

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. 21-cv-11303-SDK-DRG

[DEMAND FOR JURY TRIAL]

Hon. Shalina D. Kumar

Magistrate Judge David R. Grand

SUPPLEMENTED FIRST AMENDED COMPLAINT

Plaintiffs Catholic Healthcare International, Inc. (“CHI”) and Jere Palazzolo (collectively referred to as “Plaintiffs”), by and through undersigned counsel, bring this Supplemented First Amended Complaint against Defendants Genoa Charter Township (“Township”) and Sharon Stone (collectively referred to as “Defendants”), and in support thereof allege the following upon information and belief:

INTRODUCTION

1. Places of religious worship, such as CHI’s proposed St. Pio Chapel and prayer campus, hold a special place in America—a nation that was founded by religious refugees in search of religious freedom. Defendants’ rejection of Plaintiffs’

right to religious worship on CHI's private property as set forth in this Supplemented First Amended Complaint is not in keeping with our proud tradition of accommodating people of faith, and it is contrary to the demands of the United States Constitution, the Michigan Constitution, and federal statutory law.

2. The U.S. Supreme Court recently affirmed the strong protection afforded religious organizations and people of faith under the First Amendment. *See Fulton v. City of Phila.*, 141 S. Ct. 1868 (2021) (holding that Philadelphia's refusal to contract with Catholic Social Services for the provision of foster care services unless CSS agrees to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment).

3. Protection for the free exercise of religion also applies in full to land use decisions that burden religious exercise, as in this case. As Justice Gorsuch recently noted in *Mast v. Fillmore Cty.*, 141 S. Ct. 2430 (2021) (granting certiorari, vacating adverse land use decision against Amish, and remanding for further consideration in light of *Fulton*):

Fulton makes clear that the County and courts below misapprehended RLUIPA's demands. That statute requires the application of "strict scrutiny." Under that form of review, the government bears the burden of proving both that its regulations serve a "compelling" governmental interest—and that its regulations are "narrowly tailored."

Id. at 2432 (Gorsuch J., concurring). Strict scrutiny is the "most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997);

see also Tandon v. Newsom, 141 S. Ct. 1294, 1297 (2021) (“[S]trict scrutiny requires the State to further ‘interests of the highest order’ by means ‘narrowly tailored in pursuit of those interests.’ . . . That standard ‘is not watered down’; it ‘really means what it says.’”) (internal citation omitted).

4. This case seeks to vindicate fundamental constitutional and statutory rights. It is a civil rights action brought pursuant to the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* (“RLUIPA”), and the Michigan Constitution, challenging the unconstitutional acts, policies, practices, and/or customs of Defendants.

5. Plaintiffs seek a declaration that Defendants violated their clearly established rights as set forth in this Supplemented First Amended Complaint; a declaration that the zoning laws of Genoa Charter Township and Defendants’ application of those laws as set forth in this Supplemented First Amended Complaint unlawfully restrict CHI’s use and enjoyment of its property for religious purposes and the free exercise of Plaintiffs’ religion in violation of the United States and Michigan Constitutions and RLUIPA; a declaration that through the enforcement and attempted enforcement of the Township zoning laws, Defendants have substantially burdened and unlawfully infringed upon Plaintiffs’ rights to religious exercise, religious expression, and expressive association in violation of the United

States and Michigan Constitutions and RLUIPA; a preliminary and permanent injunction enjoining the unlawful enforcement of the Township zoning laws and the unlawful acts, policies, practices and/or customs of Defendants as set forth in this Supplemented First Amended Complaint; and nominal and compensatory damages for the harm caused by the Township. Plaintiffs also seek an award of their reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988, RLUIPA, and other applicable law.

JURISDICTION AND VENUE

6. This action arises under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, RLUIPA, and the Michigan Constitution. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over the state law claims in this case pursuant to 28 U.S.C. § 1367(a).

7. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

8. Plaintiffs' claim for damages against the Township is made pursuant to 42 U.S.C. § 1983, RLUIPA, and other applicable law.

9. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

PARTIES

10. Plaintiff Catholic Healthcare International, Inc. (“CHI”) is a nonprofit corporation incorporated under the laws of the State of Missouri. It is a tax-exempt organization under § 501(c)(3) of the Internal Revenue Code.

11. CHI is formally recognized as a private association of the faithful by the Catholic Diocese of Lansing, Michigan.

12. The activities and work of CHI as set forth in this Supplemented First Amended Complaint are religious exercise, religious assembly, and religious expression protected by the United States and Michigan Constitutions and federal statutory law.

13. Plaintiff Jere Palazzolo is a citizen of the United States and the Chairman, President, and Director of CHI.

14. Plaintiff Palazzolo engages in religious exercise, religious assembly, and religious expression through the activities and work of CHI. Plaintiff Palazzolo’s rights to religious exercise, religious assembly, and religious expression are protected by the United States and Michigan Constitutions and federal statutory law.

15. Defendant Genoa Charter Township (“Township”) is a charter township located in Livingston County, Michigan. The Township is a municipal entity organized and existing under the laws of the State of Michigan. It is a

municipal corporation with the right to sue and be sued.

16. The Township and its officials, including the Genoa Charter Township Board (“Township Board”), are responsible for creating, adopting, approving, ratifying, and enforcing the decisions, laws, policies, practices, customs, and/or procedures of the Township as set forth in this Supplemented First Amended Complaint.

17. The Township Board is the final decision maker for the Township on special land use applications, specifically including the special land use application (“Final Submission”) submitted by CHI as set forth in this Supplemented First Amended Complaint.

18. The Township, through its officials, including Defendant Sharon Stone, enforces the Genoa Township Zoning Ordinance (“Zoning Ordinance”) as set forth in this Supplemented First Amended Complaint.

19. The Township’s decisions, laws, policies, practices, customs, and/or procedures were the moving force behind the constitutional and statutory violations set forth in this Supplemented First Amended Complaint.

20. At all relevant times, the Township trained, supervised, and employed Defendant Stone, the Township’s Ordinance Officer.

21. The Township’s deficient training and supervision of Defendant Stone were done with deliberate indifference as to their known or obvious consequences

and were a moving force behind the actions that deprived Plaintiffs of their fundamental constitutional and statutory rights as set forth in this Supplemented First Amended Complaint.

22. At all relevant times, Defendant Stone was the Ordinance Officer for the Township. As the Ordinance Officer, Defendant Stone is responsible for enforcing the Township's Zoning Ordinance, which includes [but is not limited to] the Sign Ordinance, as set forth in this Supplemented First Amended Complaint.

23. At all relevant times, Defendant Stone was an agent, servant, and/or employee of the Township, acting under color of state law. Defendant Stone is sued for declaratory and injunctive relief only.

STATEMENT OF FACTS

24. CHI is formally recognized as a private association of the faithful through a decree issued on or about August 4, 2020, by the Most Reverend Earl Boyea, Bishop of the Roman Catholic Diocese of Lansing, Michigan ("Bishop Boyea").

25. In the decree, Bishop Boyea stated: "Thus, after having reviewed their statutes (can. 299 § 3) and finding their efforts praiseworthy (cann. 298 § 2, 299 § 2), observing that their exercise of the apostolate is designed to promote the works of piety, to increase the exercise of charity, and to animate the temporal order with a Christian spirit (can. 298 § 1), upholding before their eyes the heroic virtues of

Saint Pius of Pietrelcina [Saint Padre Pio] as their model and pattern, I give my consent for them to be designated ‘Catholic’ in accord with the norms of law (cann. 216, 300), and I recognize the organization called CATHOLIC HEALTHCARE INTERNATIONAL (CHI) as a private association of the faithful.”

26. CHI’s objective is to be a model of Christian healthcare delivery and medical education based on the “Work” of St. Padre Pio: a “Clinic for the Soul” for all in need; and to provide training and support to professionals of existing and developing hospitals, healthcare systems, medical schools, clinics, and physician practices desiring to participate in the fullness of its ministry. In the example of St. Padre Pio, *this work is first built upon an extensive foundation of prayer by faithful Catholic supporters*. Accordingly, prayer is an essential part of—indeed, it is the very foundation for—the important work of CHI. Accordingly, the construction of the St. Pio Chapel and prayer campus, as set forth in this Supplemented First Amended Complaint, is essential to the work of CHI.

