

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

APOLLOS PROPERTIES, LLC, *et al.*,

Plaintiffs,

v.

LELAND TOWNSHIP, MICHIGAN, *et al.*,

Defendants.

Judge Paul L. Maloney

No. 26-cv-2307

**MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

Leland Township denied Plaintiffs, Youth for Christ Club and high school students the right to assemble, speak, worship, and study the Bible at private property. Should individuals assemble for prayer and Bible study, Leland Township threatens criminal prosecution with \$500 penalties and 93-days in jail for each violation. Leland General Code Penalty Ordinance 2016-02.

Leland Township's prohibition against religious assemblies at private property is a facial violation of the First, Fifth, and Fourteenth Amendments, the Equal Protection Clause, the Michigan state constitution and numerous federal and Michigan civil rights laws, including the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C 2000cc-2000cc-5 (RLUIPA). Verified Complaint.¹

Plaintiffs ask this Court to enjoin Leland Township from denying Plaintiffs' First Amendment freedoms and enjoin the Township's continuing violation of RLUIPA. Plaintiffs: (a) are likely to succeed on the merits of both a facial and an as applied challenge to Leland Township's prohibition of religious assembly, (b) have suffered irreparable injury because Leland Township denied Plaintiffs' constitutional rights to speech and religious assembly, (c) the equities strongly favor enjoining Leland Township from continuing the Township's unconstitutional conduct; and, (d) enjoining Leland Township from an ongoing violation of First Amendment freedoms is in the public interest.

THE LEGAL STANDARD FOR A PRELIMINARY INJUNCTION

In *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008), the Supreme Court held, "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on

¹ ECF No. 12 and exhibits, ECF No 11-1 to 11-58.

the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” See also, *Murthy v. Missouri*, 603 U.S. 43 (2024), *Nken v. Holder*, 556 U.S. 418, 435 (2009) and *Hilton, v. Braunskill*, 481 U.S. 770, 776 (1987).

When the nonmoving party is a governmental entity, the last two *Winter* factors “merge.” *Nken* 556 U.S. at 435. (“Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party.”) In First Amendment cases, “the crucial injury is usually whether the plaintiff has demonstrated a likelihood of success on the merits. This is so because ... the issues of the public interest and harm to the respective parties largely depend on the constitutionality of the [state action].” *Hamilton’s Bogarts, Inc. v. Michigan*, 501 F.3d 644, 649 (6th Cir. 2007) (quoting *Nightclubs, Inc. v. City of Paducah*, 202 F.3d 884, 888 (6th Cir. 2000)).

In *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The Supreme Court explained, “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” A First Amendment violation is complete when the government denies or restrains the exercise of protected speech or assembly. And because the loss of First Amendment freedoms “for even minimal periods of time” is irreparable injury, a plaintiff need not await prosecution or prove additional consequential harm to challenge a prohibition of his First Amendment freedoms. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (quoting *Elrod*.)

In *Bays v. City of Fairborn*, 668 F.3d 814, 819 (6th Cir. 2012), the Sixth Circuit explained, “when First Amendment rights are implicated, the factors for granting a preliminary injunction essentially collapse into a determination of whether restrictions on First Amendment rights are

justified to protect completing constitutional rights.” (quoting *Cnty. Sec. Agency v. Ohio Dep’t of Commerce*, 296 F.3d 477, 485 (6th Cir. 2002)).

In RLUIPA cases—as in other cases involving free-exercise rights—the likelihood of success on the merits is often the dispositive factor. *Catholic Healthcare Int’l, Inc. v. Genoa Charter Twp., Michigan*, 82 F.4th 442, 447 (6th Cir. 2023) (Citing *Doster v. Kendall*, 54 F.4th 398, 428 (6th Cir. 2022)). See also, *Bays supra*, 668 F.3d at 825, *Déjà vu of Nashville, Inc v. Metro. Govt. Of Nashville and Davidson Cty.*, 274 F.3d 377,400 (6th Cir. 2001) and *G&V Lounge, Inc. v. Michigan Liquor Control Com’n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

The Constitution does not require Plaintiffs to violate the Township’s Ordinance, expose themselves to criminal prosecution, and await punishment before seeking judicial relief. Justice Thurgood Marshall memorably explained, “the value of a sword of Damocles is that it hangs – not that it drops.” *Arnett v. Kennedy*, 416 U.S. 134, 231 (1974) (Marshall J., dissenting). See also, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (“When an individual is subject to such a threat, an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law.”) and *Steffel v. Thompson*, 415 U.S. 452, 459 (1974).

