NOS. 22-2139 & 23-1060

United States Court of Appeals for the Sixth Circuit

CATHOLIC HEALTHCARE INTERNATIONAL, INCORPORATED; JERE PALAZZOLO,

PLAINTIFFS-APPELLANTS CROSS-APPELLEES,

V.

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

DEFENDANTS-APPELLEES CROSS-APPELLANTS,

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

APPELLANTS' REPLY/CROSS-APPELLEES' RESPONSE BRIEF (THIRD BRIEF)

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

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

Plaintiff-Appellant / Cross-Appellee Catholic Healthcare International, Inc. is a nonprofit corporation. It does not have a parent corporation and no publicly held company owns 10% of its stock.

Plaintiff-Appellant / Cross-Appellee Jere Palazzolo is an individual, private party.

No party is a subsidiary or affiliate of a publicly owned corporation. There are no publicly owned corporations, not a party to the appeal, that have a financial interest in the outcome.

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/s/ *Robert J. Muise*
Robert J. Muise, Esq.

REASONS WHY ORAL ARGUMENT SHOULD BE PERMITTED

Plaintiffs previously filed a motion to expedite briefing and decision in this case. (Doc. No. 12). The former relief was granted and the latter was deferred to the merits panel. (Doc. No. 16-2 ["The decision as to when and whether oral argument will be conducted and whether to expedite the issuance of a decision are reserved to the merits panel to which this appeal will be assigned."]).

Consequently, pursuant to Rule 34(a) of the Federal Rules of Appellate Procedure and 6th Cir. R. 34(a), Plaintiffs would request oral argument only insofar as the Court deems it necessary to reach a fuller understanding of the issues and the underlying facts in this case, which raises important legal issues regarding religious exercise and expression on private property, and only so long as the timing for oral argument does not cause an extensive delay with the issuance of a decision.

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/s/ *Robert J. Muise*
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INTRODUCTION

"The principle that government may not enact laws that suppress religious belief or practice is . . . well understood." *Church of the Lukumi Babalu Aye, Inc v. City of Hialeah*, 508 U.S. 520, 523 (1993). Yet, the Township is sparing no effort to prohibit Plaintiffs from engaging in peaceful religious activity that is fully protected by the First Amendment and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq*. ("RLUIPA").

This "Third Brief" will (1) *reply* to Defendants' arguments in response to Plaintiffs' request to preliminarily enjoin the Township's restriction on the display of religious symbols/signs (a small altar, Stations of the Cross, and a mural wall with the image of Our Lady of Grace) on Plaintiff Catholic Healthcare International, Inc.'s 40-acre property ("CHI Property") and (2) *respond* to Defendants' argument that the district court abused its discretion by granting Plaintiffs' request to preliminarily enjoin the Township from restricting Plaintiffs' use of the CHI Property for "organized gatherings" (religious assembly and worship).

STATEMENT OF JURISDICTION

On June 2, 2021, Plaintiffs filed this federal action, alleging violations arising under the United States Constitution, 42 U.S.C. § 1983, RLUIPA, and the Michigan Constitution. (Compl., R.1). The district court has jurisdiction pursuant to 28 U.S.C.

§§ 1331 and 1343 over the federal claims and supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367(a).

On September 19, 2021, Plaintiffs filed an emergency motion for a temporary restraining order/preliminary injunction. (R.23). On September 29, 2021, the district court denied Plaintiffs' motion (R.30), prompting Plaintiffs to file a notice of interlocutory appeal the very next day (R.31).

This Court heard the appeal, and on December 20, 2021, it issued its mandate, remanding for the district court to reconsider its *Younger* abstention conclusion, *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, No. 21-2987, 2021 U.S. App. LEXIS 33937, at *3 (6th Cir. Nov. 12, 2021), and it expanded the scope of its remand for the district court to reconsider its ripeness analysis, *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, No. 21-2987, 2021 U.S. App. LEXIS 36609, at *1 (6th Cir. Dec. 10, 2021).

A year later (December 20, 2022), the district court ruled on Plaintiffs' motion, concluding that *Younger* abstention does not apply but denying Plaintiffs' request to display the religious symbols/signs at issue on ripeness grounds. (Order at 7-9, R.70, PageID.3508-10). The district court granted Plaintiffs' request to enjoin the Township's restriction on "organized gatherings." (*Id*. at 9-10, R.70, PageID.3510-11).

On December 21, 2022, Plaintiffs filed a timely notice of appeal of the district

court's order denying Plaintiffs' motion as it relates to the religious displays. (Notice of Appeal, R.71, PageID.3512-14). The Court has jurisdiction of that appeal (No. 22-2139) pursuant to 28 U.S.C. § 1292.

On January 19, 2023, Defendants filed a notice of appeal of the district court's order granting Plaintiffs' motion as it relates to the restriction on "organized gatherings." (Notice of Appeal, R.81). The Court has jurisdiction of this cross-appeal (No. 23-1060) pursuant to 28 U.S.C. § 1292.

STATEMENT OF THE ISSUES FOR REVIEW

I. Whether this challenge to the Township's restriction on Plaintiffs' rights to religious exercise and expression on CHI's private property is ripe.

II. Whether the enforcement of the Township's Zoning Ordinance facially and as applied to restrict Plaintiffs' religious exercise and expression on CHI's private property deprives Plaintiffs of their rights protected by the First Amendment and RLUIPA, thereby causing irreparable harm and warranting the requested injunction.

III. Whether the district court abused its discretion when it granted Plaintiffs' request to preliminarily enjoin the Township's restriction on Plaintiffs' use of the CHI Property for "organized gatherings" (religious assembly and worship).

STATEMENT OF THE CASE

I. Procedural Background.

On September 19, 2021, Plaintiffs filed an emergency motion for a temporary

restraining order (TRO) and for a preliminary injunction. (R.23). This motion was compelled by the fact that the Township filed an enforcement action on September 17, 2021 in state court, seeking to prohibit Plaintiffs from displaying religious symbols (an altar, Stations of the Cross, and a mural wall with the image of Our Lady of Grace) and from engaging in "organized gatherings" on their rural, 40-acre property in the Township. (Pls.' Mot. for TRO & Prelim. Inj. at 1-4, R.23, PageID.1122-25).

The district court held a hearing on Plaintiffs' motion on September 21, 2021. The court denied the TRO that same day (R.28), and on September 29, 2021, the court denied the request for a preliminary injunction on *Younger* abstention and ripeness grounds. (R.30). The following day, Plaintiffs filed a notice of appeal (R.31), appealing the denial of the request for a preliminary injunction.

This Court heard the case, and on December 20, 2021, it issued its mandate, remanding for the district court to reconsider its *Younger* abstention ruling, *Catholic Healthcare Int'l, Inc.*, No. 21-2987, 2021 U.S. App. LEXIS 33937, at *3, and it subsequently expanded the scope of its remand for the district court to reconsider its ripeness analysis, *Catholic Healthcare Int'l, Inc.*, No. 21-2987, 2021 U.S. App. LEXIS 36609, at *1.

In light of the Court's mandate, on January 6, 2022, the district court ordered the parties to file supplemental briefs on the *Younger* abstention and ripeness issues. (Briefing Schedule, R.38). Those briefs were filed.

On April 25, 2022, the *state* court stayed all proceedings pending final resolution of this federal case, which was filed first. (R.51-3). Consequently, as the district court correctly concluded in its subsequent ruling, *Younger* abstention does not apply in this case. (Order on Prelim. Inj. at 7-8, R.70, PageID.3506-07).

On May 5, 2022, the district court ordered "the parties to submit supplemental briefs by May 26, 2022 on the applicability of *Rooker-Feldman*" to Plaintiffs' motion for a preliminary injunction. (Text Order, May 5, 2022). Those briefs were filed. And as the district court also correctly concluded in its subsequent ruling, "the *Rooker-Feldman* doctrine does not apply." (Order on Prelim. Inj. at 8 n.3, R.70, PageID.3509). Defendants do not challenge either of these rulings.

On December 20, 2022, the district court finally ruled on the motion, denying Plaintiffs' request to enjoin the Township's ban on Plaintiffs' religious displays, concluding that the challenge was not ripe. (Order on Prelim. Inj. at 8-9, R.70, PageID.3509-10). This decision is the subject of the appeal docketed as No. 22-2139. In this same order, the district court enjoined the Township from "enforce[ing] the prohibition of organized gatherings on the Property. . . ." (*Id*. at 10, R.70, PageID.3511). This decision is the subject of the cross-appeal docketed as No. 23-1060.

II. Decision Below.

In its order denying Plaintiffs' motion to preliminarily enjoin the Township's

ban on Plaintiffs' religious displays/signs, the district court concluded, yet again and despite additional and material factual developments, that the challenge was not ripe. (Order on Prelim. Inj. at 8-9, R.70, PageID.3509-10). In its order denying this part of the preliminary injunction motion, the district court expressly "adopt[ed] the ripeness analysis and holding found at section III.C of" its "recent opinion on defendants' motion to dismiss." (*Id*.). In that opinion, the district court concluded that Plaintiffs' challenge was not ripe because they "never sought approval from the Township to simply install or erect the desired religious symbols"; therefore, "the Township never reached a final decision on how the Zoning Ordinance applies to the installation or erection of the religiously symbolic structures CHI seeks to place on the Property." (Order on Mot. to Dismiss at 19, R.69, PageID.3485).

The district court is wrong factually and legally. This challenge is ripe as Plaintiffs *twice* submitted a special land use application (a burdensome and costly submission), which, per the Township, is the *necessary* process to obtain the requisite permits. And *twice* the Township denied the request.

