

Case No. 22-2139/23-1060

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

**CATHOLIC HEALTHCARE INTERNATIONAL, INC. AND
JERE PALAZZOLO,**

Plaintiffs-Appellants Cross-Appellees,

v.

**GENOA CHARTER TOWNSHIP, MICHIGAN AND
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

No. 4:21-cv-11303-SDK-DRG (Honorable Shalina D. Kumar, *presiding*)

**DEFENDANT-APPELLEES' CROSS APPELLANTS'
GENOA TOWNSHIP AND SHARON STONE'S
PRINCIPAL AND RESPONSE BRIEF**

(SECOND BRIEF)

AMERICAN FREEDOM LAW CENTER

By: Robert J. Muise (P62849)

Kate Oliveri (P79932)

Attorneys for Plaintiffs-Appellants

Cross-Appellees

PO Box 131098

Ann Arbor, MI 48113

P: (734) 635-3756

F: (801) 760-3901

E: rmuise@americanfreedomlawcenter.org

koliveri@americanfreedomlawcenter.org

SEWARD HENDERSON PLLC

By: T. Joseph Seward (P35095)

David D. Burress (P77525)

Attorneys for Defendants-Appellees

Cross-Appellants

210 East 3rd Street, Suite 212

Royal Oak, Michigan 48067

P: (248) 733-3580

F: (248) 733-3633

E: jseward@sewardhenderson.com

dburress@sewardhenderson.com

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 22-2139/23-1060 Case Name: CHI, Inc. v Genoa Charter Township

Name of counsel: David Daniel Burress

Pursuant to 6th Cir. R. 26.1, Sharon Stone
Name of Party

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on Friday, April 7, 2023 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ David D. Burress

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

TABLE OF CONTENTS

Table of Contents..... i

Index of Authorities iii

Statement in Support of Oral Argument..... 1

Statement of Jurisdiction..... 2

Statement of Issues 4

Statement of the Case..... 5

Summary of the Argument..... 6

Facts and Procedural History 8

 I. Background Facts 8

 II. CHI files suit13

 III. CHI applies for a temporary driveway permit.....13

 IV. Genoa Township files suit in state court14

 V. Further proceedings in state court.....15

 VI. CHI’s December 2021 submissions to the Township.....15

 VII. CHI returns to federal court.....17

 VIII. CHI goes back to state court17

 A. Evidence related to CHI’s structures.....18

 B. Evidence related to CHI’s access.....19

 C. The rulings in state court20

 IX. Continued proceedings in the federal court.....21

 X. Partial dismissal of CHI’s claims.....23

 XI. The order that is subject of this appeal.....24

Standard of Review.....25

Genoa Township’s Response to CHI’s Appeal.....26

 I. The District Court properly denied CHI and Palazzolo’s request for an injunction related to the CHI structures26

 A. Law26

 B. Application27

II. Alternatively, this Court lacks jurisdiction to grant CHI’s request34

Genoa Township’s Cross Appeal35

I. The District Court abused its discretion by allowing CHI to use the
Property because CHI has no lawful access for its proposed uses35

A. Law35

B. Application36

II. The District Court abused its discretion by granting a preliminary
injunction because CHI will not suffer irreparable harm38

A. Law39

B. Application40

Conclusion41

Certificate of Compliance42

Proof of Service43

Appendix44

INDEX OF AUTHORITIES

Cases

Bonnell v. Lorenzo,
241 F.3d 800 (6th Cir. 2001)26

Boy Scouts of Am. v. Dale,
530 U.S. 640 (2000)40

Church of the Lukumi Babalu Aye v. City of Hialeah,
508 U.S. 520 (1993)30

City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC,
142 S. Ct. 1464 (2022).....32

City of Ladue v. Gilleo,
512 U.S. 43 (1994)33

Déjà vu of Nashville, Inc. v. Metro. Gov't of Nashville,
274 F.3d 377 (6th Cir. 2001)32

Genoa Charter Twp. v. Cath. Healthcare Int'l Inc.,
985 N.W.2d 510 (Mich. 2023).....21

Gonzales v. Nat'l Bd. of Med. Examiners,
225 F.3d 620 (6th Cir. 2000)25

Int'l Outdoor, Inc. v. City of Troy,
974 F.3d 690 (6th Cir. 2020)32

Jimmy Swaggart Ministries v. Bd. of Equalization,
493 U.S. 378 (1990)30

King Enterprises, Inc. v. Thomas Twp.,
215 F. Supp. 2d 891 (E.D. Mich. 2002)33

Kissinger v. Bd. of Tr. of Ohio State Univ., Coll. of Veterinary Med.,
5 F.3d 177 (6th Cir. 1993).....30

Leary v. Daeschner,
228 F.3d 729 (6th Cir. 2000)26, 39

Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch,
510 F.3d 253 (3d Cir. 2007)39, 40

Michigan State AFL-CIO v. Miller,
103 F.3d 1240 (6th Cir. 1997)25

Miller v. City of Cincinnati,
622 F.3d 524 (6th Cir. 2010)32

Oskiera v. Chrysler Motors Corp.,
943 F.2d 52 (6th Cir. 1991)34

Sandison v. Michigan High Sch. Athletic Ass'n, Inc.,
64 F.3d 1026 (6th Cir. 1995)25

Schenck v. City of Hudson,
114 F.3d 590 (6th Cir. 1997)25

Stenberg v. Cheker Oil Co.,
573 F.2d 921 (6th Cir. 1978)26, 39

Westchester Day Sch. v. Vill. of Mamaroneck,
504 F.3d 338, 350 (2d Cir. 2007)29

Wilson v. N.L.R.B.,
920 F.2d 1282 (6th Cir. 1990)39

Winter v. Nat. Res. Def. Council, Inc.,
555 U.S. 7 (2008)26

Statutes

28 U.S.C. § 1292(a) 2

28 U.S.C. § 1292(a)(1).....2, 34

28 U.S.C. § 1292(b) 2

28 U.S.C. § 1331..... 2

28 U.S.C. § 1367..... 2

28 U.S.C. § 2283.....33

42 U.S.C. § 1983..... 2
42 U.S.C. § 2000cc *et seq* 2
42 U.S.C. § 2000cc-2(b)29

Other Authorities

Genoa Ord. § 15.06.04(a).....36, 38
Genoa Ord. § 16.03.02(f)(6)33
Genoa Ord. § 19.0728
Genoa Ord. § 23.05.0228
Genoa Ord. § 3.05.02(e).....35, 38

STATEMENT IN SUPPORT OF ORAL ARGUMENT

This case addresses the issue of whether Catholic Healthcare International, Inc, and its president Jere Palazzolo (hereinafter “CHI”) is entitled to a preliminary injunction allowing it to erect structures in violation of the Genoa Township Zoning Ordinance, where the related claims have been dismissed by the district court, and CHI’s request is contrary to a state court injunction.

This case also addresses whether the district court abused its discretion by summarily granting CHI a preliminary injunction allowing it to use its vacant property in violation of the Genoa Township Zoning Ordinance, when evidence shows that CHI will not suffer irreparable harm without an injunction because they have no approved access to their property, and for at least the past year, CHI has carried out their claimed religious ministry at a different location.

STATEMENT OF JURISDICTION

Jurisdiction of the District Court

Plaintiffs-Appellants/Cross Appellees (hereinafter “CHI”) filed a Supplemented Amended Complaint alleging claims under 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. [R.55 (*Supplemented First Amended Complaint*)]. The district court has jurisdiction over claims arising under the Constitution, and laws of the United States pursuant to 28 U.S.C. § 1331. The district court may exercise supplemental jurisdiction according to 28 U.S.C. § 1367.

Appellate Jurisdiction of this Court

Both parties have filed cross appeals from an order denying in part and granting in part a preliminary injunction [Order R.70, Page ID # 3502-3511; CHI Notice R.71, Page ID # 3512-3513; Genoa Notice R.81, Page ID # 4014-4015]. This Court has appellate jurisdiction over an appeal from an interlocutory order of the United States district court granting or denying an injunction pursuant to 28 U.S.C. § 1292(a)(1).

Genoa Township disputes that this court has jurisdiction over CHI’s appeal, because the claims underlying its request for injunction have been dismissed and are not subject to this Court’s jurisdiction under 28 U.S.C. § 1292(a) or (b).

Timeliness of the Appeal

On December 20, 2022, the district court issued its “Order Denying in Part and Granting in Part Plaintiff’s Motion for Preliminary Injunction (ECF No. 23)” [R.70, Page ID.3502-3511].

On December 21, 2022, CHI timely filed a Notice of Appeal. [R.71, Page ID # 3512-3513] On January 19, 2023, Appellees/Cross Appellants (hereinafter “Genoa”) timely filed its Notice of Appeal.¹ [R.81, Page ID # 4014-4015].

¹ On December 30, 2022, Genoa filed a timely motion for reconsideration, which remains pending in the district court. [R.75, Page ID # 3599-3924].

STATEMENT OF ISSUES

1. Whether the district court properly denied CHI and Palazzolo’s request for a preliminary injunction related to their “religiously symbolic” structures, where CHI’s related claims have been dismissed, and CHI does not have a likelihood of success on the merits of its claims?

Genoa Township and Sharon Stone answer, “Yes.”

CHI and Palazzolo presumably answer, “No.”

2. Whether the Court should deny CHI’s appeal for lack of jurisdiction because it seeks an injunction based upon claims that were dismissed, and the only remaining claim related to the structures is Genoa’s state court claim which has resulted in an injunction against CHI?