BACKGROUND

A. Youth for Christ Club’s ministry to high school students.

Youth for Christ Club is an evangelical Christian ministry established by Billy Graham and others in 1944. James and Elizabeth VanSteenhouse wanted to provide a location where high school students participating in Youth for Christ Club activities could assemble for prayer, Bible study, and fellowship. The VanSteenhouse family bought a building in the Village of Leland on North Lake Street and invited Youth for Christ Club to meet at the property. The VanSteenhouse family holds title to this property in Apollos Properties, LLC. VanSteenhouse Declaration, Para. 13. James and Elizabeth VanSteenhouse purchased the North Lake Street property for the specific

purpose of providing Youth for Christ Club a location to assemble. The VanSteenhouse family purchased the property as an act of their religious faith to support the Youth for Christ Club ministry and to proclaim the Gospel. *Id.*

Three points distinguish this case from other First Amendment and RLUIPA cases. Even though the court issued a preliminary injunction in some of these other cases, these three points provide even more compelling support for a preliminary injunction here.

First, the North Lake Street property, where high school students were assembling (and seek to continue assembling) for prayer and Bible study, is *not a public forum*. The North Lake Street building is *private property*. Thus, we need not consider the analysis involving First Amendment expression in public forums such as sidewalks, parks, and parades.

Second, the preliminary injunction Plaintiffs seek is a *post-enforcement* injunction, not a *pre-enforcement* injunction. This distinguishes this case from *Grand v. University Heights, OH*, 159 F.4th 507 (2025), 2026 WL 1871301 (2026) (order granting writ of certiorari). There is no need to speculate about hypothetical future enforcement or prosecution. Almost a year ago Leland Township ordered Plaintiffs and others to stop assembling at the North Lake Street property and that prohibition continues indefinitely. Leland Township's denial of constitutional rights is definitive, established, and ongoing.

Third, Leland Township's denial of Plaintiffs' right to assemble is premised *entirely* upon *the content of the speech and religious nature* of Plaintiffs' assembly and is not predicated upon any allegedly neutral, generally applicable regulation advancing a compelling government interest by the least restrictive means. High school students assembling to pray and study the Bible at private property does not involve any modification of the existing structure nor any increased

burden upon public infrastructure or any health and safety concern such as the fire code. The Township acknowledges this to be so.²

B. RLUIPA provides ‘broad protection for religious liberty’ preventing government using zoning laws to substantially burden religious assembly, exclude or discriminate against religious exercise.

The Supreme Court explained, “Congress enacted RLUIPA, and its sister statute, the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb *et seq.* (RFRA), in the aftermath of our decisions in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 76 (1990), and *City of Boerne v. Flores*, 521 U.S. 507, (1997). See *Holt v. Hobbs*, 574 U.S. 352, 356–358, (2015) (discussing this history). Both statutes aim to ensure “greater protection for religious exercise than is available under the First Amendment.” *Holt* at 357. See also, *Ramirez v. Collier*, 595 U.S. 411, 424 (2022) and *Burwell v. Hobby Lobby Stores, Inc.* 573 U.S. 682, 730 (2014).

Congress adopted RLUIPA “to provide very broad protections for religious liberty.” *Holt* at 356 (citing *Hobby Lobby*, 573 U.S. at 693). Section 2000cc-2(g) provides, “This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.” The Senate unanimously passed RLUIPA and President Clinton signed RLUIPA into law on September 22, 2000.