In this same order, the district court granted Plaintiffs' request to preliminarily enjoin the Township's ban on "organized gatherings." (Order at 9-10, R.70, PageID.3510-11). As noted previously, the Township is appealing this ruling, which is the basis for the cross-appeal (case No. 23-1060). (R.81).

As argued further below, the district court did not abuse its discretion when it

preliminarily enjoined the Township's restriction on "organized gatherings." As the district court noted, this "constitutionally dubious" restriction prohibiting "religious assembl[ies]" was contained in a driveway permit that expired "by its own terms." (Order on Prelim. Inj. at 9-10, R.70, PageID.3510-11).

III. Statement of Facts.[1]

A. Plaintiffs' Religious Exercise and Expression.

Plaintiff CHI is a nonprofit corporation that is formally recognized as a private association of the faithful. The activities and work of CHI, including its proposed development and use of its property located within the Township (CHI Property) as a prayer campus are religious exercise, religious assembly, and religious expression. Plaintiff Jere Palazzolo is the Chairman, President, and Director of CHI. He engages in prayer, worship, and other religious assemblies on the CHI Property. (Palazzolo Decl. ¶¶ 1-8, 10, R.23-3, PageID.1314-16).

CHI acquired 40 acres of property (CHI Property) located within the Township from the Catholic Diocese of Lansing, Michigan. The diocese originally acquired the property with the reasonable expectation of building a church on it since places of religious worship are allowed on this property by the Zoning Ordinance.[2] When CHI acquired the property, it too had a reasonable expectation of developing it into a

[1] (*See also* First Br. at 7-26 [Statement of Facts]).

[2] The property is zoned Country Estate (CE), and "[c]hurches, temples and similar places of worship" are allowed on property zoned CE after special land use approval by the Township. (Palazzolo Decl. ¶ 15, R.23-3, PageID.1316).

prayer campus, which would include a modest adoration chapel (St. Pio Chapel), prayer trails, and religious displays, including the displays at issue here. (Palazzolo Decl. ¶¶ 9, 11-14, 16-27, R.23-3, PageID.1315-20).

The Stations of the Cross, the image of Our Lady of Grace, and a small altar were displayed on the CHI Property beginning in September 2020, and they were used for prayer and worship. The displays caused no safety issues during the year in which they stood. They were not erected along any public right of way or thoroughfare. They could not be seen from the road; they were located in a wooded, isolated area. Accordingly, ***the displays do not undermine any of the Township's stated objectives for restricting signage***. (Palazzolo Decl. ¶¶ 17-27, 78, 81-84, R.23-3, PageID.1317-20, 1333-35; Muise Decl., Ex. C [Sign Standards], R.23-2, PageID.1291-92; O'Reilly Decl. ¶¶ 7-15, R.23-4, PageID.1341-43).

B. Township's October 2020 Demand to Remove the Religious Displays.

On October 9, 2020, Defendants ordered Plaintiffs to remove the Stations of the Cross and the image of Our Lady of Grace, claiming that by displaying these religious symbols and using them for religious worship, Plaintiffs have now converted the rural property into a "church or temple" under § 25.02 of the Zoning Ordinance, which defines "church or temple" as "any structure *wherein* persons regularly assemble for religious activity." To comply with Defendants' demand, Plaintiffs would have had to undertake an extensive, costly (in excess of $20,000), and burdensome zoning

process. Defendants' determination was factually inaccurate as there was no "structure" on the CHI Property "wherein" regular religious assemblies took place.[3] (Palazzolo Decl. ¶¶ 29-32, R.23-3, PageID.1320-22).

In November 2020, Plaintiffs, through counsel, rejected the Township's factual assertion that the display of these few religious symbols converted the 40-acre rural property into a "church or temple." (Verified Compl., Ex. 7 [Atty ltr. of 11/5/20], R.23-2, PageID 1210-12). Plaintiffs informed the Township that it would comply with any reasonable permitting request, but that the Township's position was patently unreasonable. Moreover, Plaintiffs informed the Township that it would soon be submitting a special land use application for the construction of a modest chapel (St. Pio Chapel) and prayer campus, *which would include the very religious symbols at issue*. (*Id*.).

More specifically, Plaintiffs were preparing a special land use application for the development of the St. Pio Chapel and prayer campus—a development that would maintain the peaceful, rural nature of the property. The prayer campus will not be a high-volume site. It will be a place where people can walk the trails and pray. One trail, for example, will allow visitors to pray the Stations of the Cross. (Palazzolo Decl. ¶¶ 34-45, R.23-3, PageID.1323-1325).

[3] This is the context for Plaintiff Palazzolo's comment that "CHI did not plan to construct a 'place of worship at this time.'" (*See* Verified Compl., Ex. 3 [Email exchange], R.23-2, PageID 1186). Contrary to Defendants' assertion, there was nothing "dishonest" about this statement. (*See* Second Br. at 31).

The proposed chapel will be approximately 600 feet off of Chilson Road (the major road to the property). Plaintiffs are preserving most of the property to allow for trails and to allow people to find peace in the natural surroundings. Plaintiffs are only building on approximately 5 acres (out of 40), and this development is largely in the open area of the site, thereby maintaining the rural character of the property. And the modest size of the chapel (95 seats) and the limited parking (39 spaces) will necessarily limit the number of people who visit the property on a regular basis. (Palazzolo Decl. ¶¶ 46, 47, R.23-3, PageID.1325).

The St. Pio Chapel will contain a tabernacle, which is a liturgical furnishing used to house the Eucharist (the Body of Christ) outside of Mass. A tabernacle provides a safe location where the Eucharist can be kept for the adoration of the faithful and for later use. 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 property. (Palazzolo Decl. ¶¶ 35-40, R.23-3, PageID.1323-24).

After Plaintiffs' counsel sent his letter to the Township's counsel on November 5, 2020, the Township remained silent and took no further action at that time, leading Plaintiffs to believe that the matter would be resolved via the special land use application.

C. Plaintiffs' *First* Special Land Use Application for Permits.

Per Plaintiffs' counsel's letter, in December 2020, CHI submitted a special land

use application, ***which included the religious displays at issue***. (Muise Decl., Ex. C [Hr'g Tr. at 38, 54], R.39-2, PageID.1566; Palazzolo Decl. ¶¶ 51-67, R.23-3, PageID.1326-31). This application *is what the Township demanded for the religious displays*, even without the chapel. This process (which requires professional expertise to complete) cost CHI in excess of $30,000. (Palazzolo Decl. ¶ 4, R.39-3, PageID.1617).

Plaintiffs' application met all of the Zoning Ordinance requirements. A traffic study was not required for the development as the proposed use of the property did not meet the threshold traffic generated to require such a study.[4] The negligible traffic caused by the proposed chapel and prayer campus would have little to no overall impact, and Chilson Road, where the development would be located, has been shown to handle much larger traffic volumes in the past.[5] The Township's engineering consultants did not require a traffic impact study. The Road Commission did not require a traffic impact study. And the Planning Commission did not require a traffic impact study. (Palazzolo Decl. ¶¶ 48-53, R.23-3, PageID.1325-27).

[4] Plaintiffs' engineers did complete and submit as part of the application a traffic impact assessment using the *Institute of Transportation Engineers Trip Generation Manual*. This manual is commonly used within the Township for such purposes, and the Township even references it in its application for special land use approval as a legitimate source for determining traffic impact. (Palazzolo Decl., ¶ 57 [First Am. Compl., Ex. 2 (Resubmittal), R.14-2, PageID.274], R.23-3, PageID.1328).

[5] Chilson Road accommodated over 5,000 vehicles a day prior to the construction of the Latson Road interchange. After the construction, traffic decreased significantly to approximately 2,500 vehicles a day. (O'Reilly Decl. ¶¶ 26-27, R.23-4, PageID.1346-47).

Plaintiffs' application was ultimately approved by the Township Planning Commission. Plaintiffs went "above and beyond and addressed all of the concerns of the Planning Commission and the consultants." Nonetheless, the Township Board denied Plaintiffs' application (and thus denied the permits required to construct the chapel and erect the religious displays), citing traffic as the chief complaint.[6] (Palazzolo Decl. ¶¶ 51-68, R.23-2, PageID.1326-31; *see also supra* nn.4-5).

As noted in Plaintiffs' application, there are only <u>two</u> events all year (St. Pio's Feast Day and birthday) that Plaintiffs intend to hold on the CHI Property that may require an increase in parking above and beyond the 39 permitted parking spaces. To accommodate this, Plaintiffs proposed using the greenspace on their property for overflow parking. (*See* Palazzolo Decl., ¶ 57 [citing to First Am. Compl., Ex. 2 (Resubmittal) PageID.276], R.23-3, PageID.1328). The Township denied this request even though (1) the Township permits private residences in the very same area to hold events that *far* exceed the number of people who will be visiting the CHI Property for these two *special* events; (2) the Township would permit a *secular* park on this property, which, given the property area and a comparable park property within the Township, could have over 200 parking spaces; and (3) the Township's own "Assembly Ordinance" permits assemblies up to 1,000 people, and once that threshold

[6] The Township Board did not table the matter for additional traffic information nor did it grant approval for the display of the religious symbols/signs. It denied the entire proposal.

is met, the host could apply for a special permit.[7] Plaintiffs' religious assembly scheduled for September 23, 2021, would have had far fewer people attending. (*See* O'Reilly Decl., ¶¶ 20-24, R.23-4, PageID.1344-46; *see also* O'Reilly Supplemental Decl., ¶¶ 3-5 [photographs of cars for event held across the street from the CHI Property], R.52, PageID.2210-13).