Genoa Township and Sharon Stone answer, “Yes.”

CHI and Palazzolo presumably answer, “No.”

3. Whether the district court abused its discretion by granting CHI an injunction allowing CHI to host organized gatherings on the Property, where CHI will not suffer irreparable harm because it does not have any compliant means to access to the Property for its organized gatherings?

Genoa Township and Sharon Stone answer, “Yes.”

CHI and Palazzolo presumably answer, “No.”

4. Whether the district court abused its discretion by granting CHI an injunction allowing it to use its Property for organized gatherings, where CHI does not have a likelihood of success on the merits and will not suffer irreparable harm because it has at least one other location available to it from which it can carry out its religious ministry?

Genoa Township and Sharon Stone answer, “Yes.”

CHI and Palazzolo presumably answer, “No.”

STATEMENT OF THE CASE

This appeal involves an order of the District Court which: (1) denied CHI an injunction related to claims based upon CHI’s “religiously symbolic structures,” and (2) granted CHI a preliminary injunction prohibiting the Township from enforcing a prohibition upon “organized gatherings.” [R.70, Page ID # 3502-3511].

The Plaintiffs-Appellants/Cross-Appellees Catholic Healthcare International, Inc, and its president Jere Palazzolo, (hereinafter “CHI”) appeal the first holding of the District Court’s ruling related to the structures. [R.71 (*CHI Notice of Appeal*)]. The Defendants-Appellees/Cross-Appellants Genoa Township and Sharon Stone-Francis (hereinafter “Genoa”) appeal the second part of the district court’s ruling, related to the prohibition upon organized gatherings. [R.81 (*Genoa Notice of Appeal*)].

SUMMARY OF THE ARGUMENT

CHI paints this appeal as if it were a continuation of an earlier appeal which also sought an injunction. However, since CHI's last appeal to this Court, the posture of the case has changed significantly. First, and most significantly, is that the claims underlying CHI's current request have been dismissed. Following remand, Genoa filed a renewed Motion to Dismiss, and the district court dismissed CHI's claims based upon the "prohibition" of its "religiously symbolic structures." CHI now has no likelihood of success upon the merits of these claims, which is fatal to its current request for an injunction.

Moreover, the evidence shows that CHI will not suffer irreparable harm. After this Court remanded CHI's last appeal, CHI requested a continued hearing in state court. Based upon the evidence at the hearing, the state court converted its Temporary Restraining Order to a preliminary injunction. Contrary to CHI's claims that the state court proceedings were then "stayed," CHI unsuccessfully filed appeals to the Michigan Court of Appeals, and the Michigan Supreme Court. CHI is now improperly attempting to use this Court as if it were an avenue of state court appellate review.

Genoa Township brings its cross appeal from the district court's order allowing CHI to host "organized gatherings" at its property. The fact that CHI has no valid access to the Property under the Genoa Township Zoning Ordinance, and the fact that CHI has failed to comply with the standards prescribed by the Livingston County Road Commission, required the district court to conclude that CHI has no lawful access for any of its organized events. The district court has erred and abused its discretion by concluding that CHI is free from compliance with access standards, simply because its permit has expired.

The district court also erred and abused its discretion by summarily concluding that CHI has satisfied the threshold for a preliminary injunction. Contrary to CHI's allegations and self-serving declarations, evidence shows that the Missouri-based corporation has continued to host the same "organized gatherings" it claims to be deprived of, at churches in the surrounding area.

FACTS AND PROCEDURAL HISTORY

I. BACKGROUND FACTS

Plaintiff/Appellant Catholic Healthcare International, Inc. is a nonprofit corporation, based in Wildwood, Missouri. [R.64-2; Page ID # 3338-3370 (*2020 IRS Form 990 EZ*)]. Jere Palazzolo is its president. [Id.]. Palazzolo is also a resident of Missouri. [R. 55, Page ID # 2287 ¶ 181 (*Complaint*)].

Months before CHI acquired title to the Property at issue in Genoa Township, township officials told it about permit requirements that applied to its proposed use. [R.59-2, Page ID # 2887, 2893-2894 (*2021-05-03 Board Packet*)]. In correspondence with the Township, Mr. Palazzolo denied that CHI planned to construct a “place of worship at this time” and instead claimed it wanted to install a “small art feature” for an event with the Bishop. [R.59-2, Page ID # 2887-2889 (*2021-05-03 Board Packet*)]. Despite being told in late-July and August of 2020 that special use approval was necessary, at some time in September of 2020, CHI had Stations of the Cross “housings,” an altar, and a “grotto,” constructed on the Property. [R.55, Page ID # 2265 (*Complaint* ¶ 116); 55-3, R. Page ID # 2333 (*CHI Impact Assessment*)].

On October 9, 2020, Genoa Township sent a letter to the Bishop Mengelin of the Diocese of Lansing, who was the record owner of the Property. The letter was copied to Mr. Palazzolo. [R.59-2, Page ID # 2885 (*Letter to Diocese*)]. The letter

advised that a “grotto” had been constructed without approval, in violation of the zoning ordinance. [Id.] The letter requested that the structures be removed by November 9, 2020. [Id.]

On October 20, 2020, weeks after the Township’s letter, CHI accepted title to the Property for one dollar. [R.59-2, Page ID # 2895, 2897 (*2021-05-03 Board Packet*); R.64-2; see also Page ID # 3348, 3360 (*2020 IRS Form 990 EZ*)]. On October 21, 2020, the Diocese provided the Township with a copy of a Warranty Deed to CHI and directed further correspondence to Robert Muise, counsel for CHI. [R.59-2, Page ID # 2895 (*2021-05-03 Board Packet*)].

On October 23, 2020, Mr. Muise sent a letter arguing that the “grotto” was not a grotto, but instead a “temporary religious symbol” or “sign.” [R.59-2 Page ID # 2901 (*2021-05-03 Board Packet*); see also R.55, Page ID # 2250 ¶ 59 (*Complaint*)]. On November 4, 2020, the Township attorney responded to Mr. Muise, disputed his claims, and detailed the history of CHI’s request, including how it had constructed structures on the Property without permits or approval, because it failed to plan ahead for its event with the Bishop. [R.59-2 Page ID # 2904-2907 (*2021-05-03 Board Packet*)]. The letter also included a photograph showing that the “grotto” was a structure constructed in an unsafe manner. [R.59-2 Page ID # 2905 (*2021-05-03*

Board Packet)). The letter also included a picture of a sign² posted at the Property with the word “Grotto” on it, with an arrow, pointing to the grotto. [Id.]

After the Township attorney disputed Mr. Muise’s claims, CHI submitted a special land use application to construct a 6,084 square foot “proposed church and associated drives and parking areas.” [R.55-2, Page ID # 2301 (*2020-12-09 Application for Site Plan Review*)]. The remainder of the site was to be used for “outdoor features, like an outdoor Stations of the Cross walkway, natural nature trail, and outdoor grotto sign.” [R.55-2, Page ID # 2308].

It was apparent from CHI’s submissions that it was not accurately accounting for the traffic expected at the Property. The Impact Assessment evaluated traffic during “*the peak hour on a Sunday*,” but failed to consider traffic at other times, such as when CHI planned to host “services **after dusk which will require lighting**.” [R55-2, Page ID # 2312-2314 (*Impact Assessment*)](emphasis added), and; the Impact Assessment failed to consider traffic during other times when “**th[e] facility will be near capacity for only a few hours on certain days of the week**” [R.55-2, Page ID # 2313](emphases added).³ On February 8, 2021, the Planning

² This sign was visible in the Plaintiffs’ original Complaint but was cropped out of the amended Complaint. [Compare R.1, Page ID # 13 with R.55, Page ID # 2247].

³ Despite promises CHI made in its Warranty Deed, its “Impact Assessment” was also left blank in the area regarding whether any “deed restrictions, [or] protective covenants” affected the site. [R.55-2, Page ID # 2314 (*Impact Assessment*)].

Commission tabled Plaintiffs' application, based on concerns that its intended scope of use exceeded its proposal. [R.59-3, Page ID # 2913-2914 (*2021-02-08 PC Minutes*)].

On February 16, 2021, Plaintiffs' engineer provided a resubmittal along the with an "operations manual." [R.55, Page ID # 2258 ¶ 92]. Plaintiffs' re-submittal continued to list two "special events" to be held on May 25, 2021, and September 23, 2021. [R.55-3, Page ID # 2336 (*2021-02-06 CHI Resubmittal*)]. The manual said the number of "anticipated attendees [for these events] is not known." [R.55-3, Page ID # 2336]. Despite its site plan with only 39 parking spaces, CHI's operations manual anticipated hosting "staged/multiple receptions" and using greenspace for overflow parking during its events. [R.55-3, Page ID # 2336].

When CHI appeared before the Planning Commission on March 8, 2021, its engineer claimed that event parking may be moved to a local parish because the site is not big enough to host "**massive 200 car events.**" [R.55-4, Page ID # 2353 (*2021-03-05 Planning Commission Minutes*)]. Mr. Palazzolo also acknowledged that the Chilson Rd. location was intended to be a "site of pilgrimage." [R.55-4, Page ID # 2353]. During the call to the public, residents raised concerns because 60 to 80 cars had been parked along Chilson Rd. during a recent event at the Property. [R.55-4, Page ID # 2355-2358]. And residents raised concerns about large numbers of visitors to the Property each year. [R.55-4, Page ID # 2359].

