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' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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ISSUE PRESENTED

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

CONTROLLING AND MOST APPROPRIATE AUTHORITY

Bible Believers v. Wayne Cnty., 805 F.3d 228 (6th Cir. 2015)

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

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

COUNTERSTATEMENT OF MATERIAL FACTS[1]

Plaintiff CHI is a nonprofit corporation that is recognized as a private association of the faithful by the Catholic Diocese of Lansing, Michigan. (Jere Palazzolo ["JP"] Decl. ¶¶ 2, 5, 6, ECF No. 97-2, PageID.4164-65). In October 2020, the Diocese *donated* to CHI the property located at 3280 Chilson Road ("CHI Property") in Genoa Charter Township ("Township"). (*Id*. ¶ 8, Ex. A [Warranty Deed], PageID.4165-66, 4185-87).[2] The CHI Property is an approximately 40-acre wooded lot. (*Id*. ¶ 8, PageID.4165-66). The natural, rural, and wooded nature of the CHI Property makes it uniquely suitable for a prayer campus and adoration chapel as the property reflects the natural beauty, peace, and serenity of God's creation. (*Id*. ¶¶ 15, 33, PageID.4167, 4171; Ann O'Reilly ["AO"] Decl. ¶ 15, ECF No. 97-3, PageID.4369). Other than the CHI Property, CHI does not own any real property in the Township *or anywhere else in the world*. (JP Suppl. Decl. ¶ 4, ECF No. 173-2, PageID.6892). And there is no property that is as suitable as the CHI Property for the prayer campus and adoration chapel. (AO Decl. ¶ 15, PageID.4369; AO Decl. ¶¶ 4, 7, ECF No. 113-2, PageID.5060-62). None of the properties suggested by Defendants are "feasible alternatives" as a matter of fact and law. *See infra*. Plaintiffs

[1] The operative guidelines do not require numbered paragraphs/counter-numbered paragraphs. (https://www.mied.uscourts.gov/judges/district/pdf/?judgeid=56).
[2] The deed was corrected to extend the conveyance to 10 years. (JP Suppl. Decl. ¶ 2, Ex. 1 [Corrective Warranty Deed], ECF No. 173-2, PageID.6891, 6898-6901).

engage in religious exercise through the use of the CHI Property for religious assembly, prayer, and worship. (JP Decl. ¶¶ 1, 4, 7, 9, 16-28, 32, ECF No. 97-2, PageID.4164-71).

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

CE and AG are "[t]he two Agricultural Districts" established by the Zoning Ordinance ("ZO"). (Robert Muise ["RM"] Decl. ¶ 8, Ex. E [Art. 3 of the ZO], ECF No. 97-5, PageID.4388, 4417-4432). Similar uses are allowed on property zoned CE and AG in that "Churches, temples and similar places of worship" and "elementary schools" are an allowed use after special land use approval and "publicly owned parks . . . and recreational areas" and "[p]rivate non-commercial parks, nature preserves and recreational areas owned and maintained by home-owners association" are *permitted* uses in these zones. (*Id.*). The Township even permits the keeping of "swine" on property zoned CE and AG. (*Id.*).

In December 2020, CHI, with the assistance of Boss Engineering, submitted

to the Township for approval a special land use application for the construction of a prayer campus and adoration chapel on the CHI Property ("Original Submission").[3] (JP Decl. ¶ 39, Ex. B [Original Submission], ECF No. 97-2, PageID.4172, 4189-214; ST Decl. ¶ 4, ECF No. 97-4, PageID.4376). The proposed development ("CHI Project") involved construction on approximately 5 of the 40 acres, and this construction is planned to occur mainly in the open spaces of the property to avoid removing trees and to maintain the property's natural and rural beauty. (JP Decl. ¶¶ 33, 48 Ex. F [Final Submission], PageID.4171, 4175, 4258-78).

The CHI Project includes a 95-seat adoration chapel (St. Pio Chapel) and prayer campus with prayer trails and religious displays, an outdoor altar, religious statues, a parking lot with 39 spaces, and a commercial driveway. (JP Decl. ¶¶ 17-28, 39, Ex. B [Original Submission], Ex. F [Final submission], ECF No. 97-2, PageID.4167-69, 4172, 4189-214, 4258-78; ST Decl. ¶ 4, ECF No. 97-4, PageID.4376). This is a low impact and low intensity development as it will be a place of adoration, prayer, and reflection, maintaining the natural features of the property. (JP Decl. ¶ 30, PageID.4170; ST Decl. ¶ 6, PageID.4376). The St. Pio Chapel will contain a tabernacle, which is used to house the Eucharist outside of Mass. A tabernacle provides a safe location where the Eucharist can be kept for

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

adoration by the faithful and for later use and to prevent its profanation. (JP Decl. ¶¶ 22, 23, ECF No. 97-2, PageID.4168-69). The Catholic Church describes the Eucharist as the source and summit of the Christian life. (*Id*. ¶ 24, PageID.4169). Without the chapel, there could be no tabernacle on the CHI Property. And without the tabernacle, the Eucharist could not be kept on the property. The chapel, therefore, is the central and critical element of the CHI Project; without it, Plaintiffs are unable to carry out a core function of their religious activities. (*Id*. ¶¶ 25-27, PageID.4169). The chapel will also allow people to engage in religious worship during inclement weather, including during Michigan winters. (*Id*. ¶ 28, PageID.4169).

