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 PARTIAL 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 partial summary judgment on the issue of liability as to Plaintiffs' claim arising under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq*. ("RLUIPA"). Granting this motion will resolve the underlying issues, aside from damages, thereby streamlining this case significantly.[1]

"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,

[1] Should this motion be denied and the discovery of additional evidence necessary, Plaintiffs will, at the appropriate time and pursuant to the Court's "Practice Guidelines," seek leave to move for summary judgment at the close of discovery.

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. As set forth in the accompanying brief, the record of this case is well developed such that partial summary judgment on the issue of liability is appropriate.

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 the issue of liability for their claim arising under RLUIPA. Fed. R. Civ. P. 56(a).

Pursuant to E.D. Mich. LR 7.1, on October 23, 2023, Plaintiffs' counsel sought but did not receive concurrence from Defendants' counsel in the relief requested in this motion.

WHEREFORE, Plaintiffs hereby request that this Court grant this motion and enter judgment on the issue of liability on Plaintiffs' claim arising under RLUIPA.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq. (P62849)
Kate Oliveri, Esq. (P79932)
P.O. Box 131098
Ann Arbor, Michigan 48113
(734) 635-3756
rmuise@americanfreedomlawcenter.org
koliveri@americanfreedomlawcenter.org

David Yerushalmi, Esq. (Ariz. Bar No. 009616; DC Bar No. 978179; Cal. Bar No. 132011; NY Bar No. 4632568)
2020 Pennsylvania Ave NW, Suite 189
Washington, D.C. 20006
(646) 262-0500
dyerushalmi@americanfreedomlawcenter.org

Attorneys for Plaintiffs

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PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ISSUE PRESENTED v

CONTROLLING AND MOST APPROPRIATE AUTHORITY vi

STATEMENT OF MATERIAL FACTS 1

SUMMARY OF MATERIAL FACTS 20

ARGUMENT 20

I. RULE 56 STANDARD 20

II. THE TOWNSHIP VIOLATED RLUIPA 21

A. RLUIPA 23

B. The Application of RLUIPA to the Material Facts of this Case 25

1. Religious Exercise 25

2. Substantial Burden 26

3. Strict Scrutiny 31

CONCLUSION 40

CERTIFICATE OF SERVICE 41

TABLE OF AUTHORITIES

Cases Page

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986)....................21

Bethel World Outreach Ministries v. Montgomery Cnty. Council,
706 F.3d 548 (4th Cir. 2013)....................30

Burwell v. Hobby Lobby Stores, Inc.,
573 U.S. 682 (2014)....................37

Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.,
Nos. 22-2139, 23-1060, 2023 U.S. App. LEXIS 23951 (6th Cir. Sep. 11, 2023)....................23, 26, 28, 29

Celotex Corp. v. Catrett,
477 U.S. 317 (1986)....................21

Church of Lukumi Babalu Aye v. City of Hialeah,
508 U.S. 520 (1993)....................32, 35

City of Boerne v. Flores,
521 U.S. 507 (1997)....................31

Dunn v. Blumstein,
405 U.S. 330 (1972)....................37

Fulton v. City of Phila.,
141 S. Ct. 1868 (2021)....................22, 23, 31, 32, 33

Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,
546 U.S. 418 (2006)....................32

Holt v. Hobbs,
574 U.S. 352 (2015)....................24, 26

Klein v. City of Jackson,
735 F. Supp. 2d 732 (E.D. Mich. 2010)....................21

Livingston Christian Schs. v. Genoa Charter Twp.,
858 F.3d 996 (6th Cir. 2017) 26, 27, 29, 30

Mast v. Fillmore Cnty.,
141 S. Ct. 2430 (2021) 22, 23, 40

Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,
475 U.S. 574 (1986) 21

Miles Christi Religious Order v. Twp. of Northville,
629 F.3d 533 (6th Cir. 2010) 23

Petra Presbyterian Church v. Vill. of Northbrook,
489 F.3d 846 (7th Cir. 2007) 30

Sherbert v. Verner,
374 U.S. 398 (1963) 37

Spirit of Aloha Temp. v. Cty. of Maui,
49 F.4th 1180 (9th Cir. 2022) 33

Street v. J.C. Bradford & Co.,
886 F.2d 1472 (6th Cir. 1989) 21

Tandon v. Newsom,
141 S. Ct. 1294 (2021) 31

Thomas v. Review Bd.,
450 U.S. 707 (1981) 25

United States v. City of Troy,
592 F. Supp. 3d 591 (E.D. Mich. 2022) 22

Westchester Day Sch. v. Vill. of Mamaroneck,
504 F.3d 338 (2d Cir. 2007) 27

Widmar v. Vincent,
454 U.S. 263 (1981) 25

Statutes/Rules

42 U.S.C. § 2000cc ....*passim*

Fed. R. Civ. P. 56 21

ISSUE PRESENTED

Whether the Court should grant Plaintiffs' motion for partial summary judgment on the issue of liability on Plaintiffs' RLUIPA claim when there is no genuine dispute of material fact that (1) the Township imposed or implemented a land use regulation in a manner that imposed a substantial burden on the religious exercise of Plaintiffs and (2) that the Township cannot demonstrate that the imposition of this burden on Plaintiffs' religious exercise is in furtherance of a compelling governmental interest *and* the least restrictive means of furthering that compelling governmental interest as a matter of law.