Despite the concerns raised by some members of the Planning Commission and the public, the Planning Commission narrowly voted 4 to 3 to recommend approval, subject to conditions. First, “events and use of the Property shall not exceed the available provided parking on the site.” [R.55-4, Page ID # 2361 (*2021-03-05 Planning Commission Minutes*)]. Second, the operations manual and documents provided at the meeting must be attached to, and become part of, the Impact Assessment. [R.55-4, Page ID # 2361]. And third, approval of the Site Plan was subject to a limit of 39 parking spaces. [R.55-4, Page ID # 2361].

When Plaintiffs went before the Township Board on May 3, 2021, members of the public proudly announced their own Catholic faith, yet still expressed their opposition to the church in this location. [R. 55-6, Page ID # 2389]. Neighboring residents also hired a consultant to review CHI’s Impact Assessment, and provided a report recommending denial, based on the project’s incompatibility with the zoning district, and CHI’s failure to consider its actual traffic needs. [R.59-2, Page ID # 2719-2723 (*2021-05-03 Board Packet*)(Community Image Builders report)]. On May 5, 2021, the Township Board voted to deny CHI’s special use permit and Impact Assessment. [R.55-6, Page ID # 2392-2394].

On May 7, 2021, township Enforcement Officer Sharon Stone-Francis wrote CHI a letter, again advising them that the grotto/sign and stations of the cross housings constructed without permits must be removed. [R.55, Page ID # 2251¶ 61].

Ms. Stone-Francis included copies of the Township’s sign and accessory structure ordinances with her letter. [R.55, Page ID # 2264 ¶¶ 111-112].

II. CHI FILES SUIT

Weeks after the Township Board denied its special land use application, CHI and Palazzolo filed suit in the United States District Court. The Complaint was based upon the Township Board’s denial of CHI’s special land use permit, and the May 7, 2021 letter from the Township, telling CHI that the structures had to be removed. [R.1, Page ID # 21-23]. CHI’s RLUIPA claim was focused on the “final” decision of the Township Board regarding the “St. Pio Chapel and prayer campus.” [R.1, Page ID # 28]. Other claims focused on facial and as-applied challenges to the “sign ordinance.” [R.1, Page ID # 23-27, 31-34 (¶¶ 93-104; 124-128)].

III. CHI APPLIES FOR A TEMPORARY DRIVEWAY PERMIT

More than a month after filing its federal court lawsuit, CHI applied for a permit from the Livingston County Road Commission, to construct a “field driveway,” for temporary access to its vacant site. [R. 59-4, Page ID # 2921 (*2021-07-12 Field Driveway Permit Application*)]. The Road Commission permit stated that the applicant “agrees to the terms of the permit[:.]”

Permit to construct a field driveway per the **attached plan dated 7/8/21 and prepared by Boss Engineering. (Job #20-477). Field driveway is not to be used for organized gatherings.** A commercial driveway approach will be **required if there is a change in use of the property.**

[R. 59-4, Page ID # 2921](emphases added).

The attached plan, dated July 8, 2021 and drawn by CHI's engineer, depicted construction of a "temporary gravel access" and showed the property as vacant land. [R.59-4, Page ID # 2926]. The plan noted improvements required to the driveway surface. [R.59-4, Page ID # 2926]. The plan also noted that the Road Commission required CHI to move the location of its access "**to match the centerline of the approved approach Per LCRC Review #LC-20-11**" [R.59-4, Page ID # 2926](emphasis added).

CHI did not challenge the Livingston County Road Commission's ability to impose any of these conditions. CHI admittedly did nothing to comply with the driveway permit. [R.23, Page ID # 1133 (*CHI Motion for Injunction*); R.23-4, Page ID # 1348-1349 (*O'Reilly Declaration*)]. And CHI has admittedly done nothing to improve its access since it acquired the Property in October of 2020. [Id.]

IV. GENOA TOWNSHIP FILES SUIT IN STATE COURT

On September 17, 2021, Genoa Township filed suit in state circuit court to enjoin CHI's violations of the Article 21 related to "accessory structures" and Article 15 related to "driveway standards." [R.26-2, Page ID # 1392-1395 (*2021-09-17 Ex-Parte Motion for TRO*)]. The state court entered a temporary restraining order ("the TRO") against CHI on September 20, 2021. [R.26-3, Page ID # 1406 (*2021-09-20 TRO*)].

CHI initially responded to the state court action by filing an emergency

Motion for Temporary Restraining Order in the federal district court. [R.23 (*CHI Motion for Injunction*)]. The district court held a hearing and denied CHI's request for relief. [R.28, 29 (Transcript), 30]. CHI then filed an appeal to this Court along with an emergency motion for an injunction. This Court remanded the case back to the district court with instructions to consider (1) whether *Younger* abstention applied, and (2) whether CHI's claims were ripe. [Case: 21-2987 Doc. 21-2, 23-2, 24].

V. FURTHER PROCEEDINGS IN STATE COURT

While CHI's first appeal was pending in this Court, the state court held an evidentiary hearing on CHI's motion to dissolve TRO, and an Order to Show Cause. The hearing was ultimately adjourned pursuant to a stipulation of counsel, after counsel discussed CHI's plan to apply for land use approval as a religious "park." [See R.75-3, Page ID # 3748-3753; see also Doc. 19, Page31-32 (*PL Brief*)]. The state court TRO was continued by stipulation, pending CHI's submission of a new land use application. [R.75-3, Page ID # 3753].

VI. CHI'S DECEMBER 2021 SUBMISSIONS TO THE TOWNSHIP

CHI did not apply for land use approval as a park. Instead, on October 15, 2021, 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*)]. CHI's submission and revised Impact Assessment explicitly stated that "intent of the site

is to provide an outdoor Mass and prayer campus capable for accommodating the equivalent number of persons as a 95-seat chapel,” and that the number of parking spaces was chosen to “accommodate the chapel when the chapel is eventually constructed.” [R.59-5, Page ID # 2938].

At the hearing on December 13, 2021, the Planning Commission considered a report from its planning consultant, who opined that “despite the exclusion of a church/temple building, we are of the opinion that the proposed use entails a ‘similar place of worship,’” and that “a similar special land use/site plan was denied by the Township Board earlier this year.” [R.59-5, Page ID # 2951-2952 (*2021-12-13 - Planning Commission Packet*)].

In response to the Planning Commission’s concerns that it was being asked to approve the same use the Township Board had denied, Mr. Palazzolo said that CHI wanted to use the property for “weekly services.” [R.59-6, Page ID # 2995]. CHI’s engineer, Scott Tousignant, also argued about the Township Board’s denial of their first special land use permit. [R.59-6, Page ID # 2995]. At the conclusion of the hearing, the Planning Commission determined that Section 19.07 of the Zoning Ordinance prohibited consideration of CHI’s application because:

the Planning Commission does not find there are new grounds or substantial new evidence to support changed intent of this application nor is there proof of any changed conditions based off all the reasons in the Township Board’s denial of May 3, 2021.

[R.59-6, Page ID # 2997 (*2021-12-13 - Approved PC Minutes*)].

CHI appealed to the Zoning Board of Appeals (the “ZBA”) but failed to address the relevant standards of review. For example, the ZBA does not decide constitutional issues. Nevertheless, CHI argued that the May 3, 2021 decision of the Township Board was unlawful and wrong for constitutional reasons. [R.59-7, Page ID # 3007-3014 (*2022-02-15 ZBA Packet*)]. Mr. Palazzolo claimed that removal of the chapel was “a significant and substantial change.” [R.59-7, Page ID # 3012-3014 (*2022-02-15 ZBA Packet*)]. However, the appeal still did not address the relevant criteria in Section 19.07. The ZBA unanimously affirmed the Planning Commission’s application of Section 19.07. [R.59-8 (*2022-02-15 Approved ZBA Minutes*)].

VII. CHI RETURNS TO FEDERAL COURT

After the Planning Commission declined to hear the application until one year had passed from the Township Board denial, CHI sought leave to file a supplemental pleading in federal court. The “allegations” of the supplemental pleading referred to selected portions of the state court record, entry of the state court TRO, and the proceedings before the Planning Commission and ZBA after CHI’s plan to submit a new land use application. [R.43].

VIII. CHI GOES BACK TO STATE COURT

After filing its supplemental pleadings in federal court, CHI requested further proceedings in state court. On February 24, 2022, CHI filed a motion for summary

disposition and set the motion for hearing on April 21, 2022. Then, on March 2, 2022, CHI asked to continue the state court evidentiary hearing, on a date before its dispositive motion. [R.75-2, Page ID # 3617 (*Muise Email*)]. On April 5, 2022, the state court conducted CHI's requested hearing. Based on the evidence at the September 28, 2021 and April 5, 2022 hearings, the 44th Circuit Court denied CHI's motion to dissolve the TRO, and instead converted the TRO into a preliminary injunction. [R.75-4].

A. Evidence related to CHI's structures

At the hearings on September 28, 2021 and April 5, 2022, Assistant Township Manager, Kelly VanMarter (now Township Manager) was the only witness who testified. Ms. VanMarter explained that under the Township Zoning Ordinance, accessory structures are permitted only "in connection with, incidental to, and on the same lot with a principal building, occupied by a use permitted in the zoning district." [R.75-3, Page ID # 3663-3664 (*2021-09-28 Transcript*)]. CHI's structures are not allowed because CHI's property has no principal building. [Id.]. And, in order to maintain accessory structures, a property must also have an approved land use. [R. 75-3, Page ID # 3664].

