

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Re: Case No. 26-0103, *In re: Catholic Healthcare International, Inc., et al*
Originating Case No. 4:21-cv-11303

Dear Counsel,

The Petition for Permission to Appeal, filed pursuant to Fed. R. App. P. 5, has been docketed as case number **26-0103**.

The Clerk's office will send you additional information as soon as the Court has finished its customary screening and issued a ruling on the petition. Appearance forms must be filed within 7 days. A party may file a response within 10 days of service of the petition, unless other instructions are made. Fed. R. App. P. 5(b)(2).

Sincerely yours,

s/Kelly Stephens, Clerk
Appeal Case Manager: Gretchen
Direct Dial No. 513-564-7018

cc: Mr. David Daniel Burress
Mr. T. Joseph Seward

Enclosure

OFFICIAL COURT OF APPEALS CAPTION FOR 26-0103

In re: CATHOLIC HEALTHCARE INTERNATIONAL, INC., et al.

CATHOLIC HEALTHCARE INTERNATIONAL, INC.; JERE PALAZZOLO

Petitioners

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No.

**United States Court of Appeals
for the
Sixth Circuit**

**CATHOLIC HEALTHCARE INTERNATIONAL, INC.;
JERE PALAZZOLO,**

PLAINTIFFS - PETITIONERS,

v.

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

DEFENDANTS - RESPONDENTS.

ON PETITION FOR PERMISSION TO APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
HONORABLE SHALINA D. KUMAR
Civil Case No. 5:21-cv-11303

**PETITION FOR PERMISSION TO APPEAL ORDER
CERTIFIED UNDER 28 U.S.C. § 1292(b)**

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**DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTERESTS**

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

Plaintiff-Petitioner Catholic Healthcare International, Inc. is a nonprofit corporation. It does not have a parent corporation and no publicly held company owns 10% of its stock. Additionally, there are no publicly owned corporations, not a party to the petition, that have a financial interest in the outcome.

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Plaintiffs-Petitioners Catholic Healthcare International, Inc. (“CHI”) and Jere Palazzolo (collectively referred to as “Petitioners”) request that the Court grant this petition for immediate appellate review of the district court’s order denying their motion for partial summary judgment as to liability, as it involves a controlling question of law as to what constitutes a substantial burden on religious exercise under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* (“RLUIPA”); a substantial ground for difference of opinion regarding the question of law exists; and an immediate appeal will materially advance the ultimate termination of the litigation. The district court certified its order for interlocutory appeal under 28 U.S.C. § 1292(b).¹ (R.165). As noted in the certification order, “If plaintiffs can prevail on their substantial burden RLUIPA claim as a matter of law without any further factual development, then all that will remain before this Court will be the determination of the relief available to plaintiffs.” (R.165, Order Denying Pls.’ Mot. for Recons. & Granting Alternative Mot. for Certification for Interlocutory Appeal at 11-12, PageID.5860-61).

This case, which was filed in June 2021, is not new to the Court. Most recently, in 2023, the Court unanimously reversed the district court and granted Petitioners’ request for a preliminary injunction under RLUIPA. *Catholic*

¹ A copy of the district court’s order certifying its prior order for interlocutory appeal (R.165) is attached as Exhibit 1. A copy of the certified order—the order denying Petitioners’ motion for partial summary judgment (R.133)—is attached as Exhibit 2.

Healthcare Int’l, Inc. v. Genoa Charter Twp., 82 F.4th 442 (6th Cir. 2023). This ruling prompted Petitioners to file their fully-supported motion for partial summary judgment as to liability under RLUIPA on November 30, 2023. (R.97). The district court denied the motion without prejudice on September 24, 2025. (R.133). Petitioners promptly filed a motion for reconsideration, or in the alternative, for certification on September 30, 2025. (R.134). On June 29, 2026, the district court granted the request to certify its order denying Petitioners’ motion for partial summary judgment.² (R.165).

This appeal presents an exceptionally important question concerning the proper interpretation of RLUIPA’s substantial-burden provision—a question that affects religious land-use disputes throughout the Sixth Circuit.

Congress enacted RLUIPA in response to widespread evidence that local governments were employing individualized zoning processes to prevent churches

² As this short review of the procedural history demonstrates, there has been substantial delay in getting this straightforward RLUIPA case resolved, thus further warranting immediate review by this Court. (*See also* R.165, Order Denying Pls.’ Mot. for Recons. & Granting Alternative Mot. for Certification for Interlocutory Appeal at 13 [“Based on these factors, combined with this case’s age and the fact that it has twice been remanded to this Court after appeals to the Sixth Circuit, the Court will certify the Order for an immediate interlocutory appeal.”], PageID.5862). As noted, Petitioners’ motion for partial summary judgment was filed in November 2023, yet the district court did not rule until September 2025 (nearly two years later). Petitioners then promptly filed their motion for reconsideration, or in the alternative, for certification six days later, yet the district court did not grant the request for certification until June 2026 (nearly nine months later).

and other religious institutions from using their own property for religious exercise. To remedy that recurring problem, Congress imposed strict limitations upon governmental land-use decisions that substantially burden religious exercise and directed that RLUIPA “shall be construed in favor of a broad protection of religious exercise.” 42 U.S.C. § 2000cc-3(g). The district court’s certified order departs from that statutory framework. This Court should grant the petition.

JURISDICTIONAL STATEMENT

This petition is filed pursuant to 28 U.S.C. § 1292(b) and Rule 5 of the Federal Rules of Appellate Procedure. On September 24, 2025, the district court entered an order denying Petitioners’ motion for partial summary judgment on their RLUIPA claim and granting Respondents’ motion for discovery. (R.133). On September 30, 2025, Petitioners moved for reconsideration or, alternatively, for certification for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). (R.134). On June 29, 2026, the district court denied reconsideration but granted Petitioners’ alternative request and expressly certified its September 24, 2025 order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b), concluding that the statutory requirements for certification had been satisfied. (R.165). This petition is timely under Rule 5(a)(2) of the Federal Rules of Appellate Procedure. This Court has jurisdiction to permit this appeal pursuant to 28 U.S.C. § 1292(b).

QUESTIONS PRESENTED

I. Should the Court permit the appeal so that it can consider the merits of the district court's order denying Petitioners' motion for partial summary judgment on the issue of liability under RLUIPA as resolution of the substantial burden question will ultimately resolve this lawsuit?

II. Did the district court err, as a matter of law, by concluding that Petitioners' motion for partial summary judgment under RLUIPA could not be decided until Respondents conducted discovery regarding hypothetical "feasible alternative locations" from which Petitioners might conduct their religious exercise, notwithstanding the undisputed evidence that Respondents' denial of Petitioners' special land use application to construct a place of religious worship, an allowed use, on Petitioners' own property itself caused a substantial burden on religious exercise?