CONTROLLING AND MOST APPROPRIATE AUTHORITY

Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp., Nos. 22-2139, 23-1060, 2023 U.S. App. LEXIS 23951 (6th Cir. Sep. 11, 2023)

Fulton v. City of Phila., 141 S. Ct. 1868 (2021)

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

42 U.S.C. § 2000cc *et seq.*

Fed. R. Civ. P. 56

STATEMENT OF MATERIAL FACTS

1. Plaintiff Catholic Healthcare International, Inc. ("CHI") is a nonprofit organization that is incorporated in the State of Missouri. (Palazzolo Decl. ¶ 2, at Ex. 1).

2. CHI is recognized as a private association of the faithful by the Catholic Diocese of Lansing, Michigan. (Palazzolo Decl. ¶¶ 5, 6, at Ex. 1).

3. In October 2020, the Catholic Diocese of Lansing, Michigan donated and conveyed to CHI a lot of land located at 3280 Chilson Road in Genoa Charter Township ("Township"), Michigan (hereinafter referred to as "CHI Property"). (Palazzolo Decl. ¶ 8, Ex. A [Warranty Deed], at Ex. 1).

4. The CHI Property is approximately 40 acres in size, and it is a wooded lot. (Palazzolo Decl. ¶ 8, at Ex. 1).

5. 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. (Palazzolo Decl. ¶¶ 15, 33, at Ex. 1; O'Reilly Decl. ¶ 15, at Ex. 2).

6. Other than the CHI Property, CHI does not own any property in the Township or the surrounding areas. And there is no property in the Township or the surrounding areas that is as suitable as the CHI Property for the prayer campus and adoration chapel. Property, in this sense, is not fungible. Being forced to purchase

and develop another property (which includes producing the requisite plans and obtaining government approvals to do so) would necessarily result in additional delay, uncertainty, and expense. (Palazzolo Decl. ¶¶ 29-32, at Ex. 1; *see also* O'Reilly Decl. ¶ 15, at Ex. 2).

7. CHI engages in religious exercise through its work and use of the CHI Property for religious assembly, prayer, and worship. (Palazzolo Decl. ¶¶ 7, 9, 16-28, 32, at Ex. 1).

8. Plaintiff Jere Palazzolo, a Catholic, is the Chairman, President, and Director 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. (Palazzolo Decl. ¶¶ 1, 4, at Ex. 1).

9. The CHI Property is zoned Country Estate (CE) by the Township. (Palazzolo Decl. ¶ 13, at Ex. 1; Tousignant Decl. ¶ 2, at Ex. 3).

10. "Churches, temples and similar places of worship" are an allowed use by the Zoning Ordinance on property zoned CE after special land use approval by the Township. (Palazzolo Decl. ¶ 13, at Ex. 1; Tousignant Decl. ¶ 3, at Ex. 3).

11. Plaintiffs had a reasonable expectation that their proposed development would be approved as such developments are an allowed use for property zoned CE. (Palazzolo Decl. ¶¶ 12-14, at Ex. 1).

12. CE and AG (Agricultural District) are "[t]he two Agricultural Districts" established by the Zoning Ordinance. (Muise Decl. ¶ 8, Ex. E [Article 3 of the Zoning Ordinance ("Z.O.")], at Ex. 4).

13. Similar uses are allowed on property zoned CE and AG in that "Churches, temples and similar places 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. (Muise Decl. ¶ 8, Ex. E [Article 3 of the Z.O.], at Ex. 4).

14. The Township permits the keeping of "swine" on property zoned CE and AG. (Muise Decl. ¶ 8, Ex. E [Article 3 of the Z.O.], at Ex. 4).

15. Three Fires Elementary School ("Three Fires"), a public school that is located less than a mile from the CHI Property, is surrounded by and adjacent to property zoned CE. (O'Reilly Decl. ¶ 4, at Ex. 2).

16. 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. (O'Reilly Decl. ¶ 6, at Ex. 2).

17. At times, events held at Three Fires are so large that cars must park on the grass along the entranceway. (O'Reilly Decl. ¶ 7, at Ex. 2).

18. Fillmore Park, which is located in the Township, is surrounded by and adjacent to property zoned AG and CE. (O'Reilly Decl. ¶ 4, at Ex. 2).

19. A Chaldean "camp & retreat center" ("Chaldean Property"), which is located in the Township, is surrounded on two sides and adjacent to property zoned CE. (O'Reilly Decl. ¶ 4, at Ex. 2).

20. There is a church on the Chaldean Property with seating for 240 people and associated parking. (O'Reilly Decl. ¶ 4, at Ex. 2).

21. The Panhandle Eastern Pipeline Company ("Panhandle Eastern") has a facility on property that is approximately 1/3 of a mile from the CHI Property, and the Panhandle Eastern property is adjacent to property zoned CE. (O'Reilly Decl. ¶ 4, at Ex. 2).

22. 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 (hereinafter referred to as the "Original Submission"). (Palazzolo Decl. ¶ 39, Ex. B [Original Submission], at Ex. 1; Tousignant Decl. ¶ 4, at Ex. 3).

23. The proposed development of the CHI Property (also referred to as the "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. (Palazzolo Decl. ¶ 33, Ex. F [Final Submission], at Ex. 1).

24. The CHI Project includes the construction of 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, an associated parking lot with 39 spaces, and a commercial driveway. (Palazzolo Decl. ¶¶ 17-28, Ex. B [Original Submission], Ex. F [Final submission] at Ex. 1; Tousignant Decl. ¶ 4, at Ex. 3).

25. The CHI Project is a low impact and low intensity development as it will be a place of adoration, prayer, and reflection, and it will maintain the natural features of the property. (Palazzolo Decl. ¶ 30, at Ex. 1; Tousignant Decl. ¶ 6, at Ex. 3).