27. The work of CHI is the work of the faithful, and it is religious exercise.

28. On or about October 20, 2020, the Diocese of Lansing (“Diocese”), through Bishop Boyea as the grantor, conveyed to CHI via warranty deed approximately 40 acres of property located in the Township. The property is located at 3280 Chilson Road (“CHI Property”).

29. The Diocese originally acquired the property with the expectation of

building a church on it since the Zoning Ordinance allows places of religious worship on this property upon special land use approval.

30. Upon acquiring the CHI Property, Plaintiffs had a reasonable expectation of being able to use the property for religious purposes, including for the purpose of constructing and developing the St. Pio Chapel and prayer campus.

31. As the owner of the CHI Property, CHI intends to use this property to exercise its fundamental rights to the free exercise of religion, the freedom of speech, and religious assembly, including using this property for prayer, worship, Mass, and eucharistic adoration.

32. The CHI Property is zoned Country Estate (“CE”) by the Township.

33. Section 3.03 (Permitted and Special Land Uses) of the Township Zoning Ordinance contains a “List of Uses” for residential districts, which includes property zoned CE.

34. Pursuant to the Zoning Ordinance, the Township permits “[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.

35. In fact, the Township operates a park just 3 miles east of the CHI Property. This park is on a parcel of land that is smaller (38 acres) than the CHI Property (40 acres). The park includes two playgrounds, a water misting feature, a

sled hill, a .66-mile walking path, two regulation sized athletic fields, a swing set for all ages, picnic tables, and a pavilion with accessible heated bathrooms and warming area. This park is supported by more than 200 parking spaces.

36. This very park with its 200 plus parking spaces—whether constructed by the Township or as a “private non-commercial park . . . owned and maintained by a home-owners association”—could be constructed on the CHI Property without requiring any special land use approval. Such parks are a permitted use under the Zoning Ordinance. However, as set forth in this Supplemented First Amended Complaint, Plaintiffs’ religious “park” was denied by the Township under the Zoning Ordinance.

37. Also located within the Township is a park (Fillmore County Park), where the Township permitted a “Leopold the Lion Reading Trail.” This “Reading Trail” contained large signs installed along a trail, as depicted in the photograph below. Per the website, “This fifteen-part Reading Trail takes you through the entire story [of Leopold the Lion] with fun questions/activities to do along the way.” (<https://www.howellrecreation.org/events/readingtrail>).



Leopold the Lion Reading Trail - Available
Now At Fillmore County Park!

38. The Township permits a “Sculpture & Poetry Walk” on private property located within the Township. This “sculpture and poetry walk” contains numerous and large sculptures and other secular displays, including signs displaying poetry. The Sculpture & Poetry Walk hosts regular events, from open houses to poetry readings to individual artist shows. Additionally, it holds poetry competitions and open submission periods for poetry for the art walk.

39. Pursuant to the Zoning Ordinance, the Township permits “[f]arms”; “[t]ree and sod farms, greenhouses, nurseries and similar horticulture enterprises without sales on the premises, however, Christmas tree sales shall be permitted” on property zoned CE.

40. Pursuant to the Zoning Ordinance, the Township permits “[s]toring, packaging and processing of farm produce” on property zoned CE.

41. Pursuant to the Zoning Ordinance, the Township permits “[a]ccessory roadside stands and commercial cider mills selling only produce grown on the premises” on property zoned CE.

42. Pursuant to the Zoning Ordinance, the Township permits “[e]ssential public services” on property zoned CE. Plaintiffs’ proposed St. Pio Chapel and prayer campus, as set forth in this Supplemented First Amended Complaint, will provide essential religious services.

43. Pursuant to the Zoning Ordinance, “[c]hurches, temples and similar

places of worship” are allowed on all residential property in the Township, including property zoned CE, after special land use approval.

44. In order to exercise their religion, which includes religious speech and assembly, and to further the religious mission and vision of CHI as a private association of the faithful, Plaintiffs want to fully develop the CHI Property into a prayer campus, which would include an adoration chapel (the St. Pio Chapel), prayer trails, a small outdoor altar, and the display of religious images, icons, and symbols, including Stations of the Cross, religious statues, and the display of the image of Santa Maria delle Grazie (“Our Lady of Grace”).

45. A photograph of a Station of the Cross that was [and will be] located on the CHI Property appears below:



46. This Station of the Cross is smaller than some birdhouses that the Township allows on private property without any special permit requirements or fees. Below is a photograph of a birdhouse located within the Township:



47. Located on the CHI Property were numerous (approximately 8 or more) tree stands that people in the local community erected and used for hunting deer for many years. These tree stands are much taller “structures” than any of the religious symbols on the CHI Property. Defendants have never complained about the presence of these tree stands on the property.

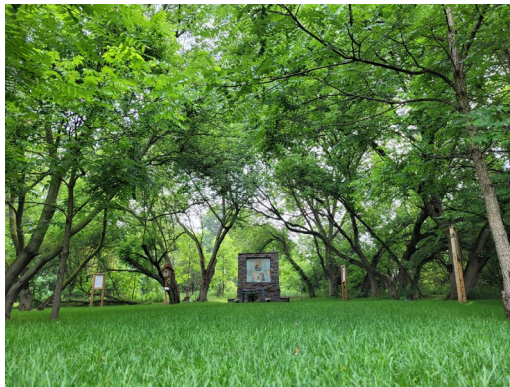
48. The Stations of the Cross that were displayed on the CHI Property were set into a sleeve in the ground so they could be easily moved for maintenance and repairs or for other reasons. They were not permanently affixed.

49. The Stations of the Cross are a fourteen-step Catholic devotion that commemorates the Passion of Jesus Christ. The fourteen devotions, or stations, focus on specific events of His last day, beginning with His condemnation.

50. The Stations of the Cross are commonly used as a mini pilgrimage as the individual moves from station to station. At each station, the individual recalls and meditates on a specific event from Christ’s last day. Specific prayers are recited,

then the individual moves to the next station until all fourteen are complete.

51. Photographs of the display of the image of Santa Maria delle Grazie and the small altar, which were [and will be] located on the CHI Property, appear below:



52. Neither the Stations of the Cross nor the image of Santa Maria delle Grazie were [or will be] viewable from a public street or sidewalk. The CHI Property is rural and wooded, and it will be maintained as a rural and wooded property by Plaintiffs.

53. In fact, the property is so wooded that the trees and their overhanging branches that surrounded the image of Santa Maria delle Grazie created a “grotto” effect. Of course, there is no natural or manmade cave on the CHI Property. An actual “grotto” is a small cave or an artificial recess or structure made to resemble a natural cave, and they (“grottoes”) are often used as part of a Catholic shrine. In fact, the word “grotto” has become used almost exclusively to refer to Catholic shrines built into a rock formation. Consequently, the natural area created by the trees that surrounded the image was/is often referred to as a “grotto” by Plaintiffs.

54. The CHI Property is posted with “no trespassing” signs. The property is intended for prayer. Any activity or intention that interferes with prayer is strictly forbidden and those in violation will be considered trespassers.

55. The Stations of the Cross and the image of Santa Maria delle Grazie, which Plaintiffs were responsible for displaying, had been displayed on the property from September 2020 until they were ordered to be removed in September 2021 as set forth below.

56. The Township, through its officials, initially told Plaintiffs that the display of the image of Santa Maria delle Grazie was permissible as a temporary display and even suggested that Plaintiffs erect the display on a flatbed truck so that it remained mobile. However, displaying this image on a flatbed truck would not be safe. The display as configured by Plaintiffs had no safety issues. Nonetheless,

there was no basis for Defendants to assert that the display on a truck parked on the property was fine, but that the same display on the property itself violated the Township Zoning Ordinance.

57. On or about October 9, 2020, Defendants' assault on Plaintiffs' religious rights began in earnest. During this time, Defendant Stone and the Township ordered Plaintiffs to remove the religious symbols from the CHI Property by November 2020 unless CHI undertook an extensive, costly (in excess of \$20,000), and burdensome zoning process. Defendant Stone and the Township imposed this exceedingly burdensome process upon CHI because they considered these religious symbols to be the equivalent of a "church or temple" under § 25.02 of the Township Zoning Ordinance, which defines "church or temple" as "any structure wherein persons regularly assemble for religious activity." This determination was factually inaccurate and demonstrates the arbitrary, capricious, discriminatory, irrational, and unreasonable manner in which Defendant Stone and the Township apply the Township Zoning Ordinance to Plaintiffs. There is and was no "structure" on the CHI Property "wherein" regular religious assemblies take place. Nor are any of these religious symbols "accessory structures" requiring Township approval.

