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' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

ISSUES PRESENTED

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

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

CONTROLLING AND MOST APPROPRIATE AUTHORITY

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

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

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

42 U.S.C. § 2000cc *et seq.*

Fed. R. Civ. P. 56

ARGUMENT IN REPLY

This is not a hard case. "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.'" *United States v. City of Troy*, 592 F. Supp. 3d 591, 611 (E.D. Mich. 2022) (cleaned up);[1] 42 U.S.C. § 2000cc-3 ("This Act shall be construed in favor of a broad protection of religious exercise . . . .").

I. Plaintiffs Prevail on Their RLUIPA Substantial Burden Claim.

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); *City of Troy*, 592 F. Supp. 3d at 609 (granting summary judgment for the U.S. government in favor of religious adherent under RLUIPA and rejecting city's assertion that certain properties were feasible alternative locations). It is not possible to conceive of a more "substantial burden" on the use of property for religious exercise than the complete prohibition of it, as in this case. The Court is compelled to grant summary judgment in Plaintiffs' favor under RLUIPA's substantial burden provision because the undisputed *material* facts demonstrate the following. ***First***, Plaintiffs' use of the CHI Property is "religious

[1] The *City of Troy* and *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442 (6th Cir. 2023) ("*CHI*"), provide the templates for the Court to grant Plaintiffs' motion.

exercise" under RLUIPA. 42 U.S.C. § 2000cc-5(7). ***Second***, the Township's *complete* denial of the CHI Project caused a "substantial burden" on Plaintiffs' religious exercise *as a matter of law* under RLUIPA[2] 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 Defendants' 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) Plaintiffs had a reasonable expectation that their proposed development would be approved as the use is *expressly allowed* (and "not prohibited") under the Zoning Ordinance ("ZO"),[3] there was no variance or re-zoning required, and the Planning Commission recommended approval;[4] (c) the Township's complete denial caused substantial delay, uncertainty, and expense for

[2] As Plaintiffs noted in their motion, the Court need not resolve the constitutional claims because Plaintiffs are entitled to the requested relief under RLUIPA. *CHI*, 82 F.4th at 452 (applying constitutional avoidance). Nonetheless, Plaintiffs' constitutional claims rely upon the same facts as their RLUIPA claims. Defendants' argument that the constitutional claims are not fully developed is without merit.

[3] Plaintiffs' knowledge that special land use approval was required does not constitute consent to an unlawful denial. Knowledge of the approval process is not equivalent to accepting an unjustified governmental restriction on religious exercise. Indeed, most of the properties the Township argues as "feasible alternatives" would require Plaintiffs to repeat this very same process.

[4] If the Planning Commission's approval recommendation is as meaningless as Defendants suggests, then requiring CHI to undergo that costly and time-consuming process constitutes an additional burden on religious exercise.

Plaintiffs (all of which continue today); and (d) Plaintiffs are unable to carry out a core function of their religious activities without the development (this is particularly true without the St. Pio chapel). ***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 with admissible, material, and relevant evidence.

Defendants identify no property CHI already owns or leases (because there is none), 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. The weakness of Defendants' argument is highlighted by the case law they cite in support. (Defs.' Opp'n Br. at 19-20). Defendants lead with *Renton v. Playtime Theatres*, 475 U.S. 41 (1986), which, as we have noted on multiple occasions, is not a RLUIPA case. At issue in *Renton* was a city ordinance that regulated adult motion picture theaters (obscenity). The Court held that the ordinance did not violate the First Amendment as it was a valid governmental response to the "serious problems created by adult theaters." *Id*. at 54. *Renton* is no help to Defendants. Defendants' reliance on *Episcopal Student Foundation v. City of Ann Arbor*, 341 F. Supp. 2d 691,

704 (E.D. Mich. 2004), fares no better. At issue in *Episcopal Student Foundation* was the religious organization's request for a demolition permit to destroy its *existing* facility to build a larger one on the property (*i.e.*, the organization was not being denied the use of its property for religious exercise). *Id*. *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024 (9th Cir. 2004), is no help as it involved a request to re-zone property to permit the religious use. No re-zoning is required here. Plaintiffs' use is an allowed use (for which the Planning Commission recommended approval).[5] No variance is required. This Court's page limitation prevents further discussion of the cases cited, but the point remains: no case presents the egregious facts at issue here and *no case* stands for the bogus proposition that Plaintiffs must abandon the perfect property donated by the Diocese and then canvas the universe for other properties, regardless of cost, uncertainty, or delay, before a "substantial burden" can be shown. Defendants' argument makes a mockery of RLUIPA.[6] And the fact that another church (Holy Spirit or any other such venue) has generously