Plaintiffs also proposed least restrictive measures to address traffic for these two *special* events by offering to provide a shuttle service or "staged/multiple receptions." (Palazzolo Decl., ¶ 57 [citing to First Am. Compl., Ex. 2 (Resubmittal) PageID.276], R.23-3, PageID.1328). The Township rejected these alternatives, which would mitigate *any* traffic concerns.

D. May 2021 Demand to Remove the Religious Symbols/Signs.

Following the Township's denial of Plaintiffs' *first* request for permits to construct the chapel and prayer campus (which included the religious displays at issue), the Township sent CHI a letter dated May 7, 2021, demanding the removal of the religious displays/signs by June 4, 2021, prompting Plaintiffs to file this federal lawsuit on June 2, 2021. (Compl., R.1; Palazzolo Decl. ¶¶ 72-73, R.23-3, PageID.1332).

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

[7] (*See* Muise Decl. ¶ 5, Ex. D [Assembly Ordinance], R.23-2, PageID.1306-09).

will need to be removed." The Township also stated that the display of the image of Our Lady of Grace is a "structure/grotto ***sign*** [that] does not have a permit and will also need to be removed." The Township's letter included a copy of the Township's "sign standards and accessory structure ordinance." (Palazzolo Decl., ¶¶ 72-74, R.23-3, PageID.1332; May 7 Ltr. (emphasis added), R.27-2, PageID.1426-27).

Unfortunately, there is *no permitting process* that would allow Plaintiffs to display the religious symbols at issue other than the full-blown special land use application process, even though such activity would be less impactful than other similar secular activity permitted by the Township *in this very same neighborhood* without the owners having to undergo this burdensome, costly, and subjective process. (*See, e.g.,* O'Reilly Decl. ¶¶ 4-8, 20-25, R.23-4, PageID.1340-41, 1344-46).

E. Township's Enforcement Action.

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),[8] 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

[8] (*See* Verified Compl., R.23-2, PageID.1223).

[CHI] Property" and to prevent Plaintiffs from holding religious worship on the property, claiming that a Road Commission permit (which Plaintiffs have never used and which has now expired) "forbids" this. (Verified Compl., ¶¶ 2, 62, Ex. 15 [Permit], R.23-2, PageID.1163, 1271).

On September 20, 2021, the state court judge signed the *ex parte* TRO, 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 expression, worship, and assembly on the property. (Muise Decl., Ex. A [TRO], R.39-2, PageID.1550).

CHI promptly filed a motion to dissolve the TRO as Plaintiffs had a religious assembly scheduled for September 23, 2021. (Emergency Mot., R.27-3, PageID.1428-48). The state court did not dissolve the TRO as requested (the court "denied" a proposed order that would have done so). Rather, the court set a hearing on CHI's motion to dissolve and the Township's motion for a preliminary injunction for September 28, 2021. By that time, the religious displays had been removed per the TRO's requirement that they be removed "immediately." (Palazzolo Decl. ¶¶ 6-9, R.39-3, PageID.1617-20).

The hearing on CHI's motion to dissolve 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 to determine whether the

matter could be resolved between the parties. During cross-examination, the Township's witnessed testified, *inter alia*, that if the CHI Property had been a private residence (like the adjacent property), Plaintiffs could erect 14 bird houses (the number of Stations of the Cross), display a picnic table (the size of the altar), and construct a 12-foot stone wall outside of the setbacks (the size of the mural wall) for just a $50 permit per "structure" and without having to undergo the burdensome and costly application for special land use process[9] (Muise Decl., Ex. C [Hr'g Tr. at 78], R.39-2, PageID.1573)—a process which grants discretionary authority to the Township Board to grant or deny a request (*id*. at 103, PageID.1575). The witness also confirmed, *inter alia*, that there is no burdensome special land use application required prior to having 200 people at a home for a football party in the Township. (*Id*. at 62, PageID.1571).

In other words, unlike Plaintiffs' religious displays, which are structurally no different in size or scope, the secular "structures" identified 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 special land use approval process, and 200 people could gather to watch football at the neighbor's property, but

[9] As stated throughout these proceedings, Plaintiffs would have no objection to paying for a $50 permit per religious display/sign and having a building inspector inspect each display to ensure that it was safe. *Plaintiffs told the Township from the very beginning* that they were "willing to comply with reasonable permitting requirements." (Verified Compl., Ex. 7 [Atty ltr. of 11/5/20], R.23-2, PageID 1210-12). But the Township's answer has always been, "No."

they could not come to pray at the CHI property.

As noted, the hearing was adjourned in an effort to resolve the matter. But Defendants' version of what transpired is demonstrably false, as set forth below.

F. Defendants' Misrepresent the Facts Regarding Plaintiffs' *Second* Special Land Use Application.

In their Second Brief, Defendants state:

> During state court proceedings, CHI asked for a continuance of the evidentiary hearing, so it could apply to use its property as a "park." [See R.75-3, Page ID # 3748-3753 (*2021-09-28 Hearing Transcript*); see also Doc. 19, Page 31-32 (*PL Brief*)]. But CHI did not apply for land use approval as a park. Instead, CHI reapplied for substantially the same use the Township Board denied almost a year earlier. [R.59-5, Page ID # 2935 (*2021-12-13 PC Packet*)].

(Second Br. at 28). Defendants are playing fast and loose with the facts.

During the hearing, the Township's witness was questioned, *inter alia*, about the fact that a park is a *permitted* use in this zoning district. That is, the Township does not require the onerous and subjective special land use application process for such use. Just a few miles away, the Township has a park on 38 acres (smaller than the CHI Property), and this park has multiple structures, including a pavilion, and over 200 parking spaces. (O'Reilly Decl. ¶ 4, R.23-4, PageID.1340). The Township's witness could not answer whether Plaintiffs' proposed development could be approved as a "park," (Tr. of Hr'g at 130-31, R.75-3, PageID.3748-49), even though the impact of Plaintiffs' proposal, in terms of any legitimate zoning concerns, would be far less than the parks approved by the Township in the same geographical area.

CHI's counsel asked the following pointed question:

> Q: Okay, so is it the township's position then that we could call this a public park, make the altar the primary structure, the others the ancillary structures, put in a commercial driveway and it would be permitted and no need to get further township approval, and we could be done?

(Tr. of Hr'g at 130-31, R.75-3, PageID.3748-49). The Township's counsel interrupted this line of questioning, objected, and stated, "[Y]our Honor, if Mr. Muise is trying to negotiate a settlement in this case, this is not the appropriate venue to do so. He shouldn't be doing that through cross-examination." (*Id*. at 131, R.73, PageID.3749). But of course, counsel was not "negotiat[ing] a settlement." The suggestion is absurd. As CHI's counsel explained:

> Your Honor, we're trying to figure out what it is this -- that we need to do to actually comply with the injunction that they are imposing. Because from the very beginning it was this is a church or temple, and these are accessory structures. And because there's no principal structure they're not permitted. Well, we tried to get a principal structure, this modest adoration chapel, and it was denied. And now the property is being stripped of all religious items and being denied access for religious worship. That's why we're here. And I'm trying to figure out the contours of this thing because when you're regulating in the area of religious liberty and freedom of speech you have to regulate with precision not with a blunt instrument. And that's where we are. And I'm scratching my head over these answers based on this year that we've had dealing with the, with the township on this.

(*Id*. at 131-32, R.75-3, PageID.3749-50). Shortly following this explanation, the Township's counsel (David Burress) made the following suggestion to the court: "[P]erhaps we need a moment to speak with Mr. Muise if he would like to discuss, you know . . . some of these issues. We could have a breakout session." (*Id*. at 132,

R.75-3, PageID. 3750). During the breakout session, the Township's counsel said that they (T. Joseph Seward was present as well) would inquire into whether the proposed Prayer Campus could be a "permitted" use as a park. The parties agreed to adjourn to pursue this option.

Unfortunately, this option was not viable as the Prayer Campus would need to be a "public" park and thus not reserved for the private religious use of CHI and those who associate with CHI. And more fundamentally, the Township would not permit the construction of the modest St. Pio Chapel (a necessary component as it will contain the Tabernacle with the Eucharist) on a "park." Consequently, there was no reasonable resolution/permitting process available that would protect Plaintiffs' right to religious exercise. The *only* option for Plaintiffs was to engage, once again, in the burdensome special land use approval process.

Accordingly, the *parties stipulated to* and submitted a proposed order to the state court judge, notifying the court (per the court's request to be notified of the next steps, if any, the parties would be taking following the adjournment) as follows:

> The parties hereby advise the Court that [CHI] intends to submit, under protest and with a reservation of all rights, claims, and defenses,[10] 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,

[10] CHI expressly reserved "all rights, claims, and defenses" because it did not want to waive any claim or right to build the St. Pio Chapel should Plaintiffs ultimately prevail in this litigation.

> altar, mural wall with the image of Our Lady of Grace, and a commercial driveway with parking.

(Muise Decl., ¶ 6, Ex. A [Consent Order / Stip. ¶ C], R.39-2, PageID.1550-51, 1559). The stipulation accurately described what the parties agreed would need to be submitted and *what CHI in fact submitted* (at great cost) to obtain approval to use the property for religious exercise.

Defendants' assertion that the costly special land use application that was submitted *pursuant to this stipulation* was "manufactured" and that Plaintiffs "should have known" that it would be rejected (Second Br. at 28) is shocking in its falsity. Thankfully, Plaintiffs' counsel set forth the parties' agreement and understanding more fully in an email to Defendants' counsel. Below are the relevant excerpts from the email exchange between Plaintiffs' counsel and the Township's counsel regarding precisely what Plaintiffs would be submitting *in order to comply with the Township's permitting requirements*:

> As a follow up to our prior discussion, CHI will submit, under protest and with a reservation of all rights, claims, and defenses, a special land use application, site plan, and associated documents to develop the *prayer campus portion* of its property located in Genoa Township ("CHI Property"). 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. As noted, CHI will reserve all rights, claims, and defenses as set forth in the current federal litigation in *Catholic Healthcare International v. Genoa Township*, Case No. 5:21-cv-11303-JEL-DRG, specifically including the right to construct the St. Pio adoration chapel on the CHI Property should CHI ultimately prevail in the federal litigation.