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

The Original Submission did not have curbs and gutters for the chapel parking lot because Boss Engineering determined that curbs and gutters were not necessary for proper management of stormwater, and adding them increased the cost of the proposal and created more of an environmental impact. Nonetheless, the Township

demanded that CHI include curbs and gutters as part of the revisions, and CHI complied. (JP Decl. ¶ 43, ECF No. 97-2, PageID.4173; ST Decl. ¶ 5, ECF No. 97-4, PageID.4376). CHI made the requested changes and resubmitted the application ("Resubmission") for approval by the Planning Commission. (JP Decl. ¶ 44, Ex. D [Resubmission], ECF No. 97-2, PageID.4173-74, 4222-43; *see also* ST Decl. ¶¶ 4, 7, ECF No. 97-4, PageID.4376, 4377). Also included with the Resubmission was an "operations manual . . . to illustrate more clearly the vision for uses and activity on the site." (JP Decl. ¶ 45, Ex. D [Resubmission], ECF No. 97-2, PageID.4174, 4222-43; ST Decl. ¶ 4, ECF No. 97-4, PageID.4376). If the CHI Project did not substantially comply with the ZO, the Planning Commission would have never considered it in the first instance. (*Id*. ¶ 18, PageID.4381). On March 8, 2021, the Planning Commission approved the Resubmission. (JP Decl. ¶ 46, Ex. E [PC Mins.], PageID.4174, 4245-56). During this meeting, additional changes were suggested by the Commission as part of its motion to approve CHI's application. (*Id*. ¶ 46, Ex. E [PC Mins.], PageID.4174, 4245-56). During the hearing, the Chairman of the Planning Commission noted that CHI "***met all of the requests made by the Planning Commission***," and further noted that Plaintiffs "***have gone above and beyond and addressed all of the concerns of the Planning Commission and the consultants***." (*Id*. ¶ 47, Ex. E [PC Mins.], PageID.4174, 4245-56). CHI made the changes suggested by the Planning Commission and finalized its application ("Final

Submission") for submission to the Township Board for final approval. (JP Decl. ¶ 48, Ex. F [Final Submission], ECF No. 97-2, PageID.4175, 4258--78; ST Decl. ¶ 4, ECF No. 97-4, PageID.4376).[4] The Final Submission met all of the objective criteria for approval under the ZO. (*Id*. ¶ 9, PageID.4377).

One of the changes required by the Planning Commission was the removal of the "curb drop for parking access to the greenspace north of the chapel." This change ultimately restricted the number of vehicles that could park on the CHI Property for the few (typically two) annual special events planned for the property. The greenspace could accommodate approximately 100 additional vehicles, but this additional parking option was rejected. (JP Decl. ¶ 50, ECF No. 97-2, PageID.4175; ST Decl. ¶ 7, ECF No. 97-4, PageID.4377). Due to the Township's denial of the use of the greenspace for additional parking, the number of vehicles that can park on the CHI Property is limited to 39 (the parking lot size). (JP Decl. ¶ 50, PageID.4175; ST Decl. ¶ 8, PageID.4377). As noted, CHI's proposed development did not require a variance. (JP Decl. ¶ 51, PageID.4175-76). As part of the requested revisions, CHI also agreed to reduce the proposed use of the St. Pio Chapel bell even though the use did not violate any Township ordinance. (*Id*. ¶ 51, PageID.4175-76).

On May 3, 2021, the Township Board denied CHI's Final Submission by a 5

[4] The revisions cost $5,400. (JP Decl. ¶ 49, Ex. G [Invoices/Payments], PageID.4175, 4280-82).

to 2 vote. (JP Decl. ¶¶ 52, 53, ECF No. 97-2, PageID.4176). The denial of the Final Submission was not based on any measurable, objective criteria. Rather, the Township's denial was based upon amorphous, subjective considerations. (*Id*. ¶ 54, PageID.4176). The Township's stated reasons for rejecting the Final Submission are recorded in the official minutes. (*Id*. ¶¶ 55-57, Ex. H [Twp. Bd. Mins.], PageID.4176-79, 4284-94; ST Decl. ¶¶ 10-12, ECF No. 97-4, PageID.4377-80).

With regard to the traffic issue, Boss Engineering used the manual recommended by the Township for calculating traffic. (JP Decl. ¶ 58, Ex. F [Final Submission], PageID.4179, 4258-78; ST Decl. ¶ 13, PageID.4380). The scenario used by Boss Engineering was the *worst-case scenario* for this type of development. (*Id*. ¶¶ 14-15, PageID.4380-81). The 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.[5] In fact, the Road Commission approved the commercial driveway proposed by CHI. (*Id*. ¶ 17, Ex. A [Road Comm'n Letter], PageID.4381, 4384; *see also* JP Decl. ¶ 59, PageID.4179-80). The Planning Commission did not require any additional traffic impact evaluation or study. (*Id*. ¶ 60, PageID.4180; ST Decl. ¶¶ 18-19, PageID.4381-82). As noted in the

[5] The traffic counts section on the Road Commission's website was used to analyze Chilson Road's annual average daily traffic (AADT). Chilson Road previously accommodated an AADT of 4,505, but now has an AADT of 2,500 at the relevant section. (ST Decl. ¶¶ 13, 16, ECF No. 97-4, PageID.4380, 4381).

Planning Commission meeting minutes, the CHI Project's "use does not warrant a traffic study." And this was confirmed by the Township's engineering consultant. (JP Decl. ¶ 46, Ex. E [PC Mins.], PageID.4174, 4245-56; ST Decl. ¶¶ 19-20, PageID.4381-82). Further, to accommodate *special* events (typically two a year) that might require parking beyond the 39 parking spaces, CHI proposed the following: "Approaching each event, interest levels will be gauged. Should excessive interest in an event warrant, staged/multiple receptions may occur to accommodate these additional people. It would be anticipated that on special event days, people will be shuttled into the site as necessary once parking accommodations on-site are full." (JP Decl. ¶ 61, ECF No. 97-2, PageID.4180).

