UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CATHOLIC HEALTHCARE INTERNATIONAL, INC. and JERE PALAZZOLO, Plaintiffs-Appellants Cross-Appellees, v. GENOA CHARTER TOWNSHIP, and SHARON STONE, in her official capacity as Ordinance Officer for Genoa Charter Township, Defendants-Appellees Cross-Appellants.	Case Nos. 22-2139 & 23-1060

PLAINTIFFS-APPELLANTS / CROSS-APPELLEES' MOTION TO EXPEDITE BRIEFING AND DECISION

Plaintiffs-Appellants / Cross-Appellees Catholic Healthcare International, Inc. ("CHI") and Jere Palazzolo (collectively referred to as "Plaintiffs"), hereby move the Court to expedite briefing and decision in these appeals, which involve alleged violations of Plaintiffs' fundamental rights to religious exercise and expression resulting in ongoing irreparable harm.

On September 19, 2021, Plaintiffs filed an emergency motion for a temporary restraining order (TRO) and for a preliminary injunction. (R-23). This motion was compelled by the fact that Defendant-Appellee / Cross-Appellant Genoa Charter

Township ("Township") filed an enforcement action on September 17, 2021 in state court, seeking an *ex parte* TRO to prohibit Plaintiffs from displaying religious symbols (altar, Stations of the Cross, and mural wall with the image of Our Lady of Grace) and from engaging in "organized gatherings"—religious worship—on their rural, 40-acre property in the Township.[1] (*See* R-23, Pls.' Mot. for TRO and Prelim. Inj. at 1-4, PageID. 1122-25).

The District Court held a hearing on Plaintiffs' motion on September 21, 2021. (Minute Entry, 9/21/21). The court denied the TRO that same day (R-28), and on September 29, 2021, the court denied the request for a preliminary injunction on *Younger* abstention and ripeness grounds. (R-30). The following day, Plaintiffs filed a Notice of Interlocutory Appeal (R-31), appealing the denial of the request for a preliminary injunction.

This Court heard the case, and on December 20, 2021, it issued its mandate, remanding for the District Court to reconsider "whether this case involves a civil-enforcement action that is 'akin to a criminal prosecution' and thus eligible for *Younger* abstention," *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, No. 21-2987, 2021 U.S. App. LEXIS 33937, at *3 (6th Cir. Nov. 12, 2021), and it "expand[ed] the scope of [its] remand to include reconsideration of the district

[1] This federal action was filed on June 2, 2021, well prior to the commencement of any state court action. (R-1, Compl.).

court's ripeness analysis," *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, No. 21-2987, 2021 U.S. App. LEXIS 36609, at *1 (6th Cir. Dec. 10, 2021).

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

On April 25, 2022, the state court stayed all proceedings pending final resolution of this federal case. (R-51-3). Consequently, as the District Court correctly concluded, *Younger* abstention does not apply in this case. (R-70, Order at 7-8 [citing, *inter alia*, *Jones & Jones Leasing Co., LLC v. Zepsa Indus.*, No. 19-12746, 2020 U.S. Dist. LEXIS 177260, at *6 (E.D. Mich. Sep. 28, 2020) (citing *Walnut Properties, Inc. v. Whittier*, 861 F.2d 1102, 1107 (9th Cir. 1988))], PageID.3506-07).

On May 5, 2022, the District Court ordered "the parties to submit supplemental briefs by May 26, 2022 on the applicability of *Rooker-Feldman* [23] to Plaintiffs' Emergency MOTION for Temporary Restraining Order/Preliminary Injunction." (Text Order, May 5, 2022). Those briefs were filed. And as the District Court also correctly concluded in its Order, "the *Rooker-Feldman* doctrine does not apply." (R-70, Order at 8 n.3, PageID.3509).

In its recent Order denying Plaintiffs' motion for a preliminary injunction to enjoin the Township's ban on Plaintiffs' religious displays, the District Court

concluded, yet again, that the challenge was not ripe (despite additional factual developments).[2] (R-70, Order at 8-9, PageID.3509-10). The District Court "adopt[ed] the ripeness analysis and holding found at section III.C of" its "recent opinion on defendants' motion to dismiss." (*Id.*). In that opinion, the District Court concluded that Plaintiffs' challenge was not ripe because they "never sought approval from the Township to simply install or erect the desired religious symbols"; therefore, "the Township never reached a final decision on how the Zoning Ordinance applies to the installation or erection of the religiously symbolic structures CHI seeks to place on the Property." (R-69, Order on Mot. to Dismiss at 19, PageID.3485). The District Court is wrong factually and legally. This challenge is plainly ripe as Plaintiffs *twice* submitted special land use applications (burdensome and costly submissions), which, per the Township, is the necessary process to obtain the requisite permits. And *twice* the Township denied the requests.

This burdensome and costly *permitting scheme* (*i.e.*, the application of the Zoning Ordinance to restrict Plaintiffs' use of the property for religious exercise) being imposed upon Plaintiffs is causing irreparable harm. Plaintiffs' challenge to that scheme is plainly ripe. In fact, in its response to Plaintiffs' motion for an

[2] The District Court granted Plaintiffs' request for an injunction with regard to the Township's ban on "organized gatherings." (R-70, Order at 9-10, PageID.3510-11). The Township has appealed this ruling, which is the basis for the cross-appeal in case no. 23-1060.

injunction pending appeal in the District Court, the Township (perhaps unwittingly) acknowledges that Plaintiffs' claims are ripe:

> CHI will not suffer irreparable harm in the absence of an injunction because its request to construct the altar, mural wall, and stations of the cross *is prohibited by the Zoning Ordinance* and the state court injunction.[3] *Special land use approval is required* for CHI's proposed structures . . . . *CHI must obtain special land use approval before its structures can be erected*, because it intends to use the property as a church, temple, or similar place of worship.