[5] Remember too that it was Township officials who made it clear that this (special land use) was the process that Plaintiffs had to engage in to get approval for the CHI Project ***and for the prayer campus without the chapel*** (Verified Compl., ¶ 19, Ex. 3 [email], ECF No. 23-2, PageID.1166, 1188-89), and if this proposal was so beyond the pale and outside of the realm of a *reasonable* use of the CHI Property, the project would have never received Planning Commission approval.

[6] Plaintiffs thoroughly dismantled Defendants' "feasible alternative" property argument in their response to Defendants' motion for summary judgment and incorporate those arguments here as space does not allow a rehashing of the arguments. (*See* Pls.' Opp'n at 12-30, ECF No.179, PageID.8608-26).

permitted Plaintiffs to use its property for *some* religious exercise in the interim does *not* negate the substantial burden imposed by the Township.[7]

II. Plaintiffs Prevail on Their RLUIPA Equal Terms Claim.

"[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), "the phrase 'legitimate zoning criteria' best captures the idea that the comparison required by RLUIPA's equal terms provision is to be conducted with regard to the legitimate zoning criteria set forth in the municipal ordinance in question." *Id.* at 369. "There 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." *Id*. at 269.

[7] Attending Mass elsewhere is not equivalent to developing the CHI Property with its adoration chapel and rural prayer trails. Defendants cannot redefine Plaintiffs' religious exercise as merely the ability to worship somewhere else. *CHI*, 82 F.4th at 453 (Clay, J., concurring) (rejecting the argument); *see also City of Troy*, 592 F. Supp. 3d at 609 ("The Court also disagrees with Troy's suggestion that Adam members join other mosques in other communities.").

The relevant zoning criteria here is the permitted uses for property zoned Country Estates (CE)—the zoning criteria applied to the CHI Property. This approach is also consistent with *City of Troy*, in which the court found:

> the relevant "legitimate zoning criteria" [to be] that which applies to the specific district at issue. Thus, places of worship must be treated on equal terms with nonreligious institutions that are similarly situated with regard to the legitimate zoning criteria of each individual district. Those similarly situated institutions may vary across districts, but would consistently be those allowed to operate by right that have similar impacts on traffic, safety and neighboring properties. . . .

City of Troy, 592 F. Supp. 3d at 605-11 (granting summary judgment to the U.S. government on its Equal Terms claim against the city). Here, the CHI Property is compatible with and suitable for Plaintiffs' place of religious worship (a "prayer park") on this property zoned CE. Yet, the Township requires a costly, subjective, and time-consuming special land use application process in order for Plaintiffs to construct their prayer park (with or without the chapel, *see* n.5, *supra*), and it denied this use based on its (unlawful) rejection of the application. However, under the ZO, the Township *permits*, without requiring the owner to endure the costly, subjective, and time-consuming special land use application process, "[p]ublicly owned parks" and "[p]rivate non-commercial parks . . . owned and maintained by a home-owners association" *on this very property*. Thus, the Township park that is 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) is expressly permitted "***by right***" on property zoned CE, whether constructed by the Township or "owned and maintained by a home-owners association," and, therefore, it could be constructed *on the CHI Property without* requiring any special land use approval, in violation of the Equal Terms provision of RLUIPA.

III. Plaintiffs Are Entitled to the Requested Relief.

Defendants' claim that Plaintiffs are not entitled to an order permitting the construction of the CHI Project is patently wrong. Upon this Court *properly* finding that Defendants violated RLUIPA (and/or the federal and state constitutions), Plaintiffs are entitled to prospective relief and damages. Defendants' ongoing restriction on Plaintiffs' religious exercise constitutes irreparable harm, and this harm is sufficient for granting an injunction. *Lee v. City of Columbus*, 636 F.3d 245, 249 (6th Cir. 2011) ("A party is entitled to a permanent injunction if it can establish that it suffered a constitutional violation and will suffer continuing irreparable injury for which there is no adequate remedy at law."); *Newsome v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989) (stating that "minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief").