III. Does the district court's interpretation of RLUIPA conflict with its text and purpose, Supreme Court precedent, and this Court's decisions interpreting RLUIPA by effectively requiring religious landowners to negate the existence of alternative properties before a denial of an allowed religious use can constitute a substantial burden?

IV. Is immediate review warranted because resolution of these controlling legal questions will materially advance the ultimate termination of this litigation?

FACTS NECESSARY TO UNDERSTAND THE QUESTIONS PRESENTED

In October 2020, CHI acquired approximately 40 acres of wooded property from the Catholic Diocese of Lansing, Michigan. The property is located at 3280 Chilson Road in Respondent Genoa Charter Township (“Township”). The property’s rural, wooded, and contemplative character made it uniquely suited for CHI’s intended use as a prayer campus and for Eucharistic adoration in the modest adoration chapel planned for the site. (R.97, Pls.’ Mot. for Partial Summ. J. at 1, PageID.4120).

CHI’s property is zoned “Country Estate.” The Township’s zoning ordinance expressly authorizes “[c]hurches, temples and similar places of worship” within that district through the Township’s special land use approval process. Accordingly, Petitioners sought approval to engage in a use that the Township itself had already determined was appropriate within the zoning district, subject only to individualized review. (*Id.* at 2, PageID.4121).

Petitioners proposed the construction of a modest prayer campus consisting principally of a 95-seat St. Pio adoration chapel, prayer trails, Stations of the Cross, devotional displays, religious statues, and related improvements occupying only a small portion of the 40-acre parcel. The parking would consist of a mere 39 spaces. The chapel would contain a tabernacle for the Eucharist, making possible Eucharistic adoration—a central aspect of Petitioners’ religious mission. Petitioners

intentionally designed the project as a low-impact, low-intensity religious use that preserved the overwhelming majority of the property's natural and rural character. (*Id.* at 5-6, PageID.4124-25).

In December 2020, Petitioners submitted their special land use application, environmental impact assessment, and site plan through their professional engineering firm. The proposal sought approval to construct the prayer campus and adoration chapel on approximately five acres of the 40-acre parcel while preserving the property's wooded and rural character. (*Id.* at 4-5, PageID.4123-24).

The Township did not reject the application as inconsistent with the zoning ordinance. Instead, the application entered the Township's ordinary review process. (*Id.* at 8, PageID.4127).

Township planners and consultants reviewed the submission and requested revisions. Petitioners revised the plans. (*Id.* at 6, PageID.4125).

The Planning Commission tabled the application and requested additional information. Petitioners supplied it. (*Id.* at 6-7, PageID.4125-26).

The Township requested engineering changes, including modifications to stormwater management, parking design, and other site features. Petitioners complied. (*Id.* at 7, PageID.4126).

The Township requested an operational plan explaining the intended religious activities on the property. Petitioners prepared and submitted one. (*Id.* at 7, PageID.4126).

The Planning Commission suggested additional modifications during the public hearing. Petitioners incorporated those changes as well. (*Id.* at 8, PageID.4127).

By the time the application reached the Township Board, Petitioners had revised their proposal repeatedly, expended substantial resources,³ and incorporated every requested modification. Petitioners presented un rebutted evidence that the final submission satisfied every objective requirement of the Township's zoning ordinance and required no variance whatsoever. The Township's own planning consultants likewise acknowledged that the application complied with the ordinance and therefore properly proceeded through the special land use process. (*Id.* at 8-9, PageID.4127-28).

The Township Planning Commission ultimately voted 4-3 to recommend approval of the application. During the public hearing, the Chairman of the Planning Commission expressly observed that Petitioners "met all of the requests made by the

³ The cost incurred by Petitioners to submit the original special land use application and associated plans 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). The revisions cost Petitioners an additional \$5,400 (engineering fees). (*Id.* at 6, 9, PageID.4125, 4128).

Planning Commission” and “have gone above and beyond and addressed all of the concerns of the Planning Commission and the consultants.” (*Id.* at 8, PageID.4127).

On May 3, 2021, the Township Board nevertheless denied the application. (*Id.* at 10, PageID.4129).

The Board did not identify any objective zoning requirement Petitioners had failed to satisfy. Rather, it relied upon generalized and discretionary concerns regarding neighborhood character, anticipated traffic, lighting, activity levels, and similar subjective considerations despite the Planning Commission’s recommendation of approval. (*Id.* at 10-15, PageID.4129-34).

Petitioners filed this lawsuit on June 2, 2021. (R.1).

REASONS FOR GRANTING THE PETITION

RLUIPA was enacted by Congress for the very purpose of preventing the governmental action at issue in this case. That is, “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); *see also* 42 U.S.C. § 2000cc-3 (“This Act shall be construed in favor of a broad protection of religious exercise”). “RLUIPA prohibits governments from *infringing* sincerely held religious beliefs and practices

except as a last resort.” Mast v. Fillmore Cnty., 141 S. Ct. 2430, 2433 (2021) (Gorsuch, J., concurring) (emphasis added).

This case is ripe for summary judgment on the issue of liability under RLUIPA because the undisputed *material* facts, which are largely derived from indisputable public records, demonstrate the following.⁴ **First**, that Petitioners’ use of the property is “religious exercise” under RLUIPA.⁵ **Second**, that the Township’s complete denial of the proposed development caused a “substantial burden” on Petitioners’ religious exercise as a matter of law⁶ under RLUIPA for at least *four* independent reasons, *any one of which is sufficient to meet this element*: (a) Plaintiffs have no ready or reasonable alternative locations for their proposed development, particularly in light of the unique, rural nature of the CHI property; and contrary to the Township’s and the district court’s position, Plaintiffs are not required to bear additional costs, delays, and uncertainty to pursue some hypothetical alternative that might exist somewhere in the universe; (b) Petitioners had a reasonable expectation

⁴ This case has been ongoing for over five years. (R.1). It has gone to this Court twice, and both times the Court reversed lower court rulings that favored the Township. And there have been multiple evidentiary hearings and presentations of evidence in the district court and in state court related to Petitioners’ use of the property at issue. The record is more than sufficient for this Court to rule on the substantial burden question.

⁵ Plaintiffs’ proposed use of the CHI Property as a prayer campus with an adoration chapel is “religious exercise” protected by RLUIPA. 42 U.S.C. § 2000cc-5(7).