58. Defendants' application of the Township Zoning Ordinance to Plaintiffs' religious displays demonstrated that Defendants were not going to operate

in good faith toward Plaintiffs, and this lack of good faith was affirmed by the Township's denial of Plaintiffs' request to construct the St. Pio Chapel and prayer campus as set forth in this Supplemented First Amended Complaint.

59. Plaintiffs challenged this assault on their religious liberty because their right to religious freedom through prayer and the display of the religious symbols does not depend upon the Township granting them prior approval. To that end, Plaintiffs, through counsel, responded to Defendant Stone's letter, pointing out the factual inaccuracies and the unlawful burden Defendants were imposing upon Plaintiffs' freedom of speech and religious exercise.

60. The Sign Ordinance, which is part of the Zoning Ordinance, that Defendants sought to apply against Plaintiffs and their religious displays in October 2020, expressly exempted certain permanent signs (§ 16.03.11), it exempted real estate signs (§ 16.03.15), it exempted all flags (§ 16.03.03), and it exempted all temporary political signs (§ 16.03.14) "provided such signs are not placed within the public street right-of-way line in a manner that obstructs visibility." Plaintiffs' religious displays were not [nor will they be] placed within the public street right-of-way—they were not [nor will they be] visible from the road—and thus create no visibility issues whatsoever. Plaintiffs identified these exemptions in their objection to Defendants' demand to remove the religious symbols, noting, *inter alia*, that by permitting unlimited, temporary political signs (subject to the "public street right-

of-way line” limitation), but prohibiting Plaintiffs’ temporary religious display, the Township is engaging in a form of content-based discrimination. Shortly following this exchange, the Township amended its Sign Ordinance. However, the amendments did not cure the ordinance’s constitutional defects as set forth further in this Supplemented First Amended Complaint.

61. Following this exchange of correspondence, Defendants took no further action and remained silent on the religious displays until May 7, 2021, as set forth and noted further in this Supplemented First Amended Complaint. During this lengthy silence, Plaintiffs assumed that Defendants properly understood that their demands were unlawful.

62. The adoration chapel (“St. Pio Chapel”) planned for the CHI Property will be a modest, 95 seat, 6,090 square foot chapel/church with an associated parking lot, site lighting, and building lighting. The parking lot will have only 39 parking spaces.

63. The St. Pio Chapel will contain a tabernacle, which is a liturgical furnishing used to house the Eucharist outside of Mass.

64. A tabernacle provides a safe location where the Eucharist can be kept for the adoration of the faithful and for later use. Canon Law requires a tabernacle to be in a secure location, such as the St. Pio Chapel, because it helps prevent the profanation of the Eucharist.

65. As taught by the Catholic Church, the Eucharist is the Body, Blood, Soul, and Divinity of Our Lord Jesus Christ, that united in His one Divine Person is really, truly, and substantially present. The Catholic Church describes the Eucharist as the source and summit of the Christian life.

66. Without the St. Pio Chapel, there could be no tabernacle on the CHI Property. And without the tabernacle, the Eucharist could not be kept on the CHI Property.

67. The St. Pio Chapel is the central and critical element of Plaintiffs' proposed development.

68. Without the St. Pio Chapel, Plaintiffs are unable to carry out a core function of their religious activities.

69. The St. Pio Chapel will also allow people to engage in religious worship on the CHI Property during inclement weather, including during the often harsh and cold winters of Michigan.

70. Plaintiffs do not own other properties close to the CHI Property that would permit them to carry out their religious activities. CHI, a nonprofit organization, does not have the funds to purchase new property and to go through, yet again, the extensive and costly process of getting their proposed development approved by the Township and ultimately completed, nor should Plaintiffs have to undergo such a burden to engage in their right to religious exercise. Any suggestions

by the Township that Plaintiffs should have to shoulder such a burden is more evidence of the Township's arbitrary, capricious, discriminatory, irrational, and unreasonable treatment of Plaintiffs.

71. There are residences within the Township, including residences on property zoned CE, that are the same size as, or larger than, the proposed St. Pio Chapel.

72. There are accessory structures and buildings on property within the Township, including on property zoned CE, that are the same size as, or larger than, the proposed St. Pio Chapel.

73. At times, more people will attend a graduation party, a football party, or other permitted secular events in the Township, including such events held on property zoned CE, than will visit the CHI Property or the St. Pio Chapel when at full capacity.

74. In fact, secular events with up to 1,000 people have been held at residences located near the CHI Property without any complaints from neighbors or the Township and without the Township requiring any permits or other official approvals for the events.

75. There are two protestant churches located near the CHI Property. Chilson Hills Church is approximately 2.1 miles south of the CHI Property. It is located at the intersection of Brighton Road and Chilson Road. This property is

zoned SR (Suburban Residential). Liberty Baptist Church is approximately 3.0 miles north of the CHI Property, and it too is located on Chilson Road. This property is zoned SR (Suburban Residential). Accordingly, both of these churches are located on property zoned residential, thereby requiring special land use approval by the Township.

76. As a matter of fact, the CHI Property is compatible with and suitable for the development of a place of religious worship, specifically including the construction and development of the proposed St. Pio Chapel and prayer campus.

77. The development of the St. Pio Chapel and prayer campus is harmonious and consistent with adjacent land uses. It is harmonious and consistent with maintaining the peaceful, rural nature of the property.

78. The St. Pio Chapel will be a place where people can come to pray, attend Mass, and adore Jesus Christ in the Eucharist. The prayer campus is not a high-volume site. It is a place where people can come and walk the trails and pray. One trail, for example, will allow visitors to pray the Stations of the Cross described above. The proposed development will retain the rural atmosphere of the area, and it will promote the quality of life.








79. The St. Pio Chapel will be approximately 600 feet off of Chilson Road. Plaintiffs are preserving most of the property to allow for trails on the property and to allow people to find peace in the natural surroundings. Plaintiffs are only building

on approximately 5 acres of the 40-acre lot, and this development is largely in the open area of the site. In other words, Plaintiffs' proposed development will maintain the rural character of the property.

80. The modest size of the chapel and the limited parking will necessarily limit the number of people who visit the religious property, and Plaintiffs, like other property owners in the Township, will abide by the relevant laws when hosting events on the CHI Property. Defendants cannot (nor should they be permitted to) discriminate against, nor treat disparately, Plaintiffs in this regard. Consequently, Plaintiffs should be permitted to host events on their property that are similar in scope and attendance to secular events permitted by the Township on nearby properties.

81. The Livingston County Road Commission routinely conducts traffic counts throughout the county. They have a traffic count station located on Chilson Road between the Latson Road and Crooked Lake Road intersections (the same stretch of road where the CHI Property is located). A snapshot below shows the traffic counts for the dates in which a count was conducted. As the table below shows, the total daily counts between 2002-2012 were averaging approximately 5,055 cars per day, while between 2014-2019, the counts were averaging approximately 2,542 cars per day. It should be noted that the construction of the Latson Road interchange to I-96 began in the Fall of 2012 and was completed by the

end of 2013. The daily car count over these two spans of years shows that the average daily traffic was nearly cut in half after the construction of the Latson Road interchange was completed.

VOLUME COUNT			
	Date	Int	Total
	Tue 5/28/2019	60	2,635
	Wed 7/13/2016	60	2,422
	Wed 5/28/2014	60	2,569
	Tue 4/24/2012	60	4,505
	Mon 6/29/2009	60	5,027
	Thu 5/11/2006	60	5,361
	Mon 4/29/2002	60	5,330

82. A traffic study was not required for the proposed development of the CHI Property as the proposed use of the property did not meet the threshold traffic generated to require such a study.

83. The negligible traffic caused by the proposed St. Pio Chapel and prayer campus will have little to no overall impact, and Chilson Road has been shown to handle much larger traffic volumes in the past.

84. The Fire Marshall also confirmed that Plaintiffs' proposed development satisfies all of the requirements for emergency vehicle access.

