UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

CATHOLIC HEALTHCARE INTERNATIONAL, INC. and JERE PALAZZOLO,

Plaintiffs,

v.

GENOA CHARTER TOWNSHIP, and SHARON STONE, Ordinance Officer for Genoa Charter Township,

Defendants.

No. 5:21−cv−11303−JEL−DRG

Hon. Judith E. Levy

Magistrate Judge David R. Grand

PLAINTIFFS' REPLY IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER / PRELIMINARY INJUNCTION

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This case is an undisguised frontal attack on religious liberty, which is a fundamental right protected by the First Amendment. *Widmar v. Vincent*, 454 U.S. 263, 269 (1981) ("Religious worship" is a "form[] of speech and association protected by the First Amendment."); *Satawa v. Macomb Cty. Rd. Comm'n*, 689 F.3d 506, 529 (6th Cir. 2012) (observing that "[t]he crèche . . . is private religious expression, 'fully protected under the Free Speech Clause'") (quoting *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). And "[t]he Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief." *Newsome v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

In their opposition, Defendants improperly ask this Court to abstain from exercising its jurisdiction and ruling on this motion. This Court has jurisdiction to issue the requested injunction, and it is compelled to do so under the circumstances. This federal action, which seeks to vindicate federal rights, including federal constitutional rights, was filed on June 2, 2021. (Compl. [Doc. No. 1]). At issue in this federal litigation is the constitutionality of the enforcement of the Township's Zoning Ordinance, including its Sign Ordinance, facially and as applied to restrict Plaintiffs' religious activity. The issue of whether the Township can order the removal of the religious symbols (apart from the denial of the special use permit)

and enforce its Zoning Ordinance to restrict Plaintiffs' right to religious worship on the CHI Property is squarely before this Court. (*See* FAC ¶¶ 110-29, 140-60, Prayer for Relief § B & D ["to further enjoin Defendants . . . from enforcing or endeavoring to enforce the Township Zoning Ordinance, including the Sign Ordinance, so as to restrict Plaintiffs' religious exercise and religious expression"]).[1] Defendants' claims to the contrary (Defs.' Resp. at 13-18 [Doc. No. 26]) are *demonstrably false*.

Indeed, in the May 7, 2021, letter from the Township's Ordinance Officer, Defendant Stone, a letter which the Township *expressly* relies upon in its "Verified Complaint" at ¶ 45 and which is *central* to this lawsuit (*see* FAC ¶¶ 110-14, Doc. No. 14), states, "After denial of the proposed project at 3280 Chilson Road, the ***signs/temporary signs*** are in violation of the ***sign ordinance*** and will need to be removed. Also, the structure/grotto ***sign*** does not have a permit and will also need to be removed," (Muise Decl., Ex. A ["Verified Complaint" with May 7, 2021 Ltr. [ECF No. 23-2, Page ID. 1263], Ex. 1).[2] Thus, to argue as Defendants do here (in a transparent attempt to avoid what should be a straightforward ruling in Plaintiffs'

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[1] Defendants misrepresent the Prayer for Relief in their response. (*See* Defs.' Resp. at 13-14 [Doc. No. 26]).

[2] For the Court's convenience, a copy of the May 7, 2021, letter is attached to this reply as Exhibit 4. Plaintiffs will continue the numbering of the exhibits from those filed in its motion for consistency and ease of reference. Plaintiffs previously filed three exhibits in support of the motion and have attached Exhibits 4 and 5 to this reply.

favor) that the constitutionality (under federal law) of the Sign Ordinance, facially and as applied, is not at issue is *false*.

Moreover, a ruling by this Court that the enforcement by the Township of its *Zoning Ordinance* in this case violates federal law is entirely appropriate. Indeed, federal law—and not the Township's Zoning Ordinance—is the supreme law of the land. U.S. Const. Art. VI, cl. 2 ("This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land.").

The Township's recent *ex parte* filing in the Livingston County Circuit Court does not deprive this Court of its jurisdiction to decide the federal questions presented by this case and to issue the requested injunction in furtherance of that jurisdiction.[3] Indeed, it would be improper for this Court to abstain and not exercise its jurisdiction. *See, e.g., Exec. Arts Studio, Inc. v. City of Grand Rapids*, 391 F.3d 783, 791 (6th Cir. 2004) (citation omitted) ("There is no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be *treason to the Constitution*.") (internal quotations and citations omitted) (emphasis added).

