of speech are “fundamental,” *see supra; id.* at 256 (“Freedom of speech is a fundamental right.”), and disparate treatment that burdens these rights violates the Fourteenth Amendment, *id.* at 256-57. Here, Defendants permit secular activity within the CE zoned areas of the Township (and in the same neighborhood as the CHI Property), including the development of secular parks, but discriminate against Plaintiffs’ religious activity without satisfying strict scrutiny in violation of the Fourteenth Amendment.

E. Michigan Constitution.

The Michigan Constitution “guarantees the free exercise of religion.” *Alexander v. Bartlett*, 14 Mich. App. 177, 181 (1968). And it is “at least as protective of religious liberty as the United States Constitution.” *People v. Dejonge*, 442 Mich. 266, 273 n.9 (1993). Michigan 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 (2008) (emphasis added); *see id.* at 314 n.5. Defendants have restricted Plaintiffs’ free exercise of religion *and* religious expression, and these restrictions cannot survive strict scrutiny.

III. Relief.

Plaintiffs are entitled to declaratory and permanent injunctive relief, permitting the development of the prayer campus and chapel so as to allow Plaintiffs to engage in their religious exercise. *See Lee v. City of Columbus*, 636 F.3d 245, 249 (6th Cir. 2011) (“A party is entitled to a permanent injunction if it can establish that it suffered a constitutional violation and will suffer continuing irreparable injury for which there is no adequate remedy at law.”); *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 v. Burns*, 427 U.S. 347, 373 (1976)). And in addition to nominal damages, which are awarded as a matter of law,¹³ Plaintiffs are entitled to summary judgment on their established economic damages.¹⁴ As noted previously, summary judgment is appropriate where the evidence presents no genuine dispute of material fact—that is, where the evidence is not such that “a reasonable jury could return a verdict for the nonmoving party.”

¹³ *Saieg v. City of Dearborn*, 641 F.3d 727, 741 (6th Cir. 2011) (“In addition to declarative and injunctive relief, [the plaintiff] is entitled to nominal damages for the violation of his constitutional rights.”); *Carey v. Phipps*, 435 U.S. 247, 266-67 (1978) (awarding nominal damages as a matter of law).

¹⁴ To permit complete resolution on summary judgment, Plaintiffs seek only the economic damages established by Dr. Smith for increased construction costs and excess property taxes and do not seek summary judgment on the \$1,607,500 lost-donation calculation. If the Court grants the full relief requested, Plaintiffs will waive the lost-donation claim; otherwise, that claim is reserved for trial.

Liberty Lobby, Inc., 477 U.S. at 248. Here, Dr. Smith’s unrebutted economic analysis establishes \$2,687,099 in increased construction and engineering costs and \$16,688 in excess property taxes through September 24, 2026, with the latter increasing by \$26.36 per day thereafter.¹⁵ (Smith Decl. ¶¶ 10, 11, [Smith Rep. at 15–18, Ex. 1, Exs. N, T, W] at Ex. B). Defendants did not depose Smith or retain a competing damages expert. That absence is significant. In *Wineries of the Old Mission Peninsula Association v. Peninsula Township*, Judge Maloney confronted a similarly one-sided damages record: only the plaintiffs had retained a damages expert. The court scrutinized the expert’s methodology and rejected unsupported categories, but awarded those damages that were adequately supported, emphasizing that “the court does not have the benefit of proofs to the contrary. The Township did not retain a damages expert.” *Wineries of the Old Mission Peninsula Ass’n v. Peninsula Twp.*, No. 1:20-cv-1008, 2025 U.S. Dist. LEXIS 127952, at *91-92 (W.D. Mich. July 7, 2025). Here the record is stronger still: Smith was not even deposed, and his construction and accrued tax calculations are fixed, documented, and unrebutted. Plaintiffs are therefore entitled to summary judgment, awarding \$2,703,787 in

¹⁵ Had the CHI Project been approved in 2021, the property would have been exempt from taxes pursuant to Michigan law upon completion of the construction (Mich. Const. 1963, art. IX, § 4; Mich. Comp. Laws § 211.7s). (JP Suppl. Decl. ¶ 7 at Ex. A).

economic damages through September 24, 2026, plus \$26.36 for each additional day until judgment.

CONCLUSION

The Court should grant this motion, enter judgment in Plaintiffs' favor, and award Plaintiffs the requested relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2026, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: None.

AMERICAN FREEDOM LAW CENTER

/s/Robert J. Muise

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