Plaintiffs are also entitled to damages.[8] Defendants' contention that Plaintiffs' construction cost damages are speculative conflates the fact of injury with the

[8] Whether nominal damages are available against Sharon Stone has no material

amount of damages. The Sixth Circuit distinguishes uncertainty concerning the fact of damages, which precludes recovery, from uncertainty concerning their amount, which does not. *Broan Mfg. Co. v. Associated Distribs., Inc.*, 923 F.2d 1232, 1235-36 (6th Cir. 1991). Here, neither is speculative. Defendants' unlawful delay increased the cost of constructing CHI's chapel, and the precise amount is mathematically ascertainable through judgment under the disclosed, unrebutted methodology of Plaintiffs' damages expert, Dr. Stan Smith. Defendants' reliance on *Freedom's Path at Dayton v. Dayton Metropolitan Housing Authority*, No. 3:16-cv-466, 2022 U.S. Dist. LEXIS 94495 (S.D. Ohio May 26, 2022), is misplaced (and non-binding). There, the development had effectively been abandoned, and the claimed future construction expenses lacked a sufficient causal connection to the defendant's conduct. CHI, by contrast, has never abandoned the CHI Project, continues to own the donated property, and remains committed to developing it. The Township's denial directly prevented construction from proceeding, causing costs to increase during the delay. Defendants cannot plausibly argue both that CHI should have purchased alternative property at substantial additional expense and that CHI

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impact on this case. Her replacement is substituted as a matter of law. Fed. R. Civ. P. 25(d). And an official capacity suit is "another way of pleading an action against an entity of which an officer is an agent." *Ky. v. Graham,* 473 U.S. 159, 165 (1985). Thus, the claims against her fold into those against the Township. And in addition to compensatory damages, the Township is liable for nominal damages as a matter of law. *Saieg v. City of Dearborn*, 641 F.3d 727, 741 (6th Cir. 2011).

lacked the financial capacity to build on property it already owned. Nor does reliance on charitable fundraising establish an inability to finance construction. The record identifies CHI's donor relationships, pledges, and fundraising plans, and Defendants offered no evidence establishing that CHI could not raise the necessary funds. Defendants' challenge to the construction cost estimates also fails. Boss Engineering's March 23, 2026 project-specific estimate incorporated the chapel estimate supplied by project architect Mary Swanson. Scott Tousignant explained that building construction costs were outside his engineering expertise, distinguishing them from Boss Engineering's site development estimates. (Tousignant Dep. 251:15-256:18, ECF No. 175-25, PageID.8340-41). His inability to independently explain Swanson's architectural calculations does not establish that her estimate was unreliable. Defendants never deposed Swanson or presented expert testimony challenging the reliability of her construction cost estimate. Nor did Defendants depose Dr. Smith or present a rebuttal economist challenging his independently corroborated 6% compounded annual construction cost escalation rate. Smith's methodology applies that annual rate to the project specific construction estimate; 2032 was simply the terminal year used for his original projection, not a necessary assumption underlying the calculation. Accordingly, the same disclosed methodology permits a precise determination of increased construction costs through the date of judgment, without assuming when

construction will ultimately be completed.[9] The resulting damages calculation rests on documented project estimates and the disclosed economic methodology, not speculation concerning a future construction completion date.

CONCLUSION

The Court should grant Plaintiffs' motion forthwith.

Respectfully submitted,

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[9] If the Court entered judgment on December 31, 2026, application of Smith's 6% compounded annual escalation rate to his $4,509,024 baseline construction estimate would yield approximately $870,720 in increased construction and engineering costs, including the $9,424 Prayer Campus Submission expense, using a January 1, 2024 baseline and three years of annual compounding. The amount is recalculable through the actual judgment date. If the Court grants Plaintiffs' motion on liability and increased construction and engineering costs, Plaintiffs conditionally waive their separate claim for excess property tax damages, which depends upon the assumed date of construction completion. This waiver is expressly conditioned upon the Court granting the requested relief. If the Court does not grant summary judgment on liability and increased construction and engineering costs, Plaintiffs waive no category of damages and preserve for trial all damages supported by the evidence, including excess property tax damages.

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 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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