> CHI, through Boss Engineering, will plan to have the application and associated documents submitted to the Township by next Friday, October 15, 2021. *Since the plans are substantially the same as before and the Planning Commission has already seen and approved them (with the chapel—these new plans will obviously* ***not*** *include the chapel*), we would ask that this matter be placed on the November 8, 2021, planning commission calendar. As I understand it, the Township would then have an opportunity to approve or reject the application at the November 15, 2021 board meeting. This would move the process along in an expedited fashion.
>
> * * *
>
> This plan (the submission) coincides with our prior discussion . . . .
>
> Let me know your thoughts as soon as possible as I am trying to get this moving quickly, and *I do not want CHI to waste additional resources on the new special land use application, modified site plan, etc. if it will be a futile effort*.

(Muise Decl. ¶ 2, Ex. A [emphasis added], R.47, PageID.2138-39). Unfortunately, despite opposing counsel's representations, this turned out to be a very costly and futile effort, highlighting yet again the Township's gamesmanship.

G. Plaintiffs Submit Their *Second* Application for Special Land Use.

On October 15, 2021, CHI in fact submitted this second costly (in excess of $9,000) and burdensome application for special land use per the agreement of counsel and the stipulation and of the parties. (Palazzolo Decl. ¶ 10, Ex. A [Oct. 15, 2021 submission], R.39-3, PageID.1624-52)

On December 13, 2021, the Planning Commission denied the application based on the Township Board's *previous* denial of CHI's application on May 3, 2021. (Muise Decl., Ex. A [Planning Comm'n Meeting Mins.], R.48-2, PageID.2168-78;

Palazzolo Decl. ¶¶ 14-16, R.39-3, PageID.1621-22). That is, 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 original application—**even though the main structure, the chapel, had been removed***. (Muise Decl., Ex. A [Planning Comm'n Meeting Mins.], R.48-2, PageID.2168-78; Palazzolo Decl. ¶¶ 16, 17, R.39-3, PageID.1622). In other words, for the same reasons the Township Board denied the first special application for land use, the Planning Commission denied this second application, requiring Plaintiffs to now wait a year from the denial of its first application to resubmit another costly (the fee alone is over $2,000) and futile application.[11]

CHI appealed the Planning Commission's adverse decision to the ZBA, and the ZBA affirmed. (Muise Decl., Ex. B [ZBA Mins.], R.48-2, PageID.2179-87). Defendants' argument that Plaintiffs failed to address the standard for the appeal is nonsense. (*See* Second Br. at 17 [stating that "CHI argued that the May 3, 2021 decision of the Township Board was unlawful and wrong for constitutional reasons" and "did not address the relevant criteria in Section 19.07"). Indeed, it is demonstrably false.[12]

[11] What, precisely, is the compelling or substantial government interest for this additional delay? The Township has no answer.

[12] The documents show that Plaintiffs thoroughly addressed the applicable standard.

The ZBA was reviewing the Planning Commission's decision that the Prayer Campus submission, *which excluded the chapel*, did not present new grounds or substantial new evidence in light of the Township Board's denial on May 3, 2021 of CHI's first application. That was the decision that was appealed by CHI and affirmed by the ZBA. This is a final decision. As a result, the second special application for land use, which was submitted to permit Plaintiffs to develop just the prayer campus (the religious displays/signs and driveway with limited parking—just 39 spaces for a 40-acre property) in order to resolve the state court injunction issue, was denied.

In the final analysis, Defendants' assertion that "CHI manufactured an application that it knew or should have known could not be considered by the Planning Commission, and then filed a meritless appeal to the Zoning Board of Appeals" (Second Br. at 28) is an astonishing misrepresentation and simply more evidence of the gamesmanship Plaintiffs have had to endure from this governmental entity and its counsel.

H. Continuation of the State Court Proceedings.

On April 5, 2021, the state court continued the hearing on CHI's motion to dissolve the TRO and the Township's motion for a preliminary injunction. At the

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(ZBA Packet, R.59-7, PageID.3007-14). While CHI noted that "the denial of [its] original submission and the Township's ongoing efforts to prevent CHI from using its property for religious worship are unlawful, and these issues are currently in litigation," CHI expressly noted (contrary to Defendants' assertion) that "[*t*]*hose legal arguments are not presented here*." (*Id*., PageID.3008). Instead, CHI expressly addressed the zoning standard.

close of the hearing, the judge denied CHI's motion and granted the Township's request for a preliminary injunction, thereby continuing the enforcement action against CHI. (Muise Decl. ¶ 4, R.48-2, PageID.2167). During the hearing, the Township's witness testified as follows:

> Q: * * * If CHI was willing to pay a $50 permit per religious display, the religious displays at issue here, which is the mural wall, the altar, stations of the cross, make them permanent and would have a building inspector come out to inspect them, and on the CHI property, would the zoning ordinance permit that?
> A *After you've received site plan approval, yes*.
> Q: [M]y question is, if they, if they did this tomorrow, they went in as all, all things being equal as they are sitting here today, if they went in, applied for the $50 permits per items [the religious displays at issue], had them inspected on the property, would the zoning ordinance permit that?
> A: *No*.

(Muise Decl. ¶ 1, Ex. A [Hr'g Tr. at 94-95 (emphasis added)], R.73-2, PageID.3559-60). Consequently, there *is no permit process available* to erect the religious displays at issue until the Township approves a special land use application. The Township has now twice denied Plaintiffs' applications—applications which expressly included the religious displays at issue. Thus, it is patently false to conclude, as the district court did in its order, that "plaintiffs have never sought approval from the Township to simply install or erect the desired religious symbols." (Order on Mot. to Dismiss at 19, R.69, PageID.3485). Indeed, it is a breathtaking misapprehension of the facts of this case.

As of today, and as a direct result of the Township's enforcement of its Zoning

Ordinance, the religious displays/signs at issue have been removed.[13] The harm caused by the Township is not speculative nor is it based on a subjective chill. The harm is real and irreparable. The issues are ripe. (*See* Palazzolo Decl. ¶ 19, R.39-3, PageID.623).

STANDARD OF REVIEW

Issues of justiciability, including ripeness, are reviewed *de novo*. *NRA of Am. v. Magaw*, 132 F.3d 272, 278 (6th Cir. 1997). Moreover, this Court reviews the district court's order denying the preliminary injunction *de novo* because it involves the application of the First Amendment. "When a party seeks a preliminary injunction on the basis of a potential constitutional violation, 'the likelihood of success on the merits often will be the determinative factor.'" *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (citation omitted). "Because the determination of whether the movant is likely to succeed on the merits is a question of law and is accordingly reviewed *de novo*, the standard of review for a district court decision regarding a preliminary injunction with First Amendment implications is *de novo*." *Bays v. City of Fairborn*, 668 F.3d 814, 819 (6th Cir. 2012) (internal quotations and citations omitted); *Am. Freedom Def. Initiative v. Suburban Mobility Auth. for Reg'l Transp.*, 698 F.3d 885, 889-90 (6th Cir. 2012) (same). "Put another way, in the First Amendment context, the

[13] Per the Court's Order, Plaintiffs are able to use the property for outdoor religious worship once again; however, they cannot use temporary religious displays such as the Stations of the Cross or an altar as part of their prayer and religious worship. *See supra*.

other factors [in the preliminary injunction analysis] are essentially encompassed by the analysis of the movant's likelihood of success on the merits, which is a question of law that must be reviewed *de novo." Id.* at 890.

However, Plaintiffs contend that it would be proper for this Court to review the district court's order *granting* the preliminary injunction that serves to protect Plaintiffs' religious assembly and worship for an abuse of discretion. *See generally Platt v. Bd. of Comm'rs on Grievs. & Discipline of the Ohio Supreme Court*, 769 F.3d 447, 454 (6th Cir. 2014) ("[W]hen we look at likelihood of success on the merits, we independently apply the Constitution, but we still defer to the district court's overall balancing of the four preliminary-injunction factors.").

SUMMARY OF THE ARGUMENT

The issues are ripe for review. Plaintiffs have twice submitted costly applications for special land use—the only permit application process available to them—in order to obtain the necessary permits for the religious displays and were twice denied by the Township. This challenge to the Township's discriminatory enforcement of its Zoning Ordinance to prohibit Plaintiffs' religious exercise and expression is unquestionably ripe. And upon this Court's *de novo* review of the record, Plaintiffs are entitled to the requested preliminary injunction.

This Court has jurisdiction to decide *all* of the issues presented as this Court has jurisdiction to review denials of requests for preliminary injunctions pursuant to 28

U.S.C. § 1292, and all of the issues presented were raised in Plaintiffs' motion. Moreover, the district court failed to address Plaintiffs' request for a preliminary injunction on RLUIPA grounds (and the court denied Defendants' request to dismiss the RLUIPA claim). RLUIPA alone provides a basis for this Court to grant the requested injunction. And finally, the district court failed to address the discriminatory and unlawful application of the Zoning Ordinance (the permitting scheme) to restrict Plaintiffs' religious exercise and expression. In other words, there are no barriers to this Court granting Plaintiffs' request for a preliminary injunction.