The Township's ZO *permits* (*i.e.*, no special land use approval required) "[p]ublicly owned parks, parkways, scenic and recreational areas, and other public open spaces" and "[p]rivate non-commercial parks, nature preserves and recreational areas owned and maintained by a home-owners association" on property zoned CE. (RM Decl. ¶ 8, Ex. E [Article 3 of the ZO], ECF No. 97-5, PageID.4388, 4417-4432). Fillmore Park holds events that will have an unknown number of people attending. (AO Decl. ¶ 8, ECF No. 97-3, PageID.4366). The Township operates a park ("Genoa Park") approximately 3 miles east of the CHI Property that is on a parcel of land that is smaller (38 acres) than the CHI Property (40 acres), and it permits events that will have an unknown number of people attending. (*Id*. ¶ 10,

PageID.4367). Genoa Park has at least three playgrounds, a water misting feature, a sled hill, a .66-mile walking path, two regulation sized athletic fields, a swing set, picnic tables, and a pavilion with bathrooms and warming area. The park is supported by more than 200 parking spaces. (*Id*. ¶ 11, PageID.4367). Genoa Park is adjacent to property zoned AG. (*Id*. ¶ 4, PageID.4362-63). *Genoa Park would be a permitted use in property zoned CE*. (RM Decl. ¶ 8, Ex. E [Art. 3 of the ZO], PageID.4388, 4417-4432). In other words, this secular park with 200 parking spaces is a permitted use for the CHI Property, while the Township denied CHI's religious park with 39 parking spaces. (*See id*.).

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

CHI's application was denied on May 3, 2021. No "least restrictive means" were proposed to address the Township's concerns. (JP Decl.¶¶ 52, 53, ECF No. 97-2, PageID.4176). Following this denial, on September 17, 2021, the Township filed

a complaint in state court against CHI, and the Township sought an injunction to remove the religious displays and altar from the CHI Property and for CHI to cease all "organized gatherings" on the property. (RM Decl. ¶¶ 2, 3, Ex. A [TRO], ECF No. 97-5, PageID.4387, 4392-94). The state court granted the requested injunction under state law.[6] (*Id*. ¶¶ 3, 7, Ex. A [TRO], Ex. D [Prelim. Inj.], PageID.4387, 4388, 4392-94, 4415). On October 15, 2021 and pursuant to a stipulation entered into between CHI and the Township, CHI submitted a special land use application for approval of the prayer campus *without* the chapel ("Prayer Campus Submission") in an effort to comply with the injunction and thus permit Plaintiffs to use the property for religious worship. (JP Decl. ¶ 66, Ex. I [Prayer Campus Submission], ECF No. 97-2, PageID.4181, 4296-4323).[7] The Planning Commission rejected the substantially modified (no chapel) submission. (JP Decl. ¶ 70, Ex. M [PC Mins.], ECF No. 97-2, PageID.4182, 4341-50). The ZBA affirmed this decision. (*Id*. ¶ 71, Ex. N [ZBA Mins.], PageID.4182, 4352-59).

On September 11, 2023, the Sixth Circuit granted Plaintiffs' request for a preliminary injunction under RLUIPA, thereby permitting the return of the religious

[6] The state case is stayed pending resolution of this federal case. (RM Decl. ¶ 7, PageID.4388).

[7] The Prayer Campus Submission cost $9,423.80 ($2,875 for the application fee and $6,548.80 in engineering fees). (*Id*. ¶ 67, Ex. J [Invoices/Payments], PageID.4181, 4325-29). Had the Township approved the Final Submission, there would have been no need for this submission. (*Id*. ¶ 68 PageID.4182).

symbols to the CHI Property, and it affirmed this Court's order enjoining the Township's "organized gatherings" restriction. (6th Cir. Op. & J., ECF No. 87). On September 12, 2023, this Court entered the preliminary injunction, thereby mooting the state court injunction. (Prelim. Inj., ECF No. 88).

INTRODUCTION

Defendants' motion is premised upon a false statement of the law, namely, that "[a] feasible alternative location exists [under RLUIPA] where there is other land available for purchase." (Defs.' Br. at 19).[8] Defendants contend that this is the law regardless of whether these alternatives will impose additional costs, delays, or uncertainty for Plaintiffs. This naked "alternative-property" theory has no competent legal *or* factual foundation. Judgment should be entered in Plaintiffs' favor.

STANDARD OF REVIEW

Summary judgment is proper only if the movant shows no genuine dispute of *material* fact and entitlement to judgment as a matter of law. Fed. R. Civ. P. 56(a). The nonmovant's evidence must be believed and all justifiable inferences drawn in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). That rule does not change because both sides have moved for summary judgment. The Sixth Circuit

[8] Defendant Stone's departure has no material impact on this case. Rule 25(d) provides that when a public officer sued in an official capacity resigns or leaves office, the action does not abate and the successor is automatically substituted; no order is required. Fed. R. Civ. P. 25(d).

requires the Court to evaluate each motion "on its own merits," drawing reasonable inferences against the party whose motion is under consideration. *Taft Broad. Co. v. United States*, 929 F.2d 240, 248 (6th Cir. 1991); *see also Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989).

ARGUMENT

I. Plaintiffs Prevail on Their Substantial Burden RLUIPA Claim.

As this Court previously noted, "If plaintiffs can prevail on their substantial burden RLUIPA claim as a matter of law. . . , then all that will remain before this Court will be the determination of the relief available to plaintiffs."[9] (Order, ECF No. 165, PageID.5860-61). And whether the government imposed a "substantial burden" on religious exercise is a "question of law."[10] *Livingston Christian Sch. v. Genoa Charter Twp.*, 858 F.3d 996, 1001 (6th Cir. 2017) ("*Livingston Christian*").

Defendants' naked "alternative-property" theory arises out of a fundamental misapprehension of the governing law. As part of this misapprehension, Defendants conflate CHI's knowledge that a special land use application would be required (common for the construction of churches, and one of the main reasons why

[9] The Court need not reach the constitutional claims because Plaintiffs are entitled to the requested relief under RLUIPA. *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 452 (6th Cir. 2023) (applying constitutional avoidance).
[10] Defendants do not attempt to justify their actions under strict scrutiny, because it is impossible to do so. *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) (describing strict scrutiny as the "most demanding test known to constitutional law").