85. CHI hired Boss Engineering, a local and reputable engineering firm, to prepare and submit the application for special land use and associated site plan and environmental impact statement to the Township for approval of the proposed construction of the St. Pio Chapel and prayer campus on the CHI Property. The

application and supporting documents met or exceeded the requirements for special land use as set forth in the Township Zoning Ordinance.

86. On or about December 23, 2020, CHI, through Boss Engineering, submitted its special land use application and documentation for the St. Pio Chapel and prayer campus (hereinafter “Original Submittal”) to the Township. This submission included a special land use application, environmental impact assessment, and site plan. A copy of the Original Submittal is attached as Exhibit 1.

87. The Original Submittal met all of the requirements of the Township Zoning Ordinance and should have been approved without any revisions.

88. The Township, through its Planner and consultants, reviewed the Original Submittal and sent back comments to Boss Engineering for revisions.

89. CHI, through Boss Engineering, made the requested revisions, and the application was scheduled for review by the Township Planning Commission at a public meeting scheduled for on or about February 8, 2021. The Planning Commission meeting ended with the commissioners tabling the matter and offering additional comments regarding issues that they wanted CHI to address and include in a resubmittal.

90. The Original Submittal did not have curbs and gutters for the chapel parking lot because curbs and gutters were not necessary for proper management of stormwater, and adding them increased the cost of the proposal, and it created more

of an environmental impact. Nonetheless, the Township demanded that Plaintiffs include curbs and gutters as part of the revisions, undermining the Township's concerns about environmental impact.

91. CHI, through Boss Engineering, made the requested changes and resubmitted for approval by the Planning Commission the application and supporting documents (hereinafter "Resubmittal") on or about February 16, 2021. A copy of the Resubmittal is attached as Exhibit 2.

92. The February 16, 2021 cover letter from Boss Engineering that is included in the Resubmittal outlines the requested changes made to the proposed development. Also included with the Resubmittal was an "operations manual . . . to illustrate more clearly the vision for uses and activity on the site."

93. On or about March 8, 2021, the Township Planning Commission held a public meeting to consider CHI's special land use application (*i.e.*, the Resubmittal). The Township Planning Commission recommended approval to the Township Board of the site plan, environmental impact statement, and special land use application. The Planning Commission approved the application by a vote of 4 to 3. Additional changes were suggested by the Planning Commission as part of its motion to approve CHI's application. A copy of the Approved Minutes of the March 8, 2021 Township Planning Commission Meeting is attached as Exhibit 3.

94. During the public hearing by the Township Planning Commission, Mr.

Chris Grajek, the Chairman of the Planning Commission, noted, as set forth in the Approved Minutes, that Plaintiffs “met all of the requests made by the Planning Commission.” The Chairman further noted that Plaintiffs “have gone above and beyond and addressed all of the concerns of the Planning Commission and the consultants.”

95. CHI, through Boss Engineering, made the changes suggested by the Planning Commission during the March 8, 2021 meeting and finalized its application (“Final Submission”) for submission to the Township Board for final approval. A copy of the Final Submission is attached as Exhibit 4.

96. One of the changes was the removal of the “curb drop for parking access to the greenspace north of the chapel.” This change improperly limited the number of vehicles that could park on the greenspace for the few (typically two) annual religious events planned for the CHI Property. The greenspace can accommodate approximately 100 additional vehicles with no problem or adverse impact to the surrounding area. As noted previously, the Township has permitted private residences located near the CHI Property to host large events of up to 1,000 people, and the attendees for these events would park on the grassy areas of the residence. In other words, secular events that are significantly larger than any religious event planned by Plaintiffs for the CHI Property are permitted by the Township, but Plaintiffs are being unlawfully prohibited from holding similar, but

significantly smaller, religious events on the CHI Property.

97. CHI's application for special land use does not require a variance to the Township's zoning laws. CHI's application met or exceeded the requirements and standards set forth in the Zoning Ordinance. Indeed, CHI was willing to, and did, make all of the Planning Commission's suggested changes and modifications to its application. In fact, CHI was willing to reduce its proposed use of the St. Pio Chapel bell per the Township's request even though its proposed use did not violate any Township ordinance.

98. On or about May 3, 2021, the Township Board held a public hearing to consider the Final Submission.

99. During the meeting, CHI's special land use application, environmental impact statement, and site plan for CHI's proposed development of the St. Pio Chapel and prayer campus (collectively the Final Submission) were each denied by a 5 to 2 vote.

100. The alleged and faulty reasons for the Township's denial of CHI's proposed development of the St. Pio Chapel and prayer campus (Final Submission) are set forth in the Minutes for this meeting. A copy of the Minutes of the Genoa Charter Township Board meeting of May 3, 2021 is attached as Exhibit 5.

101. The Township's denial of the Final Submission was not based on any measurable, objective criteria. Plaintiffs' proposed development of the CHI

Property met or exceeded all such criteria set forth in the Zoning Ordinance. Rather, the Township's denial was based upon amorphous, subjective considerations that were contrary to the facts and which permit an anti-religious/anti-Catholic animus to drive the Township's decision.

102. The Township's rejection of the Plaintiffs' proposed development of the CHI Property was arbitrary, capricious, discriminatory, irrational, unreasonable and contrary to the facts. The Township's rejection placed a substantial burden on Plaintiffs' religious exercise, and the Township did not have a legitimate, let alone compelling, interest for the rejection.

103. A vocal segment of the public expressed opposition to Plaintiffs' proposed development based on anti-religious and anti-Catholic sentiments—sentiments which induced and/or motivated the Township to reject the development. A few examples of the anti-religious and anti-Catholic comments of those who publicly opposed Plaintiffs' development are as follows: “[T]his property will only be able to be used by ‘faithful Catholics’ I do not think it is proper for the Township to allow a sect in this area. It would be like having the Proud Boys take up residence and say it is all for Jesus.”; “It is no secret that the Catholic Church is one of the wealthiest corporations in the world. They also own pharmaceutical corporations that they make millions on the sale of pain medication that has half the planet addicted to them. . . . The only thing they covet is power & money. I can

provide SEVERAL credible sources (a few I just read) that support just that. So when people compare this monster church that is going to take over their community to Hell's Angel's or the Proud Boys, they are correct. I believe in GOD, not this corrupt dynasty."; "The Catholic Church turns people away DAILY! Homosexuals, single mothers, transgenders, pro-choice supporters. . . . Catholicism is not at ALL about inclusion."; and "This is an organization that will say and do anything regardless of how nefarious to gain its objective, at the same time it hides under the umbrella of being a holy, prayerful organization only interested in the welfare of others. Don't forget we are dealing with the most powerful, richest, most corrupt organization on the planet and they have had hundreds of years to hone their skills. These are the guys who taught Machiavelli how to use power."

104. The Township and its officials were aware of this anti-Catholic and anti-religious animus toward Plaintiffs and the proposed development of the CHI Property. The Township rejected Plaintiffs' proposed development because it wanted to appease the hostile public rather than uphold Plaintiffs' right to religious exercise.

105. The Township's denial of Plaintiffs' application to construct and develop the St. Pio Chapel and prayer campus on the CHI Property (*i.e.*, the denial of the Final Submission) is a final decision causing substantial harm to Plaintiffs, including causing a substantial burden on Plaintiffs' religious exercise. The

Township's final decision prohibits Plaintiffs from engaging in their religious exercise as set forth in this Supplemented First Amended Complaint.

106. Plaintiffs do not have any alternative locations for the construction and development of the St. Pio Chapel and prayer campus. In other words, there is no feasible alternative location from which Plaintiffs can carry on their religious mission. Consequently, the Township's rejection prohibits Plaintiffs from engaging in their desired religious behaviors, thereby causing a substantial burden on Plaintiffs' religious exercise.

107. In 2020, CHI paid approximately \$7,792 to the Township in property taxes for the CHI Property. CHI recently paid \$7,320.83 to the Township in summer property taxes for the CHI Property. CHI will have to continue paying property taxes to the Township even though the Township will not allow Plaintiffs to engage in their desired religious exercise on the CHI Property.

108. Upon completion of the St. Pio Chapel and prayer campus, CHI will be eligible for a property tax exemption. Consequently, a factor motivating the Township's refusal to approve Plaintiffs' proposed development is the loss of tax revenue for the Township.