26. 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. (Palazzolo Decl. ¶¶ 22, 23, at Ex. 1).

27. Pursuant to the Catholic faith, the Eucharist is the Body, Blood, Soul, and Divinity of Our Lord Jesus Christ, that united in His one Divine Person is really,

truly, and substantially present. The Catholic Church describes the Eucharist as the source and summit of the Christian life. (Palazzolo Decl. ¶ 24, at Ex. 1).

28. 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 St. Pio Chapel, therefore, is the central and critical element of the CHI Project. (Palazzolo Decl. ¶¶ 25, 26, at Ex. 1).

29. Without the St. Pio Chapel, Plaintiffs are unable to carry out a core function of their religious activities. (Palazzolo Decl. ¶ 27, at Ex. 1).

30. The St. Pio Chapel will also allow people to engage in religious worship on the CHI Property during inclement weather, including during the often harsh and cold winters of Michigan. (Palazzolo Decl. ¶ 28, at Ex. 1).

31. 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 Livingston County Road Commission's fee ($150). (Palazzolo Decl. ¶ 40, Ex. C [Invoices/Payments], at Ex. 1).

32. The Township, through its Planner and consultants, reviewed the Original Submission and sent back comments to Boss Engineering for revisions. (Palazzolo Decl. ¶ 41, at Ex. 1).

33. CHI, through Boss Engineering, made the requested revisions, and the application was scheduled for review by the Township Planning Commission at a

public meeting scheduled for 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. (Palazzolo Decl. ¶ 42, at Ex. 1).

34. 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. (Palazzolo Decl. ¶ 43, at Ex. 1; Tousignant Decl. ¶ 5, at Ex. 3).

35. 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. (Palazzolo Decl. ¶ 44, Ex. D [Resubmission], at Ex. 1; *see also* Tousignant Decl. ¶¶ 4, 7, at Ex. 3).

36. 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." (Palazzolo Decl. ¶ 45, Ex. D [Resubmission], at Ex. 1; Tousignant Decl. ¶ 4, at Ex. 3).

37. If the CHI Project did not substantially comply with the Zoning Ordinance, the Planning Commission would have never considered it in the first instance. (Tousignant Decl. ¶ 18, at Ex. 3).

38. On March 8, 2021, the Township Planning Commission held a public meeting and approved the Resubmission by a vote of 4 to 3. (Palazzolo Decl. ¶ 46, Ex. E [Planning Commission Minutes], at Ex. 1).

39. During the March 8, 2021 meeting, additional changes were suggested by the Planning Commission as part of its motion to approve CHI's application. (Palazzolo Decl. ¶ 46, Ex. E [Planning Commission Minutes], at Ex. 1).

40. During the public hearing, Mr. Chris Grajek, the Chairman of the Planning Commission, noted that CHI "met all of the requests made by the Planning Commission." The Chairman further noted that Plaintiffs "have gone above and beyond and addressed all of the concerns of the Planning Commission and the consultants." (Palazzolo Decl. ¶ 47, Ex. E [Planning Commission Minutes], at Ex. 1).

41. 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. (Palazzolo Decl. ¶ 48, Ex. F [Final Submission], at Ex. 1; Tousignant Decl. ¶ 4, at Ex. 3).

42. The revisions cost CHI $5,400 (engineering fees). (Palazzolo Decl. ¶ 49, Ex. G [Invoices/Payments], at Ex. 1).

43. The Final Submission met all of the objective criteria for approval under the Township's Zoning Ordinance. (Tousignant Decl. ¶ 9, at Ex. 3).

44. 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 religious events planned for the property. The greenspace could accommodate approximately 100 additional vehicles, but this option for additional parking was rejected. (Palazzolo Decl. ¶ 50, at Ex. 1; Tousignant Decl. ¶ 7, at Ex. 3).

45. 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). (Palazzolo Decl. ¶ 50, at Ex. 1; Tousignant Decl. ¶ 8, at Ex. 3).

46. CHI's proposed development did not require a variance. (Palazzolo Decl. ¶ 51, at Ex. 1).

47. 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. (Palazzolo Decl. ¶ 51, at Ex. 1).

48. On May 3, 2021, the Township Board held a public hearing to consider the Final Submission, and the Board denied CHI's special land use application, environmental impact statement, and site plan (Final Submission) by a 5 to 2 vote. (Palazzolo Decl. ¶¶ 52, 53, at Ex. 1).

49. 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. (Palazzolo Decl. ¶ 54, at Ex. 1).

50. The Township's stated reasons for rejecting the special land use application, as recorded in the official minutes from the meeting, are as follows:

> 1. The proposed use involving a 95 seat, 6,090 square foot church with associated parking lot, site lighting, building lighting, and outdoor accessory structures and uses that is planned for daily gatherings and outdoor special events with an unknown number of visitors is not consistent with the following goals, objectives and policies of the Master Plan:
> a. The use does not "Promote harmonious and organized development consistent with *adjacent land uses*";
> b. The proposed use is located within the rural reserve area outside of the growth boundary and is contrary to the purpose of the rural reserve area which is an area that is to be "maintained at a relatively low intensity rural character of development, *typically more than 2 acres per dwelling unit*, that will not adversely impact natural features and agricultural uses";
> c. The proposed use is not consistent with the following description of the Agricultural/Country Estate planned areas: "These areas shall remain in agricultural use, or develop as single family residential on estate lots. Many of the areas are prime farmland or have significant

natural limitations such as wetlands or severe soil limitations. As these areas are not planned for sanitary sewer, they can only support low density residential development. This classification is recommended for *single family residences on lots no smaller than 5 acres*."