⁶ 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).

that their proposed development would be approved as the use is expressly allowed (and “not prohibited”) under the Zoning Ordinance; (c) the Township’s complete denial caused substantial delay, uncertainty, and expense for Petitioners (all of which continue today), and, as noted, this alone is sufficient to find a “substantial burden” under RLUIPA; and (d) Petitioners are unable to carry out a core function of their religious activities without the development (this is particularly true without the adoration chapel, which will house the tabernacle for the Eucharist). **Third**, the Township’s stated reasons for its complete denial of the proposed development are not compelling. And **fourth**, even if the Township’s interests were compelling, there are less restrictive means available to accomplish those interests. None of this is refuted (or refutable) with admissible, material, and relevant evidence.

I. This Appeal Meets the Standard for Granting Interlocutory Review.

A district court may certify an interlocutory appeal pursuant to 28 U.S.C. § 1292(b) if (1) the order involves a controlling question of law; (2) a substantial ground for difference of opinion regarding the ruling exists; and (3) an immediate appeal would materially advance the litigation. *In re City of Memphis*, 293 F.3d 345, 350 (6th Cir. 2002).⁷ Under this standard, “[a] legal issue is controlling if it

⁷ 28 U.S.C. § 1292(b) provides as follows:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the

could materially affect the outcome of the case.” *Id.* at 351 (citing *In re Baker & Getty Fin. Servs., Inc. v. Nat’l Union Fire Ins. Co.*, 954 F.2d 1169, 1172 n.8 (6th Cir. 1992)). A substantial ground for difference of opinion exists when: (1) the question is difficult, novel and either a question on which there is little precedent or one whose correct resolution is not substantially guided by previous decisions; (2) the question is difficult and of first impression; (3) a difference of opinion exists within the controlling circuit; or (4) the circuits are split on the question. *Eagan v. CSX Transp., Inc.*, 294 F. Supp. 2d 911, 916 (E.D. Mich. 2003). “A substantial ground for difference of opinion exists where reasonable jurists might disagree on an issue’s resolution, not merely where they have already disagreed.” *In re Trump*, 874 F.3d 948, 952 (6th Cir. 2017) (citation omitted). Finally, an immediate appeal may materially advance the ultimate termination of the litigation if it could render further proceedings in the district court unnecessary. *See id.*

“[W]here, as here, the district court certifies its order and a timely petition follows, [the Court] must decide whether to exercise [its] ‘discretion,’ as a *prudential* matter, to ‘permit an appeal to be taken from such order.’ 28 U.S.C. § 1292(b). Since ‘the district court has made an order, the three factors that justify interlocutory appeal

order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

should be treated as *guiding* criteria rather than *jurisdictional* requisites.” *In re Trump*, 874 F.3d at 951 (citation omitted).

As noted by this Court:

[P]etitions do not arise under 28 U.S.C. § 1292(b) *unless* the district court first certifies its order for an interlocutory appeal. In most cases, certified orders already stand out as “exceptional” by virtue of another Article III judge’s opinion. District courts do not make a habit of certifying their own orders for interlocutory appeal. There is little risk that this order—read in its context—will open the floodgates.

In re Trump, 874 F.3d at 952-53. The same is true here.

In enacting 28 U.S.C. § 1292(b), Congress empowered district courts to certify interlocutory orders for immediate appellate review if the order involves a controlling question of law; a substantial ground for difference of opinion regarding the question of law exists; and an immediate appeal might materially advance the ultimate termination of the litigation. The district court’s order denying Petitioners’ motion for partial summary judgment on the issue of liability resolved a question of law that meets the standard for interlocutory appeal. And that question involves the standard for establishing a substantial burden on religious exercise under RLUIPA. This is a question of law. *Livingston Christian Sch.*, 858 F.3d at 1001.

In its ruling, the district court accepted Respondents’ argument that so long as other property exists (and not just in Michigan, but globally) for Petitioners to develop their prayer campus with the proposed adoration chapel, regardless of the

delay or cost that doing so would impose on Petitioners, then Petitioners are unable to establish a substantial burden on their religious exercise under RLUIPA. That view of the law is incorrect, and it has the effect of undermining the very purpose of RLUIPA. The district court's ruling is at odds with the Supreme Court's interpretation of RLUIPA, *see, e.g., Mast*, 141 S. Ct. 2430, 2433 (Gorsuch, J., concurring), and it is at odds with other case law, specifically including a ruling from this Court in this very case. *See infra*. Accordingly, there are substantial grounds for difference of opinion with the district court's ruling. Furthermore, the legal issue resolved by the district court on what constitutes a substantial burden is a threshold, controlling *question of law*, and immediate appellate review of this issue will materially advance the ultimate termination of this litigation that has been ongoing for over five years.⁸ Congress enacted 28 U.S.C. § 1292(b) specifically to empower district courts to avoid waste and inefficiency.

II. The Certified Order Presents a Controlling Question of Law, the Resolution of Which Will Materially Advance this Litigation.

Whether the government has imposed a “substantial burden” on religious

⁸ Petitioners have been unlawfully prevented from developing their property for religious purposes *for over five years*. This harm is irreparable. *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)); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (“Courts have persuasively found that irreparable harm accompanies a substantial burden on an individual’s rights to the free exercise of religion under RFRA.”).

exercise is a “question of law.” *Livingston Christian Sch.*, 858 F.3d at 1001. Based on the undisputed facts set forth in Petitioners’ fully-supported motion for partial summary judgment, it was error for the district court to deny Petitioners’ motion on the grounds that it could not find in their favor on the substantial burden element of RLUIPA without further discovery. Fed. R. Civ. P. 56(a) (“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.”) (emphasis added).⁹

But even more to the point for purposes of this petition, case law does not require Petitioners to prove a negative. That is, Petitioners are not required to show that there are no other properties available in Michigan or anywhere else in the world for the proposed religious development regardless of cost, burdens, and delays associated with finding such property, purchasing it, developing plans for it, and obtaining approvals for the plans before a substantial burden can be found. The case law says the opposite of what the district court is requiring of Petitioners here in light of its order. *See Catholic Healthcare Int’l, Inc.*, 82 F.4th 442 (discussed *infra*); *Livingston Christian Schls.*, 858 F.3d at 1004, 1006 (stating that a “substantial burden” is found when “land-use regulations . . . prohibit a plaintiff from engaging

⁹ Just because the district court may need to evaluate facts when resolving a matter does not mean that it is not ripe for summary judgment or that discovery will necessarily change the *material* facts.

in desired religious behaviors,” noting that 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”) (emphasis added); *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 557-58 (4th Cir. 2013) (“When a religious organization buys property *reasonably* expecting to build a church, governmental action impeding the building of that church may impose a substantial burden. . . . *This is so even though other suitable properties might be available, because the ‘delay, uncertainty, and expense’ of selling the current property and finding a new one are themselves burdensome.*”) (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.”); *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).