[3] Today, CHI filed an emergency motion in the Livingston County Circuit Court to dissolve the *ex parte* TRO pursuant to Michigan Court Rule 3.310(B)(5). (*See* Emergency Mot. to Dissolve (without attached exhibits), Ex. 5). In this motion, CHI expressly reserved its right to raise any and all federal claims and defenses in federal court pursuant to *England v. Louisiana Board of Medical Examiners*, 375 U.S. 411, 421-22 (1964). (*Id*. at 1, n.1).

As noted by the Sixth Circuit, "The *Younger* abstention doctrine counsels a federal court to refrain from adjudicating a matter that is properly before it in deference to *ongoing state criminal proceedings*." *Exec. Arts Studio, Inc.*, 391 F.3d at 791 (citation omitted) (emphasis added). And while this has been extended to certain classes of civil cases, "it remains the rule that only *exceptional* circumstances justify a federal court's refusal to decide a case in deference to the states." *Id*. (internal quotations and citation omitted) (emphasis added). This case contains no such "exceptional circumstances."

In *Executive Arts Studio*, the Sixth Circuit made the following relevant observation:

> Here, Executive Arts perceived the possibility of the prospective future enforcement of the zoning law against itself once the state court had declared Executive Arts to be a regulated use under the City's zoning law, *preemptively filing in federal court* attacking the constitutionality of the Ordinance before any enforcement action could occur.

Id. at 792 (emphasis added). The same is true in this case. Anticipating that the Township might seek enforcement action against Plaintiffs for their religious displays and worship, Plaintiffs preemptively filed in federal court this lawsuit attacking the constitutionality of the Zoning Ordinance facially and as applied to Plaintiffs' religious exercise and expression.[4] *Executive Arts Studio* is controlling.

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[4] As noted previously, following the denial of Plaintiffs' special land use application, on May 7, 2021, the Township sent a letter to CHI demanding the removal of the religious symbols by <u>June 4, 2021</u>, prompting Plaintiffs to file this action on <u>June 2,</u>

Executive Arts filed its federal lawsuit on March 29, 2001. On May 3, 2001, the ZBA denied its variance request. Executive Arts appealed the decision with the Kent County Circuit Court on May 22, 2001. And on October 11, 2001, the Kent County Circuit Court issued an opinion finding, *inter alia*, that Executive Arts (also referred to as "Velvet Touch" in the case) "was a public nuisance under Michigan law and would have to either *cease operations or remove* all the material which caused it to fall into the ambit of the ordinance." *Id*. at 789 (emphasis added). This state court ruling did <u>*not*</u> preclude the district court from granting summary judgment in Executive Arts' favor, finding that the zoning ordinance at issue was unconstitutional as applied as a matter of federal law. The Sixth Circuit affirmed this ruling.

The Sixth Circuit concluded as follows:

> In this case, the substantive content to which the Supreme Court referred, an allegedly unconstitutional zoning ordinance, is directly at issue. Therefore, while "it is true, of course, that the federal court's disposition of [this] case may well affect, or for practical purposes, pre-empt, a future - - or . . . even a pending - - state-court action . . . there is no doctrine that the availability or even the pendency of state judicial proceedings excludes the federal courts." [*New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 373 (1989)]. The City has simply not explained how the district court's acceptance of jurisdiction over the constitutional issues contained within *the amended* complaint would have interfered, except as a collateral by-product, with any ongoing state judicial proceedings. Therefore, the City has not

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<u>2021</u> (Compl., Doc. No. 1), prior to any action by the Township to (unlawfully) enforce its Zoning Ordinance against Plaintiffs, (*see, e.g.,* FAC ¶¶ 110-113; May 7, 2021, Ltr., Ex. 4).

> shown this court why the exceptional abstention doctrine of *Younger* should be applied.

Exec. Arts Studio, Inc., 391 F.3d at 792-93.

In conclusion, there is no basis for this Court to abstain in this case. The Court has jurisdiction to conclude that the Township's Zoning Ordinance is unconstitutional facially and/or as applied to restrict Plaintiffs' religious activity on the CHI Property as a matter of federal law and to then issue the requested injunction in furtherance of the Court's jurisdiction to rule in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: None.

AMERICAN FREEDOM LAW CENTER

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