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

On December 23, 2022 (three days after the District Court's adverse ruling at issue here), Plaintiffs filed a motion for an injunction pending appeal in the lower court (R-73) pursuant to Rule 8 of the Federal Rules of Appellate Procedure. *See* Fed. R. App. P. 8 (a)(1) (stating that "[a] party must ordinarily move first in the district court for" an injunction pending appeal). On January 14, 2023, Plaintiffs

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[3] The state court injunction is simply the way in which the Township is enforcing its Zoning Ordinance to prevent Plaintiffs from using the CHI Property for religious exercise. The District Court has already (correctly) ruled that the state court proceedings pose no barrier to ruling in this case (*i.e.*, *Younger* abstention does not apply). (R-70, Order on Prelim. Inj. at 7-8, n.3, PageID.3508-09).

[4] The Township's understanding as to why the District Court found the claims unripe further confirms Plaintiffs' ripeness argument. Per the Township: "This Court has dismissed Plaintiffs' claims based upon its structures as unripe *because CHI knew the permit requirements*, and *admittedly failed to apply for special land use approval before erecting its structures*." (R-74, Twp.'s Resp. at 5 [emphasis added], PageID. 3579). As noted, Plaintiffs have now twice applied "for special land use approval" and have now twice been denied.

filed a motion to expedite the ruling on Plaintiffs' motion for an injunction pending appeal. (R-80). As of this filing, the District Court has yet to rule on Plaintiffs' motion. Indeed, the District Court took a *year* to the day to rule on the original motion for a preliminary injunction following this Court's remand on December 20, 2021, and this lengthy delay was despite the fact that Plaintiffs filed *two* motions to expedite that ruling. (R-48 [filed Apr. 7, 2022] and R-66 [filed Nov. 1, 2022]). These delays have only exacerbated the irreparable harm. Consequently, Plaintiffs cannot wait any longer for the District Court to take action on the pending motion for an injunction pending appeal, thus necessitating the filing of this motion to expedite.

Plaintiffs' religious displays at issue (altar, Stations of the Cross, and mural wall with the image of Our Lady of Grace) and their use of the CHI property to erect such displays for religious worship are fully protected by the First Amendment and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, *et seq*. ("RLUIPA").[5] *See Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (concluding that "[r]espondents' religious display in Capitol Square was private expression . . . fully protected under the Free Speech Clause"); *Satawa*

[5] At the end of the day, this is not a hard case. RLUIPA means what it says. *See Mast v. Fillmore Cnty.*, 141 S. Ct. 2430, 2431 (2021) (Gorsuch, J., concurring) (noting with disapproval the fact that the "courts below misapprehended RLUIPA's demands").

v. Macomb Cty. Rd. Comm'n, 689 F.3d 506, 529 (6th Cir. 2012) (observing that "[t]he crèche . . . is private religious expression, 'fully protected under the Free Speech Clause'") (quoting *Pinette*, 515 U.S. at 760); 42 U.S.C. § 2000cc-5(7) (defining "religious exercise" to include "any exercise of religion," including "[t]he use . . . of real property for the purpose of religious exercise").

The Township's restriction on Plaintiffs' right to religious exercise and expression is causing irreparable harm as a matter of 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)); *Bonnell v. Lorenzo,* 241 F.3d 800, 809 (6th Cir. 2001) ("[W]hen reviewing a motion for preliminary injunction, if it is found that a constitutional right is being *threatened* or *impaired*, a finding of irreparable injury is *mandated*.") (emphasis added); *Heid v. Mohr*, No. 2:18-CV-311, 2019 U.S. Dist. LEXIS 33895, at *33 (S.D. Ohio Mar. 4, 2019) ("Although RLUIPA imposes standards different from those under the First Amendment, RLUIPA provides statutory protection for First Amendment values. Therefore, the likelihood of success on the merits is also key in the RLUIPA context. . . . Supreme Court precedent is clear that 'even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.'"); *Roman*

Catholic Archdiocese of Kan. City in Kan. v. City of Mission Woods, 385 F. Supp. 3d 1171, 1175-76 (D. Kan. 2019) (concluding that "a RLUIPA violation—whether based on the statute's Substantial Burden, Equal Terms, or Nondiscrimination provisions—infringes on the free exercise of religion" and thus establishes irreparable harm); *see also Doster v. Kendall*, 54 F.4th 398, 428 (6th Cir. 2022) (affirming the granting of a preliminary injunction and enjoining the military vaccine mandate, finding irreparable harm based on a violation of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *et seq*.); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (concluding that "although the plaintiff's free exercise claim is statutory rather than constitutional, the denial of the plaintiff's right to the free exercise of his religious beliefs" is "irreparable harm").

Indeed, the public interest favors issuing the injunction and thus granting this motion to expedite. *See G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights."); *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1490 (6th Cir. 1995) (stating that "the public as a whole has a significant interest in ensuring equal protection of the laws and protection of First Amendment liberties").

WHEREFORE, Plaintiffs request that the Court grant this motion and expedite the briefing and decision in these appeals involving the fundamental rights to religious exercise and expression.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 27(d), the foregoing is proportionally spaced, has a typeface of 14 points Times New Roman, and contains 1,879 words, excluding those accompanying documents identified in Fed. R. App. P. 27(a)(2)(B).

AMERICAN FREEDOM LAW CENTER

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

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that all of the participants in this case are registered CM/ECF users.

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