The district court completely ignored the ruling from this Court in this case. In that ruling, this Court appropriately addressed the very unique nature of the wooded property and its suitability for use as a prayer campus and the fact that other

churches in the surrounding area may permit Petitioners to hold its *special events* while Petitioners are waiting for a conclusion to this litigation does not undermine the substantial burden claim. Indeed, the district court's order begs the following question: is this requirement of demonstrating no feasible alternative going to run into perpetuity, particularly in light of how long this case has been pending? Case law says otherwise.

This Court already outlined the law on substantial burden, particularly as applied in this case, when it reversed the district court's order denying Petitioners' motion for a preliminary injunction. As the unanimous court stated in the majority opinion, "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." *Catholic Healthcare Int'l, Inc.*, 82 F.4th at 449 (internal citation and punctuation omitted). These facts are not disputed, and they apply to the completion of the prayer campus with the adoration chapel.

The district court was wrong to conclude that Petitioners have not established a substantial burden in this case as a matter of law. The district court was wrong to place the burden on Petitioners to prove that there is no place *in the world* where the

prayer campus and adoration chapel could be constructed (regardless of cost, burdens, and delays associated with finding such property, purchasing it, developing plans for it, and obtaining approvals for the plans) before a substantial burden can be found.

In its order on Petitioners' motion for reconsideration, or in the alternative, for certification, the district court contradicts the express language of its order denying Petitioners' motion for partial summary judgment, claiming that the court was not imposing such a burden on Petitioners. However, in its decision denying that motion—the order that is certified for appeal—the court stated, “Plaintiffs offer no evidence that they considered other locations in the Township or the surrounding environs.” (R.133, Order at 9, PageID.5394). And in a footnote to this assertion, the district court stated, “The record before the Court does not include evidence for why plaintiffs, who are part of a worldwide Eucharistic adoration program, would be confined to the Township, Livingston County, or even Michigan, for the development of its prayer campus.” (*Id.* at 9, n.1). Why would Petitioners need to consider any property other than the 40-acre, wooded property that was donated to them by the Catholic Diocese of Lansing and that is perfectly suited for the proposed prayer campus, particularly when churches and other places of religious worship are an allowed use on this property? Moreover, Petitioners fully expected that their

special land use application would be approved by the Township Board,¹⁰ and this is further evidenced by the fact that the Planning Commission and the Township's consultants recommended approval of the application.

Finally, the district court's most recent argument that "plaintiffs' motion for partial summary judgment and motion for reconsideration essentially ignore the third factor—whether plaintiffs imposed the burden on themselves" (R.165, Order on Mot. for Recons. & Certification at 9, PageID.5858) demonstrates a misapprehension of the facts and the law. To begin, the "scope of application" of RLUIPA provides, in relevant part:

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or 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 describes the special land use application process employed by the Township to deny Petitioners' religious use of the property. Utilizing the special land use application process can hardly be considered a burden that Petitioners imposed on themselves. The district court is wrong on this point.

¹⁰ As set forth in Petitioners' motion for partial summary judgment, "'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. . . . Plaintiffs had a reasonable expectation that their proposed development would be approved as such developments are an allowed use for property zoned CE. . . . [And] CHI's proposed development did not require a variance." (R.97, Pls' Mot. for Partial Summ. J. at 2, 9 [citing record evidence], PageID.4121, 4128).

And once a religious organization acquires property with a reasonable expectation of obtaining approval for its religious use, as in this case, the denial of the approval inflicts a substantial burden. *See, e.g., Petra Presbyterian Church*, 489 F.3d at 851 (“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.”).

Places of religious worship are an allowed use on Petitioners’ property. The property was donated to Petitioners by the Catholic Diocese of Lansing. It is common for churches and other similar places of religious worship to be an allowed use subject to a special land use application (as RLUIPA expressly contemplates). It is the abuse of such processes whereby government officials make individualized assessments of whether to permit the religious use that is precisely what RLUIPA was designed to prevent. In other words, this is a quintessential RLUIPA case. The district court has it wrong, and this Court should grant review, clarify the substantial burden element of RLUIPA, and reverse the district court.

III. This Appeal Presents an Ideal Vehicle to Clarify RLUIPA.

Petitioners maintain that RLUIPA asks whether the government’s implementation of its land-use regulations substantially burdens religious exercise. The district court’s reasoning instead transforms one factual consideration discussed in this Court’s prior decisions into what effectively becomes an additional legal prerequisite applicable to every RLUIPA land-use claim. That interpretation cannot

be reconciled with RLUIPA or existing case law. Nothing in RLUIPA requires a religious organization to establish that no other suitable property exists. Nothing conditions the statutory protection of RLUIPA upon proving that the denied property constitutes the only possible location where religious exercise could occur. Congress could have imposed such a limitation. It did not. Rather, Congress directed that RLUIPA “shall be construed in favor of a broad protection of religious exercise.” 42 U.S.C. § 2000cc-3(g). The district court’s interpretation accomplishes precisely the opposite.

RLUIPA’s focus remains fixed upon governmental conduct. The district court’s interpretation shifts that focus away from the challenged governmental action and toward the religious organization’s real-estate holdings, financial resources, acquisition opportunities, and internal planning decisions. Rather than focusing on the Township’s denial of Petitioners’ application to construct a concededly authorized place of religious worship on Petitioners’ own property and the burden the Township’s denial placed on Petitioners’ religious exercise, the district court shifted the inquiry to Petitioners’ conduct. Under the court’s reasoning, the dispositive issue becomes whether Petitioners could have purchased different property, relocated their ministry, redesigned their religious exercise, or otherwise accomplished their religious mission somewhere else. That is not the inquiry Congress prescribed. Nothing in RLUIPA requires a religious organization to prove

that it exhausted every conceivable alternative before challenging a governmental land-use decision. Congress did not condition statutory protection upon a showing that the denied property was the only place where religious exercise could occur. Nor did Congress require religious institutions to demonstrate that they lacked the financial ability to purchase other property, that no comparable parcel existed, or that relocating their ministry would have been impossible.

A municipality defending its zoning decision will almost always be able to hypothesize that another parcel of land exists, that another municipality might approve a similar project, or that the religious organization could modify its plans to fit another location. If such speculation is sufficient to postpone or defeat judicial review, then the focus of every RLUIPA case shifts from evaluating governmental conduct to scrutinizing the religious organization's strategic, financial, and ministerial decisions. Congress enacted RLUIPA to curb governmental interference with religious exercise—not to invite courts to second-guess how religious institutions organize their ministries. Stated simply, RLUIPA regulates governmental decision-making—not religious contingency planning.