2. The proposed use involving a 95 seat, 6,090 square foot church with associated parking lot, site lighting, building lighting, and outdoor accessory structures and uses that is planned for daily gatherings, and outdoor special events with an unknown number of visitors is in direct contrast with all aspects of the statement of purpose for the Country Estate zoning district which states that "The Country Estate (CE) District is established as a district where the principal use is residential, with smaller scale farming and raising of horses and livestock typically an accessory use. *The health, safety and welfare contribution of this district is to retain the rural atmosphere and quality of life* while accommodating compatible, very low density, residential development".

3. The amount of traffic, visitors, lighting, noise, and activity associated with the use is not compatible with and will significantly alter *the existing and intended character of the general vicinity*. Events previously held at the site were described as having heavy traffic with cars parked on the roadway causing hazardous conditions.[2]

4. The impacts of the proposed use and activities will be detrimental to the natural environment, public health, safety or welfare by reason of excessive production of traffic, noise, lighting or other such nuisance.

[2] This assertion is irrelevant as it is based on the property without the proposed development/improvements. If the Township permitted the CHI Project, there would be a commercial driveway with a deceleration taper and deceleration lane as well as an acceleration taper and there would be a dedicated parking lot. Moreover, as discussed further in this brief, the Township could mitigate any traffic/parking concerns by permitting the use of the greenspace on the property for parking or permitting CHI to shuttle guests to the property for events that will exceed the number of parking spots, as well as additional less restrictive measures. *See infra*.

(Palazzolo Decl. ¶ 55, Ex. H [Township Board Minutes], at Ex. 1; Tousignant Decl. ¶ 10, at Ex. 3).

51. The Township's stated reasons for rejecting the environmental impact statement, as recorded in the official minutes from the meeting, are as follows:

> 1. The proposed use involving a 95 seat, 6,090 square foot church with associated parking lot, site lighting, building lighting, and outdoor accessory structures and uses that is planned for daily gatherings, and outdoor special events with an unknown number of visitors is not harmonious with, and will be harmful, injurious, or objectionable to, existing and planned future uses *in the immediate area*. The proposed development is not coordinated *with other developments in the vicinity*.
>
> 2. The traffic impact analysis did not consider the trips associated with the outdoor site features or the planned special events and is therefore lacking information to determine if impacts are properly mitigated and it cannot be determined that safe, convenient, uncongested, and well defined vehicular and pedestrian circulation is provided within and accessing the site.
>
> 3. Without knowing the full scope of the traffic impacts, it is unclear if access to the site is designed to minimize conflicts between vehicles and with traffic using adjacent streets and driveways.

(Palazzolo Decl. ¶ 56, Ex. H [Township Board Minutes], at Ex. 1; Tousignant Decl. ¶ 11, at Ex. 3).

52. The Township's stated reasons for rejecting the site plan, as recorded in the official minutes from the meeting, are as follows:

> 1. The proposed use involving a 95 seat, 6,090 square foot church with associated parking lot, site lighting, building lighting, and outdoor accessory structures and uses that is planned for daily gatherings, and outdoor special events with an unknown number of visitors is not harmonious with, and will be harmful, injurious, or objectionable to,

existing and planned future uses in the immediate area. The proposed development is not coordinated with other developments in the vicinity.

2. The traffic impact analysis did not consider the trips associated with the outdoor site features or the planned special events and is therefore lacking information to determine if impacts are properly mitigated and it cannot be determined that safe, convenient, uncongested, and well defined vehicular and pedestrian circulation is provided within and accessing the site.

3. Without knowing the full scope of the traffic impacts, it is unclear if access to the site is designed to minimize conflicts between vehicles and with traffic using adjacent streets and driveways.

(Palazzolo Decl. ¶ 57, Ex. H [Township Board Minutes], at Ex. 1; Tousignant Decl. ¶ 12, at Ex. 3).

53. As stated in CHI's application with regard to the traffic issue:

I. Impact on traffic and pedestrians: A description of the traffic volumes to be generated based on national reference documents, such as the most recent edition of the *Institute of Transportation Engineers Trip Generation Manual*, other published studies or actual counts of similar uses in Michigan.

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. 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.

(Palazzolo Decl. ¶ 58, Ex. F [Final Submission], at Ex. 1; Tousignant Decl. ¶ 13, at Ex. 3).

54. The scenario used by Boss Engineering set forth in the Institute of Transportation Engineers Trip Generation Manual (the manual the Township recommends) for calculating traffic trips was the *worst-case scenario* for this type of development. (Tousignant Decl. ¶¶ 14-15, at Ex. 3).

55. The Livingston 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. (Tousignant Decl. ¶ 17, Ex. A [Road Commission Letter] at Ex. 3; *see also* Palazzolo Decl. ¶ 59, at Ex. 1).

56. The Planning Commission did not require any additional traffic impact evaluation or study. As noted, it approved the development. (Palazzolo Decl. ¶ 60, at Ex. 1; Tousignant Decl. ¶¶ 18-19, at Ex. 3).

57. 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. (Palazzolo Decl. ¶

46, Ex. E [Planning Commission Minutes] at Ex. 1; Tousignant Decl. ¶¶ 19-20, at Ex. 3).

58. To accommodate special events (typically two a year) held at the CHI Property 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." (Palazzolo Decl. ¶ 61, at Ex. 1).

59. The CHI Property is outside of the growth boundary, and there are single family dwelling units zoned CE that are near or adjacent to the CHI Property that have lot sizes that are less than 5 acres and some less than 2 acres. (O'Reilly Decl. ¶¶ 18-19, at Ex. 2).