RLUIPA was created)[11] with advance knowledge that the Township would reject its application, prohibit the religious use, and force CHI—after accepting the donated, 40-acre wooded CHI Property that is uniquely suited to its religious mission—to acquire an entirely different property. This is a preposterous reading of the law.

Defendants' assertion that "[a] feasible alternative location exists where there is other land available for purchase" finds no basis in law under RLUIPA. And this is evident by the fact that the case Defendants cite for their erroneous proposition is *Renton v. Playtime Theatres*, 475 U.S. 41 (1986), which is *not* a RLUIPA case; it is an obscenity case. At issue in *Renton* was whether a city ordinance that prohibits adult motion picture theaters from locating within 1,000 feet of certain properties violates the First Amendment. The Supreme Court held that it did not, concluding that the ordinance was a valid governmental response to the "serious problems created by adult theaters" and therefore satisfied the First Amendment. *Id*. at 54. The First Amendment does not provide broad protection for obscenity. *See, e.g., United*

[11] A special land use application is common for the construction of places of religious worship. It was the abuse of this subjective process by the government that was a driving factor for the creation of RLUIPA. *See* 42 U.S.C. § 2000cc(a)(2)(C) (applying "substantial burden" provision when there are "procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved"); *United States v. City of Troy*, 592 F. Supp. 3d 591, 611 (E.D. Mich. 2022) ("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)."). The Township's legal theory would eviscerate this federal law.

States v. Alvarez, 567 U.S. 709, 717 (2012) (describing "the few historic and traditional categories of expression" that may be restricted under the First Amendment, including "obscenity"). In comparison, RLUIPA is construed *broadly* to *protect* religious exercise. 42 U.S.C. § 2000cc-3 ("This Act shall be construed in favor of a broad protection of religious exercise . . . ."). Defendants' erroneous argument places the right to religious exercise on the same footing as smut.

Livingston Christian also flatly rejects Defendants' proposition. As stated by the Sixth Circuit, a substantial burden occurs when "the religious institution will suffer ***substantial delay, uncertainty, and expense*** due to the imposition of the regulation . . . ." *Livingston Christian*, 858 F.3d at 1004 (cleaned up). In *Livingston Christian*, the Sixth Circuit cited with approval the Second Circuit's decision in *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007), in which the court stated, "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); *see Livingston Christian,* 858 F.3d at 1004. In *Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548, 557-58 (4th Cir. 2013), a case that was also cited favorably throughout *Livingston Christian*, the Fourth Circuit held that "[w]hen 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."). The Sixth Circuit *in this very case* reaffirmed this application of the law: "One factor in determining substantiality, for purposes of [RLUIPA], 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." *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 449 (6th Cir. 2023) ("*CHI*") (cleaned up).[12] Moreover, "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 v. Hobbs*, 574 U.S. 352, 361-62 (2015) (emphasis added). Thus, a *proper* application of the substantial-

[12] While *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981), recognizes that preliminary injunction findings ordinarily do not bind the court at a later proceeding on the merits because preliminary relief is commonly decided on an abbreviated record, it does not erase the Sixth Circuit's legal construction of RLUIPA, convert unrelated parcels into feasible alternatives, or transform knowledge of a permitting requirement into knowledge of future governmental denial. The fuller record here further exposes the defects of Defendants' arguments.

burden inquiry *must* include the "delay, uncertainty, and expense" considerations and whether the alternatives are in fact "ready" alternatives, viewed particularly in light of the adequacy of the religious organization's *current* facilities. A "feasible alternative location" is not simply some random property that the Township can locate on a map (which is all that Defendants offer) regardless of the cost, uncertainty, and delay associated with (1) acquiring this new property, particularly when CHI already owns the perfect property for the CHI Project, and this property was donated; (2) developing and paying for new engineering plans; (3) obtaining necessary government approvals; and (4) the suitability of this alternative for the proposed prayer campus, particularly when compared with the 40-acre, wooded CHI Property. In sum, Defendants' naked "alternative-property" argument is wrong, and accepting it will end RLUIPA as there will always be property for sale somewhere.

Defendants' self-imposition argument, which here involves materially different circumstances compared with a situation where the claimant acquired property *knowing* that the proposed religious use was prohibited or that permission would not be forthcoming, does not alter the result. *See Andon, LLC v. City of Newport News*, 813 F.3d 510, 515-16 (4th Cir. 2016); *Petra Presbyterian Church*, 489 F.3d at 851. CHI did not knowingly acquire property on which religious use was prohibited; it accepted donated property on which religious use was expressly allowed subject to special land use approval. Knowledge that an application must be

filed is not knowledge that it will be (unlawfully) denied, much less advance acceptance of whatever delay, expense, uncertainty, repeated denials, and restrictions on religious exercise the government subsequently imposes. It is important to note here yet again that the religious use is an *allowed* use on this property, *no variance was required*, and the *Planning Commission itself recommended approval*. In short, it was not unreasonable for Plaintiffs to believe that the CHI Project would be approved. The Sixth Circuit already rejected the factual premise underlying Defendants' theory in this very case: although a burden may be self-imposed where a plaintiff has "good reason to know in advance that its proposed usage will be subject to an onerous review process," the Township's ZO gave CHI "little reason to expect the treatment" it actually received, and CHI has "undisputedly" suffered delay, uncertainty, and expense. *CHI*, 82 F.4th at 448-49. Defendants cannot convert knowledge that an application was required into prescience that the Township would (unlawfully) deny the use.

The substantial burden here is the Township's direct interference with, indeed prohibition of, religious exercise on the CHI Property, which undisputedly has resulted in years of delay, uncertainty, and expense.