CONCLUSION

Petitioners hereby request that the Court grant this petition and permit immediate appellate review of the district court's order denying Petitioners' motion for partial summary judgment.

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CERTIFICATE OF COMPLIANCE

I certify that this petition complies with the type-volume limitation of Fed. R. App. P. 5(c)(1) because it contains 5,018 words, excluding the parts of the petition excluded by Fed. R. App. 32(f). I further certify that this petition complies with the typeface and typestyle requirements of Fed. R. App. 32 because the petition is proportionally spaced and has a typeface of 14-point Times New Roman.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by electronic mail pursuant to 6 Cir. R. 25(b)(1) and the Court's "Instructions for Submitting Petition for Review." All of the participants in this case are registered CM/ECF users. I certify that service will be accomplished pursuant to Fed. R. App. P. 25 via electronic mail and Federal Express upon the following:

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EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC HEALTHCARE
INTERCATIONAL, INC. et al.,
Plaintiffs,

v.

CHARTER TOWNSHIP OF
GENOA et al.,
Defendants.

Case No. 21-11303
Honorable Shalina D. Kumar
Magistrate Judge

**ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION
AND GRANTING THEIR ALTERNATIVE MOTION FOR
CERTIFICATION FOR INTERLOCUTORY APPEAL (ECF NO. 134)**

I. Introduction

Plaintiffs Catholic Healthcare International, Inc., ("CHI") and Jere Palazzolo ("Palazzolo") (together "plaintiffs") move for reconsideration of this Court's order denying plaintiffs' motion for partial summary judgment and granting defendants Charter Township of Genoa's (the "Township") and Sharon Stone's ("Stone") (together "defendants") motion for discovery (the "Order"). ECF No. 133. Specifically, plaintiffs move the Court to reconsider and reverse its denial of plaintiffs' "motion for partial summary

judgment on the issue of liability under RLUIPA as the Court made a mistake of law on the question of whether the Township's denial of Plaintiffs' request to develop the CHI Property for a prayer campus and adoration chapel placed a substantial burden on Plaintiffs' religious exercise."¹ ECF No. 134, PageID.5401. In the alternative, plaintiffs move the Court under 28 U.S.C. § 1292(b) to certify the Order for interlocutory appeal.² For the reasons set forth below, the Court denies the motion for reconsideration but grants the motion to certify its order denying plaintiffs' motion for partial summary judgment for interlocutory appeal (ECF No. 133).

II. Background

CHI and Palazzolo, CHI's president and director, sued the Township and Stone, its ordinance officer, alleging that the Township's denial of CHI's special land use application for the construction of a prayer campus including a 6,000 square foot chapel on the Property violated the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc

¹ The "Property" refers to CHI's parcel of undeveloped property located at 3280 Chilson Road in the Township.

² Plaintiffs acknowledge that the portion of this motion seeking clarification of the discovery portion of the Order is now moot. See ECF No. 163.

et seq., their First Amendment rights to religious exercise, religious expression, and expressive association, as well as their Fourteenth Amendment right to equal protection. ECF No. 55.

Although discovery had not yet begun, plaintiffs moved for partial summary judgment on their RLUIPA substantial burden claim. ECF No. 97. They argued that they are entitled to partial summary judgment on this claim because there is no genuine dispute of material fact that the Township's denial of CHI's special land use application for the construction of St. Pio's Chapel and prayer campus on the Property imposes a substantial burden on plaintiffs' religious exercise. *Id.*

The Court denied plaintiffs' motion finding the issue was too fact intensive to resolve as a matter of law "given the limited record before the [c]ourt." ECF No. 133, PageID.5393 (citing *Adam Community Ctr. v. City of Troy*, 381 F. Supp. 3d 887, 902 (E.D. Mich. 2019)). Furthermore, the Court held that denying defendants' request for discovery would be an abuse of discretion, and that the Court's "fact-based analysis of the substantial burden issue requires a well-developed record, which, in turn, requires discovery." *Id.* at PageID.5395.

Plaintiffs filed the instant motion for reconsideration, pursuant to Eastern District of Michigan Local Rule 7.1(h)(2) and Federal Rule of Civil Procedure 54(b), arguing that the Court made a mistake in denying their motion for partial summary judgment based on the facts and law before it and that the correction of this mistake would require the Court to grant their motion. Specifically, plaintiffs contend, as they did in their motion, that whether the government has imposed a substantial burden on religious exercise is a question of law, and that based on the undisputed facts they set forth, they are entitled to judgment on the substantial burden element of RLUIPA. See *generally* ECF No. 134.

III. Discussion

A. Motion for Reconsideration

“District courts have authority both under common law and Rule 54(b) to reconsider interlocutory orders and to reopen any part of a case before entry of final judgment.” *Rodriguez v. Tenn. Laborers Health & Welfare Fund*, 89 F. App’x 949, 959 (6th Cir. 2004) (citing *Mallory v. Eyrich*, 922 F.2d 1273, 1282 (6th Cir. 1991)). Thus, district courts may “afford such relief from interlocutory orders as justice requires.” *Id.* (quoting *Citibank N.A. v. FDIC*, 857 F. Supp. 976, 981 (D.D.C. 1994)) (internal brackets

omitted). Courts traditionally will find justification for reconsidering interlocutory orders when there is: (1) an intervening change of controlling law; (2) new evidence available; or (3) a need to correct clear error or prevent manifest injustice. *Louisville/Jefferson Cty. Metro Gov't v. Hotels.com, L.P.*, 590 F.3d 381, 389 (6th Cir. 2009) (citing *Rodriguez*, 89 F. App'x at 959).

Eastern District of Michigan Local Rule 7.1(h)(2) articulates that motions for reconsideration of non-final orders are disfavored and may be brought only upon the following grounds:

- (A) The court made a mistake, correcting the mistake changes the outcome of the prior decision, and the mistake was based on the record and law before the court at the time of its prior decision;
- (B) An intervening change in controlling law warrants a different outcome; or
- (C) New facts warrant a different outcome and the new facts could not have been discovered with reasonable diligence before the prior decision.

E.D. Mich. LR 7.1(h)(2).