60. Under the Zoning Ordinance, 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. (Muise Decl. ¶ 8, Ex. E [Article 3 of the Z.O.], at Ex. 4).

61. Fillmore Park holds events that will have an unknown number of people attending. (O'Reilly Decl. ¶ 8, at Ex. 2).

62. The Township operates a park ("Genoa Park") approximately 3 miles east of the CHI Property. This park 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. (O'Reilly Decl. ¶ 10, at Ex. 2).

63. Genoa Park has three playgrounds (one recently opened in November 2023), 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. The park is supported by more than 200 parking spaces. (O'Reilly Decl. ¶ 11, at Ex. 2).

64. Genoa Park is adjacent to property zoned AG. (O'Reilly Decl. ¶ 4, at Ex. 2).

65. Genoa Park would be a permitted use in property zoned CE. (Muise Decl. ¶ 8, Ex. E [Article 3 of the Z.O.], at Ex. 4).

66. The Township's assembly ordinance permits up to 1,000 people to attend an event on private property without requiring any special permits. (Muise Decl. ¶ 11, Ex. H [Assembly Ordinance], at Ex. 4).

67. The Township permits *a neighbor* to the CHI Property to host a football party with over 200 people attending without requiring any special zoning permits. (Muise Decl. ¶ 6, Ex. C [Tr. at 62:11-14], at Ex. 4).

68. A Family Fun Day with a large gathering of people at a private residence on Chilson Road is permitted by the Township. (O'Reilly Decl. ¶¶ 12-13, at Ex. 2).

69. The traffic counts section on the Livingston County Road Commission's website was used to analyze Chilson Road's annual average daily traffic and this data shows that Chilson Road previously accommodated an AADT of 4,505, but now has an AADT of 2,500 between E. Coon Lake Road and Beck Road. (Tousignant Decl. ¶¶ 13, 16, at Ex. 3).

70. The entire application was denied on May 3, 2021. That is, the Township Board did not consider any conditions to CHI's proposed development to alleviate any of its concerns. (Palazzolo Decl.¶¶ 52, 53, at Ex. 1).

71. 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 mural wall with the image of Our Lady of Grace, and the outdoor altar from the CHI Property and for CHI to cease all "organized gatherings" on the property. (Muise Decl. ¶¶ 2, 3, Ex. A [TRO], at Ex. 4; *see* Verified Compl., R.23-2, PageID.1223).

72. The Township's requests for a TRO and preliminary injunction were granted. (Muise Decl. ¶¶ 3, 7, Ex. A [TRO], Ex. D [Prelim. Inj.], at Ex. 4).

73. On or about October 15, 2021, CHI submitted a special land use application and associated documents 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 to therefore permit Plaintiffs to use the property for religious worship once again. (Palazzolo Decl. ¶ 66, Ex. I [Prayer Campus Submission], at Ex. 1).

74. As part of the documentation related to the Prayer Campus Submission, Plaintiff Palazzolo submitted a letter to the Township dated November 22, 2021. In this letter, Plaintiff Palazzolo asked, *inter alia*, "How many people are permitted to gather outdoors on private property to engage in religious worship?" "What is the number of people that the Township will permit on CHI's 40-acre property for outdoor religious worship? And what is that number based upon?" The Township responded, "Upon the advice of counsel, Genoa Charter Township will not issue a response to your demand for answers due to the pending litigation referenced in your letter." (Palazzolo Decl. ¶ 69, Ex. K [CHI Letter to Township], Ex. L [Township Response] at Ex. 1).

75. The Prayer Campus Submission cost CHI $9,423.80 ($2,875 for the Township's application fee and $6,548.80 in engineering fees). (Palazzolo Decl. ¶ 67, Ex. J [Invoices/Payments], at Ex. 1).

76. Had the Township approved the Final Submission, there would have been no need for the Prayer Campus Submission. (Palazzolo Decl. ¶ 68, at Ex. 1).

77. 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 Zoning Ordinance 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." (Palazzolo Decl. ¶ 70, Ex. M [Planning Commission Minutes], at Ex. 1).

78. The ZBA affirmed the Planning Commission's decision regarding the Prayer Campus Submission. (Palazzolo Decl. ¶ 71, Ex. N [ZBA Minutes], at Ex. 1).

79. On September 11, 2023, the Sixth Circuit granted Plaintiffs' request for a preliminary injunction under RLUIPA, thereby permitting the return of various religious symbols to the CHI Property. The Sixth Circuit also affirmed this Court's order enjoining the Township's "organized gatherings" restriction on the CHI Property. (Muise Decl. ¶ 13, at Ex. 4; 6th Cir. Op. & J., ECF No. 87).

80. On September 12, 2023, this Court entered the preliminary injunction, thereby mooting the state court injunction. (Prelim. Inj., ECF No. 88).

SUMMARY OF MATERIAL FACTS

To summarize the details set forth above, this case is ripe for summary judgment on the issue of liability under RLUIPA because the undisputed facts, which are largely derived from public records, demonstrate: **(1)** that Plaintiffs' use of the CHI Property is "religious exercise" under RLUIPA; **(2)** that the Township's complete denial of the CHI Project caused a "substantial burden" on Plaintiffs' religious exercise as a matter of law under RLUIPA because (a) Plaintiffs have no ready or reasonable alternative locations for their proposed development, (b) Plaintiffs had a reasonable expectation that their proposed development would be approved, (c) the Township's complete denial caused substantial delay, uncertainty, and expense for Plaintiffs, and (d) Plaintiffs are unable to carry out a core function of their religious activities; **(3)** the Township's stated reasons for its complete denial of the proposed development are not compelling as a matter of law; and **(4)** even if the Township's interests were compelling, there are less restrictive means available to accomplish those interests as a matter of law.