She addressed CHI's various examples of birdhouses, tables, Halloween decorations and other structures that CHI presented pictures of. She explained that the examples relate to properties occupied with a permitted use or a principal

building, which the structures are accessory to. [R.75-3, Page ID # 3669-3671]. She also explained that residential properties go through a land use approval process. [Id.]. And the other examples, such as the parks, referred to by CHI had gone through a site plan approval, which is what the Township asked CHI to do. [Id.]

B. Evidence related to CHI's access

Ms. VanMarter also explained her familiarity with the Livingston County Road Commission's requirements. [R.40-3, Page ID # 1797-1800; R.75-3, Page ID # 3665-3666 (2021-09-28 Transcript)]. For example, the Road Commission regulates the location, size, and design of driveways, to ensure access for emergency vehicles. [R.40-3, Page ID # 1799; R.75-3, Page ID # 3666 (2021-09-28 Transcript)]. Location is also important to ensure adequate sight distance when entering or exiting the driveway and to ensure a safe amount of visibility to motorists on the road. [Id.] Ms. VanMarter explained that CHI does not have any access that meets the design criteria of a "driveway," because its only access is via a "dirt access road." [R.40-3, Page ID # 1797; R.75-3, Page ID # 3664 (2021-09-28 Transcript)].

At the continued hearing on April 5, 2022, photographs were introduced showing the deplorable condition of CHI's access. [R.75-4, Page ID # 3853 (2022-04-21 Transcript); R.75-5, Page ID # 3917 (*Genoa Exhibit 21*)]. Ms. VanMarter also testified that its condition would prohibit access by emergency vehicles, or other heavy apparatus, that its condition was unstable and unsafe, and that cars could get

stuck in it. [R.75-4, Page ID # 3854 (2022-04-21 Transcript)]. To her knowledge, the Livingston County Road Commission never approved CHI's current access. [Id.]

Upon questioning by the state court judge, counsel for CHI was unable to show that its access complies with sight-distance requirements. [R.75-4, Page ID # 3840 (2022-04-15 Transcript)]. Counsel for CHI admitted that he assumed the driveway complied because Livingston County issued a permit. [Id.]. But, contrary to counsel's assumption, the July 8, 2021 plans, drawn by CHI's own engineer, show that the Road Commission required the location of CHI's access to be moved, "to match the centerline of the approved approach Per LCRC Review #LC-20-11." [R.59-5, Page ID # 2926 (*Boss Drawing*)]. CHI has admittedly done nothing to improve its access or comply with the requirements of the Livingston County Road Commission, since it acquired the Property. [R.23, Page ID # 1133; ECF No. 23-4, Page ID # 1348-1349 (*O'Reilly Declaration*)].

C. The rulings in state court

At the conclusion of the continued hearing, the state court converted the TRO to a preliminary injunction. [R.75-4, Page ID # 3897-3903 (2022-04-25 Hearing Transcript)]. Later, after denying CHI's motion for summary disposition, the state court "stayed" the case at CHI's request but ordered that the preliminary injunction shall remain in effect until further order of the state court. [R.51-3, Page ID # 2208 (2022-04-21 State Court Order)]. CHI then asked the federal court to take judicial

notice that state court proceedings were now stayed. [R.51, Page ID # 2192 (*CHI Request for Judicial Notice*)].

Despite CHI's claim that state court proceedings were "stayed," CHI filed unsuccessful appeals of the preliminary injunction to the Michigan Court of Appeals and Michigan Supreme Court. Most recently, on March 6, 2023, the Michigan Supreme Court denied CHI's application for leave to appeal. *Genoa Charter Twp. v. Cath. Healthcare Int'l Inc.*, 985 N.W.2d 510 (Mich. 2023).

IX. CONTINUED PROCEEDINGS IN THE FEDERAL COURT


After CHI lost in the state circuit court, on May 5, 2022, the district court issued a docket text order, which: (1) granted CHI's motion to supplement its pleadings, (2) dismissed Genoa Township's pending motion to dismiss without prejudice, and (3) ordered further briefing on abstention issues. On May 9, 2022, Plaintiffs filed their Supplemented First Amended Complaint [R. 55]. On June 13, 2022, Genoa Township filed a renewed motion to dismiss. [R.59, Page ID # 2582-3149 (*Genoa Renewed Motion to Dismiss*)].

While the Township's motion to dismiss was pending, and CHI was prosecuting its state court appeals, CHI filed a motion to expedite the district court's consideration of its motion for preliminary injunction (ECF No. 23). [R.66, Page ID # 3378-3382 (*CHI Motion to Expedite*)].

Despite CHI's claims of urgency, evidence showed that neither the state court injunction nor the lack of a permit from the Township placed a substantial burden upon CHI or Palazzolo's rights of free exercise or expressive association. For example, on Wednesday, May 25, 2022, CHI held one of its two semi-annual events at Holy Spirit Catholic Church, in Brighton, MI. [R. 67-3, Page ID # 3431 (2022-05-15 *Holy Spirit Bulletin*)]. In addition to a Mass and reception, CHI advertised that it would have its "religious art collection" on display:

ST. PADRE PIO BIRTHDAY CELEBRATION

Holy Spirit Parish will commemorate St. Pio's 133rd birthday on **Wednesday, MAY 25 at 5:00 pm at the Serenity Court (weather permitting, otherwise in Church)**. Please note that this has been moved from St. Joseph in Howell.



- Exciting news about the St. Padre Pio medical school initiative;
- The religious liberty lawsuit by our counsel from the American Freedom Law Center;
- The urgent need for The Terri Schiavo Home for the Brain Injured by Terri's brother Bobby Schindler;
- And much more...

Join our family of St. Pio's faithful friends as we celebrate, enjoy refreshments, and view the new additions to our beautiful, original religious art collection. There is no cost to attend! Register at: <https://chi-usa.com/events/stpiobirthday/>

To register visit: <https://chi-usa.com/events/stpiobirthday/>

[Id.]. CHI's attorney(s) were also part of the event. [Id.]

And months later, on Wednesday, September 23, 2022, CHI held its other semi-annual event, the St. Padre Pio feast day event, at Holy Spirit Catholic Church in Brighton, MI:



Catholic Healthcare International
ST. PADRE PIO FEAST DAY CELEBRATION
SEPTEMBER 23, 5 pm at Holy Spirit, Brighton

Join us as we celebrate our beloved Patron, St. Pio, a modern-day and very active saint. The evening includes Mass with Bishop Boyea, a program with exciting updates about the proposed St. Padre Pio Institute for the Relief of Suffering, School of Osteopathic Medicine; the St. Pio Home for the Relief of Suffering being planned for SE Michigan; the Padre Pio Prayer campus in Howell; and the Terri Schiavo Home for the Brain Injured.

A reception including an Italian meal and spirits will follow. Mass will take place in Holy Spirit's beautiful Serenity Court in Brighton (weather permitting), with the reception in the Church activity center.

Reservations are required for this free evening—go to www.chi-usa.com/events/stpiofeastday/ Questions? E-mail aoreilly@chi-usa.com.



[R67-4, Page ID # 3434 (2022-09-18 – *Holy Spirit Bulletin*)]. Bishop Boyea came from Lansing to celebrate Mass, at the new location in Brighton. [Id.]

X. PARTIAL DISMISSAL OF CHI'S CLAIMS

On November 30, 2022, the District Court held a hearing upon Genoa Township's pending motion to dismiss, *only*. [R.65, Page ID # 3376 (Notice of Hearing)].

On December 20, 2022, the district court issued an order partially granting Genoa's motion to dismiss. [R.69 (*Order Partially Granting Motion to Dismiss*)].

The court granted the motion as to:

plaintiffs' claims arising from the prohibition and removal of CHI's religiously symbolic structures from the Property and DISMISSES them without prejudice as unripe [and];

plaintiffs' First Amendment facial challenge to the Sign Ordinance and DISMISSES it for lack of standing;

[R.69, Page ID # 3500]. However, the district court ruled that some of CHI’s claims survive, including:

First Amendment claims under the Free Exercise Clause and for interference with expressive association (as to the prohibited organized gatherings on the Property).

[Id.].

XI. THE ORDER THAT IS SUBJECT OF THIS APPEAL

On the same date the district court partially dismissed CHI’s claims, the court denied CHI’s request for a preliminary injunction “with respect to the installation and erection of religiously symbolic structures. . . .” [R.70, Page ID # 3511 (Order)]. However, the district court ordered that: “the Township may not enforce the prohibition of organized gatherings on the Property pending further rulings from the Court.” [Id.]

STANDARD OF REVIEW

This Court reviews a district court's decision upon a preliminary injunction for “abuse of discretion.” *Sandison v. Michigan High Sch. Athletic Ass'n, Inc.*, 64 F.3d 1026, 1030 (6th Cir. 1995). The district court abuses its discretion when it applies the incorrect legal standard, misapplies the correct legal standard, or relies upon clearly erroneous findings of fact. *Schenck v. City of Hudson*, 114 F.3d 590, 593 (6th Cir. 1997). A preliminary injunction should ordinarily be reversed when there is no likelihood of success on the merits. *Gonzales v. Nat'l Bd. of Med. Examiners*, 225 F.3d 620, 625 (6th Cir. 2000); *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1249 (6th Cir. 1997).