A motion for reconsideration is not a proper means “to re-hash old arguments.” *Smith ex rel. Smith v. Mt. Pleasant Public Schools*, 298 F. Supp. 2d 636, 637 (E.D. Mich. 2003). “Fundamentally, ‘a motion for

reconsideration is not a second bite at the apple[.]” *Masjid Malcolm Shabazz House of Worship, Inc. v. City of Inkster*, 2022 WL 866402, at *7 (E.D. Mich. March 23, 2022) (quoting *Collins v. Nat’l Gen. Ins. Co.*, 834 F. Supp. 2d 632, 641 (E.D. Mich. 2011)).

The Court finds that plaintiffs’ motion for reconsideration largely reiterates the substantial burden arguments that they advanced in their original motion for partial summary judgment. But even if the Court overlooked that redundancy, it finds no error to correct.

First, and contrary to plaintiffs’ assertion otherwise, the Court did *not* find that a genuine issue of material fact existed. Rather, it ruled that it could not determine if a genuine issue of material fact existed on the record before it. In other words, plaintiffs had not met their initial burden of establishing the absence of a genuine issue of material fact. Indeed, when the moving party also bears the burden of persuasion at trial, as plaintiffs do here, it “must lay out the elements of the claim, cite the facts which it believes satisfies these elements, and demonstrate why the *record* is so one-sided as to rule out the prospect of a finding in favor of the non-movant on the claim.” *United States v. Feldman*, 439 F. Supp. 3d 946, 951 (E.D. Mich. 2020) (internal quotation omitted) (emphasis added); *see also Surles*

v. Andison, 678 F.3d 452, 455–56 (6th Cir. 2012). Plaintiffs cannot establish a one-sided record when there is no relevant record.

As the Court noted in its Opinion, “[a]nalyzing these factors is a fact intensive inquiry that requires a developed record replete with evidence to support each party’s position.” *Adam Community Ctr. v. City of Troy*, 381 F. Supp. 3d 887, 902 (E.D. Mich. 2019). In denying the defendant city’s motion to dismiss, the *Adam Community Center* court held that the determination of whether the Township’s actions substantially burdened plaintiffs’ religious exercise was too fact intensive to resolve as a matter of law, and “too premature to address on a motion for summary judgment, given the limited record before the [c]ourt.” *Id.*

Yet plaintiffs ask the Court to do just that in their motion for reconsideration, resisting the absence of a record from discovery by emphasizing the age of this case and the documents relating to the proposed chapel and the Property that were generated and used during the special use application process and the related litigations, including this case. But this argument ignores the particular factors the Court must consider when analyzing a substantial burden claim, namely whether plaintiffs have a feasible alternative location from which to carry on its

mission, whether they have suffered substantial delay, uncertainty, and expense due to the defendants' denial of plaintiffs' special use application, and whether plaintiffs imposed the burden on themselves. See *Living Christian School v. Genoa Charter Twp.*, 858 F.3d 996, 1004 (6th Cir. 2017).

Feasible alternative locations, and plaintiffs' consideration of them, were not at issue in prior proceedings so documents (and other evidence) related to this issue are not part of the current record. Plaintiffs argue that the Court's denial of their motion imposes a burden on them to prove a negative, that they are not required to show that there are no other properties available in Michigan or elsewhere for the development of their proposed prayer campus. The Order does not address which party carries the burden of proof on the substantial burden factors and likewise does not shift the parties' burdens. Whether the availability of feasible alternate locations is an element of a RLUIPA substantial burden claim, for which plaintiffs carry the burden of proof, or an affirmative defense for which defendants' have the burden, was not material to the Court's decision. The Court's Order merely permits the parties to conduct discovery for evidence

to either support or challenge the elements of or the affirmative defenses to plaintiffs' claim.

Notably, plaintiffs' motion for partial summary judgment and motion for reconsideration essentially ignore the third factor—whether plaintiffs imposed the burden on themselves. Under this factor, “when plaintiff has good reason to know in advance that its proposed usage will be subject to an onerous review process, the burdens of that process are not likely to count as substantial for purposes of [RLUIPA].” *Catholic Healthcare Int’l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 449 (6th Cir. 2023). In an earlier interlocutory appeal in this matter, the Court of Appeals ruled that the Township’s zoning ordinance gave plaintiffs “little reason to expect” that the religious displays plaintiffs wanted to erect on the Property as a prayer trail would be considered a “church or temple” under the zoning ordinance the Township applied. *Id.* That “ordinance defines a ‘church or temple’ as any ‘structure wherein persons regularly assemble for religious activity.’” *Id.* (quoting Genoa Twp. Zoning Ordinance § 25.02). Although plaintiffs’ intended religious displays—the Stations of the Cross, an alter and a mural—fit within the ordinance’s definition of “structure,” “a church is a structure ‘*wherein*’ people gather to worship. And no person—much less

‘persons’—could gather to worship inside any of these structures.” *Id.* (emphasis added). On this basis, the Court of Appeals found that plaintiffs could likely prove the Township substantially burdened their religious exercise when it required them to obtain a special land-use permit to erect the religious displays along a prayer trail. *Id.* at 450.

But the appellate court’s ruling cuts against such a finding as it relates to the adoration chapel at issue now. “The Township’s demand that the plaintiffs obtain a special land-use permit for the religious displays on their trail,” with all the burdens involved (as described to plaintiffs by Township personnel), “and all the uncertainty inherent in discretionary land-use decisions,” would have come “as a shock to these plaintiffs . . . because nothing in the Township’s ordinance would have prepared them for it.” *Id.*

The direct application of the ordinance to the proposed chapel, however, is obvious. As the Court of Appeals points out, discretionary land-use decisions are inherently uncertain. See *id.* Thus, although plaintiffs would not expect their religious displays and prayer trail to be treated like a church under the ordinance, they could hardly be surprised that the proposed chapel would be so treated. Accordingly, what plaintiffs knew and

when are critical details necessary for a legal determination as to whether plaintiffs imposed upon themselves the burdens for approval for the construction of a chapel on the Property. Defendants thus must be permitted to conduct discovery before summary judgment would be appropriate.

B. Certification under 28 U.S.C. § 1292(b)

“The district court may certify an order for interlocutory appeal if it is ‘of the opinion’ that three conditions exist: ‘[1] the order involves a controlling question of law to which there is [2] substantial ground for difference of opinion and . . . [3] an immediate appeal may materially advance the termination of the litigation.’ ” *In re Trump*, 874 F.3d 948, 951 (6th Cir. 2017) (emphasis and alterations in original; quoting 28 U.S.C. § 1292(b)). “The decision to certify an appeal pursuant to section 1292(b) is left to the sound discretion of the district court.” *Sigma Fin. Corp. v. Am. Int’l Specialty Lines Ins. Co.*, 200 F. Supp. 2d 710, 723 (E.D. Mich. 2002).