In *Catholic Healthcare*, 82 F.4th at 452, the Sixth Circuit held, “Congress enacted RLUIPA, which protects individuals and religious institutions from discrimination in zoning and landmarking laws, to provide ‘broad protection for religious liberty.’ The statute mandates that ‘[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, including a religious assembly or

² Verified Complaint, Para. 268-270, and 281-285, and Exhibits 9-A, 9-B, 27, and 33. See also, Planning Commission’s review of Special Use Permit application. **Exhibit 1.**

institution,’ unless the government can satisfy strict scrutiny. This requires [the government to establish] that the burden imposed on the person or institution [seeking to engage in religious exercise] is in furtherance of a compelling governmental interest’ and ‘is the least restrictive means of furthering that compelling governmental interest.’” (Citing, *Holt* and quoting *Burwell*, 573 U.S. at 693.) RLUIPA provides in relevant part:

(a) Substantial burdens

(1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, 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.

(2) Scope of application

This subsection applies in any case in which— ...

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) Equal terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits

No government shall impose or implement a land use regulation that—

- (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

§2000cc–2. Judicial relief

(a) Cause of action

A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) Burden of persuasion

If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion. ...

(g) Broad construction

This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.

(4) Government

The term "government"—

(A) means—

- (i) a State, county, municipality, or other governmental entity created under the authority of a State;
- (ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and
- (iii) any other person acting under color of State law; and ...

(5) Land use regulation

The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity

The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d–4a of this title.

(7) Religious exercise

(A) In general

The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(C) The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

C. Leland Township’s religious gerrymander – strip clubs permitted, churches forbidden.

Leland Township established a religious gerrymander. Leland Township’s Master Plan and Zoning Ordinance divided land in Leland Township into thirteen different zoning districts.³ Leland Township identifies uses allowed as of right (“*use by right*”) and uses allowed with a Special Use Permit (“*permitted use*”). A *use by right* means the owner may use the land for the stated purposes without having to first seek the Township’s approval. An owner may use his property for a “permitted use” if the owner first applies for, and the Township grants, a Special Use Permit. Property may not be used for any purpose not allowed by right or with a permit.

“Churches and Religious Institutions” are forbidden from assembling by right in *any* part of Leland Township. In six agricultural and residential districts, churches and religious institutions are permitted if the church or religious institution first pays the Township a fee, applies for a permit and the Township grants the permit. Leland Township designates seven zoning districts to be “church free zones.” In the six zoning districts where churches and religious institutions may be allowed, those seeking to assemble must obtain a special use permit and also comply with site development and “Special Performance Standards.” These requirements are unique to religious

³ ECF No. 12, p. 9 (p. 20 of ECF), footnote 4, and Articles 7 and 14 of Zoning Ordinance.

assemblies. In seven zoning districts, churches and religious institutions are absolutely forbidden and do not have even the option of seeking a special use permit. Leland Township’s “Special Performance Standards” are vague, undefined, and arbitrary and are not “neutral of general application.” See, *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969), and *Bays*, 668 F.3d at 825.

Zoning Districts		Churches and Religious Institutions
AC	Agricultural Conservation District	Permit required
AR	Low Density Agricultural – Residential District	Permit required
R-1A	Medium Density Lakeshore Residential District	Permit required
R-1B	Medium Density Inland Residential District	Permit required
R-2	Medium Density Village Residential District	Permit required
R-3	High Density Residential District	Permit required
C-1	Village Commercial District	Absolutely prohibited
C-2	General Commercial District	Absolutely prohibited
C-3	Waterfront Commercial District	Absolutely prohibited
M-1	Light Manufacturing District	Absolutely prohibited
C-4	Fishtown Historic District	Absolutely prohibited
	Leland Harbor Overlay District	Absolutely prohibited
	Cultural Overlay District	Absolutely prohibited

Should an owner use private property for a purpose not allowed or permitted, the owner is subject to a \$500 fine and 93-days in jail for each time the property is used for a prohibited purpose. Ordinance Section 3.05, and General Code Penalty Ordinance 2016-02.