GENOA TOWNSHIP'S RESPONSE TO CHI'S APPEAL

I. THE DISTRICT COURT PROPERLY DENIED CHI AND PALAZZOLO'S REQUEST FOR AN INJUNCTION RELATED TO THE CHI STRUCTURES

CHI does not have a “strong likelihood” of success upon the merits because its related claims have been dismissed. Moreover, CHI’s proposed structures are prohibited because of its own failure and refusal to comply with the requirements of the Genoa Township Zoning Ordinance.

A. Law

A preliminary injunction is an extraordinary measure that has been characterized as “one of the most drastic tools in the arsenal of judicial remedies.” *Bonnell v. Lorenzo*, 241 F.3d 800, 808 (6th Cir. 2001). In deciding whether to grant an injunction, the Court must balance four factors:

- (1) whether the movant has a strong likelihood of success on the merits;
- (2) whether the movant would suffer irreparable injury without the injunction;
- (3) whether issuance of the injunction would cause substantial harm to others; and
- (4) whether the public interest would be served by issuance of the injunction.

Id. at 809. The burden of persuasion is on the party seeking injunctive relief. *Stenberg v. Cheker Oil Co.*, 573 F.2d 921, 925 (6th Cir. 1978). The party must prove that irreparable injury is likely in the absence of an injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008); *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000).

B. Application

1. *CHI does not have a strong likelihood of success on the merits because its related claims have been dismissed.*

In the district court, CHI sought to “immediately enjoin the enforcement of the Genoa Charter Township Zoning Ordinance as applied to Plaintiffs’ religious displays and assemblies on the Property.” [R.23, Page ID # 1122, 1154]. More specifically, CHI wanted an injunction allowing it to erect structures that it referred to as “religious symbols (altar, Stations of the Cross, and image of Santa Maria delle Grazie).” [R.23, Page ID # 1127 (*CHI Motion for Injunction*)]. The district court has now dismissed Plaintiffs’ claims based upon its structures because CHI knew the permit requirements, and admittedly failed to apply for special land use approval before erecting them, because CHI instead chose to seek a permit for its proposed church development. [R.69, Page ID # 3480-3486 (*Order Partially Granting Motion to Dismiss*)]. The district court has also ruled that CHI’s structures violate portions of the “sign ordinance” whose constitutionality is not at issue. [R.69, Page ID # 3479 (*Order Partially Granting Motion to Dismiss*)]. CHI does not have *any* likelihood, much less a “strong” likelihood of success on the merits because the claims upon which it seeks an injunction have been dismissed. Accordingly, the district court did not abuse its discretion by denying the injunction.

2. CHI does not have strong likelihood of success on the merits because its claims are not ripe

Contrary to CHI's claims that the district court erred because the issues are "ripe for review," the Planning Commission and ZBA did not reach a "final decision," because 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.

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)]. Contrary to CHI's claims that the Planning Commission reached a "final decision," Section 19.07 of the ordinance prohibited it from considering CHI's application because one year had not elapsed since the Township Board denied substantially the same project. [R.59-6, Page ID # 2997 (2021-12-13 - Approved PC Minutes); R. 59-9, Page ID # 3139 (Genoa Ordinance § 19.07)].

CHI then filed a meritless appeal to the ZBA. [R.59-7, Page ID # 3007-3014 (2022-02-15 ZBA Packet); 59-9, Page ID # 3143 (Genoa Ordinance § 23.05.02)]. CHI argued about constitutional issues the ZBA has no authority to decide, but failed

to address the reasons that the Planning Commission refused to hear its most recent application. The ZBA unanimously affirmed the Planning Commission’s application of Section 19.07. [R.59-8, Page ID # 3114 (2022-02-15 Approved ZBA Minutes)].

Following the ZBA hearing CHI could have, but failed to, seek further review under procedures specified by the Ordinance. One year from the Township Board’s denial also expired on May 7, 2022. CHI could now resubmit their “prayer campus” plan, but they have not done so. CHI’s own actions and inactions have rendered their claims unripe. And accordingly, the district court did not abuse its discretion by denying CHI’s requested injunction.

3. CHI has failed to show a likelihood of success on its claims

Despite its claims now being dismissed, CHI uses this appeal to argue about the merits of them and argues that application of the Zoning Ordinance to their structures imposes a “substantial burden.” [Doc.19, Page 48-49 (CHI Brief)]. A plaintiff bears the burden of establishing that a land use decision places a “substantial burden” on its exercise of religion. 42 U.S.C. § 2000cc-2(b). Courts have cautioned that “substantial burden” claims are **rarely established**, even when the effect of a land use regulation is to prohibit a religious congregation from building a church on its own land. *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 350 (2d Cir. 2007).

Generally applicable burdens, neutrally imposed, are not “substantial” burdens upon the free exercise of religion. *Jimmy Swaggart Ministries v. Bd. of Equalization*, 493 U.S. 378, 389–91 (1990). A neutral law of general applicability “need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.” *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531 (1993). The Sixth Circuit considers three factors in determining whether a law is a neutral law of general applicability: (1) whether the law is generally applicable; (2) whether the law is intended to prohibit a particular religious belief or a particular religious practice; and (3) whether the law is subject to a system of particularized exemptions. *Kissinger v. Bd. of Tr. of Ohio State Univ., Coll. of Veterinary Med.*, 5 F.3d 177, 179-80 (6th Cir. 1993).

Here, the evidence at the state court hearing established that CHI’s claims do not have a likelihood of success on the merits. Township Manager Kelly VanMarter explained that CHI’s structures are not allowed because CHI’s property has no principal building. [R.75-3, Page ID # 3663-3664 (2021-09-28 Hearing Transcript)]. Under the Township Zoning Ordinance, accessory structures are permitted only “in connection with, incidental to, and on the same lot with a principal building, occupied by a use permitted in the zoning district.” [R.75-3, Page ID # 3663-3664 (2021-09-28 Hearing Transcript)]. Next, she explained that to maintain

accessory structures, a property must also have an approved land use. [R. 75-3, Page ID # 3664 (2021-09-28 Hearing Transcript)].

Ms. VanMarter also addressed all of CHI's various examples of birdhouses, tables, Halloween displays and other structures that CHI presented pictures of. She explained that the examples relate to properties occupied with a permitted use or a principal building, that the structures are accessory to. [R.75-3, Page ID # 3669-3671 (2021-09-28 Hearing Transcript)]. She also explained that residential properties go through a land use approval process. [Id.]. And the other examples, such as the parks referred to by CHI, had gone through a site plan approval, which is what the Township asked CHI to do. [Id.]

The history of this case also shows that CHI's claim do not have a likelihood of success on the merits, because CHI's burdens are self-imposed. CHI's failure to comply with ordinance was largely due to Mr. Palazzolo's dishonest representation that CHI did not plan to construct a "place of worship at this time" before CHI acquired the Property. [R.59-2, Page ID # 2887-2889 (2021-05-03 Board Packet)]. Despite being told in late-July and August of 2020 that special use approval was necessary for its plan, CHI had Stations of the Cross "housings," an altar, and a "grotto," constructed on the Property. [R.55, Page ID # 2265 (CHI Complaint ¶ 116)]. CHI also did not take title to the Property until after it was told that the structures it built violated the ordinance. [R.59-2, Page ID # 2895, 2897 (2021-05-

03 Board Packet)]. The district court did not abuse its discretion because the evidence shows that CHI does not have a “strong likelihood” of success on the merits.

4. CHI has failed to show a strong likelihood of success on the merits upon their claim that the ordinance is a prior restraint

CHI has also failed to establish a strong likelihood of success on the merits of its claims that the ordinance operates as a “prior restraint” upon speech. [Doc. 19, Page 45]. CHI relies on *Int’l Outdoor, Inc. v. City of Troy*, 974 F.3d 690 (6th Cir. 2020), which was effectively overruled by the Supreme Court in *City of Austin, Texas v. Reagan Nat’l Advert. of Austin, LLC*, 142 S. Ct. 1464, 1472 (2022). That case involved an “off premises” sign regulation which distinguished between signs which refer to something on the property, and signs which refer to some other place or event “off premises.” The plaintiffs challenged the ordinance as a content-based regulation subject to strict scrutiny because it considered the content of a sign. The Supreme Court rejected the idea “any examination of speech or expression inherently triggers heightened First Amendment concern.” *Id.* at 1474.

CHI’s claims are also not supported by *Miller v. City of Cincinnati*, 622 F.3d 524, 532 (6th Cir. 2010); *Déjà vu of Nashville, Inc. v. Metro. Gov’t of Nashville*, 274 F.3d 377, 399–400 (6th Cir. 2001). *Miller* involved a facial challenge to a regulation that required political advocacy groups to obtain an “authorized sponsor” with unfettered discretion to decide which groups would receive access to city hall. 622

F.3d at 532. Similarly, *Deja Vu* involved a licensing scheme that “delegate[d] overly broad licensing discretion to an administrative office.” 274 F. 3d at 399. Unlike the licensing schemes in *Miller*, *Déjà Vu*, and *International Outdoor*, the provisions of the ordinance at issue here do not give unbridled direction to issue permits based on the idea or message being expressed.