The Court’s Order denying plaintiffs’ motion for summary judgment clearly involves a controlling question of law and an immediate appeal may materially advance termination of this litigation. If plaintiffs can prevail on their substantial burden RLUIPA claim as a matter of law without any

further factual development, then all that will remain before this Court will be the determination of the relief available to plaintiffs.

Whether the controlling legal question at issue involves a substantial ground for a difference of opinion is the critical issue for certifying the Order for immediate appeal. “A substantial ground for difference of opinion exists where reasonable jurists might disagree on an issue’s resolution, not merely where they have already disagreed.” *In re Trump*, 874 F.3d at 952.

District courts in this circuit have interpreted a substantial ground for difference of opinion regarding the correctness of the decision to mean when (1) the question is difficult, novel and either a question on which there is little precedent or one whose correct resolution is not substantially guided by previous decisions; (2) the question is difficult and of first impression; (3) a difference of opinion exists within the controlling circuit; or (4) the circuits are split on the question.

Massarello v. Power Home Remodeling Grp. LLC, 809 F. Supp. 3d 711, 714 (E.D. Mich. 2025) (quoting *In re Miedzianowski*, 735 F.3d 383, 384 (6th Cir. 2013)) (internal quotation marks omitted).

The Court believes, on balance, these factors weigh in favor of certifying the Order for immediate appeal. Although the issue does not appear to either be difficult or novel, there is little precedent as to whether a plaintiff may prevail on a substantial burden RLUIPA claim as a matter of law without a record developed through discovery. Although the *Adams*

court compellingly reasoned that “[d]iscovery and actual evidence is needed to address several of the factors relevant to the substantial burden inquiry, such as whether the alleged burdens Plaintiff sustained were actually self-imposed hardships as opposed to being caused by the . . . denial of Plaintiff’s . . . application,” it did so under Rule 12(b)(6), not Rule 56. Moreover, it did so without reference to Sixth Circuit or any published authority.

Additionally, a difference of opinion exists within the Sixth Circuit, and, in fact, within the panel which decided an earlier appeal on this matter. *Compare Catholic Healthcare*, 82 F.4th at 451 (limiting ruling to display of religious symbols on prayer trails) *with id.* at 453 (Clay, J. concurring) (suggesting that the Township’s imposed substantial burden on plaintiffs’ prayer campus development includes the adoration chapel).

Based on these factors, combined with this case’s age and the fact that it has twice been remanded to this Court after appeals to the Sixth Circuit, the Court will certify the Order for an immediate interlocutory appeal.

IT IS SO ORDERED.

s/ Shalina D. Kumar
SHALINA D. KUMAR

Dated: June 29, 2026

United States District Judge

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC HEALTHCARE
INTERNATIONAL, INC. et al.,

Plaintiffs,

v.

GENOA CHARTER TOWNSHIP
et al.,

Defendants.

Case No. 21-cv-11303
Honorable Shalina D. Kumar
Magistrate Judge David R. Grand

**ORDER DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
JUDGMENT (ECF NO. 97) AND GRANTING DEFENDANTS' MOTION
FOR DISCOVERY (ECF NO. 129)**

I. Introduction

Plaintiffs Catholic Healthcare Inc. ("CHI"), a non-profit corporation recognized as a private association of the faithful by the Catholic Diocese of Lansing, Michigan, and Jere Palazzolo, CHI's president and director, sued Genoa Township (the "Township") and its ordinance officer, Sharon Stone, alleging, among other things, that the Township's denial of CHI's special land use application for the construction of a prayer campus, including a 95-seat, 6,090 square foot chapel on CHI's 40 acre property within the Township violated the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §2000cc *et seq.* ("RLUIPA"). ECF No. 55.

Although discovery has not yet begun, plaintiffs move for partial summary judgment on their RLUIPA substantial burden claim. ECF No. 97. The motion is fully briefed, and the Court heard oral argument. ECF Nos. 102, 106, 120. For the following reasons, the Court denies plaintiffs' motion.

II. Factual and Procedural Background

In 2020, CHI acquired title to a roughly 40-acre parcel of undeveloped property located at 3280 Chilson Road in Genoa Township, Michigan (the "Property"). ECF No. 97-2. The Property is zoned as "Country Estate," which is defined as "a district where the principal use is residential, with small scale farming and raising 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." ECF No. 97, PageID.4130 (emphasis removed).

CHI submitted a special land use application in December 2020. *Id.* at PageID.4123. The application sought approval for the construction of a prayer campus with nature trails and outdoor displays including the Stations of the Cross, a mural wall, an outdoor altar, religious statues, a commercial driveway, and a 39-space parking lot along with a 6,090 square

foot adoration chapel (“St. Pio’s Chapel”). CHI’s application contemplated a low impact, low intensity development; a place for “adoration, prayer, and reflection.” *Id.* at PageID.4124. CHI maintains that the 95-seat St. Pio’s Chapel is crucial to the development because, without it, there can be no tabernacle in which to store the Eucharist on the Property, and worship during inclement weather would be curtailed. *Id.* at PageID.4125.

The Township’s Planning Commission first addressed CHI’s special land use application at its February 2021 meeting. The Planning Commission tabled CHI’s application based in part upon concerns about increased traffic and noise, and the unclear scope of the proposed use. ECF No. 55-3.

CHI’s resubmitted special land use application, including an operational plan for St. Pio’s Chapel requested by the Township’s Planning Commission, was considered again at its meeting in March 2021. *Id.* at PageID.4127. Despite the opposition expressed by residents attending the meeting and by those who signed a petition opposing Township approval, the Planning Commission voted, four votes to three, in favor of recommending the Township Board approve CHI’s special land use application. *Id.*

The Township Board considered CHI's special use application, environmental impact assessment, and site plan at its regular public meeting on May 3, 2021. *Id.* at PageID.4129. The Township Board denied the application and the associated impact assessment and site plan, finding that the proposed use of the Property for a 6,090 square foot church with a parking lot, site lighting, building lighting, and outdoor accessory structures to be used for daily gatherings and outdoor special events with an unknown number of visitors was inconsistent with the standards of the Zoning Ordinances. *Id.* at PageID.4129-31. Specifically, the Township Board determined that "[t]he 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." *Id.* at PageID.4130.

Plaintiffs argue that they are entitled to partial summary judgment on their RLUIPA claim because there is no genuine dispute of material fact that the Township's denial of CHI's special land use application for the construction of St. Pio's Chapel and prayer campus on the Property imposed a substantial burden on plaintiffs' religious exercise. ECF No. 97. They further argue that the Township cannot demonstrate that the imposition of this burden on plaintiffs' religious exercise is in furtherance of

a compelling government interest and the least restrictive means of furthering that compelling governmental interest. ECF No. 97.