In those districts where religious assembly may be permitted, Leland Township requires religious assemblies to comply with site development and “Special Performance Standards”. Zoning Ordinance Art. 16.11. These Special Performance Standards are specific and unique to “Churches and Religious Institutions” and do not apply to secular and nonreligious assemblies such as libraries, art studios, museums and not-for-profit organizations. Section 16.11 requires churches and religious institutions to comply with the following:

a. The following site and development requirements shall apply:

1. All ingress and egress for the site shall be from a paved major or minor thoroughfare.
2. The site shall be at least two (2) acres in size.
3. No more than twenty-five (25) percent of the site area shall be covered by buildings. No more than sixty percent (60%) of the site shall be covered by impervious surface.
4. No building shall be closer than fifty (50) feet from any lot line or right-of-way.
5. No building shall be erected to a height greater than that permitted in the district in which it is located unless the building is set back an additional one (1) foot for each one (1) foot of additional height above the district height limitation. A spire is excluded.

b. Special Performance Standards:

1. Use of the structure shall not result in accrual of distributable profits, realization of private gain resulting from payment or compensation in excess of a reasonable and customary allowance for salary or other compensation for services rendered, or any other form of private gain.
2. No day care center, private school, or other use requiring a Special Approval shall be allowed without a separately approved Land Use Permit for each use.
3. Signs shall be limited to one (1) identification sign and one changeable message board. The identification sign shall have a maximum area of twenty-four (24) square feet. Both signs may be lighted, but not internally.

Leland Township designates the North Lake Street property where Plaintiffs and Youth for Christ Club assembled to be in the C-1 district. Property in the church-free C-1 district may be used for “any generally recognized retail business ... which supplies foods, drugs, liquor, furniture, dry goods, notions, books, flowers, jewelry, or hardware, residential uses when occupying the second or third floors [and] single family dwelling[s], and standard restaurants, personal service establishments such as, but not limited to, repair shops, barber and beauty shops, photographic studios, and dry cleaners, financial institutions, insurance offices, real estate offices, artist offices

and galleries, professional offices for accountants, doctors, lawyers, engineers, architects, and similar uses.”

Property in the C-1 zoning district may also be used for “parking lots, cemeteries, parks, schools, libraries, and similar uses and activities ... Automobile and Service Repair Stations, clubs and other establishments which provide food or drink...bed and breakfast businesses, planned unit development and adult related businesses” if the Planning Commission grants a permit. But churches and religious institutions are forbidden in the C-1 mixed-use zoning district and in the other six church-free zoning districts.

Leland Township’s Zoning Ordinance does not define “religious institution” or “adult related business” but defines “Club”, “Church” and “Standard Restaurant”.

- b. A “*church*” is “A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose.”
- c. A “*club*” is “An organization of persons for special purposes or for the promulgation of sports, arts, science, literature, politics, agriculture or similar activities, but not operated for profit and open only to members and not the general public.”
- d. A “*standard restaurant*” is “An establishment whose principal business is the sale of food and/or beverages to customers in a ready to consume state, and whose principal method of operation includes one or both of the following characteristics: (a) customers normally provided with an individual menu, are served their food and beverage by a restaurant employee, at the same table or counter at which food and beverages or are consumed; (b) a cafeteria-type operation where food and beverage generally are consumed within the restaurant building.

D. Leland Township enforced its religious gerrymander against Youth for Christ Club.

After the VanSteenhouse family bought the North Lake Street property in February 2025, High school students assembled for prayer and Bible study at the North Lake Street property.⁴ A small group of activists opposed Youth for Christ Club's ministry in Leland. These activists opposed Youth for Christ Club meeting with students at Leelanau County public school events. In response, the VanSteenhouse family bought the property on North Lake Street to provide a location where Youth for Christ Club could assemble. The activists then demanded Leland Township deny Youth for Christ Club the right to assemble at the private property on North Lake Street.⁵

In response to this opposition, Leland Township forbid high school students from continuing to assemble for prayer and Bible study at the North Lake Street property. Leland Township demanded Youth for Christ Club and Apollos pay a fee and submit an application for a Special Use Permit. Apollos and Youth for Christ Club submitted an application for a Special Use Permit on October 17, 2025.⁶

After numerous public hearings over an eight-month period (October 2025 – May 2026), the Planning Commission twice adopted "Findings and Conclusions" denying Youth for Christ Club's application for a permit to assemble.⁷ Leland Township's Planning Commission concluded Youth for Christ Club, is not a secular "club" permitted to assemble in the C-1 zoning district but is a "Church or Religious Institution" forbidden from assembling at private property in this church-free district.