109. The St. Pio Chapel would be a source of donations for CHI. Consequently, the Township's rejection of the proposed development will reduce the amount of donations that CHI will have to support its religious mission.

110. Following the Township's unlawful rejection of Plaintiffs' Final Submission, the Township continued its assault on Plaintiffs' rights to religious exercise and freedom of speech. On or about May 7, 2021, the Township, via a letter signed and issued by Defendant Stone, demanded once again that Plaintiffs remove the Stations of the Cross and the display of the image of Santa Maria delle Grazie from the CHI Property. Plaintiff Palazzolo didn't receive the letter until on or about May 19, 2021.

111. As stated in the Township's letter, "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." In this letter, Defendant Stone also states that the display of the image of Santa Maria delle Grazie is a "structure/grotto sign [that] does not have a permit and will also need to be removed." Defendants consider this image to be an "accessory structure."

112. Defendants included with the letter a copy of the Township's "sign standards and accessory structure ordinance," which are part of the Zoning Ordinance.

113. As set forth in the May 7, 2021 letter, Defendants, specifically including Defendant Stone, demanded that Plaintiffs remove all religious symbols and icons from the CHI Property. In other words, Defendants demanded that Plaintiffs cleanse the CHI Property of anything religious.

114. The “sign standards” referenced in the Township’s May 7, 2021 letter are found in Article 16 of the Township Zoning Ordinance. Article 16 was amended, in relevant part, on November 11, 2020. A copy of Article 16 is attached as Exhibit 6 (“Sign Ordinance”).

115. The image of Santa Maria delle Grazie, which is approximately 6’ x 6’ in size, is displayed within a frame. The top frame housing is built on cement board with stone veneer on the front of the frame. The back is exposed. The base is loose, stacked stone. There is no cement, and there are no footings. It is not a permanent structure. It is not an accessory building or structure, as Defendants assert; it is a religious symbol protected by the First Amendment.

116. The image of Santa Maria delle Grazie was displayed on the CHI Property from September 2020 to September 2021. Neither wind nor rain nor any other factors caused any safety issues whatsoever for the duration the display was erected. Time itself refutes any claim that this display is/was unsafe. Moreover, this display was not [and will not be] erected along any public right of way or thoroughfare. As noted previously, the display could not [and will not] be seen from the road. It was [and will be] located in a wooded, isolated area.

117. To treat the image of Santa Maria delle Grazie as an accessory building or structure and thus demand its removal, as the Township did here, is not only factually incorrect, it is unconstitutional.

118. The Township permits many different types of signage, both temporary and permanent. The Township's stated interests for regulating signage within the Township is, in relevant part, as follows:

to protect public safety, health and welfare; minimize abundance and size of signs to reduce motorist distraction and loss of sight distance; promote public convenience; preserve property values; support and complement objectives of the Township Master Plan and this Zoning Ordinance; and enhance the aesthetic appearance within the Township.

Sign Ordinance § 16.01.

119. CHI's religious displays (Stations of the Cross and image of Santa Maria delle Grazie), which were [and will be] located within a wooded area on a 40-acre lot, do not undermine any of the Township's stated objectives for restricting signage.

120. CHI's religious displays are not "distracting to motorists and pedestrians." They do not "create[] a traffic hazard" nor do they "reduce[] the effectiveness of signs needed to direct and warn the public." CHI's religious displays do not "overwhelm the senses, impair sightlines and vistas, create confusion, reduce desired uniform traffic flow, create potential for accidents, affect the tranquility of residential areas, impair aesthetics [or] degrade the quality of a community." *See* Sign Ordinance § 16.01.01.

121. CHI's religious displays were not [and will not be] placed within the public street right-of-way—they were not [and will not be] visible from the road—

and thus create no visibility or public safety issues whatsoever. And they create no visual blight. An individual who is offended by or objects to Plaintiffs' religious displays would have to enter the private property to see them—the person is plainly not entering the property for the purpose of prayer and is thus exceeding any permission he or she has to enter the property.

122. Defendants have no legitimate interest, let alone a compelling interest, in ordering Plaintiffs to remove the private religious symbols from the CHI Property. Defendants' enforcement of the Township Zoning Ordinance against Plaintiffs' religious displays is arbitrary, capricious, discriminatory, irrational, unreasonable, and unconstitutional.

123. The Sign Ordinance expressly exempts by way of its definition of a "sign" the following: "Legal notices," "Decorative displays in connection with a recognized holiday, provided that the display doesn't exceed 75 days"—an arbitrary number; "Signs required by law"; and "Flags of any country, state, municipality, university, college or school." Sign Ordinance § 16.02.20.

124. By its own terms, the Township's Sign Ordinance exempts from its permit and fee requirement "Historical marker[s]," "Parking lot signs," "Street address signs," and "Temporary signs." Sign Ordinance § 16.03.02.

125. As set forth in this Supplemented First Amended Complaint and by the plain language of the Sign Ordinance, this ordinance is a content-based restriction

on speech, *Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015), which is unlawful, *id.* at 163 (“Content-based laws . . . are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”); *see also Int’l Outdoor, Inc. v. City of Troy*, 974 F.3d 690 (6th Cir. 2020) (requiring strict scrutiny because “the Sign Ordinance imposed a content-based restriction by exempting certain types of messages from the permitting requirements, such as flags and ‘temporary signs’ that included on- and off-premises real-estate signs, ‘garage, estate or yard sale’ signs, ‘non-commercial signs[,]’ ‘[p]olitical signs[,]’ ‘holiday or other seasonal signs[,]’ and ‘constructions signs’”).

126. By requiring prior approval and a permit, the Sign Ordinance operates as a prior restraint on Plaintiffs’ speech and religious exercise.

127. Defendants’ actions, as set forth in this Supplemented First Amended Complaint, are not narrowly tailored to serve a compelling interest.

128. As a direct and proximate result of Defendants’ actions, Plaintiffs have suffered and will continue to suffer substantial delay, uncertainty, and expense. The delay in the construction of the St. Pio Chapel and prayer campus has resulted in the loss of Plaintiffs’ First Amendment rights, thereby causing irreparable harm, and the loss of donations. The cost of hiring an engineering firm to prepare the documents

(and the many modifications to the Original Submittal) required by the Township for the special land use application cost CHI in excess of \$27,000.

129. Defendants' actions, as set forth in this Supplemented First Amended Complaint, have caused, and will continue to cause, irreparable harm to Plaintiffs and a substantial burden on their fundamental rights, including their right to freely exercise their Catholic faith.

SUPPLEMENTAL ALLEGATIONS

130. It is painfully evident that the Township will do almost anything to prevent Plaintiffs from using the CHI Property for religious expression and worship, and the allegations set forth herein are part of the continuing and ongoing violation of Plaintiffs' constitutional and statutory rights.

131. As part of the ongoing violation of Plaintiffs' constitutional and statutory rights as set forth in the Supplemented First Amended Complaint, on Friday, September 17, 2021, just days before a scheduled religious assembly in celebration of St. Pio's Feast Day (September 23, 2021) that Plaintiffs had been planning for many months (and which the Township had known about for at least 6 months), the Township filed a "verified" complaint and *ex parte* TRO request in the 44th Circuit Court for Livingston County, asking the county circuit court to order Plaintiffs "to remove a 12-foot-tall stone structure [the image of Our Lady of Grace], altar, and 14 stations of the cross housing structures that have been installed at the

[CHI] Property” and to prevent Plaintiffs from holding religious worship on the property, claiming that a Livingston County (not Township) driveway permit (which Plaintiffs have never used, as discussed further below, and which expired on January 8, 2022) “forbids” this.

132. The verified complaint filed by the Township was not “verified” by persons with personal knowledge of the facts allegedly verified.

133. In its verified complaint, the Township admits the following: “there is another pending civil action arising out of the transaction or occurrence alleged in the complaint, in the United States District Court for the Eastern District of Michigan, under the name *Catholic Healthcare International, Inc. v. Genoa Township*, Case No. 21-cv-11303.” Thus, the Township admits that these supplemental allegations are part of the same transaction, occurrence, and ongoing course of conduct set forth in the First Amended Complaint filed on July 14, 2021 (ECF No. 14).