As the facts and law establish, the enforcement of the Township's Zoning Ordinance violates Plaintiffs' rights protected by the First Amendment and RLUIPA. The Zoning Ordinance operates as a prior restraint on speech. It is content-based facially and as applied. It is not a neutral law of general applicability. And its enforcement against Plaintiffs substantially burdens their religious expression and exercise. The Township's enforcement of the Zoning Ordinance in this case does not satisfy strict or intermediate scrutiny.

Because Plaintiffs have demonstrated a likelihood of success on their First Amendment and RLUIPA claims and are currently suffering irreparable harm, they are entitled to a preliminary injunction as a matter of fact and law. The Court should reverse the district court and issue the requested injunction.

Regarding Defendants' cross-appeal, the district court did not abuse its discretion by enjoining the Township from enforcing a "constitutionally dubious" restriction on "organized gatherings" based on an expired permit. This restriction is unconstitutionally vague and overbroad, and it prohibits Plaintiffs from engaging in religious assemblies and worship in violation of the First Amendment and RLUIPA.

ARGUMENT IN REPLY

I. This Court Should Reverse the District Court's Denial of Plaintiffs' Request for a Preliminary Injunction to Permit the Display of Their Religious Symbols/Signs.

Defendants argue that the Court should affirm the denial of Plaintiffs' request for a preliminary injunction with regard to the religious symbols/signs because (1) Plaintiffs' "related claims have been dismissed"; (2) their "claims are not ripe"; (3) they "failed to show a likelihood of success on [their] claims"; and (4) they "failed to show a strong likelihood of success on the merits upon their claim that the ordinance is a prior restraint." (Second Br. at 27-34). None of the arguments has merit.

Regarding Defendants' argument that the "related claims have been dismissed," Plaintiffs address that issue more fully in Section II below as Defendants raise it as an alternative argument as well.

A. Plaintiffs' Claims Are Ripe.

Plaintiffs' claims were ripe the moment the Township ordered the removal of Plaintiffs' religious symbols/signs in October 2020. Plaintiffs' claims were further

ripened when the Township Board denied Plaintiffs' first application for special land use in May 2021. Plaintiffs' claims were further ripened when the Township sought an enforcement action in state court, resulting in the removal of Plaintiffs' religious displays/signs. And Plaintiffs' claims were further ripened when the Township denied Plaintiffs' second application for special land use. Throughout, the Township has engaged in the discriminatory enforcement of a permitting scheme (the Zoning Ordinance) to prohibit Plaintiffs' exercise of their rights protected by the First Amendment and RLUIPA. Plaintiffs' claims are ripe.

As set forth above, Defendants' assertion that Plaintiffs' "manufactured an application that it knew or should have known could not be considered by the Planning Commission, and then filed a meritless appeal to the Zoning Board of Appeals" (Second Br. at 28-29), which is the *only* basis for Defendants' argument here, is, as demonstrated above, false. The fact that Defendants' counsel believe that they can press this claim in light of the evidence (particularly the stipulation entered into between the parties and the email between counsel discussing this issue) is shocking. Such mendacity must be rejected by this Court.

But even more to the point, Defendants ignore the fact that the religious symbols/signs were part of the first application for land use that the Township denied, and the Township will not issue *any* permits until the Township Board approves a special land use application, which it will not. Indeed, the Planning Commission

rejected the second application described above based on the Board's rejection of the first application.

Defendants never address the arguments or case law set forth in Plaintiffs' opening brief, including the fact that Plaintiffs are challenging this entire permitting scheme that is being enforced to discriminate against their religious exercise. (First Br. at 29-34). The issues are ripe for review, particularly since ripeness is properly relaxed (for good reason) in the First Amendment context. *See Norton v. Ashcroft*, 298 F.3d 547, 554 (6th Cir. 2002); *Steffel v. Thompson*, 415 U.S. 452, 462 (1974); *Cheffer v. Reno*, 55 F.3d 1517, 1523 n.12 (11th Cir. 1995) ("We note that the doctrine of ripeness is more loosely applied in the First Amendment context."); *Red Bluff Drive-In, Inc. v. Vance*, 648 F.2d 1020, 1033 n.18 (5th Cir. 1981) (relaxing the injury-in-fact requirement for standing in First Amendment challenges); *Berner v. Delahanty*, 129 F.3d 20, 24 (1st Cir. 1997) (same).

B. Plaintiffs Have Established a Strong Likelihood of Success on Their Claims.

Defendants argue (1) that Plaintiffs cannot establish a "substantial burden" on their religious exercise and (2) that "[g]enerally applicable burdens, neutrally imposed, are not 'substantial' burdens on the free exercise of religion." (Second Br. at 29-32). Defendants fail to meaningfully address Plaintiffs' Free Speech Clause arguments. (First Br. at 34-42). And Defendants' free exercise arguments are without merit.

To begin, Defendants' free exercise arguments fail to address (let alone cite) *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), which is the most recent and controlling authority on the issue of what constitutes "general applicability" under the Free Exercise Clause. In *Fulton*, the Court explained that "[a] law . . . lacks general applicability if it prohibits religious conduct *while permitting secular conduct that undermines the government's asserted interests in a similar way*." *Id*. at 1877 (emphasis added). As demonstrated here and in further detail in Plaintiffs' opening brief (First Br. at 42-44), Defendants permit a host of secular conduct that undermines the government's asserted interests for denying Plaintiffs' religious conduct. Defendants assert that "Ms. Van Marter . . . addressed all of CHI's various examples." (Second Br. at 31). But neither she nor Defendants addressed the examples in the context of controlling law. For example, what is the government's interest (compelling or otherwise) for permitting a large secular park with over 200 parking spaces on a lot of land that is smaller (38 acres) than the CHI Property (40 acres) but rejecting Plaintiffs' prayer campus? What is the government's interest (compelling or otherwise) for permitting a private residence to erect numerous signs/displays for a simple $50 permit or not requiring any permit whatsoever as in the case with "holiday decorations," which have no size limitations as they are exempt from the sign ordinance, but rejecting Plaintiffs' religious symbols/signs? What is the government's interest (compelling or otherwise) for prohibiting Plaintiffs' religious symbols/signs

when these displays meet all of the criteria for regulating signage as set forth in the Township's Zoning Ordinance? What is the government's interest (compelling or otherwise) for permitting "manufactured landscape features" (all of Plaintiffs' religious displays/signs meet the size and other "neutral" restrictions for these features) in all "yards" in the Township but not on the CHI Property? And why are the restrictions on Plaintiffs' fundamental rights the least restrictive means for promoting the government's interests (whatever they may be)? Defendants' failure to address the proper *legal* standard to justify their restrictions on Plaintiffs' fundamental rights is fatal to their entire argument.

Regarding Defendants' scant "substantial burden" argument, they fail to address controlling law. As noted in Plaintiffs' opening brief (First Brief), while this Court did not have the benefit of *Fulton* or *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), when it decided *Livingston Christian Schools v. Genoa Charter Township*, 858 F.3d 996 (6th Cir. 2017), the factors outlined in that case demonstrate that Plaintiffs have established the "substantial burden" element under RLUIPA. In *Livingston Christian Schools*, the Court observed that a "substantial burden" is found: (1) when the challenged action "places significant pressure on an institutional plaintiff to modify its behavior," particularly where "the plaintiffs had demonstrated that they were unable to carry out some core function of their religious activities due to the inadequacy of their current facilities"; (2) when a religious institution does not have "a feasible alternative

location from which it can carry on its mission"; (3) when "the religious institution *will suffer substantial delay, uncertainty, and expense* due to the imposition of the regulation"; and (4) when "an institutional plaintiff has obtained an interest in land [with] a reasonable expectation of being able to use that land for religious purposes." *Id*. at 1001-06. Any *one* of these is sufficient. *See also Bethel World Outreach Ministries v. Montgomery Cty. Council*, 706 F.3d 548, 557-58 (4th Cir. 2013) ("When a religious organization buys property reasonably expecting to build a church, governmental action impeding the building of that church may impose a substantial burden. . . . *This is so even though other suitable properties might be available*, because the 'delay, uncertainty, and expense' of selling the current property and finding a new one are themselves burdensome.") (emphasis added); *Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007) ("What is true is that . . . once the organization has bought property reasonably expecting to obtain a permit, the denial of the permit may inflict a hardship on it.").

Here, the "*substantial delay, uncertainty, and expense* due to the imposition of the regulation" is sufficient to find a substantial burden. Contrary to Defendants' argument, the Township's unlawful actions are not excused because Plaintiffs have been allowed to celebrate its two annual events (St. Pio's Feast Day and birthday) at a Catholic Church located in another city (Brighton). Plaintiffs do not own this church property and thus have no property interest in it, including the right to control its use.

Plaintiffs must rely on the good graces of the pastor of the church to use it twice a year. To argue that the Township's unlawful conduct is excused simply because Plaintiffs are able to *partially* exercise their religion on *another's property* in *another city* is absurd, and it undermines RLUIPA and the First Amendment. The Court must reject it.

Having shown a substantial burden on Plaintiffs' religious exercise, Defendants must now come forward with evidence showing that the restriction on religious exercise "is in furtherance of a compelling governmental interest; and . . . is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1)(A), (B). Defendants cannot meet this burden, nor have they even attempted to do so.

In sum, Plaintiffs have established a strong likelihood of succeeding on the merits of their claims, thus warranting the requested injunction. *See Obama for Am.*, 697 F.3d at 436 (stating that "[w]hen a party seeks a preliminary injunction on the basis of a potential constitutional violation, the likelihood of success on the merits often will be the determinative factor") (internal quotations and citation omitted); *Bonnell v. Lorenzo,* 241 F.3d 800, 809 (6th Cir. 2001) ("[W]hen reviewing a motion for preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated.").