The facts of *Livingston Christian* further reinforce this conclusion. In that case, the Sixth Circuit found such an alternative because *the school already owned its Pinckney property* (a fact repeated throughout the case), could return there with

little or no expense, and later made that property unavailable by leasing it to someone else (*i.e.*, a self-imposed burden). 858 F.3d at 1009-11. Here, Defendants identify no property CHI already owns (because there is none, and no amount of discovery will change that fact), no donated equivalent, and no substitute simultaneously available, financially feasible, suitable for CHI's prayer-campus mission and purpose, free of yet another discretionary approval process, and free of all of the associated costs, uncertainly, and delay that would come with scrapping the CHI Property and going elsewhere. In short, Plaintiffs have suffered a substantial burden on their religious exercise under RLUIPA, and there is *no* other valid conclusion as a matter of law.

Defendants also materially overread *Livingston Christian* when they assert that a claimant generally must prove categorical exclusion from an entire jurisdiction. (Defs.' Br. at 23). *Livingston Christian* expressly described the inquiry as "functional and factually driven," 858 F.3d at 1011, and applied its considerations to the actual availability and practical feasibility of alternatives. Defendants thus take authorities holding that RLUIPA does not guarantee immunity from ordinary zoning or compel government to provide inexpensive real estate and convert them into a proposition those decisions do not support: that a religious organization accepting donated property on which religious use is legally permissible assumes the risk that the municipality will later (unlawfully) deny that use and must thereafter purchase some different property. That is not the law, nor should it be.

The evidentiary record is no better for Defendants. Defendants refer broadly to approximately thirty-five purported alternative properties,[13] but Defendants' expert, Bohlen, identifies only five supposed alternatives for comparison, none of which are the same as the thirty-five on Defendants' map. Moreover, none of the referenced materials contain a comparison of parcels to CHI's actual requirements. There is no determination that the additional properties were available to CHI, what they cost, whether they provided the wooded and serene environment required for contemplative religious use, what zoning applied, whether CHI's proposed use required special land use approval, or what additional expense, delay, and uncertainty acquisition and development would entail. Raw property materials do not become proof of five (or thirty-five) feasible alternatives merely because Defendants collected them.

The same problem is particularly stark with Defendants' $200,000 Chaldean parcel. The 40.53-acre property (1600 S. Kellogg Road) conveyed by the City of Detroit to the Chaldean Catholic Church in July 2023 is not one of Bohlen's five identified properties. Bohlen discusses a ***different*** Kellogg Road parcel (1370 S. Kellogg Road). There is no Bohlen (nor Township) determination that the 1600 S. Kellogg parcel was available to CHI in 2020 or 2021, financially feasible for CHI,

[13] Thirty-four of the properties are tiny, and nearly all are on a main thoroughfare adjacent to commercial properties, making them unsuitable for the CHI Project.

or suitable for CHI's religious mission. Defendants' "evidence" fails.

A. Bohlen cannot establish an available or feasible alternative.

Defendants assert that other parcels were "available" and invoke Bohlen for "many other comparable parcels." (Defs.' Br. 21-22). Even if Bohlen's opinions are considered,[14] his own deposition admissions defeat Defendants' attempt to establish feasible alternative properties as an undisputed fact. Bohlen testified there was "really no way to know" whether any of his five properties were available when CHI acquired the CHI Property, and answered "No" when asked whether he could identify immediately available alternatives when CHI submitted its special land use application. (Bohlen Dep. 96: 12-97:16, PageID.8045-46).[15] He admitted that he did not consider price or value (*id*. at 33:20-23, PageID.7982); did not know CHI's specific requirements (*id*. at 37:12-20, PageID.7986); did not know if any of the proposed properties required the exact same special use approval as the CHI Property (*id*. at 43:13-25, PageID.7992); and was not asked to evaluate CHI's financial capacity (*id*. at 126:3-18, PageID.8075). His normal methodology requires

[14] Plaintiffs' *Daubert* motion (ECF No. 176), demonstrates that Bohlen's alternative-property opinions are inadmissible under Rule 702 and seeks exclusion of his report and opinions, as well as the portions of Defendants' summary-judgment motion that depend upon those opinions. Nonetheless, the Court need not resolve the Rule 702 issue to reject Defendants' argument here.

[15] Since the deposition transcript filed by Defendants does not have its own page numbers, the numbers referenced herein are the pages from the document's ECF stamp.

client-specific use, location, aesthetics/features, zoning and approval criteria, and contacting owners of unlisted property to determine willingness to sell. (*Id*. at 106:13-107:5, 121:12-122:18, PageID.8055-56, 8070-71). He admitted he did not follow his methodology. (*Id*. at 37:2-5, PageID.7986). These failures are further developed in Plaintiffs' *Daubert* motion.

As noted, *Livingston Christian* makes the inquiry "functional and factually driven" and asks whether there is a feasible alternative in light of whether the imposition of the regulation causes substantial "delay, uncertainty, and expense." 858 F.3d at 1004, 1011; *see also CHI*, 82 F.4th at 448-49 (recognizing same considerations). Defendants have not established an available, financially feasible, religiously suitable substitute that will also *not* result in substantial delay, uncertainty, and expense—*because no such property exists*.