III. Analysis

A. Standard of Review

When a party files a motion for summary judgment, it must be granted “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). “A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record . . .; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1).

Under the Federal Rules of Civil Procedure, if the non-movant “shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:” (1) deny or defer consideration of the motion; (2) allow time to secure affidavits or declarations or to take discovery; or (3) “issue any other appropriate order.” Fed. R. Civ. P. 56(d). “Rule 56(d) permits, but does not require, a district court to defer consideration of a defendant’s motion for summary judgment

until after the parties have conducted discovery. *First Floor Living LLC v. City of Cleveland*, 83 F.4th 445, 453 (6th Cir. 2023) (citing *F.T.C. v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 623 (6th Cir. 2014)). When the parties have had no opportunity for discovery, denying a request for discovery under Rule 56(d) and ruling on a summary judgment motion is likely to be an abuse of discretion. *CenTra, Inc. v. Estrin*, 538 F.3d 402, 420 (6th Cir. 2008) (collecting cases).

District courts may, however, consider a motion for summary judgment absent any discovery if the non-movant's declaration requesting discovery is not supported by any details or with specificity and relies on "mere general and conclusory statements." *First Floor Living*, 83 F.4th at 453 (internal quotations omitted). The court may also rule on the motion for summary judgment if the requested discovery would not change "legal and factual deficiencies" identified by the motion such that further discovery would not change the outcome. *Id.* (internal quotations omitted).

B. RLUIPA Substantial Burden Claim

RLUIPA's substantial burden provision provides in pertinent part:

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, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

- (A) is in furtherance of a compelling governmental interest; and
- (B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1). “Under RLUIPA, a burden must have some degree of severity to be considered ‘substantial.’ The substantiality requirement is necessary ‘in order to avoid an interpretation of RLUIPA that would exempt religious institutions from all land-use regulations.’” *Catholic Healthcare Intl., Inc. v. Genoa Charter Township*, 82 F.4th 442, 452 (6th Cir. 2023) (quoting *Livingston Christian School v. Genoa Charter Twp.*, 858 F.3d 996, 1003 (6th Cir. 2017)); *see also Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App’x 729, 736 (6th Cir. 2007) (“If the term ‘substantial burden’ is not to be read out of the statute, RLUIPA cannot stand for the proposition that a construction plan is immune from a town’s zoning ordinance simply because the institution undertaking the construction pursues a religious mission.”).

RLUIPA does not define “substantial burden,” however, the Sixth Circuit has enumerated three primary factors that a district court should consider when analyzing substantial burden claims. *Livingston Christian*, 858 F.3d at 1004; *see also Living Water*, 258 F. App’x at 734. These factors are: (1) whether the religious institution has a feasible alternative location from which it can carry on its mission; (2) whether the religious

institution will suffer substantial delay, uncertainty, and expense due to the imposition of the regulation; and (3) whether the plaintiff has imposed the burden on itself. *Livingston Christian*, 858 F.3d at 1004.

“Analyzing these factors is a fact intensive inquiry that requires a developed record replete with evidence to support each party’s position.” *Adam Community Ctr. v. City of Troy*, 381 F. Supp. 3d 887, 902 (E.D. Mich. 2019). In denying the defendant city’s motion to dismiss, the *Adam Community Center* court held that the determination of whether the Township’s actions substantially burdened plaintiffs’ religious exercise was too fact intensive to resolve as a matter of law, and “too premature to address on a motion for summary judgment, given the limited record before the [c]ourt.” *Id.*

Nonetheless, plaintiffs ask this Court to address a motion for summary judgment on this same issue before the parties have conducted any discovery. Plaintiffs argue that they do not have “any ready or reasonable alternative locations for their proposed” prayer campus and chapel because they do not own any alternative locations from which they can carry out their mission. ECF No. 97, PageID.4146; ECF No. 106, PageID.4885. But the feasible alternative location factor does not limit a plaintiff to locations it already owns. To the contrary, property acquisition

opportunities suitable for carrying out the religious institution's mission, which do not require the exceptions or special permission under municipal zoning ordinances necessary for the institution's desired location, may be considered feasible alternative locations. *See United States v. City of Troy*, 594 F. Supp. 3d 591, 608–09 (E.D. Mich. 2022); *see also Livingston Christian*, 858 F.3d at 1004 (collecting cases).

Plaintiffs offer no evidence that they considered other locations in the Township or the surrounding environs.¹ The Township, however, offers evidence of alternative locations it argues would be suitable for the prayer campus with a 6,000-foot adoration chapel. See ECF No. 102. Although plaintiffs argue that the examples of feasible alternatives cited by the Township are either unsuitable or unavailable, the Court cannot resolve this fact-driven inquiry without a more fully developed record. See ECF No. 106, PageID.4894; *see City of Troy*, 594 F. Supp. 3d. at 608-09 (court deemed defendant city's identified alternatives as not feasible by considering specific facts, such as location-owner's refusal to sell to plaintiff, the size, layout, and location of alternative locations relative to

¹ The record before the Court does not include evidence for why plaintiffs, who are part of a worldwide Eucharistic adoration program, would be confined to the Township, Livingston County, or even Michigan, for the development of its prayer campus.

plaintiff's needs, as well as zoning and permitting restrictions applicable to each alternative location).

Additionally, the Court believes that disregarding the Township's declaration requesting discovery to decide plaintiffs' motion now would be an abuse of discretion. See *CenTra, Inc.*, 538 F.3d at 420. The Township's declaration specifically identifies its planned discovery and the evidentiary purpose that discovery would serve. ECF No. 102-27; see *First Floor Living*, 83 F.4th at 453. Nor is this a scenario in which the requested discovery would not change the outcome. As discussed above, the Court's fact-based analysis of the substantial burden issue requires a well-developed record, which, in turn, requires discovery.

IV. Conclusion

For these reasons, the Court **DENIES WITHOUT PREJUDICE** plaintiffs' motion for summary judgment (ECF No. 97) and **GRANTS** the Township's motion for discovery (ECF No. 129). The Court need not consider plaintiffs' motion to expedite (ECF No. 119), which is mooted by this decision, and therefore **TERMINATES** it. The Court did not consider the Township's proposed second sur-reply and thus **TERMINATES** the motion for leave to consider that sur-reply (ECF No. 126) as moot.

IT IS SO ORDERED.

s/Shalina D. Kumar
Shalina D. Kumar
United States District Judge

Dated: September 24, 2025