⁴ VanSteenhouse Declaration and Verified Complaint.

⁵ ECF 12 Para. 73-107, 122, 174-183, and 214-221.

⁶ Verified Complaint, Para. 163 and Exhibits 10-11.

⁷ Complaint, ECF No. 12, ECF Nos. 11-8, 11-9, and 11-37 – 11-38.

ARGUMENT

I. Plaintiffs will likely succeed on the merits of their First Amendment claims.

A. Leland Township violated Plaintiffs' First Amendment freedoms.

The Free Exercise Clause protects persons against laws that “discriminate against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.” *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 532 (1993); *Bible Believers v. Wayne Cnty., Michigan*, 805 F.3d 228, 255-56 (6th Cir. 2015) (*en banc*) (“The right to free exercise of religion includes the right to engage in conduct that is motivated by the religious beliefs held by the individuals asserting the claim.”). In *Bays*, 668 F.3d at 825, the Sixth Circuit, quoting *Elrod*, explained.

The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. *Elrod* at 373. Moreover, if the plaintiff shows a substantial likelihood that the challenged law is unconstitutional, no substantial harm to others can be said to inhere its enjoinder. *Deja Vu of Nashville*, 274 F.3d at 400. Finally, “it is always in the public interest to prevent violation of a party's constitutional rights.” *Id.* (quoting *G & V Lounge*, 23 F.3d at 1079).

In *Dahl v. Bd. Of Trustees of W. Mich. Univ.*, 558 F.Supp.3d. 561-564 (W. Dist. Mich. 2021), this Court explained, “[t]he Free Exercise Clause in our Constitution provides protections against a law that ‘discriminate[s] against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.’” (quoting *Church of the Lukumi*, 508 U.S. at 532; and *Bible Believers* (“The right to free exercise of religion includes the right to engage in conduct that is motivated by the religious beliefs held by the individuals asserting the claim”))).

1. Leland Township's religious gerrymander is a content specific prohibition of free speech and religious assembly.

Leland Township's prohibition of religious assembly and speech in church-free zoning districts is not a neutral regulation of general applicability narrowly tailored to achieve a compelling government interest. In *Bays* at 821, the Sixth Circuit held,

Government regulations of speech are content neutral if they are "justified without reference to the content or viewpoint of the regulated speech." *Saieg v. City of Dearborn*, 641 F.3d 727, 735 (6th Cir. 2011) (quoting *Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661 (2010)). "The government's purpose is the controlling consideration," and a restriction is content-based if it was "adopted ... because of disagreement with the message [the speech] conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791, (1989).

In *Country Mill Farms, LLC v. City of E. Lansing*, No. 2019 WL 13164267, at *11 (W.D. Mich. Dec. 18, 2019) this Court observed,

[A] municipal government vested with state authority, "has no power to restrict expression because of its message, its ideas, its subject matter or its content." *Reed v. Town of Gilbert, Arizona*, 576 U.S. 155, 163 (2015) (quoting *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)). "It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995). "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed*, 576 U.S. at 163 (citation omitted).

This Court continued,

"When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Rosenberger*, 515 U.S. at 828. "Viewpoint discrimination is thus an egregious form of content discrimination." 515 U.S. at 829. Content-based laws ... "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed*, 576 U.S. at 163 (citations omitted).

The Planning Commission's Findings and Conclusions affirmatively disclaim any neutral, generally applicable, regulation as the basis upon which the Planning Commission denied the permit application. The Planning Commission denied the permit application because those

assembling at the property were engaged in religious activity instead of commercial or retail businesses. As such, the Planning Commission's denials of a permit to assemble is exclusively, totally and entirely based upon the fact that those assembling at the property were praying and studying the Bible instead of engaging in activities such as selling alcohol or operating a dance hall. Leland Township's content specific denial of Plaintiffs' First Amendment freedoms cannot survive strict scrutiny.