134. The Township’s demands in the verified complaint regarding the religious displays are similar to those set forth in the May 7, 2021 letter, which prompted the filing of this lawsuit on June 2, 2021. Accordingly, this lawsuit was filed first and preemptively, anticipating the Township’s efforts to stop Plaintiffs from using the CHI Property for religious expression and worship. In other words, this lawsuit was filed to remedy the past constitutional and statutory violations and

to prevent the Township from engaging in the very conduct set forth in these supplemental allegations—conduct which continues the constitutional and statutory violations and which causes additional damages, harm, and injury to Plaintiffs.

135. Had the Township not violated Plaintiffs’ constitutional and statutory rights by unlawfully denying Plaintiffs’ request to construct the prayer campus and St. Pio Chapel on May 3, 2021, as set forth herein, then the damages, harm, and injury caused by the Township’s subsequent conduct set forth in this Supplemented First Amended Complaint would not have occurred.

136. On September 20, 2021, the state court judge “rubberstamped” the *ex parte* TRO prepared by the Township’s counsel, thereby forcing CHI to immediately remove the religious symbols and to immediately “cease all unlawful use and occupancy of the Property for organized gatherings,” thus prohibiting religious worship and assembly.

137. In order to comply with the Township’s demands, Plaintiffs removed the religious symbols from the CHI Property. Per the Township, the display of these religious symbols constitutes a “nuisance” under the Zoning Ordinance.

138. The task of removing these religious symbols was completed on or about Sunday, September 26, 2021. Plaintiffs have been unable to hold any “organized gatherings” as a result of the Township’s actions, thereby halting religious exercise and worship on the property to this day.

139. As noted, the Township's driveway claim (*i.e.*, no "organized gatherings" restriction) is false and yet another way in which the Township is attempting to enforce its Zoning Ordinance to restrict Plaintiffs' right to religious exercise on CHI's private property. This latest driveway ploy is all part of the same course of conduct that is at the heart of this lawsuit.

140. Despite filing an alleged "verified" complaint, a witness for the Township, Ms. Kelly VanMarter, testified under oath in the state court proceedings that the Township had no information that CHI had taken any action on the Livingston County Road Commission permit to actually construct a field driveway. And the reason why the Township had no such evidence or information is because none exists. CHI has taken no action on this permit. The Township's claim is frivolous.

141. Ms. VanMarter testified, in relevant part, as follows: "Q: Do you have any information whatsoever that CHI has ever acted on that permit to construct a field driveway? A: No."

142. Consequently, the permit, a copy of which is attached as Exhibit 7, and thus its language prohibiting "organized gatherings," is meaningless and has no force or effect. Moreover, the permit expired by its own terms on January 8, 2022. Nonetheless, the Township continues to use this permit as a pretext to prevent Plaintiffs from using the CHI Property for religious worship.

143. The no “organized gatherings” restriction that was added to CHI’s driveway permit is an unconstitutional restriction, and it was added to CHI’s permit at the insistence of the Township so that the CHI Property could not be used for religious worship.

144. Below is a photograph of the driveway entrance to the CHI property. It has been the same entrance since CHI first acquired the property in October 2020, and it was in use prior to that.

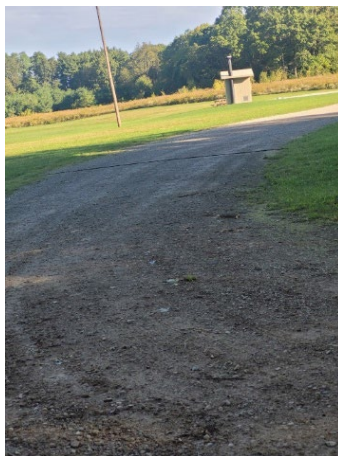


145. As the photograph above and the photograph below of the shoulder leading to the CHI Property entrance illustrate, the area to the front of the entrance and along the shoulder is large enough for a shuttle bus or van to safely pull off the road and unload people who want to enter the property on foot to pray and worship.



146. Attached as Exhibit 8 is a copy of a Livingston County Road Commission application for a permit to construct a field driveway. CHI applied for a field driveway permit because it wanted to add gravel to improve the current driveway/entrance. As noted, CHI never took any action on the permit it received. Moreover, there is nothing in the application indicating that by applying for a field driveway permit the applicant is agreeing to any restrictions on the use of the driveway. For example, the application does not say that a field driveway cannot be used for organized gatherings or any other types of gatherings. There is no Livingston County Road Commission rule or regulation that imposes limitations on the use of a field driveway, including prohibiting it from being used for organized gatherings.

147. The driveway to Fillmore Park, which is located in Genoa Township, is a dirt driveway that is similar to the entrance to the CHI Property. A photograph of the Fillmore Park driveway is depicted below.



148. Fillmore Park recently held a grand opening that was attended by many people. And the park has posted trail signs throughout. In other words, this dirt driveway is often used for organized secular gatherings at this park, and the Township allows it.

149. The hearing on CHI's motion to dissolve the TRO and the Township's motion for preliminary injunction commenced on September 28, 2021, but it was adjourned after nearly a full day of testimony from the Township's witness (Ms. VanMarter) to determine whether the matter could be resolved between the parties. During cross-examination, the Township's witness testified, *inter alia*, as follows:

Q: So looking at the property that CHI has, if it had been a private residence you could put up 14 bird houses, \$50 per, a picnic table for \$50 permit, and a ten foot by 12-foot stone wall outside of the setbacks for \$50, correct?

A: That's correct.

Q: And it wouldn't require the \$2,875 application fee, correct?

A: Single family residential is a permitted use so they do not need to pay that fee.

150. The Township's witness also confirmed, *inter alia*, that there is no burdensome special land use application process required prior to having 200 people at a home for a football party in the Township. Ms. VanMarter testified as follows: "Q: [T]here's no special land use application required prior to having 200 people at your home for a football party in Genoa Township, correct? A: Correct."

151. In other words, unlike Plaintiffs' religious displays, which are structurally no different in size or scope, the secular "structures" identified above

(bird houses, picnic tables, 12-foot stone wall) could be constructed on the property *next door* to the CHI Property for just a \$50 permit per item and without the need to undergo the costly, burdensome, and subjective Planning Commission and Township Board approval process (the special land use application process), and 200 people could gather to watch football at the neighbor's property, but they could not come to pray at the CHI Property.

152. As stated by the Sixth Circuit, “While the United States Code contains a Religious Freedom and Restoration Act and a Religious Land Use and Institutionalized Persons Act, one will search in vain for a Freedom to Watch Football on a Sunday Afternoon Act.” *Miles Christi Religious Order v. Twp. of Northville*, 629 F.3d 533, 540 (6th Cir. 2010).

153. There are residences located near the CHI property, some of which have dirt/gravel driveways. Large secular events, such as graduation parties, football parties, and other organized gatherings, are permitted on these residential properties without requiring any special permits unless the assembly exceeds 1,000 attendees. Most often, the attendees to these secular events (whether the driveway is paved or dirt/gravel) park their vehicles on the grassy parts of the property. Many of these secular events have had far more people attend than will attend any of CHI's special events on its property, and these special events (St. Pio's Feast Day event and St. Pio's Birthday event) are the largest assemblies on the CHI property. For example,

CHI had less than 200 people register for the September 23, 2021, event, and there are less than 50 people who will regularly enter the property within a given week. This is not a high traffic volume site.

154. Just days before CHI's September 23rd special event to be held on the CHI Property (an event which the Township halted via its state court filing and TRO), a "Family Fun Day" was held on September 18, 2021, on property located on Chilson Road approximately 1 mile from the CHI Property. There were approximately 100 people or more that attended this event. There is no improved surface parking for the number of vehicles at this event. Pictures of the event and the advertisement for this event appear below.



155. The hosts of the “Family Fun Day” did not need any special land use approvals from the Township to hold this event, even though the impact of this event is far greater than the use of the CHI Property for religious worship. And the Township did not take any action to halt this “fun day” event.

156. On April 30, 2022, the owner of the property located at 3275 Chilson Road, which is directly across the street from the CHI Property, was hosting a secular event. There were approximately 20 vehicles at the property, many of which were parked on the grass of the property and along Chilson Road. Pictures of these vehicles appear below (for perspective purposes, the last two pictures were taken from the CHI Property driveway):



157. Events such as these (*i.e.*, large events where numerous cars are parked on the grass and along the road) are permitted by the Township, and they are a routine occurrence.