ARGUMENT

I. RULE 56 STANDARD.

"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); *see Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1476-81 (6th Cir. 1989).

Plaintiffs, the movant for summary judgment, 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) (citation and quotation marks omitted) (emphasis added). "To demonstrate a genuine issue, the non-movant must present sufficient evidence upon which a jury could reasonably find for the non-movant; a 'scintilla of evidence' is insufficient." *Klein v. City of Jackson*, 735 F. Supp. 2d 732, 736 (E.D. Mich. 2010) (quoting *Liberty Lobby*, 477 U.S. at 252).

II. THE TOWNSHIP VIOLATED 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).

RLUIPA means what it says. And its application to the undisputed material facts in this case is straightforward. In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), for example, the Court granted certiorari, vacated the adverse land use decision against the Amish petitioners, and remanded the case for further consideration in light of *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), a free exercise case not involving RLUIPA but having obvious application. As stated by Justice Gorsuch:

> *Fulton* makes clear that the County and courts below misapprehended RLUIPA's demands. That statute ***requires*** the application of "strict scrutiny." Under that form of review, the government bears the burden of proving both that its regulations serve a "compelling" governmental interest—and that its regulations are "narrowly tailored."

Id. at 2432 (Gorsuch, J., concurring) (emphasis added). *Mast* did not involve the government denying a religious organization 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. Rather, the *Mast* "dispute [was] about plumbing, specifically the disposal of gray water—water used in dishwashing, laundry, and the like." *Id*. at 2431. The Amish opposed a County requirement for dealing with gray water on religious grounds, and the County rejected their plea for an exemption. *Id*. The Amish filed suit under RLUIPA and lost below, resulting in the petition to the

Supreme Court. The Court granted the petition, vacated the adverse decision, and remanded for further consideration in light of *Fulton*. By doing so, the Court sent a clear message: "RLUIPA prohibits governments from infringing sincerely held religious beliefs and practices *except as a last resort*." *Id.* at 2433 (Gorsuch, J., concurring) (emphasis added). This 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*, 141 S. Ct. at 1881 (emphasis added); *see also Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, Nos. 22-2139, 23-1060, 2023 U.S. App. LEXIS 23951, at *29 (6th Cir. Sep. 11, 2023) (same).

Indeed, the Sixth Circuit's unanimous decision on the preliminary injunction in this case is a clear reminder that the strict demands of RLUIPA should not be taken lightly. *See id*. RLUIPA was enacted to prevent the very actions engaged in by the Township in this case. *See generally Miles Christi Religious Order v. Twp. of Northville*, 629 F.3d 533, 540 (6th Cir. 2010) ("While the United States Code contains . . . a Religious Land Use and Institutionalized Persons Act, one will search in vain for a Freedom to Watch Football on a Sunday Afternoon Act.").

A. RLUIPA.

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

that person, assembly, or institution—(A) is in furtherance of a compelling governmental interest; *and* (B) is the least restrictive means of furthering that compelling governmental interest."[3] 42 U.S.C. § 2000cc(a)(1)(A), (B) (emphasis added). 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 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).

RLUIPA is construed *broadly* to protect religious exercise. *See* 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 chapter and the Constitution."); *see also Holt*, 574 U.S. at 356-58 (noting the broad protection intended by Congress in enacting RLUIPA).

The Township's implementation of its land use regulations in this case substantially burdened Plaintiffs' religious exercise and that burden was not in

[3] The "substantial burden" provision applies in this case 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). This is evidenced by the special land use application process that was required here.

furtherance of a *compelling* governmental interest nor the *least restrictive means* of furthering that governmental interest. The Township violated RLUIPA.

B. The Application of RLUIPA to the Material Facts of this Case.

1. Religious Exercise.

Plaintiffs' proposed use of the CHI Property as a prayer campus with an adoration chapel for prayer, meditation, worship, and Eucharistic adoration is "religious exercise" protected by RLUIPA. 42 U.S.C. § 2000cc-5(7); *see also Widmar v. Vincent*, 454 U.S. 263, 269 (1981) (stating that "[r]eligious worship" is a "form[] of speech and association protected by the First Amendment.").

Moreover, the chapel is a central and *necessary* component of the proposed development because it will house the tabernacle where the Eucharist will be securely kept and adored. Without the St. Pio 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 a chapel with a tabernacle that houses the Eucharist on the CHI Property. *See Thomas v. Review Board,* 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. Courts are not arbiters of scriptural interpretation."). Plaintiffs satisfy the "religious exercise" component of RLUIPA.

2. Substantial Burden.

"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. The Court's 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 v. Genoa Charter Township*, 858 F.3d 996 (6th Cir. 2017), the factors it outlines for determining a "substantial burden" demonstrate that Plaintiffs have satisfied that element here. *See, e.g., Catholic Healthcare Int'l, Inc.*, 2023 U.S. App. LEXIS 23951, at *22-*28 (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 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, causing some courts to define a substantial burden as something that places significant pressure on an institutional plaintiff to modify its behavior." *Livingston Christian Schools,* 858 F.3d at 1004. In such cases, "the plaintiffs had demonstrated that they were unable to carry out

some core function of their religious activities due to the inadequacy of their current facilities." *Id.* at 1006. Here, the Township banned Plaintiffs from using the CHI Property for religious activities, and without the chapel, Plaintiffs are unable to carry out a core function of their religious activities due to the lack of a tabernacle, thus establishing a substantial burden. Indeed, other than the CHI Property, Plaintiffs own no other "facilities" in the Township or the surrounding areas.