C. The Sign Ordinance Operates as a Content-Based Prior Restraint.

Defendants claim that the sign ordinance does not operate as a prior restraint, asserting that *International Outdoor, Inc. v. City of Troy*, 974 F.3d 690 (6th Cir. 2020), was overruled by *City of Austin v. Reagan National Advertising of Austin, LLC*, 142 S. Ct. 1464 (2022). Defendants are mistaken. *City of Austin* addressed a challenge to an outdoor advertising ordinance that made distinctions between on-premises and off-premises signs. That is not the issue here. Moreover, *City of Austin* did not address the issue of a prior restraint. Consequently, this Court's holding in *International Outdoor, Inc.* that the challenged ordinance "imposed a prior restraint because the right to display a sign that did not come within an exception as a flag or as a 'temporary sign' depended on obtaining either a permit from the Troy Zoning Administrator or a variance from the Troy Building Code Board of Appeals," *Int'l Outdoor, Inc.* 974 F.3d at 698, is undisturbed by *City of Austin*.

Moreover, and related to the prior restraint issue, Defendants cannot refute the fact that the Township's sign ordinance operates as a content-based restriction. The fact that "[d]ecorative displays in connection with a recognized holiday"[14] are exempt from the sign ordinance's permitting *and* size requirements as they are expressly

[14] Plaintiffs' religious displays could easily fit in the "holiday decoration" category, particularly if a 12-foot skeleton is allowed to be displayed throughout numerous "holidays." (First Br. at 37-39). This further demonstrates that the district court's conclusion that Plaintiffs lack standing to challenge the sign ordinance is wrong as a matter of law.

exempt by way of the ordinance's definition of a "sign" is dispositive. Consequently, the Township's sign ordinance imposes a content-based, prior restraint on Plaintiffs' speech because the right to display a sign that did not come within an exception, such as the holiday decoration exception, depends on obtaining a permit from the Township.

Because the sign ordinance operates as a content-based, prior restraint, it is "presumptively unconstitutional and may be justified only if the government proves that [it is] narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (citation omitted). Defendants cannot meet this demanding standard, nor have they attempted to do so.

II. This Court Has Jurisdiction to Hear and Decide this Appeal of the District Court's Partial Denial of Plaintiffs' Motion for a Preliminary Injunction.

Defendants argue that this Court lacks jurisdiction to hear Plaintiffs' appeal of the district court's denial of their request for a preliminary injunction as it relates to the religious displays. (Second Br. at 34-35). Defendants cite 28 U.S.C. § 2283 in support of their argument. But § 2283 is inapplicable as this is not a request for an injunction to stay proceedings in a state court. This is an appeal of a denial of a request to enjoin an unconstitutional zoning ordinance, facially and as applied to restrict Plaintiffs' fundamental right to religious freedom. Moreover, in deference to the federal courts, the state court stayed its proceedings so the federal claims could proceed. (State Court Stay Order, R.51-3, PageID. 2207-09).

Nonetheless, § 2283 does not bar an injunction in *this* § 1983 case. *See Mitchum v. Foster*, 407 U.S. 225, 242-43 (1972) ("[T]his Court long ago recognized that federal injunctive relief against a state court proceeding can in some circumstances be essential to prevent great, immediate, and irreparable loss of a person's constitutional rights. . . . For these reasons we conclude that, under the criteria established in our previous decisions construing the anti-injunction statute, § 1983 is an Act of Congress that falls within the 'expressly authorized' exception of that law.").

Defendants further argue (repeating an earlier argument) that "CHI's claims related to its 'religious symbolic structures' have been dismissed by the district court," and "that dismissal is not subject to this Court's jurisdiction under 28 U.S.C. § 1292(a)(1). *Oskiera v. Chrysler Motors Corp*., 943 F.2d 52 (6th Cir. 1991)." (Second Br. at 34-35). Defendants are wrong for at least four reasons. First, the district court did not dismiss Plaintiffs' RLUIPA claim, which involves the "religious symbolic structures" and which serves as a primary basis for granting the preliminary injunction. This alone defeats Defendants' argument. Second, the district court's conclusion that Plaintiffs could not make a facial challenge to the Sign Ordinance ignored and thus failed to address the as-applied challenge. Third, in its ripeness analysis, the district court failed to address the fact that Plaintiffs are challenging the *permitting scheme* that requires them to undertake (for a third time) the costly and

onerous site plan approval process (the only permitting scheme the Township will allow for the displays). And finally, the district court's ruling on the religious displays is plainly (and by necessity) a central part of its ruling on the motion for a preliminary injunction, and this Court unquestionably has jurisdiction to hear this appeal of the lower court's ruling on that motion. As the only case (unpublished) cited by Defendants (*Oskiera*) illustrates, "this court without doubt has jurisdiction to review the district court's grant [or denial] of injunctive relief in this case pursuant to 28 U.S.C. § 1292(a)(1)." *Oskiera v. Chrysler Motors Corp.*, No. 90-2079, 1991 U.S. App. LEXIS 20118, at *3-4 (6th Cir. Aug. 23, 1991). In *Oskiera*, the ruling on the injunction was in the context of an order granting partial summary judgment. A ruling granting partial summary judgment is not a final judgment and thus not appealable as a matter of right. But that didn't matter because this Court limited its review to the request for injunctive relief. *See id*. at *5 ("[T]o the extent that Oskiera appeals something other than the injunction, we have no jurisdiction. Our jurisdiction in this case is limited to reviewing the district court's grant of injunctive relief."). Here, Plaintiffs are not appealing the district court's order on Defendants' motion to dismiss. (*See* Notice of Appeal, R.71). This appeal is limited to the lower court's ruling on the preliminary injunction, and this Court's jurisdiction to review that ruling is "without doubt." Defendants' arguments to the contrary are without merit.

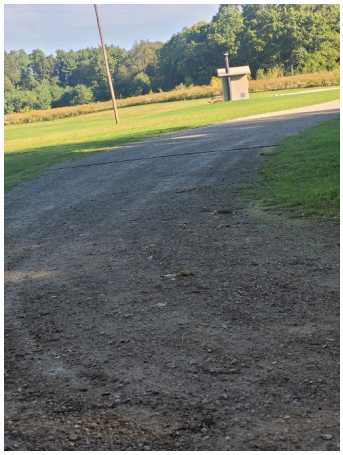
ARGUMENT IN RESPONSE TO DEFENDANTS' APPEAL

I. The District Court Did Not Abuse Its Discretion when It Granted Plaintiffs' Request to Enjoin the Restriction on "Organized Gatherings."

Defendants are asking the Court to reverse the district court's ruling enjoining them from "enforce[ing] the prohibition of organized gatherings on the Property. . . ." (Order on Prelim. Inj. at 10, R.70, PageID.3511). The Court should reject Defendants' request.

The Township's *sole* basis for prohibiting Plaintiffs from using the CHI property for constitutionally protected activity was a "constitutionally dubious" restriction on "organized gatherings" contained in a driveway permit that was never used and has since expired. (*See* Order on Prelim. Inj. at 9, R.70, PageID.3510).

CHI's current driveway has been used to access this property well before CHI first acquired it, and the use of this property has not changed. Moreover, dirt driveways are allowed throughout the Township for all types of property use, including public parks, as the image of the Filmore Park entrance below illustrates.



(O'Reilly Decl. ¶ 16, R.39-4, PageID.1714-15). The dirt driveway entrance to the CHI Property is similar, as the image below illustrates.

(*Id*. ¶ 13, PageID.1712-13).

In all the dealings Plaintiffs had with the Township prior to CHI seeking a permit to improve the dirt driveway in July 2021, the Township never raised any concerns regarding Plaintiffs' use of its current driveway.[15] In other words, it was the driveway permit that served as the sole basis for this vague and overbroad restriction.

There is no reasonable dispute that "vacant" land throughout the Township is used for secular "gatherings," such as hunting,[16] walking pets, posting "for sale" signs,

[15] Bear in mind, Plaintiffs have *twice* submitted special applications for land use seeking, *inter alia*, permits to construct a commercial driveway and modest parking area (39 spaces), but the Township has rejected both requests. This Court could grant Plaintiffs' request for a preliminary injunction by finding, at a minimum, that Plaintiffs are likely to succeed on their RLUIPA claim and enjoin the Township's rejection of Plaintiffs' *Prayer Campus* submission. This would permit Plaintiffs to erect the religious displays at issue, conduct religious worship on the property, and construct a commercial driveway with the modest parking area. In other words, it would resolve Defendants' appeal as well.

[16] When CHI first acquired the property, Plaintiffs removed numerous deer hunting tree stands that were erected on the property by people in the community. (O'Reilly

showing prospective buyers "vacant" land and allowing them to walk and inspect it, and countless other reasons. (*See* O'Reilly Decl. ¶ 9 [image of for sale sign on vacant property], R.39-4, PageID.1709-10).[17]

The Township's efforts to leverage vague and overbroad language in an expired driveway permit to prevent Plaintiffs' religious exercise must be rejected. Indeed, this restriction on "organized gatherings" is patently unconstitutional. There is no basis for disturbing the district court's ruling.

A. Plaintiffs' "Organized Gatherings" Are Constitutionally Protected.

The Township fails to explain how it has a legitimate (let alone compelling or substantial) interest in permitting a neighbor to use his dirt driveway to have over 200 people gather on his property to watch a football game on a Sunday, but yet Plaintiffs are unable to have 20 (or even 2) people gather on the CHI Property to pray a Rosary.

Plaintiffs' "organized gatherings" for the purpose of religious worship are protected by the First Amendment *and* RLUIPA.[18] *See Widmar v. Vincent*, 454 U.S. 263, 269 (1981) (holding that "religious worship" is a "form[] of speech and

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Decl. ¶ 9, R.23-4, PageID.1342).