Laws discriminating against religious practices are unconstitutional unless "justified by a compelling interest and is narrowly tailored to advance that interest." *Roberts v. Neace*, 958 F.3d 409, 416 (6th Cir. 2020) (quoting *Church of the Lukumi*, 508 U.S. at 533). When laws "infringe upon or restrict practices because of their religious motivation, the law is not neutral." *Id.* When a law forces an individual to choose between following her religious beliefs or forfeiting benefits, the law places a substantial burden on the individual's free exercise of religion. *Living Water Church of God v. Charter Twp. of Meridian*, 258 F.App'x 729, 734 (6th Cir. 2007). See also, *Dahl supra*.

2. Leland Township's requirement that Youth for Christ Club be granted a permit before assembling for prayer and Bible study at private property is an unconstitutional prior restraint upon First Amendment freedoms.

Leland Township requires persons assembling for religious speech apply for, and be granted, a permit before assembling for religious speech and fellowship. Leland Township's requirement is an unconstitutional prior restraint upon the exercise of First Amendment freedoms of speech, assembly and the free exercise of religion.

The Supreme Court held "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." *Shuttlesworth* 394 U.S. at 150-51. The Supreme Court

continued, “It is settled by a long line of recent decisions of this Court that an ordinance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.” *Shuttlesworth* 394 U.S. at 151, (quoting *Staub v. City of Baxley*, 355 U.S. 313, 322 (1958).)

The Supreme Court consistently condemns licensing schemes that vest in an administrative official discretion to grant or withhold a permit upon broad criteria unrelated to proper regulation of public places. *Kunz v. New York*, 340 U.S. 290, 293—294 (1951). *Saia v. New York*, 334 U.S. 558 (1948); and *Niemotko v. Maryland*, 340 U.S. 268 (1951). These cases involved First Amendment expression in a public forum. The Supreme Court explained such permitting requirements are unconstitutional for assembly in a public forum. “Even when the use of its public streets and sidewalks is involved, therefore, a municipality may not empower its licensing officials to roam essentially at will, dispensing or withholding permission to speak, assemble, picket, or parade according to their own opinions regarding the potential effect of the activity in question on the ‘welfare,’ ‘decency,’ or ‘morals’ of the community.” *Shuttlesworth*, 394 U.S. at 153.⁸

⁸ See *Lovell v. City of Griffin*, 303 U.S. 444 (1938); *Hague v. C.I.O.*, 307 U.S. 496 (1939); *Schneider v. State*, 308 U.S. 147, 163—165 (1939); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Largent v. Texas*, 318 U.S. 418 (1943); *Jones v. City of Opelika*, 316 U.S. 584, 600, 611 (1942) (Stone, C.J., dissenting) (Murphy, J., dissenting), vacated and previous dissenting opinions adopted *per curiam*, 319 U.S. 103; *Marsh v. Alabama*, 326 U.S. 501 (1946); *Tucker v. Texas*, 326 U.S. 517 (1946); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952); *Gelling v. Texas*, 343 U.S. 960 (1952); *Superior Films, Inc. v. Department of Education*, 346 U.S. 587 (1954); *Cox v. Louisiana*, 379 U.S. 536 (1965); and *Interstate Circuit, Inc. v. Dallas*, 390 U.S. 676 (1968).

In *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130–33 (1992) the Court held, “A law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional.” (Citing *Shuttlesworth*, 394 U.S. at 150–51, and *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 757 (1988) (invalidating permitting scheme granting officials “unbridled discretion”)). “A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous scrutiny.” *Church of the Lukumi*, 508 U.S. at 546.

Government permitting schemes regulating free speech, assembly or religious worship in which “a municipality retains discretion to grant individualized exemptions, strict scrutiny likewise applies.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 533–35 (2021). And, the Court held, “[m]oreover, permit schemes affecting First Amendment activity must contain ‘narrow, objective, and definite standards.’” *Id.* (Citing *Shuttlesworth*, 394 U.S. at 150–51).

Chief Justice Hughes wrote: “The chief purpose of the guaranty [of freedom of the press] is to prevent previous restraints upon publication.” *Near v. Minnesota*, 283 U.S. 697 (1931). See also *New York Times Co. v. United States*, 403 U.S. 713 (1971) in which Justice Black wrote, “Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.” This principle is even more emphatic when the venue where the religious speech and assembly is conducted at an owner’s private property.