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." *Livingston Christian Schs.*, 858 F.3d 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. In this respect, property is not fungible. There is no *feasible* alternative location from which Plaintiffs can carry on their mission.

The Sixth Circuit also considered "[w]hether the religious institution will suffer substantial delay, uncertainty, and expense due to the imposition of the regulation . . . ." *Livingston Christian Schs.*, 858 F.3d at 1004 (internal quotation marks omitted); *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, e.g., Catholic Healthcare Int'l, Inc.*, 2023 U.S. App. LEXIS 23951, at *13 ("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). As a direct and proximate result of the Township's denial of Plaintiffs' proposed development, Plaintiffs have suffered and will continue to suffer substantial delay, uncertainty, and expense. The delay in the construction of the St. Pio 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 of the CHI Project, Plaintiffs have been forced to litigate a separate state court action, all at great expense and delay. And Plaintiffs have no alternatives. They do not own other properties close to the CHI Property that would permit them to carry out their religious mission.[4] It is indisputable that

[4] Pursuant to the warranty deed, the CHI Property was conveyed to CHI for the very purpose of "develop[ing] the land consistent with [CHI's] Casa USA vision to replicate St. Pio's model of healthcare delivery in the U.S." Central to (and indeed the foundation of) St. Pio's "model of healthcare" is prayer. Consequently, the development of the prayer campus with the St. Pio Chapel is the very foundation,

Plaintiffs will suffer further delays, uncertainty, and expense if they are forced to purchase another suitable rural property and then try to develop it as a result of the Township's denial here. CHI is a nonprofit organization. It would impose an unnecessary financial burden to require them to purchase new property and to go through, yet again, the extensive and costly process of getting their proposed development approved by the Township (or some other governmental entity) and ultimately completed. In short, Plaintiffs "undisputedly" satisfy this "substantial delay, uncertainty, and expense" factor, which is dispositive on the substantial burden issue. *See Catholic Healthcare Int'l, Inc.*, 2023 U.S. App. LEXIS 23951, at *13.

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. As noted by the Fourth Circuit, "[w]hen a religious organization buys property reasonably expecting to build a church, governmental action impeding the building

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and thus a central and indispensable part, of CHI's healthcare ministry. Furthermore, if CHI fails to develop the CHI Property consistent with this "vision" within five years of the date of the deed, CHI will either transfer the property back to the Diocese or sell the property for its fair market value and pay the Diocese the appraised value ($260,000) at the time of this transfer. Consequently, the delay associated with obtaining approval for the CHI Project is exceedingly problematic and harmful to CHI, and it is costly as CHI has paid significant sums of money trying to obtain the Township's approval, in addition to the fact that CHI continues to pay taxes on the property. (Palazzolo Decl. ¶¶ 9, 10, Ex. A [Warranty Deed], at Ex. 1.

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."). Here, CHI acquired the property from the Catholic Diocese of Lansing with the expectation of building its prayer campus and modest chapel as this use is an allowed use under the Zoning Ordinance. Plaintiffs satisfy this factor.

One final point: "RLUIPA's substantial burden provision says nothing about targeting. Rather, it simply forbids government from imposing a substantial burden on religious exercise unless the Government demonstrates that it has used the least restrictive means of furthering a compelling governmental interest; that is, unless the governmental action satisfies strict scrutiny." *Bethel World Outreach Ministries*, 706 F.3d at 556-57. In other words, to make out a substantial burden claim, Plaintiffs need not prove religious animus on the part of the Township. *See id*. at 557; *accord Livingston Christian Schs.*, 858 F.3d at 1005.

Having demonstrated a substantial burden on religious exercise, the burden now shifts to the Township to satisfy strict scrutiny.

3. Strict Scrutiny.

The Township's substantial burden on Plaintiffs' religious exercise cannot withstand strict scrutiny as a matter of law. Strict scrutiny is the "most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997); *see also 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*, 141 S. Ct. at 1881 (emphasis added).

As noted, 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 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 remotely meet this burden.

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) (emphasis added). 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*, 141 S. Ct. at 1881. (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006)); *Catholic Healthcare Int'l,* at *28 ("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.") (internal quotations omitted, cleaned up).

Thus, the question in this case "is not whether the [Township] has a compelling interest in enforcing its [Zoning Ordinance] *generally*, but whether it has

such an interest in denying" Plaintiffs' proposed use of the CHI Property. *Fulton*, 141 S. Ct. at 1881; *see also Holt v. Hobbs*, 574 U. S. 352, 362-363 (2015) (RLUIPA requires courts to "scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants") (internal quotation marks omitted).

The Township's stated reasons for denying Plaintiffs' proposed development are set forth above in the Statement of Material Facts (*see supra* ¶¶ 50-52). When reviewing these reasons, it is important to bear in mind the concern recently expressed by the Ninth Circuit when "permitting regulations allow the [government] unbridled discretion to rely only on an arbitrary guideline—whether '[t]he proposed use would not adversely affect surrounding property'—to deny a special use permit application," as in this case. *See Spirit of Aloha Temp. v. Cty. of Maui*, 49 F.4th 1180, 1192 (9th Cir. 2022). As noted by the Ninth Circuit, "This use of 'adversely affect' is as general, flimsy, and ephemeral as 'health or welfare' or 'aesthetic quality.'" *Id.* As the court further noted, "A guideline allowing such a limitless range of subjective factors is untenable and allows unbridled discretion. An adverse effect could just as easily be causing a sinkhole or creating unsafe road conditions as it could be cutting off public access to fishing *or engaging in religious activities that neighbors dislike*." *Id*. (emphasis added).