158. The owner of this property (3275 Chilson Road) is one of the neighbors who complained to the Township about CHI, and who objects to CHI's development and use of the CHI Property for religious worship.

159. During the holidays, the Township permits private residences to erect large displays on their property without requiring any special land use approvals, including the following skeleton, which stood over 12 feet tall and which was erected in the Fall of 2021:



160. Other holiday displays permitted by the Township in the Fall of 2021 without requiring the owner to obtain any special land use approvals included the following racy displays:



161. Below is a photograph of a large “For Sale” sign that was posted in the ground with three 4x4’s. This sign, which is larger than any Station of the Cross, was visible from the public right of way, and it was located along Grand River Road in Genoa Township. An application for special land use was not required for this display. In other words, the owner(s) of this property did not have to undergo a burdensome or costly permit process to display this sign.



162. Below is a photograph of a large “For Sale” sign that was posted in the ground with three 4x4’s on a vacant lot. This sign, which is larger than any Station of the Cross, was visible from the public right of way, and it was located on the corner of Chilson Road and Crooked Lake Road. It was approximately 1/10 of a mile from the CHI property. An application for special land use was not required for this display. In other words, the owner(s) of this property did not have to undergo a burdensome or costly permit process to display this sign.



163. Below are photographs of picnic tables that were located at Genoa Township Park. These picnic tables are larger than the altar that was located on the CHI Property. An application for special land use was not required for these tables. In other words, the owner of this property did not have to undergo a burdensome or costly permit process to display these items.



164. Unfortunately (but not surprising), there was no resolution available that would protect Plaintiffs' right to religious exercise. The only option for CHI was to engage, once again, in the costly, burdensome, and time-consuming special land use approval process, which itself is no guarantee as the Township Board retains the ability to deny the request on subjective grounds. That is, in order for CHI to obtain the "necessary permits, including land use permits and building permits for the structures" demanded by the Township in its civil enforcement action, CHI had to undergo, yet again, the burdensome and costly special application for land use approval process.

165. As a result, the parties stipulated to and submitted a proposed order to the state court judge, notifying the court of the following:

The parties hereby advise the Court that [CHI] intends to submit, under protest and with a reservation of all rights, claims, and defenses, by October 15, 2021, a special application for land use, site plan, and associated documents to permit the display of religious symbols and the use of [CHI's] private property for religious worship. This submission will include the prayer trails with prayer stations, Stations of the Cross, altar, mural wall with the image of Our Lady of Grace, and a commercial driveway with parking.

166. Per the stipulation, on October 15, 2021, CHI, under protest, with a reservation of all rights, claims, and defenses and in a needless effort to satisfy the conditions of the state court TRO so that Plaintiffs could use the CHI Property for religious expression and worship, submitted a burdensome and costly (in excess of \$8,000) special land use application and associated documents, seeking approval for

the construction of the prayer campus (the religious symbols at issue and a driveway/parking area to address the “field” driveway permit issue) (hereinafter “Prayer Campus Submission”). A copy of the Prayer Campus Submission is attached as Exhibit 9. As Exhibit 9 illustrates, this is not a simple permit application. A copy of the Township’s Application for Site Plan Review, which is part of the special application for land use, is attached as Exhibit 10.

167. The fee alone for the application was \$2,875 (which is not a nominal amount—permits for similar sized items on residential property would only cost \$50 and would not require Planning Commission and Township Board approval), but to complete the application process, CHI had to hire an engineering firm with the requisite expertise to prepare and submit the site plan and environmental impact statement, to respond to the Township’s experts and consultants, and to interface with the Township’s experts and consultants.

168. The *actual* cost for the Prayer Campus Submission was in excess of \$8,500, and it was only this low because the engineers were able to use much of the same work from the original submissions. Consequently, the permitting process that the Township required for these religious displays (without the chapel) ultimately cost in excess of \$20,000, and with the current gamesmanship engaged in by the Township, CHI has now expended nearly \$40,000 in just application and engineering fees in an effort to use its property for religious expression and worship.

169. Despite incurring the additional burdens, costs, and delays associated with submitting this modified special land use application (Prayer Campus Submission), *which the Township demanded*, during a hearing on or about December 13, 2021, the Planning Commission refused to consider the submission based on the Township Board's previous denial of CHI's special land use application (referred to as the Final Submission in this Supplemented First Amended Complaint) on May 3, 2021, thereby causing further burdens, costs, delay, and uncertainty and forcing CHI to file an administrative appeal to the Zoning Board of Appeals (ZBA), which only added to the costs, delay, and uncertainty as the ZBA did not hear this appeal until February 15, 2022.

170. As part of the Prayer Campus Submission and in response to the review letters submitted by the Township's consultants, Plaintiffs submitted a letter requesting answers from the Township as to its application and enforcement of the Zoning Ordinance so that Plaintiffs could better understand how the Township was applying the ordinance to their proposed use of the CHI Property. A copy of the CHI letter is attached as Exhibit 11.

171. The Township's bad faith toward CHI was on full display when it refused to answer the questions posed in the CHI letter. In its response letter, the Township stated, "Upon the advice of counsel, Genoa Charter Township will not

issue a response to your demand for answers due to the pending litigation referenced in your letter.” A copy of the Township’s response letter is attached as Exhibit 12.

172. As noted previously, the Planning Commission rejected the Prayer Campus Submission, concluding that there were no new grounds or substantial new evidence presented to consider the new application in light of the Township Board’s denial on May 3, 2021 of CHI’s prior application (the Final Submission), thereby adding more costs, delay, and uncertainty.

173. As noted, Plaintiffs appealed the Planning Commission’s decision to the ZBA. On or about February 15, 2022, the ZBA denied Plaintiffs’ appeal, affirming the Planning Commission’s refusal to hear and approve the Prayer Campus Submission based on the Township Board’s denial of the Final Submission on May 3, 2021. The ZBA’s decision is a final decision.

174. By denying the Prayer Campus Submission and through its state court enforcement action, the Township is prohibiting Plaintiffs from simply displaying the Stations of the Cross, a small altar, and the mural wall with the image of Our Lady of Grace on the CHI Property. Pursuant to Article 11 of the Township’s Zoning Ordinance, “[g]ardens and landscaping are permitted in all yards” and “[m]anufactured landscape features and minor structures may be permitted in all yards subject to” certain location and size restrictions. All of Plaintiffs’ religious displays satisfy these location and size restrictions, yet they are still prohibited. A

copy of relevant excerpts from Article 11 (General Provisions) of the Township's Zoning Ordinance is attached at Exhibit 13.

175. Section 25.02 of the Township's Zoning Ordinance defines "Manufactured Landscape Feature" as "Any manufactured object used primarily for ornamental purposes, in landscaping. A manufactured landscape feature may include, but is not limited to, statues, lawn ornaments, bird baths/feeders, water features, fountains, lawn art, benches, arbors, trellises or other feature that if produced by hand or machine, including objects that are created from raw materials that occur in nature (such as statues created from stone, wood or tree trunks)."

176. To this day, the Township is preventing Plaintiffs from using the CHI Property for religious exercise, expression, and worship as set forth in this Supplemented First Amended Complaint.

FIRST CLAIM FOR RELIEF

(Religious Land Use and Institutionalized Persons Act)

177. Plaintiffs hereby incorporate by reference all stated paragraphs.

178. Defendants, under color of state law, have deprived Plaintiffs of their rights by imposing and implementing and/or attempting to impose or implement a land use regulation in a manner that imposes a substantial burden on Plaintiffs' religious exercise and religious expression and such imposition is not in furtherance of a compelling governmental interest nor is it the least restrictive means of

furthering that compelling governmental interest in violation of the Religious Land Use and Institutionalized Persons Act and 42 U.S.C. § 1983.

179. Pursuant to the Religious Land Use and Institutionalized Persons Act, Plaintiffs' proposed development and use of the CHI Property for the purpose of religious exercise as set forth in this Supplemented First Amended Complaint is considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose. Thus, Plaintiffs' proposed development of the CHI Property is religious exercise for Plaintiff CHI and Plaintiff Palazzolo as a matter of law.