Moreover, CHI’s structures were built and maintained in violation of content neutral criteria, such as height, size, duration, which courts have universally been found constitutional. *King Enterprises, Inc. v. Thomas Twp.*, 215 F. Supp. 2d 891, 909 (E.D. Mich. 2002); see also *City of Ladue v. Gilleo*, 512 U.S. 43, 48 (1994) (noting that it is “common ground” that governments may regulate the physical characteristics of signs). Here, the district court dismissed CHI’s claims because, in part, its “religiously symbolic structures” also violated content-neutral provisions of the ordinance. [R.69, Page ID # 3479]. Irrespective of their content, CHI’s “signs” were required to comply with the requirements for temporary signs, and they violated the ordinance:

- the ordinance allows five (5) temporary signs, plus two (2) “extra” temporary signs, but CHI had at least eighteen (18) signs in its “grotto” area alone [Genoa Ord. § 16.03.02(f)(6); R.55, Page ID ## 2247-2248 (allegation ¶ 49 and photograph depicting additional “signs”)];

- the ordinance limits temporary signs to 6 square feet in area, and 4 feet high and “extra” temporary signs to 32 square feet in area or 6 feet high, but CHI’s mural wall was at least 120 square feet in area, and 12 feet high (Genoa Ord. § 16.03.02(f)(6); R.55-3, Page ID # 2265, 2341 (*CHI’s resubmittal packet*) (Swanson Design Studios structural notes));
- the ordinance limits the duration that temporary signs can be displayed to 45 days, but CHI displayed its signs for a year [R.59-9, Page ID ## 3129-3130 Genoa Ord. § 16.02.20(f)(6); R.55, Page ID # 2265 ¶ 116 (*CHI Complaint*)].

The district court did not abuse its discretion by denying an injunction because CHI does not have a “strong” likelihood of success on the merits of its claims.

II. ALTERNATIVELY, THIS COURT LACKS JURISDICTION TO GRANT CHI’S REQUEST

CHI asks this Court to “immediately issue the requested injunction to allow the display of religious symbols on the CHI Property.” [Doc. 19, Page 61]. Contrary to CHI’s request, “[a] court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28 U.S.C. § 2283.

Here, CHI’s claims related to its “religiously symbolic structures” have been dismissed by the district court. [R.69, Page ID # 3500]. 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). The only remaining claim involving CHI’s structures is Genoa’s state court claim, which has resulted in an injunction that prohibits CHI’s structures until further order of the state court. [R.51-3, Page ID # 2208 (2021-04-21 State Court Order)]. CHI’s current appeal should be denied because it is an improper attempt to have this Court exercise jurisdiction and enjoin enforcement of the state court order.

GENOA TOWNSHIP’S CROSS APPEAL

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY ALLOWING CHI TO USE THE PROPERTY BECAUSE CHI HAS NO LAWFUL ACCESS FOR ITS PROPOSED USES

Under the Genoa Township ordinance, CHI must comply with the access standards for a “commercial driveway,” as defined by the Livingston County Road Commission. Since it acquired the Property, CHI has done nothing to improve its access or comply with the relevant standards. The district court has erred and abused its discretion by concluding that, because CHI’s driveway permit has expired, it is now free to use the Property in a manner that violates the Genoa Township Zoning Ordinance, and safety standards prescribed by the Livingston County Road Commission.

A. Law

The Genoa Township Zoning Ordinance defines a “commercial driveway” as “any vehicular access except those serving dwelling units or serving just an essential public service structure.” [R.59-9, Page ID # 3125 (Genoa Ord. § 15.02.01)]. All

“commercial driveways” in residential districts are required to meet the Access Management and Private Road Standards provided in Article 15. [R.59-9, Page ID # 3122-3123 (Genoa Ord. § 3.05.02(e))]. Under Article 15, “all commercial driveways shall be designed according to the standards of the Livingston County Road Commission or Michigan Department of Transportation, as appropriate.” [R. 59-9, Page ID # 3125-3126 (Genoa Ord. §§ 15.06.04(a), 15.02.01)].

B. Application

1. CHI does not have lawful access to the property for organized gatherings because it does not have a permit from the Road Commission

CHI does not have a likelihood of success on the merits and will not suffer irreparable harm because it does not have a permit from the Livingston County Road Commission. CHI’s last permit was dated July 21, 2021. [R.59-4, Page ID # 2921]. That permit has now expired, which means that CHI has no lawful means of access to its Property for its proposed uses.

2. CHI does not have lawful access for organized gatherings because it does not comply with Road Commission standards

CHI’s own plans and filings show that its current access fails to comply with Livingston County Road Commission standards. CHI’s latest permit was granted “per the attached plan dated 7/8/21 and prepared by Boss Engineering (Job#20-477).” [R.23-2, Page ID # 1271 (2021-07-12 Permit Application)]. That plan shows that CHI’s permit was conditioned upon improvements being made to the surface of

CHI's access. [R.59-4, Page ID # 2926]. CHI was also required to move the location of its access "to match the centerline of the approved approach Per LCRC Review #LC-20-11." [R.59-5, Page ID # 2926 (*Boss Drawing*)]. Review # LC-20-11 was based on CHI's plans dated January 20, 2021. [See R.59-2, Page ID # 2754]. However, CHI has continually admitted that it has done nothing to improve its access since it acquired the Property in October of 2020. [R.23, Page ID # 1133; R.23-4, Page ID # 1348-1349 (*O'Reilly Declaration*)].

Even with the improvements required by the Road Commission, CHI was prohibited from using the Property for "organized gatherings." CHI's July 8, 2021, permit was issued "to construct a filed driveway per the attached plan" which showed a driveway for "temporary" access to vacant land. [R.23-2, Page ID # 1271; R.59-4, Page ID # 2925 (*2021-07-12 Filed Driveway Permit Application*)]. The permit contained the condition that "field driveway is not to be used for organized gatherings." [Id.]. The permit stated further that "a commercial driveway approach will be required if there is a change in use of the property." [R.23-2, Page ID # 1271].

Here, CHI's proposed use of the Property for "organized gatherings" is a different use than "temporary" access to vacant land it requested in July of 2021. Accordingly, CHI must first have a "commercial driveway approach" that complies with Road Commission standards. The district court has abused its discretion by concluding that CHI is now free to use its property however it wants, simply because

its “temporary” access permit from the Livingston County Road Commission has expired.

3. CHI does not have lawful access to the property for organized gatherings because it does not comply with the Geno Township ordinance

Under the Genoa ordinance, CHI’s driveway must meet the requirements of a “commercial driveway,” because there is no dwelling or essential public service structure on the Property. [R.59-9, Page ID # 3122 (Genoa Ord. §3.05.02(e)); see also R.55-2, Page ID # 2312 (describing the Property as “a vacant site”)]. To meet the standards of a commercial driveway, CHI’s driveway must meet the standards of the Livingston County Road Commission. [R. 59-9, Page ID # 3125-31266 (Genoa Ord. §§ 15.06.04(a), 15.02.01)]. The district court abused its discretion by granting CHI’s requested injunction, because the evidence shows that it does not have access that meets the standards of the Genoa Zoning Ordinance.

II. THE DISTRICT COURT ABUSED ITS DISCRETION BY GRANTING A PRELIMINARY INJUNCTION BECAUSE CHI WILL NOT SUFFER IRREPARABLE HARM

In its ruling upon the motion to dismiss, the district court determined that CHI had successfully alleged a violation of its Free Exercise or expressive association rights, based upon the prohibition against using its property for “organized gatherings.” [R.69, Page ID # 3500]. However, the district court did not cite any evidence it relied on to grant a preliminary injunction. Instead, the court summarily concluded that CHI was entitled to an injunction because its driveway permit had

expired. [R.70, Page ID # 3510-3511]. The district court abused its direction because it failed to consider evidence that CHI will not suffer irreparable harm.

A. Law

Unlike the ability to survive a Rule 12 motion with mere allegations, a request for an injunction requires the movant to prove their entitlement to an injunction. *Stenberg*, 573 F.2d at 925 (holding that the movant bears the burden of persuasion on all elements supporting a request for preliminary injunction); *Leary*, 228 F.3d at 739 (holding that a movant must prove irreparable harm to support a request for preliminary injunction)

A plaintiff asserting a Free Exercise violation must prove that the government placed a “substantial burden on the observation of a central religious belief or practice” *Wilson v. N.L.R.B.*, 920 F.2d 1282, 1290 (6th Cir. 1990); see also *Jimmy Swaggert Ministries v. Bd. of Equalization of California*, 493 U.S. 378, 391-392 (1990). An alternate location for religious exercise is fatal to a Free Exercise claim. For example, in *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253 (3d Cir. 2007), a city redevelopment plan prohibited a religious organization from using its own property to construct a church. *Id.* at 256-259. The church sued, alleging violations of the Free Exercise clause and RLUIPA. *Id.* at 259. The district court granted summary judgment in favor of the city, and the Third Circuit affirmed. The Third Circuit held that when a particular location does not have

some religious significance and the religion is not excluded from nearby areas “there is no constitutionally cognizable burden on free exercise.” *Id.* at 256-257. The Court also concluded that plaintiff’s own statements showed that people served by its ministry were equally accessible in nearby areas. *Id.* at 274-275.

Similarly, a claim for denial of “expressive association” requires proof of a significant burden upon freedom of expressive association. *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 650-653 (2000).

B. Application

The district court has erred and abused its discretion by granting CHI a preliminary injunction because the district court did not address the reasons why CHI is entitled to a preliminary injunction.

Moreover, CHI is a corporation based in Wildwood, Missouri, hundreds of miles away from Genoa Township. [R.64-2; Page ID # 3338-3370 (2020 IRS Form 990 EZ)]. Its president, Jere Palazzolo is also a resident of Missouri. [R. 55, Page ID # 2287 ¶ 181]. CHI’s ministry extends hundreds of miles and over at least two states.