The Township's claim that this modest, low impact development is contrary to the arbitrary, broadly construed, general, and utterly subjective interests of its

Zoning Ordinance is belied for multiple reasons (any one of which undermines any claim that the Township's interests meet the very high "compelling interest" standard). First, the Zoning Ordinance 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, Three Fires, and Panhandle Eastern 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 (there are no CE exceptions) before requiring any special permits. Seventh, Plaintiffs' proposed development maintains the rural nature of the property and is thus entirely compatible with the Township's asserted interests for property zoned CE. Eighth, there are adjacent properties with single-family dwellings that do not

meet the minimum 2- or 5-acre lot sizes set forth in the Zoning Ordinance. Ninth, under the Zoning Ordinance, a 40-acre property zoned CE (*e.g.*, the CHI Property) could be subdivided into either *eight* 5-acre lots or *twenty* 2-acre lots for single family dwellings, and each of these dwellings could simultaneously host a Family Fun Day or a party to watch the Ohio State/Michigan football game with over 200 people attending without any special land use permits required, causing far greater traffic and other impacts than the CHI Project ever will. And finally, the fact that the Township permitted the Panhandle Eastern development on property that is just 1/3 of a mile from the CHI Property undermines any claim that the Township's interests for denying the CHI Project are "compelling." *Church of Lukumi Babalu Aye*, 508 U.S. at 547 (stating that an interest is not of the "highest order" when the government "leaves appreciable damage to that supposedly vital interest unprohibited"). (*See* O'Reilly Decl. ¶¶ 4, 5, and below images of Panhandle Eastern, at Ex. 2).

The other government interest asserted by the Township is traffic. Defendants cannot satisfy the compelling interest standard here for numerous reasons. First, the undisputed facts demonstrate that traffic is not an issue for Plaintiffs' modest development. Second, Chilson Road has been shown to handle far more traffic than Plaintiffs' development will ever generate. Third, Defendants *permit* other uses for this land (such as a public park with 200 parking spaces) that will generate far more traffic than Plaintiffs' proposed use. Fourth, 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). Fifth, Plaintiffs' engineers applied the standards for determining traffic impact based on the manual for calculating such standards *recommended by the Township*. Sixth, 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. Seventh, the Road Commission did not oppose the proposed development based on traffic concerns. Eighth, other properties zoned in the Agricultural District (which includes property zoned AG and CE), including Fillmore Park, Genoa Park, and the Chaldean church, are permitted and yet produce far more traffic (as evidenced by their size and the parking spaces permitted) than the modest CHI Project with only 39 parking spaces. And finally,

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) (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 condition the times for Mass or other events to deconflict with peak traffic on Chilson Road (assuming facts exist to require such a condition; which they don't). 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. And while the property is already a heavily wooded lot, and it will remain that way per the design of the proposed development, the Township could ask Plaintiffs to add even *more* trees to the lot to make it even *more* rural (an unnecessary condition because the CHI Project is maintaining the rural nature of the property). The Township could permit a dirt/gravel driveway and a dirt/gravel parking lot to make it more rural in nature like Fillmore Park (as noted, parks are a

permitted use in property zone CE). If noise were ever an issue, the Township could enforce its noise ordinance.[5] Indeed, there are *many* less restrictive means available to the Township to accomplish its alleged interests (assuming they were compelling, which they are not). Completely denying Plaintiffs' application is not the least restrictive means of doing so.

One final point: if the Township were to enforce any of these "less restrictive" conditions/measures, it must explain why (*i.e.*, "compelling interest") it is enforcing them against the CHI Property but not against other properties in the Township that create far greater impacts on adjacent properties zoned CE (or AG). The fact remains that the proposed development met all of the objective criteria of the Zoning Ordinance and should have been approved by the Township on May 3, 2021, without the additional restrictions.[6] Botton line: the Township cannot satisfy strict scrutiny.

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[5] (*See* Muise Decl. ¶ 10, Ex. G [Noise Ordinance], at Ex. 4).

[6] An obvious example is the Township's rejection of the use of the green space for overflow parking. Having additional parking would improve traffic flow on Chilson Road, and other properties adjacent to CE zoned properties are allowed to have dirt/gravel parking (*e.g.*, Three Fires). As noted, the Township has other laws in place, such as a noise ordinance, an assembly ordinance, a traffic code, *etc*., that apply to all properties in the Township, and these ordinances would certainly apply to the CHI Property should any of the activities occurring on the property exceed the Township-wide standards. (*See* Muise Decl. ¶¶ 10-12, Ex. G [Noise Ordinance], Ex. H [Assembly Ordinance], Ex. I [Traffic Code], at Ex. 4).

CONCLUSION

"RLUIPA prohibits governments from infringing sincerely held religious beliefs and practices except as a last resort." *Mast*, 141 S. Ct. at 2433-34 (Gorsuch, J., concurring). Defendants cannot meet their burden in this case. It's not a close call. The Court should grant this motion.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq. (P62849)
Kate Oliveri, Esq. (P79932)
P.O. Box 131098
Ann Arbor, Michigan 48113
(734) 635-3756
rmuise@americanfreedomlawcenter.org
koliveri@americanfreedomlawcenter.org

David Yerushalmi, Esq. (Ariz. Bar No. 009616; DC Bar No. 978179; Cal. Bar No. 132011; NY Bar No. 4632568)
2020 Pennsylvania Ave NW, Suite 189
Washington, D.C. 20006
(646) 262-0500
dyerushalmi@americanfreedomlawcenter.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2023, 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*
Robert J. Muise, Esq.