180. The substantial burden imposed on Plaintiffs' religious exercise is in the implementation of the land use regulation or system of land use regulations, under which Defendants make, or have in place formal or informal procedures or practices that permit Defendants to make, individualized assessments of the proposed uses for the CHI Property.

181. Defendants' actions, as set forth in this Supplemented First Amended Complaint, impose a substantial burden on Plaintiffs' religious exercise, and the substantial burden affects, or removal of that substantial burden would affect, commerce among the several States as out of state travelers, including Plaintiff Palazzolo, a resident of Missouri, will make visits to the St. Pio Chapel and prayer

campus, and the items and materials used to construct the St. Pio Chapel and prayer campus will travel in interstate commerce.

182. Defendants, under color of state law, have deprived Plaintiffs of their rights by imposing and implementing and/or attempting to impose and implement a land use regulation in a manner that treats a religious assembly, institution, or organization on less than equal terms with a nonreligious assembly, institution, or organization in violation of the Religious Land Use and Institutionalized Persons Act and 42 U.S.C. § 1983.

183. Defendants, under color of state law, have deprived Plaintiffs of their rights by imposing and implementing and/or attempting to impose and implement a land use regulation in a manner that discriminates against an assembly, institution, or organization on the basis of religion or religious denomination in violation of the Religious Land Use and Institutionalized Persons Act and 42 U.S.C. § 1983.

184. Defendants, under color of state law, have deprived Plaintiffs of their rights by imposing and implementing and/or attempting to impose and implement a land use regulation that unreasonably limits religious assemblies, institutions, or structures within a jurisdiction in violation of the Religious Land Use and Institutionalized Persons Act and 42 U.S.C. § 1983.

185. As a direct and proximate result of Defendants' actions, Plaintiffs have suffered and will continue to suffer substantial delay, uncertainty, and expense due to the imposition of the regulation.

186. As a direct and proximate result of Defendants' violation of the Religious Land Use and Institutionalized Persons Act, Plaintiffs have suffered irreparable harm, including the loss of their right to religious exercise, entitling them to declaratory and injunctive relief and damages.

SECOND CLAIM FOR RELIEF

(Free Exercise—First Amendment)

187. Plaintiffs hereby incorporate by reference all stated paragraphs.

188. By reason of the aforementioned decisions, laws, policies, practices, procedures, customs, acts, and/or omissions, engaged in under color of state law, Defendants have deprived Plaintiffs of their right to religious exercise in violation of the Free Exercise Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

189. Defendants violated Plaintiffs' right to religious exercise by targeting Plaintiffs for discriminatory and arbitrary enforcement of the zoning laws on account of Plaintiffs' religious practices.

190. The Zoning Ordinance, facially and as applied to restrict Plaintiffs' religious exercise, is not a neutral law of general applicability.

191. Defendants lack a compelling justification for discriminating against Plaintiffs' religious exercise and for distinguishing between Plaintiffs' religious use of the CHI Property and the litany of other secular uses permitted by Defendants for similarly situated property in the Township, as set forth in this Supplemented First Amended Complaint.

192. As a direct and proximate result of Defendants' violation of the Free Exercise Clause of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages.

THIRD CLAIM FOR RELIEF

(Freedom of Speech—First Amendment)

193. Plaintiffs hereby incorporate by reference all stated paragraphs.

194. By reason of the aforementioned decisions, laws, policies, practices, procedures, customs, acts, and/or omissions, engaged in under color of state law, Defendants have deprived Plaintiffs of their right to religious expression in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

195. The Township's Zoning Ordinance, specifically including [which means including, but not limited to] the Sign Ordinance and the restriction on "organized gatherings," facially and as applied to Plaintiffs and their speech and expressive activity as set forth in this Supplemented First Amended Complaint, is unconstitutionally vague and/or overbroad, causing a chilling effect on Plaintiffs' religious expression in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

196. The Township's Zoning Ordinance, specifically including [which means including, but not limited to] the Sign Ordinance, facially and as applied to Plaintiffs and their speech as set forth in this Supplemented First Amended Complaint, is a content-based restriction in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

197. The Township's Zoning Ordinance, specifically including [which means including, but not limited to] the Sign Ordinance, facially and as applied to Plaintiffs and their speech as set forth in this Supplemented First Amended Complaint, operates as an unlawful prior restraint on speech in violation of the Free Speech Clause of the First Amendment as applied to the states and their political

subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

198. Defendants’ restriction on Plaintiffs’ religious expression, including their restriction on Plaintiffs’ religious symbols pursuant to the Township’s Zoning Ordinance, specifically including [which means including, but not limited to] the Sign Ordinance, as set forth in this Supplemented First Amended Complaint, violates Plaintiffs’ right to freedom of speech protected by the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

199. As a direct and proximate result of Defendants’ violation of the Free Speech Clause of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages.

FOURTH CLAIM FOR RELIEF

(Expressive Association—First Amendment)

200. Plaintiffs hereby incorporate by reference all stated paragraphs.

201. By reason of the aforementioned decisions, laws, policies, practices, procedures, customs, acts, and/or omissions, engaged in under color of state law, including [which means including, but not limited to] the restriction on “organized gatherings” as set forth in this Supplemented First Amended Complaint, the

Township has deprived Plaintiffs of their right to expressive association guaranteed by the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

202. As a direct and proximate result of the Township's violation of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages.

FIFTH CLAIM FOR RELIEF

(Equal Protection—Fourteenth Amendment)

203. Plaintiffs hereby incorporate by reference all stated paragraphs.

204. By reason of the aforementioned decisions, laws, policies, practices, procedures, customs, acts, and/or omissions, engaged in under color of state law, Defendants have deprived Plaintiffs of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 by discriminating against Plaintiffs in their application of the Zoning Ordinance on account of Plaintiffs' exercise of their religious rights, including their right to engage in religious expression, and thereby treating Plaintiffs on less than equal terms.

205. Defendants targeted Plaintiffs for discriminatory and arbitrary enforcement of the Zoning Ordinance on account of Plaintiffs' religious practices thereby infringing upon Plaintiffs' fundamental rights in violation of the Equal

Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

206. Defendants' enforcement, specifically including Defendant Stone's enforcement of the Zoning Ordinance, including [which means including, but not limited to] the Sign Ordinance, as set forth in this First Amended Complaint is arbitrary, capricious, discriminatory, and unreasonable in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

207. As a direct and proximate result of Defendants' violation of the Equal Protection Clause, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages.

SIXTH CLAIM FOR RELIEF

(Free Exercise—Michigan Constitution)

208. Plaintiffs hereby incorporate by reference all stated paragraphs.

209. By reason of the aforementioned decisions, laws, policies, practices, procedures, customs, acts, and/or omissions, engaged in under color of state law, Defendants have deprived Plaintiffs of their right to the free exercise of religion in violation of Article 1, Section 4 of the Michigan Constitution.

210. As a direct and proximate result of Defendants' violation of the Michigan Constitution, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A) to declare that Defendants violated the Religious Land Use and Institutionalized Persons Act as set forth in this Supplemented First Amended Complaint;

B) to declare that Defendants violated the First and Fourteenth Amendments to the United States Constitution as set forth in this Supplemented First Amended Complaint;

C) to declare that Defendants violated the Michigan Constitution as set forth in this Supplemented First Amended Complaint;

D) to enjoin the enforcement of the Township Zoning Ordinance as applied to Plaintiffs so as to allow Plaintiffs to construct and develop the St. Pio Chapel and prayer campus as set forth in this Supplemented First Amended Complaint, and to further enjoin Defendants, their employees, agents, and successors in office from enforcing or endeavoring to enforce the Township Zoning Ordinance, including [which means including, but not limited to] the Sign Ordinance, so as to restrict

Plaintiffs' religious exercise and religious expression as set forth in this Supplemented First Amended Complaint;

E) to award Plaintiffs nominal and compensatory damages against the Township for the harm caused by the Township pursuant to 42 U.S.C. § 1983, the Religious Land Use and Institutionalized Persons Act, and other applicable law;

F) to award Plaintiffs their reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988, the Religious Land Use and Institutionalized Persons Act, and other applicable law;

G) to grant such other and further relief as this Court should find just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury of all issues triable of right by a jury.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2022, 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

/s/Robert J. Muise

Robert J. Muise, Esq.