B. The CHI Property was donated; the $200,000 comparison proves nothing about feasibility.

Defendants emphasize that a Chaldean Church bought another parcel for $200,000 and compare that price to CHI's later cash on hand. (Defs.' Br. 21-22). That proves another buyer completed another transaction; it does not prove that the parcel was available to CHI when needed or on terms CHI could obtain, among other factors affecting cost, delay, and uncertainty. The CHI Property, by contrast, was donated. A market substitute necessarily imposes an acquisition cost that the CHI Property did not. Defendants' $200,000 example did not even exist as a completed

transaction when CHI obtained the CHI Property or when the Township denied CHI's application (indeed, Defendants' "expert" didn't bother to identify this property in his report). CHI accepted the donated property in October 2020, and the Township denied CHI's special land use application on May 3, 2021. Yet the transaction Defendants invoke did not occur until July 18, 2023, when the Chaldean Church acquired the parcel from the City of Detroit for $200,000. (Defs.' Br. 4-5, 21-22). A sale to another religious purchaser in 2023 does not establish that the parcel was available to CHI in 2020 or in 2021 (and why would Plaintiffs be looking for such property when they have the perfect property already donated to them? Defendants' entire argument is absurd). Nor does it establish the price at which CHI could have acquired it at either time. Defendants identify no evidence that the City of Detroit was then willing to sell the parcel to CHI, on what terms, or at what price. And if the Chaldean Church was itself a prospective purchaser, Defendants offer no evidence concerning whether CHI would have had to compete against it, what competing demand would have done to the price, or why that church—once it acquired the parcel for its own religious purposes—would have sold it to CHI. Defendants simply take a transaction that occurred years later between different parties and treat its ultimate price as though it were a contemporaneous offer to CHI. That is not evidence of a "feasible alternative" under RLUIPA; it is hindsight and speculation.

A substitute would also necessarily add time and uncertainty as it would require a willing seller, negotiations, a contract, fundraising or financing, due diligence, closing, redesign, and approvals. Bohlen testified that where approval is required the process can take an "extended amount of time" with "no guarantee" of approval. (Bohlen Dep. 129:1-14, ECF No. 175-24, PageID.8078). Defendants' own evidence thus reinforces *Livingston Christian*'s delay/uncertainty/expense factors in favor of Plaintiffs.

C. Defendants do not establish physical and religious suitability.

Plaintiffs' evidence establishes the unique, rural nature of the CHI Property and CHI's lack of another facility. Bohlen never learned CHI's actual aesthetic or natural-setting requirements. (Bohlen Dep. 37:12-20, 106:13-107:5, ECF No. 175-24, PageID.7986, 8055-56). Acreage and a sale to or from another religious entity do not establish suitability.

D. Knowledge of a special land use process is not advance knowledge of denial.

Defendants' argument ultimately depends upon hindsight approaching prescience. CHI accepted a donated, forty-acre wooded property uniquely suited to its contemplated prayer campus. Defendants now contend that CHI should somehow have anticipated in 2020 that the Township would later deny special land use approval and, based upon that prediction, reject or abandon the donated property and purchase something else. Knowledge that an approval process is required is not

knowledge that the application will be denied, much less knowledge that the denial will impose the burdens established here.

Defendants' own expert exposes the flaw in that hindsight theory. Bohlen identified five supposed alternatives, yet admitted that he did not specifically analyze the special land use requirements for those properties and did not determine the historical zoning requirements for four of the five. (Bohlen Dep. 43:4-25, 46:18-23, 61:8-17, 62:16-23, ECF No. 175-24, PageID.7992, 7995, 8010, 8011). Thus, after years of litigation and with the benefit of hindsight, Defendants' retained expert still could not determine whether moving to four of his five supposed alternatives would have avoided the same discretionary special land use process at all. Defendants fault CHI for failing to know prospectively what Bohlen could not determine retrospectively.

The sole property Bohlen identified as one he understood would allow a church without special land use approval makes Defendants' theory even *less* plausible. Property No. 4 consists of approximately forty-five acres in Hartland Township[16]—not Genoa Township. (Bohlen Dep. 45:9-46:23, 63:18-64:4, ECF No. 175-24, PageID.7994-95, 8012-13). It bore virtually none of the physical

[16] The Hartland property is located in a noisy commercial district that is specifically designed to be congested with significant volumes of vehicular traffic. *See* Hartland ZO 3.1.14 (available at https://www.hartlandtwp.com/planning/page/ordinances-planning). It is plainly not suitable for the CHI Project.

characteristics that makes the CHI Property suitable for CHI's religious mission. Bohlen admitted that it had no substantial wooded area and instead contained a bowling alley, a former golf driving range, and four softball fields. (*Id*. at 64:3-17, PageID.8013). And the property sold in November 2021 for $2 million. (*Id*. at 65:5-13, PageID.8014). Thus, the resulting proposition illustrates the unreality of Defendants' argument. Plaintiffs supposedly should have foreseen in 2020 that the Township would deny their religious use of the CHI Property, abandon that property before the denial occurred, move to another township, and spend substantial funds to acquire a commercial/recreational property, and thus surrender the donated wooded property that was ideal for their religious worship. Meanwhile, for four of Bohlen's five supposed alternatives, Defendants cannot even establish that CHI would have avoided another costly and time-consuming special land use process. That is not evidence of a feasible alternative—it is evidence of a substantial burden. Nor can Defendants cure these defects by pointing to the eventual existence of churches on some of the parcels. Bohlen admitted that although three of his five properties currently contain churches, he did not know the timeline for obtaining those approvals and "did not analyze" the zoning requirements applicable when those properties were bought or sold. (*Id*. at 61:8-17, PageID.8010). The fact that another religious organization eventually obtained approval does not establish that CHI could have acquired the property when needed, at a financially feasible price,

for CHI's distinct prayer-campus use, or without substantial delay and uncertainty.