[17] These large "for sale" signs did not just magically appear. It is likely that an "organized" work crew erected them.

[18] RLUIPA "applies to an exercise of religion regardless of whether it is 'compelled.'" *Holt v. Hobbs*, 574 U.S. 352, 362 (2015). RLUIPA defines religious exercise as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," including "[t]he use, building, or conversion of real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5(7). And this "shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." *Id*.

association protected by the First Amendment"); *see generally Miles Christi Religious Order v. Twp. of Northville*, 629 F.3d 533, 540 (6th Cir. 2010) ("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.").

As stated by this Court in *Anderson v. City of LaVergne*, 371 F.3d 879, 881 (6th Cir. 2004), the "Supreme Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, *and the exercise of religion*." *Id*. (internal quotations and citation omitted) (emphasis added). And "state action which *may have the effect of curtailing the freedom to associate* is subject to the closest scrutiny." *Salvation Army v. Dep't of Cmty. Affairs*, 919 F.2d 183, 197 (3d Cir. 1990) (internal quotations and citation omitted) (emphasis added); *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2389 (2021) ("When it comes to the freedom of association, the protections of the First Amendment are triggered not only by actual restrictions on an individual's ability to join with others to further shared goals. The risk of a chilling effect on association is enough, because First Amendment freedoms need breathing space to survive.") (internal quotations and citation omitted). Accordingly, the Township's *ban* on Plaintiffs' right to associate for the purpose of religious exercise must withstand "the closest scrutiny."

Under the First Amendment and RLUIPA, this "closest scrutiny" is known as "strict scrutiny," the "most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). Strict 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.'" *Tandon v. Newsom*, 141 S. Ct. 1294, 1298 (2021) (internal citation omitted). Under this rigorous test, "so long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 141 S. Ct. at 1881. Per RLUIPA, "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person . . . unless the government demonstrates that imposition of the burden on that person, assembly, or institution—(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1)(A), (B); *see also Mast*, 141 S. Ct. at 2431 (Gorsuch, J., concurring) ("*Fulton* makes clear that the County and courts below misapprehended RLUIPA's demands.").

As set forth further below, the Township cannot satisfy this most demanding standard. The Township does not have a legitimate interest, let alone a compelling interest, for permitting dirt driveways throughout the Township but prohibiting Plaintiffs' use of their current dirt driveway for any and all "organized gatherings."

B. The Restriction on "Organized Gatherings" Is Vague, Overbroad, and Prohibits Constitutionally Protected Activity.

In *Grayned v. City of Rockford*, 408 U.S. 104 (1972), the Court outlined the rationale for the void-for-vagueness doctrine, stating, in relevant part that "*where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms*. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked." *Id*. at 108-09 (internal punctuation and quotations omitted) (emphasis added); *see Cox v. La.,* 379 U.S. 536, 551-52 (1965) (holding that the challenged breach of the peace statute was unconstitutionally vague in its *overly broad scope* because Louisiana defined "breach of the peace" in a manner that violated the First Amendment).

The no "organized gatherings" restriction enforced by the Township is unconstitutionally vague because it permits arbitrary, discriminatory, and subjective enforcement. What is an "*organized*" (as opposed to an "unorganized") gathering? How big does the gathering have to be for it to be "organized"? If two people agree to meet on the CHI Property at the same time, then apparently the "gathering" is unlawful because it was "organized" (?). But if fifty people randomly show up on the property, this "gathering" is permissible (?). If two cars use the driveway for an "organized" gathering, it is unlawful (?). But if ten cars randomly use the driveway, it is permissible (?). Fundamental rights cannot be subject to such vague restrictions.

This vagueness and overbreadth are especially problematic here because people "gather" on the CHI Property for prayer and worship, which are protected by the First Amendment. *See supra*. As stated by the Supreme Court, "Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP v. Button*, 371 U.S. 415, 438 (1963). Prior to the granting of the injunction, this restriction caused Plaintiffs to cease using the property for religious assembly and worship.[19] *Grayned*, 408 U.S. at 109 ("Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.").

As noted above, what legitimate government interest is promoted by this restriction, particularly when this driveway has been in use for many years without any issues, it had been used for more than a year for "organized gatherings" without any issues, and the Township permits other dirt driveways to be used for very large gatherings? Under the Township's Zoning Ordinance, a neighbor with a dirt driveway can have 200 people gather at his house for a football game, but two people cannot agree to meet on the CHI Property to pray a Rosary. The Fillmore Park driveway is dirt; yet, large gatherings are permitted on this property.

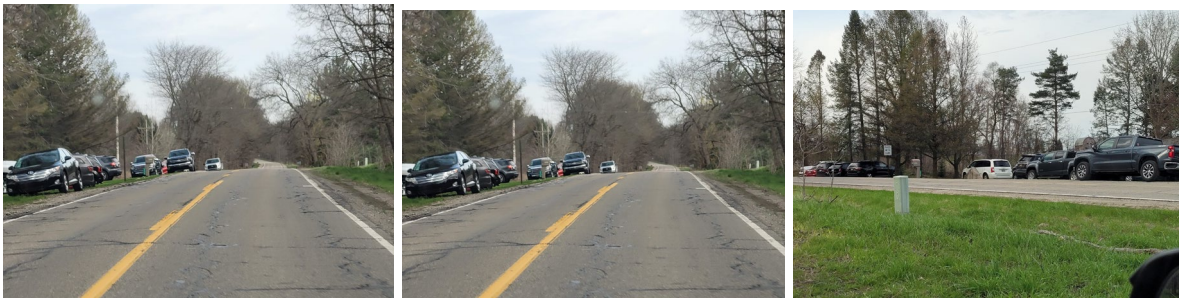
Additionally, Defendants' assertion that the "Road Commission required CHI to

[19] Since the granting of the preliminary injunction enjoining the "organized gathering" restriction, Plaintiffs have held religious assemblies on the property without any safety or other issues whatsoever. (O'Reilly Decl. ¶¶ 3-5, R.76-2, PageID.3938-40).

move the location of [the driveway] access 'to match the centerline approved approach per LCRC Review #LC-20-11'" is a red herring. (Second Br. at 14). The plans submitted by Plaintiffs' engineering firm simply noted that the "proposed temporary driveway centerline location [would] match the centerline of the" commercial driveway previously approved by the Road Commission. But this begs the question. Why not permit the construction of this field driveway without the unconstitutional restriction on "organized gatherings"? On one hand the Township complains about the "deplorable" condition of the existing driveway (a false assertion as the driveway has been used for at least a year for organized gatherings without any safety issues, and it wasn't until CHI sought the field driveway permit that it became a problem for the Township) and yet on the other it prevents Plaintiffs from improving the driveway's surface. The Township's duplicity is something to behold.

Moreover, the Township's complaint that a vehicle using the existing driveway may not have "adequate sight distance when entering or exiting the driveway and to ensure a safe amount of visibility to motorists on the road" (Second Br. at 19) is belied by the fact that there is an existing driveway across from Plaintiffs' driveway on the very same road. There have been large gatherings at this property without complaint. And a vehicle using that driveway would experience the very same "sight distance when entering or exiting" as a vehicle using the CHI Property driveway. Below are photographs taken of this property, which is "directly across the street from the CHI

Property."



(O'Reilly Supp. Decl. ¶¶ 3-4, R.52, PageID.2211-13).

At the end of the day, Defendants continue to obfuscate the facts to avoid addressing the First Amendment and RLUIPA issues because it is plainly evident that the Township does not want *any* Catholic religious worship on this property. All of this further illustrates the unlawfulness of the "organized gathering" restriction.

In *Coates v. Cincinnati*, 402 U.S. 611 (1971), the Supreme Court held an ordinance "unconstitutionally vague because it subjects the exercise of the right of assembly to an unascertainable standard, and unconstitutionally broad because it authorizes the punishment of constitutionally protected conduct. . ." *id*. at 614, which is precisely this case. *See also Bd. of Airport Comm'rs of City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 574–76 (1987) (striking down as overbroad a regulation prohibiting all "First Amendment activities" at the airport because "no conceivable governmental interest would justify such an absolute prohibition of speech").

In sum, the challenged restriction authorizes the punishment of constitutionally protected conduct (religious worship and assembly) in violation of the First

Amendment and RLUIPA.

II. Defendants' "Irreparable Harm" Argument Is Incoherent and Wrong as a Matter of Law.

Defendants fail to meaningfully address Plaintiffs' First Amendment and RLUIPA arguments, and instead conflate a free exercise argument with an argument regarding irreparable harm. (Second Br. at 38-40).

Defendants argue that since Plaintiffs sought an alternate location to celebrate their two *special* events (St. Pio's Feast Day and birthday) in another city (Brighton) and could have (potentially) found other locations for these events within "hundreds of miles . . . over at least two states"—between Wildwood, Missouri and the Township—that Plaintiffs cannot make out a free exercise violation nor show irreparable harm. (Second Br. at 40-41). The argument is wrong as a matter of fact and law.

It is factually incorrect in that the CHI Property with its prayer trails and Stations of the Cross is unique and permits worshipers to, *inter alia*, pray the stations in a rural and wooded setting, allowing the worshiper to meditate on each station of the Passion of Christ. There is no other such alternative location available. Indeed, the rural and wooded setting of the CHI Property—a setting which promotes prayer and meditation—is not replicated anywhere in the Township or at any other "alternative" location, and the banned religious symbols facilitate and promote that prayer and meditation. (*See, e.g.,* O'Reilly Decl. ¶¶ 3-5, R.76-2, PageID.3938-40).