For at least the past year, CHI has in fact hosted the same events it claims to be deprived of at another location. On Wednesday, May 25, 2022, CHI held one of its two planned semi-annual events at Holy Spirit Catholic Church, in Brighton, MI. [R. 67-3, Page ID # 3431 (2022-05-15 Holy Spirit Bulletin)]. And on Wednesday, September 23, 2022, CHI held its St. Padre Pio feast day event at the same church

in Brighton. [R.67-4 (2022-09-18 - Holy Spirit Bulletin); see also R.67-5 (2022-09-26 - St Pio Feast Day Announcement)].

CHI's ability to express its views is not dependent on where it gathers, as shown by its gatherings at Holy Spirit Catholic Church in Brighton, MI. For the same reason, being prohibited from hosting organized gatherings at the Property in Genoa Township does not substantially burden its free exercise of religion. The fact that CHI has another location available to it defeats its claims. The district court abused its discretion by summarily concluding that CHI met the threshold for a preliminary injunction because it failed to consider the evidence showing that CHI will not suffer irreparable harm in the absence of an injunction.

CONCLUSION

Genoa respectfully requests that this Court affirm the District Court's denial of CHI's request for a preliminary injunction, with respect to "the installation and erection of religiously symbolic structures."

Genoa also respectfully requests that this Court reverse the District Court, and remand with instructions for entry of an order denying the CHI's motion for preliminary injunction with respect to the "prohibition of organized gatherings on the Property," and ordering that CHI may not use its property for organized gatherings.

Respectfully submitted,

SEWARD HENDERSON PLLC

/s/ David D. Burress (P77525)

Attorneys for Defendant-

Appellees/Cross Appellants

210 East 3rd Street, Suite 212

Royal Oak, Michigan 48067

P: (248) 733-3580

F: (248) 733-3633

E: dburress@sewardhenderson.com

Dated: April 7, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to FRAP 32(g), the undersigned certifies that this document contains 8,615 words as generated by Microsoft Word version 2209.

/s/ David D. Burress (P77525)

Attorneys for Defendant-

Appellees/Cross Appellants

210 East 3rd Street, Suite 212

Royal Oak, Michigan 48067

P: (248) 733-3580

F: (248) 733-3633

E: dburress@sewardhenderson.com

Dated: April 7, 2023

PROOF OF SERVICE

I hereby certify that on **Friday, April 7, 2023**, I electronically filed the foregoing document with the Clerk of the court using the ECF system, which will send notification to the following: *All Parties and Attorneys of Record*.

/s/ David D. Burress _____

SEWARD HENDERSON PLLC

210 East 3rd Street, Suite 212

Royal Oak, MI 48067

T: (248) 733-3580

F: (248) 733-3633

E: dburress@sewardhenderson.com

APPENDIX**DESIGNATION OF RELEVANT DISTRICT COURT FILINGS**

| Description | Docket | Page ID |
|--|--------|---------|
| Summons & Complaint | 1 | 1-36 |
| Index of Exhibits | 1-1 | 37 |
| Ex. 1 - Original Submission for Special Land use Approval | 1-2 | 39-64 |
| Ex. 2 - Resubmittal for Special Land Use Approval | 1-3 | 66-87 |
| Ex. 3 - Approved Minutes of March 8, 2021 Township Planning Commission Meeting | 1-4 | 89-100 |
| Ex. 4 - Final Submission for Special Land Use of Approval | 1-5 | 102-122 |
| Ex. 5 - Draft Minutes of the Genoa Charter Township Board meeting of May 3, 2021 | 1-6 | 124-134 |
| Ex. 6 - Genoa Township Sign Ordinances | 1-7 | 136-149 |
| Amended Complaint | 14 | 192-237 |
| Index of Exhibits | 14-1 | 239 |
| Ex. 1 - Original Submission for Special Land use Approval | 14-2 | 241-266 |
| Ex. 2 - Resubmittal for Special Land Use Approval | 14-3 | 268-289 |
| Ex. 3 - Approved Minutes of March 8, 2021 Township Planning Commission Meeting | 14-4 | 291-302 |
| Ex. 4 - Final Submission for Special Land Use of Approval | 14-5 | 304-324 |
| Ex. 5 - Draft Minutes of the Genoa Charter Township Board meeting of May 3, 2021 | 14-6 | 326-336 |
| Ex. 6 - Genoa Township Sign Ordinances | 14-7 | 338-351 |
| Defendants' Motion for Judgment on Pleadings | 17 | 436-504 |
| Index of Exhibits | 17-1 | 505 |

| | | |
|--|-------|-----------|
| Ex. 1 - 2021-05-03 Board Packet | 17-2 | 507-744 |
| Ex. 2 - 2021-02-08 Planning Commission Packet | 17-3 | 746-791 |
| Ex. 3 - 2021-03-08 Planning Commission Packet | 17-4 | 793-928 |
| Ex. 4 - Genoa Ordinance §3.03 | 17-5 | 930-936 |
| Ex. 5 - Genoa Ordinance §11.02 | 17-6 | 938-939 |
| Ex. 6 - Genoa Ordinance Article 18 | 17-7 | 941-958 |
| Ex. 7 - Genoa Ordinance §25.02 | 17-8 | 960-962 |
| Ex. 8 - <i>Pentecostal Church of God v. Douglas City</i> | 17-9 | 964-971 |
| Ex. 9 - <i>Alger Bible Baptist Church v. Township of Moffat</i> | 17-10 | 973-980 |
| Ex. 10 - <i>Baldwin Park Free Speech Coalition v. City of Baldwin Park</i> | 17-11 | 982-991 |
| Ex. 11 - <i>Henry v City of Somerton</i> | 17-12 | 993-1002 |
| Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss | 20 | 1009-1073 |
| Defendants' Reply in support of Motion | 22 | 1099-1119 |
| Plaintiffs' Emergency Motion for Temporary Restraining Order/Preliminary Injunction | 23 | 1121-1154 |
| Index of Exhibits | 23-1 | 1156 |
| Ex. 1 - Declaration of Robert J. Muise | 23-2 | 1158-1159 |
| Ex. A - Email from Attorney David Burress with Attachments | | 1161-1287 |
| Ex. B - Read Receipt | | 1289 |
| Ex. C - Article 16 Sign Standards, Genoa Township Zoning Ordinances | | 1291-1304 |
| Ex. D - Township Assembly Ordinance | | 1306-1309 |
| Ex. E - §3.03, Genoa Township Zoning Ordinance | 23-3 | 1311-1312 |
| Ex. 2 - Declaration of Jere Palazzolo | 23-4 | 1314-1337 |
| Ex. 3- Wayne County Medical Examiner Report | | |

| | | |
|--|------|-----------|
| | | 1354-1376 |
| Defendants' Response to Emergency Motion for Temporary Restraining Order/Preliminary Injunction | 26 | 1353-1376 |
| Index of Exhibits | 26-1 | 1378 |
| Ex. 1 - 2021-09-17 Ex-Parte Motion | 26-2 | 1380-1404 |
| Ex. 2 - 2021-09-20 TRO | 26-3 | 1406-1408 |
| Ex. 3 - 2021-09-03 Email | 26-4 | 1410-1411 |
| Ex. 4 - 2021-09-20 Appearance | 26-5 | 1414 |
| Plaintiffs' Reply in Support of emergency Motion for Temporary Restraining Order/Preliminary Injunction | 27 | 1417-1423 |
| Index of Exhibits | 27-1 | 1425 |
| Ex. 4 - May 7, 2021. Letter from Sharon Stone to CHI | 27-2 | 1427 |
| Order Denying Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction [23] | 28 | 1449-1450 |
| 2021-09-20 Hearing Transcript | 29 | 1451-1494 |
| Order Denying the Remainder of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction [23] | 30 | 1495-1496 |
| Plaintiffs' Motion for Leave to File Brief in Reply to Defendants' Supplemental Brief | 41 | 1818-1828 |
| Defendants' Response in Opposition to Plaintiffs' Motion to File Reply to Defendants' Supplemental Brief | 42 | 1831-1842 |
| Index of Exhibits | 42-1 | 1844 |
| Ex. 1 - 2022-01-04 Muise to Barkholz | 42-2 | 1846 |
| Plaintiffs' Motion for Leave to File and Serve Supplemental Pleading | 43 | 1847-1873 |
| Index of Exhibits | 43-1 | 1875 |

| | | |
|---|--|---|
| Ex. 1 - Supplemental Pleading Ex 1. - Livingston County Road Commission Application for Field/Temporary Driveway Permit Ex 2. - Prayer Campus Submission Ex 3. - CHI Letter Ex 4. - Township's Response to CHI Letter | 43-2 | 1876-1947 1905-1908 1909-1937 1938-1945 1946-1947 |
| Plaintiffs' Reply in Support of Motion for Leave to File Brief in Reply to Defendants' Supplemental Brief Index of Exhibits Ex. 1 - Declaration of Robert J. Muise Ex A. - Email Exchange Between Counsel Ex. 2 - Declaration of Jere Palazzolo | 44 44-1 44-2 44-3 | 1948-1957 1959 1961-1962 1964-1967 1969-1971 |
| Defendants' Response in opposition to Plaintiffs' Motion to File Supplemental Pleading Index of Exhibits Ex. 1 - Honolulu, HI Ordinance Excerpt, §21-220 Ex. 2 - City of Eastpointe Ordinance Excerpt Ex. 3 - Muise to Geddis Ex. 4 - 9/21/21 TRO Hrg Ex. 5 - 9/24/2021 Consent Orer Ex. 6 - 6 th Circuit Emergency Motion Excerpt Ex. 7 - Plaintiffs' Appeal Brief Excerpt | 45 45-1 45-2 45-3 45-4 45-5 45-6 45-7 45-8 | 1972-1993 1995 1997-1998 2000-2002 2004-2040 2043-2061 2063-2065 2067-2068 2070 |
| Plaintiffs' Reply in Support of Motion for Leave to File and Serve Supplemental Pleading Index of Exhibits Ex. 1 - Response in Opposition to Request for preliminary Injunction filed in the 44 th Circuit Court for Livingston County | 46 46-1 46-2 | 2071-2080 2082 2084-2130 |