In sum, Defendants' comparisons fail at every relevant level. Calling these parcels "alternatives" does not make them feasible alternatives under RLUIPA.[17]

E. Defendants' "no funds" theory is not an element of RLUIPA and even as a damages-causation argument, it fails.

Defendants' argument begins from the wrong legal premise. RLUIPA does not require a religious institution to prove that, before a land use denial, it already possessed all funds necessary to complete every contemplated improvement. RLUIPA asks whether the government imposed a land use regulation that substantially burdened religious exercise; once the plaintiff makes that showing, the burden shifts to the government to satisfy strict scrutiny. 42 U.S.C. § 2000cc(a)(1)(A)-(B). The Sixth Circuit has already applied that framework in this case. *CHI*, 82 F.4th at 448-50. Nothing in RLUIPA or that decision adds a separate element requiring CHI to have the entire future construction budget in cash before approval. The Sixth Circuit has already held—on this record and without any finding that CHI possessed millions of dollars for a chapel—that Plaintiffs were likely to

[17] The Third Circuit recently dismantled this "feasible alternative" argument irrespective of the cost, delay, and uncertainty components that Defendants erroneously ignore under current Sixth Circuit precedent. *See Anash, Inc. v. Borough of Kingston*, 184 F.4th 214, 244 (3d Cir. 2026) (conducting detailed review of RLUIPA's statutory framework and concluding that "in all but the most dire circumstances, a land use regulation that prevents access to or use of real property for religious exercise will contravene RLUIPA — regardless of the presence of feasible alternative locations for the religious exercise").

establish a substantial burden as to the prayer trail and religious displays, and affirmed the injunction against the Township's prohibition on organized gatherings. *Id*. at 448-51. The court held that the Township caused substantial delay, uncertainty, and expense, *id*. at 448-49, and that the organized-gatherings ban substantially impaired CHI's ability to use the property to further its religious mission, *id*. at 450-51. Defendants' theory that an asserted inability to finance the entire chapel defeats the substantial burden claim cannot be reconciled with the law.

Defendants rely on a single sentence from *Livingston Christian* that a plaintiff "cannot prevail if the burden . . . was caused by something other than" the challenged land use decision. (Defs.' Br. at 25). But the quoted passage addressed a specific alleged burden—declining school enrollment—and held that the school needed admissible evidence connecting that decline to the permit denial rather than other causes. *Livingston Christian*, 858 F.3d at 1006-08. It did not create a freestanding RLUIPA element requiring a religious institution to prove, as a condition of liability, that it had cash on hand sufficient to complete every future phase of development. Here, the burdens already identified by the Sixth Circuit—the inability to maintain the religious displays and use the wooded prayer campus for organized religious gatherings, together with years of delay, uncertainty, and expense—were caused directly by the Township's challenged actions. *CHI*, 82 F.4th at 448-51.

The same point defeats Defendants' argument factually. The evidence shows

that CHI had $238,658 in checking and savings in August 2021 and $666,260 in net assets in August 2024. (Defs.' Br. at 25-26). Those resources were plainly capable of supporting CHI's religious use and phased development of the prayer campus even apart from completion of the chapel. CHI had already created prayer trails, installed religious displays, and held religious events on the property before the Township forced removal of the displays and restricted organized gatherings. *See CHI*, 82 F.4th at 445-47. The 2026 Boss Engineering estimate itself assigns only $10,000 to walking-trail improvements and separately itemizes clearing, grading, lighting, signage, landscaping, paving, and other site work; the $4.435 million chapel is by far the dominant component of the $5.066 million total. (Smith Report, ECF No. 173-4, PageID.6928-30). Thus, even accepting Defendants' select, financial snapshots, the absence of $5 million in cash says nothing about CHI's ability to use and improve the prayer campus, restore its prayer trails and religious displays, or host organized religious gatherings—the very religious exercises the Sixth Circuit has already held were substantially burdened.

Defendants' causation theory is also circular. The Township's denial and the resulting uncertainty over whether CHI could lawfully build at the CHI Property impaired the very fundraising Defendants now fault CHI for not completing. Defendants cannot rely on fundraising impairment associated with the very

governmental obstruction challenged as a basis for avoiding liability.[18]

Finally, even if a factfinder concluded that fundraising would have caused the chapel to take longer than Plaintiffs project, that would not eliminate the underlying violation. At most, it would affect the but-for construction timeline and therefore the amount of delay damages. Plaintiffs' expert's economic analysis expressly models construction timing and calculates increased construction costs as delay lengthens. (Smith Decl., ¶ 11, ECF No. 173-4, PageID.6913, 6928-30). Defendants' theory perversely turns a longer construction period into a complete defense, when a longer period of delay caused by the challenged land use decision increases the economic consequences that the damages analysis is designed to measure.

F. The failed Trinity hospital transaction proves nothing.

The failed Trinity hospital transaction proves nothing about CHI's ability to fund the prayer campus. If anything, it shows the practical costs, delay, uncertainty, and burdens associated with trying to obtain other property. But more to the point. Trinity involved the proposed acquisition of a hospital from a third party—a different asset, purchase price, transaction structure, financing problem, donor proposition, and risk profile. The prayer campus involved phased development and

[18] (*See also* Pls.' Br. in Supp. of Mot. for Summ. J. 33-34 & n.14, ECF No. 173, PageID.6884-85 [noting that Plaintiffs do not seek summary judgment on the $1,607,500 lost-donation calculation, and if the Court grants the full relief requested in the motion, they will waive this damage claim; otherwise, it is reserved for trial]).

construction on land already donated to CHI for its religious mission. Defendants offer no economist, fundraising expert, donor testimony, or financial analysis establishing any causal or economic connection between failure to consummate the Trinity hospital acquisition and CHI's ability to raise charitable contributions for the CHI Project because no such causation exists. Moreover, there is a distinct donor base, pledges, fundraising strategy, and religious appeal for the prayer-campus project, as any rational person would expect and understand.

Defendants' theory also ignores the relationship between governmental approval and fundraising. Major capital donors have an obvious reason to condition or defer substantial construction gifts until the project can lawfully be built. In sum, Defendants erroneously seek to use CHI's financial position while the project remained obstructed as proof that the Township did not impose a substantial burden.