The claim is also wrong as a matter of law. Should the Court find that Plaintiffs are likely to succeed on the merits, it is irrelevant whether alternatives exist. *See Am.-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 607 (6th Cir. 2005) (striking down a city ordinance and stating that "because we have already found that the Ordinance is not narrowly tailored, whether the City of Dearborn has provided ample alternatives of communication is now irrelevant in this case"). Moreover, "[w]hen a party seeks a preliminary injunction on the basis of a potential constitutional violation, the likelihood of success on the merits often will be the determinative factor," *Obama for Am.*, 697 F.3d at 436 (internal quotations and citation omitted), as irreparable harm is established as a matter of law, *Bonnell,* 241 F.3d at 809 ("[W]hen reviewing a motion for a preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated."). And finally, it is well established that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. N.J.*, 308 U.S. 147, 163 (1939). Defendants' arguments are without merit.

SUMMARY

It is apparent that the Township will do anything to prevent Plaintiffs from using the CHI Property for religious worship. The Township argues that Plaintiffs don't have the proper governmental approvals to exercise their religion on this 40-acre

property, but yet reject every effort (at great cost and delay) made by Plaintiffs to obtain those approvals. And after the latest failed attempt—which was rejected for the same reasons the first attempt was rejected even though Plaintiffs removed the primary structure (the St. Pio Chapel) from the request—the answer is simply, try again. When Plaintiffs try to get answers from the Township in terms of what it will approve, including the number of people it will allow to worship on the property in light of all the other events being held in the same neighborhood with no objection, the Township refuses to answer.

The Township complains about Plaintiffs' dirt driveway (despite the fact that there are dirt driveways throughout the Township that see far more traffic than Plaintiffs' current driveway and the fact that this driveway existed and was in use before Plaintiffs acquired the property), yet when Plaintiffs seek a permit to improve the surface, that permit is used by the Township to restrict Plaintiffs' rights to religious assembly and worship. When Plaintiffs submit applications with plans to make a commercial driveway (approved by the Road Commission) to support their religious worship, that too is rejected (twice). As noted, Plaintiffs' neighbor could use his dirt driveway to have 200 people at his home to watch a football game, but Plaintiffs are not permitted to use their driveway to have 20 people gather for a Rosary. And the Township's complaint about parking is rather disingenuous as it is prohibiting Plaintiffs from constructing a modest, 39 space lot on the 40-acre property.

Regarding Plaintiffs' religious symbols/signs, these displays satisfy all of the objectives set forth in the Zoning Ordinance for regulating signs. Signs much larger and quite distracting to motorists are permitted throughout the Township. Plaintiffs have on multiple occasions stated that they are willing to pay a $50 permit fee (the standard fee, although no fee is required for the "holiday" signs, such as the large skeletons erected on properties within the Township) and have an inspector come to the property to inspect the signs for safety issues. The Township's response has always been "No."

The petty tyranny of the Township and its officials is making a mockery of the First Amendment and RLUIPA. Unfortunately, the courts have, by and large, allowed these officials to get away with it. It's hard for Plaintiffs not to be cynical of this entire process. They file a motion for a preliminary injunction in September 2021 to protect their constitutional rights. It is denied. This Court promptly reviews the matter and remands it to the district court to reconsider its rulings on *Younger* abstention and ripeness. This remand was in December 2021. Despite the filing by Plaintiffs of *two* motions to expedite, the district court finally finds the time to rule *a year later in December 2022*. The delay and expense (in excess of $40,000 in application fees and engineering costs to simply apply for approval of their modest prayer campus) is unquestionably a substantial burden on Plaintiffs' religious exercise in addition to concrete and irreparable harm to their rights protected by the First

Amendment and RLUIPA.

The interim relief Plaintiffs are seeking here is yet even more modest than the low impact plan that includes the St. Pio Chapel (and which the Planning Commission originally approved, noting that Plaintiffs went "above and beyond and addressed all of the concerns of the Planning Commission and the consultants"). This Court can and should enjoin the Township from preventing Plaintiffs from using the CHI Property for religious exercise, and enjoin the Township's restriction on Plaintiffs' display of religious symbols/signs at issue (Stations of the Cross, altar, and mural wall with the image of Our Lady of Grace) in furtherance of their religious exercise. Plaintiffs have no objection to the Township inspecting each display for safety. To resolve the Township's (unfounded) concerns about the driveway, Plaintiffs have no problem improving the existing dirt driveway or constructing the commercial driveway with the modest 39 parking spaces.

At the end of the day, as Justice Gorsuch stated in *Mast*, "*Fulton* makes clear that the County and courts below misapprehended RLUIPA's demands." 141 S. Ct. at 2431 (Gorsuch, J., concurring). RLUIPA requires the application of strict scrutiny, the most demanding test known to constitutional law. The Township's restrictions on Plaintiffs' religious exercise fail to meet this standard. It's not a close call. The injunction should issue.

CONCLUSION

Plaintiffs request that the Court immediately reverse the district court and issue the requested injunction to allow the display of the religious symbols/signs on the CHI Property and that the Court affirm the district court's order enjoining the Township's restriction on Plaintiffs' use of the CHI Property for "organized gatherings."

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 32(a), the foregoing Brief is proportionally spaced, has a typeface of 14 points Times New Roman, and contains 12,955 words, excluding those sections identified in Fed. R. App. P. 32(f).

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that all of the participants in this case are registered CM/ECF users.

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise (P62849)

ADDENDUM: DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

No.	Page ID	Description
R.1	1-149	Complaint
R.14	192-351	First Amended Complaint
R.23	1121-55	Emergency Motion for Temporary Restraining Order / Preliminary Injunction
R.23-2	1157-1312	Exhibit 1: Declaration of Robert J. Muise
	1160-1287	Exhibit A: Email from Township Attorney David Burress with attachments (verified complaint with attachments filed in the 44th Circuit Court for Livingston County)
	1288-89	Exhibit B: Read Receipt
	1290-1304	Exhibit C: Article 16 Sign Standards, Genoa Township Zoning Ordinance
	1305-09	Exhibit D: Township Assembly Ordinance
	1310-12	Exhibit E: §3.03, Genoa Township Zoning Ordinance
R.23-3	1313-37	Exhibit 2: Declaration of Jere Palazzolo
R.23-4	1338-49	Exhibit 3: Declaration of Ann O'Reilly
R.27	1417-24	Plaintiffs' Reply in Support of Emergency Motion for Temporary Restraining Order / Preliminary Injunction
R.27-2	1426-27	Exhibit 4: May 7, 2021 letter from Township to CHI
R.27-3	1428-48	Exhibit 5: Emergency Motion to Dissolve *Ex Parte* TRO Issued on September 20, 2021

R.28	1449-50	Order denying in part Motion for TRO and Preliminary Injunction
R.29	1451-94	Transcript of Hearing on Motion for TRO / Preliminary Injunction
R.30	1495-96	Order Denying the Remainder of Emergency Motion for Temporary Restraining Order and Preliminary Injunction
R.31	1497-99	Notice of Interlocutory Appeal
R.37		Mandate
R.38	1515-17	Order Setting Briefing Schedule
R.39	1518-46	Plaintiffs' Brief on Issues Following Remand
R.39-2	1548-52	Exhibit 1: Declaration of Robert J. Muise
	1553-57	Exhibit A: TRO Issued by State Court
	1557-61	Exhibit B: Consent Order / Stipulation
	1562-75	Exhibit C: Hearing Transcript (excerpts), State Court
	1576-81	Exhibit D: Article 19, Township Zoning Ordinance
	1582-94	Exhibit E: Article 16, Township Zoning Ordinance (sign standards in effect in September 2020)
	1595-1609	Exhibit F: Article 16, Township Zoning Ordinance (sign standards amended November 2020)
	1610-14	Exhibit G: Article 3, Township Zoning Ordinance
R.39-3	1615-23	Exhibit 2: Declaration of Jere Palazzolo
	1624-52	Exhibit A: Prayer Campus Submission

	1653-74	Exhibit B: Review Letters
	1675-1702	Exhibit C: CHI's Response to Review Letters
	1703-04	Exhibit D: Letter from Township Declining to Respond
R.39-4	1705-15	Exhibit 3: Declaration of Ann O'Reilly
	1716-19	Exhibit A: Road Commission Application for Field/Temporary Driveway Permit
R.48	2140-63	Emergency Motion to Expedite Ruling on Plaintiffs' Motion for Preliminary Injunction
R.51	2191-96	Request for Judicial Notice
R.51-2	2198-2206	Exhibit 1: ZBA Minutes of Feb. 15, 2022
R.51-3	2207-09	Exhibit 2: State Court Stay Order
R.52	2210-14	Declaration of Ann O'Reilly
R.55	2234-98	Supplemented First Amended Complaint
R.55-14	2467-73	Exhibit 13: Article 11, Township Zoning Ordinance
R.66	3378-3406	Renewed Motion to Expedite Ruling on Plaintiffs' Motion for Preliminary Injunction
R.69	3467-3501	Order Granting in Part and Denying in Part Motion to Dismiss
R.70	3502-11	Order Granting in Part and Denying in Part Motion for Preliminary Injunction
R.71	3512-14	Notice of Interlocutory Appeal
R.73	3516-51	Motion for Injunction Pending Appeal

R-74	3568-82	Defendants' Response to Motion for Injunction Pending Appeal
R-75-3	3618-3755	Defendants' Exhibit 2: Transcript of Hearing in State Court (9/28/21)
R-76-2	3937-40	Declaration of Ann O'Reilly
R.80	4002-13	Motion to Expedite Ruling on Plaintiffs' Motion for Injunction Pending Appeal
R.81	4014-15	Defendants' Notice of Appeal