| | | |
|---|------|-----------|
| Ex. 2 - Motion for Summary Disposition filed in the 44 th Circuit Court for Livingston County | 46-3 | 2106-2124 |
| Ex. 3 - Docket Sheet for <i>Weisbord v. Michigan State University</i> | 46-4 | 2127-2130 |
| Exhibit 1 [With Corrected Exhibit A] - Declaration of Robert J. Muise | 47 | 2134-2139 |
| Emergency Motion to Expedite Ruling on Plaintiffs' Motion for Preliminary Injunction | 48 | 2140-2161 |
| Index of Exhibits | 48-1 | 2164 |
| Ex. 1 - Declaration of Robert J. Muise | 48-2 | 2166-2167 |
| Ex A. - Minutes of the December 13, 2021, Planning Commission Meeting | | 2169-2178 |
| Ex B. - Minutes of February 15, 2022, ZBA Meeting | | 2180-2187 |
| Defendants' Motion to Strike Plaintiffs' Request for Judicial Notice | 53 | 2215-2225 |
| Plaintiffs' Response in Opposition to Defendants' Motion to Strike Plaintiffs' Request for Judicial Notice | 54 | 2226-2233 |
| Supplemented First Amended Complaint | 55 | 2234-2298 |
| Index of Exhibits | 55-1 | 2299 |
| Ex. 1 - Original Submission for Special Land Use | 55-2 | 2300-2326 |
| Ex. 2 - Resubmittal for Special Land Use Approval | 55-3 | 2327-2349 |
| Ex. 3 – 2021-03-08 Planning Commission Minutes | 55-4 | 2350-2362 |
| Ex. 4 - Final Submission for Special Land Use Approval | 55-5 | 2363-2384 |
| Ex. 5 - 2021-05-03 – Township Board minutes | 55-6 | 2385-2396 |
| Ex. 6 – Genoa Ordinance Article 16 | 55-7 | 2397-2411 |
| Ex. 7 – 2021-07-12 - Driveway Permit | 55-8 | 2412-2413 |
| Ex. 8 – Blank LCRC Permit Application | 55-9 | 2414-2417 |

| | | |
|--|-------|-----------|
| Ex. 9 – 2021-10-15 – CHI Prayer Campus Submission | 55-10 | 2418-2446 |
| Ex. 10 – Blank Application for Site Plan Review | 55-11 | 2447-2456 |
| Ex. 11 – 2021-11-22 – Palazzolo letter | 55-12 | 2457-2464 |
| Ex. 12 – Township’s Response | 55-13 | 2465-2466 |
| Ex. 13. Genoa Ordinance Article 11 (Excerpts) | 55-14 | 2467-2473 |
| Defendants’ Motion to Dismiss | 59 | 2582-2669 |
| Index of Exhibits | 59-1 | 2671 |
| Ex. 1 - 2021-05-03 Board Packed | 59-2 | 2673-910 |
| Ex. 2 - 2021-02-08 Approved PC Minutes | 59-3 | 2912-2919 |
| Ex. 3 - 2021-07-12 Field Driveway Permit App | 59-4 | 2921-2926 |
| Ex. 4 - 2021-12-13 Planning Commission Packet (Excerpt) | 59-5 | 2928-2986 |
| Ex. 5 - 2021-02-13 Approved PC Minutes | 59-6 | 2988-2997 |
| Ex. 6 - 2022-02-15 ZBA Packet (Excerpt) | 59-7 | 2999-3105 |
| Ex. 7 - 2022-02-15 Approved ZBA Minutes | 59-8 | 3107-3114 |
| Ex. 8 - Genoa Ordinance (Excerpts) | 59-9 | 3116-3149 |
| Plaintiffs’ Response in Opposition to Defendants’ Motion to Dismiss | 62 | 3194-3268 |
| Defendants’ Reply in Support of Motion to Dismiss | 64 | 3313-3336 |
| Index of Exhibits | 64-1 | 3337 |
| Ex. 9 - 2020 Form 990 EZ | 64-2 | 3338-3370 |
| Ex. 10 - Additional Genoa Ordinance Excerpts | 64-3 | 3372-3375 |
| Plaintiffs’ Motion to Expedite Ruling on Preliminary Injunction | 65 | 3376-3377 |
| Plaintiffs’ Motion to Expedite Ruling on Preliminary Injunction | 66 | 3378-3382 |

| | | |
|---|------|-------------|
| Defendants' Response in opposition to Plaintiffs' Renewed/Second Motion to Expedite Ruling on Plaintiffs' Motion for Preliminary Injunction (ECF No. 66) | 67 | 3409-3424 |
| Index of Exhibits | 67-1 | 3426 |
| Ex. 1 - 2022-04-06 Order | 67-2 | 3428 |
| Ex. 2 - 2022-05-15 Holy Spirit Church Bulletin | 67-3 | 3430-3431 |
| Ex. 3 - 2022-09-18 Holy Spirit Church Bulletin | 67-4 | 3433-3434 |
| Ex. 4 - 2022-09-26 St. Pio Feast Day Announcement | 67-5 | 3436-3438 |
| Ex. 5 - Genoa Township Ordinance (Excerpt) | 67-6 | 3440 |
| Ex. 6 - 2021-12-13 Approved PC Minutes (Excerpt) | 67-7 | 3442-3446 |
| Ex. 7 - 2022-02-15 Approved ZBA Minutes (Excerpt) | 67-8 | 3459-3465 |
| Reply in Support of Renewed/Second Motion to Expedite Ruling on Plaintiffs' Motion for Preliminary Injunction | 68 | 3459-3465 |
| Order Granting in Part and Denying in Part Defendants' Motion to Dismiss (ECF No. 59) | 69 | 3467-3501 |
| Order Denying in Part and Granting in Part Plaintiff's Motion for Preliminary Injunction (ECF NO. 23) | 70 | 3502-3511 |
| CHI Notice of Appeal | 71 | 3512-3514 |
| Plaintiffs' Motion for Injunction Pending Appeal | 73 | 22381-22387 |
| Index of Exhibits | 73-1 | 3553 |
| Ex. 1 - Declaration of Robert J. Muise | 73-2 | 3555-3556 |
| Ex. A - Transcript Excerpts from hearing in the 44 th Circuit Court for Livingston County in Genoa Charter Township v. Catholic healthcare | | 3358-3560 |
| Ex. B - Article 11 (Genoa Provisions) of the Township's Zoning Ordinance (Excerpts). | | 3562-3467 |

| | | |
|--|------|-----------|
| Defendants' Response in Opposition to Plaintiff's Motion for Injunction Pending Appeal (ECF No.73) | 74 | 3573-3581 |
| Index of Exhibits | 74-1 | 3583 |
| Ex. 1 - Genoa Ordinance § 11.04.01 | 74-2 | 3585-3587 |
| Ex. 2 - Genoa Ordinance Table 3.03 | 74-3 | 3589-3591 |
| Ex. 3 - Genoa Ordinance § 3.05.02(e) | 74-4 | 3593 |
| Ex. 4 - Genoa Ordinance § 15.06.04(a) | 74-5 | 3595 |
| Ex. 5 - Genoa Ordinance Article 15 | 74-6 | 3597-3598 |
| Defendants' Motion for Reconsideration of Preliminary Injunction (ECF No.70) | 75 | 3606-3614 |
| Index of Exhibits | 75-1 | 3615 |
| Ex. 1 - 2022-03-02 Muise Email | 75-2 | 3617 |
| Ex. 2 - Hrg Transcript 9-28-21 | 75-3 | 3619-3755 |
| Ex. 3 - Hrg Transcript 4-5-22 | 75-4 | 3757-3915 |
| Ex. 4 - Genoa Exhibit 21 | 75-5 | 3917 |
| Ex. 5 - Genoa Ordinance § 3.05.02(e) | 75-6 | 3919 |
| Ex. 6 - Genoa Ordinance § 15.06.04(a) | 75-7 | 3921 |
| Ex. 7 - Genoa Ordinance Article 15 | 75-8 | 3923-3924 |
| Reply in Support of Motion for Injunction Pending Appeal | 76 | 3926-3934 |
| Index of Exhibits | 76-1 | 3936 |
| Ex. 1 - Declaration of Ann O-Reilly | 76-2 | 3938-3960 |
| Plaintiffs' Motion for Leave to File a Response to Defendants' Motion for Reconsideration (ECF No.75) | 77 | 3941-3947 |
| Defendants, Genoa Charter Township and Sharon Stone's Notice of Errata Regarding ECF No.75 | 79 | 3995-3996 |
| Index of Exhibits | 79-1 | 3998 |
| Ex. 1 - Corrected Pages | 79-2 | 4000-4001 |

| | | |
|--|----|-----------|
| Unopposed Motion to Expedite Ruling on Plaintiffs' Motion for Injunction Pending Appeal | 80 | 4002-4011 |
| Genoa Notice of Appeal | 81 | 4014-4015 |