II. Defendants Are Not Entitled to Judgment on the Equal Terms, Nondiscrimination, or Equal Protection Claims.

"[A] prima facie case under RLUIPA's equal terms provision requires proof that (1) the plaintiff [is] a religious assembly or institution, (2) subject to a land use regulation, that (3) treats the [plaintiff] on less than equal terms, [compared] with (4) a nonreligious assembly or institution." *Tree of Life Christian Sch. v. City of Upper Arlington*, 905 F.3d 357, 367 (6th Cir. 2018) (cleaned up). Defendants do not dispute elements (1) and (2). With regard to the comparison required by elements (3) and (4), "[t]here is no need . . . for the religious institution to show that there exists a

secular comparator that performs the same functions." *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 266 (3d Cir. 2007). And the "Equal Terms provision operates on a strict liability standard; strict scrutiny does not come into play." *Id*. at 269. Once a *prima facie* case is established, liability attaches. Here, the CHI Property is compatible with and suitable for Plaintiffs' place of religious worship, which is essentially a "prayer park," on this property zoned CE. The Township denied this use. However, under the ZO, the Township *permits* "[p]ublicly owned parks" and "[p]rivate non-commercial parks . . . owned and maintained by a home-owners association" *on this very property*. Indeed, the Township operates a park just 3 miles east of the CHI Property that is on a parcel of land that is smaller (38 acres) than the CHI Property (40 acres) and that is supported by more than 200 parking spaces (more than five times the number of spaces in the CHI Project). Yet, this secular park, whether constructed by the Township or "owned and maintained by a home-owners association"—could be constructed *on the CHI Property without* requiring any special land use approval, in violation of the Equal Terms provision of RLUIPA.

"RLUIPA . . . [also] contains a separate prohibition on discrimination in the implementation of land-use regulations, which does not require that the regulation impose a substantial burden." *Livingston Christian*, 858 F.3d at 1005; *see* 42 U.S.C. § 2000cc(b)(2). In applying this provision, courts have looked to equal protection

precedent. *Chabad Lubavitch of Litchfield Cty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 198 (2d Cir. 2014). Under that precedent, a plaintiff must demonstrate that the government decision was motivated at least in part by discriminatory intent, which is evaluated using the "sensitive inquiry" established in *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 266-68 (1977). One factor which this inquiry recognizes as probative of the decisionmaker's intent is the "specific sequence of events leading up to the challenged decision." *Id.* at 267. Departures from normal procedures can suggest that the decision was based on unlawful motives, as can "[s]ubstantive departures . . . particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached," as in this case. *See id.* (citing *Dailey v. City of Lawton*, 425 F.2d 1037, 1040 (10th Cir. 1970) (finding racial motivation where a city refused to rezone a plot despite present and former city planning directors' testimony that there was no reason not to rezone)). And a government decision influenced by community members' religious bias is unlawful even if the government decisionmakers display no bias themselves. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985); *Marks v. City of Chesapeake*, 883 F.2d 308, 311-13 (4th Cir. 1989). Such impermissible influence may be inferred where expressions of community bias are followed by irregularities in government decision making. *See Smith v. Town of Clarkton*, 682 F.2d 1055,

1066 (4th Cir. 1982). Here, there was no legitimate factual basis for the Township to deny Plaintiffs' application (which was recommended for approval by the Planning Commission and the Township's own consultants), and there were strong expressions of community bias that preceded this irregularity in government decision making, as Defendants admit. (Defs.' Br. at 15 ["Some written public comments expressed hostility toward Catholics."]). In sum, there is no basis to grant summary judgment in Defendants' favor on this claim.

With regard to equal protection, when the government treats an individual disparately "as compared to similarly situated persons and that such disparate treatment . . . burdens a fundamental right," such treatment violates the Fourteenth Amendment. *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 256 (6th Cir. 2015) (cleaned up). "In determining whether individuals are 'similarly situated,' a court should not demand exact correlation, but should instead seek relevant similarity." *Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 987 (6th Cir. 2012) (cleaned up). Such disparate treatment is "subject to strict scrutiny." *Bible Believers*, 805 F.3d at 256. The rights to free exercise of religion and freedom of speech are "fundamental," *see supra; id.* at 256, and disparate treatment that burdens these rights violates the Fourteenth Amendment, *id*. at 256-57. Here, Defendants permit secular activity within the CE zoned areas of the Township (and in the same neighborhood as the CHI Property), including the development of secular parks,

hosting large football parties, and hosting a Family Fun Day, but prohibit Plaintiffs' religious activity without satisfying strict scrutiny in violation of the Fourteenth Amendment.

III. Defendant's Reliance on the State Court Case, the Fire Authority, and Road Commission Requirements Lacks Merit.

Defendants argue that the state court's temporary injunction is an independent obstacle because it "has not been vacated." (Defs.' Br. 31). That argument ignores these federal proceedings. This Court entered a preliminary injunction based on *federal law* as directed by the Sixth Circuit, thus rendering the state court injunction, which is based on state law, a nullity (as evidenced by the fact that the religious displays have returned to the property, as have "organized gatherings"). Federal law, and not state law, is the Supreme Law of the land. U.S. Const. art. VI, cl. 2. The Supremacy Clause defeats any claim that the state court matter poses *any* obstacle in this case. State and local laws that interfere or conflict with federal law are "without effect." *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992).

The Fire Authority and Road Commission points fare no better. Defendants identify compliance requirements—fire access, driveway standards, and a commercial driveway permit. (Defs.' Br. at 31). However, they ignore the obvious point that the Final Submission received all of these necessary approvals. Here again, the Township is attempting to use its unlawful denial of the CHI Project as a basis for granting summary judgment in its favor. The argument lacks merit.

IV. Michigan Constitution Claim.

Defendants' argument is narrow. They rely on *Jones v. Powell*, 462 Mich. 329 (2000), to argue that Plaintiffs may not obtain a damages remedy directly under the Michigan Constitution where other remedies are available. (Defs.' Br. at 32). But even if *Jones* limits a *duplicative* damages remedy, it supplies no basis for summary judgment for Defendants. *Jones* does not dispose of Plaintiffs' federal claims, federal damages theories, nor requests for declaratory and injunctive relief.

CONCLUSION

The Court should deny Defendants' motion and grant Plaintiffs' motion for summary judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2026, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: None.

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