Leland Township bears a heavy, indeed impossible to meet, burden to justify its religious gerrymander, prior restraint and permitting scheme. Leland Township’s land use ordinance does not provide a “narrow, objective, and definite standard” that is “neutral and generally applicable” and is the “least restrictive means” to achieve a “compelling government interest.” Thus, Leland

Township’s zoning scheme, as written and as enforced, is *facially* unconstitutional and unconstitutional *as applied* to Plaintiffs.

B. Because Plaintiffs are likely to succeed in their First Amendment claims this Court should grant a preliminary injunction.

The First Amendment is made applicable to the states through the Fourteenth Amendment, *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). The First Amendment “forbids all laws ‘prohibiting the free exercise’ of religion.” *McDaniel v. Paty*, 435 U.S. 618, 620 (1978). The First Amendment protects not only the right to hold a particular religious belief, but also the right to engage in conduct motivated by that belief. *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990) (recognizing that “the exercise of religion often involves not only belief and profession but performance of (or abstention from) physical acts...” (internal quotation marks omitted.) ... “A government law that discriminates against religious speech, belief and practice triggers the protections of the Free Exercise Clause.” *Church of the Lukumi*, 508 U.S. at 532 (“At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs...”). See also *Widmar v. Vincent*, 454 U.S. 263, 271 n. 8 (1981). Political and religious speech are the highest and most important forms of speech protected by the First Amendment. See *First Choice Women’s Resource Centers v. Davenport*, 608 U.S. ___, 146 S.Ct. 1114 (2026), and *Chiles v. Salazar*, 607 U.S. ___, 146 S. Ct.1010 (2026).

In *Roberts v. United States Jaycees*, 468 U.S. 609, 617-618 (1984), held, “[o]ur decisions have referred to constitutionally protected ‘freedom of association’ ... receives protection as a fundamental element of personal liberty... [T]he 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. The Constitution guarantees

freedom of association of this kind as an indispensable means of preserving other individual liberties.”

Any government restriction upon speech and religious assembly is subject to strict scrutiny that can only be satisfied if the government’s interest is compelling and the restriction is narrowly tailored to achieve a compelling interest that cannot be achieved in a less restrictive manner.

Leland Township’s Zoning Ordinance and Master Plan establish a religious gerrymander dividing Leland Township into seven church-free zones and imposing unique “Special Performance Standards” upon churches and religious institutions in the remaining six zones. In the six zones where religious assembly is permitted, those assembling are subject to the site development and Special Performance Standards that are not imposed upon secular and nonreligious assemblies. Leland Township’s prohibition and regulation of churches, religious institutions, and faith-based assemblies cannot survive any level of constitutional scrutiny – especially strict scrutiny.

Plaintiffs are, thus, likely to prevail on Plaintiffs’ First Amendment and Equal Protection claims. And, because the Township’s denial of Plaintiff’s right to assemble at the North Lake Street property is an ongoing daily violation of Plaintiffs’ First Amendment freedoms, Leland Township should be enjoined from enforcing the Township’s Zoning Ordinance against Plaintiffs and persons seeking to assemble at the North Lake Street property.

II. Plaintiffs will likely succeed on the merits of their RLUIPA claim.

RLUIPA contains three provisions, Equal Terms, Substantial Burden and Non-Discrimination. To prevail a plaintiff need only establish the defendant has violated *one* of these three provisions of RLUIPA. *Tree of Life Christian Schools v. City of Upper Arlington*, 823 F.3d 365, 367-68 (6th Cir. 2016) (*Tree of Life II*), and *Tree of Life Christian Schools v. Upper Arlington*,

905 F.3d 357 (6th Cir. 2018) (*Tree of Life III*). Plaintiffs have shown they are likely to succeed on *all three* provisions of RLUIPA.

A. Leland Township violated the Equal Terms provision of RLUIPA.

RLUIPA's Equal Terms Provision provides "[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1).

A plaintiff that established the following four elements has established a *prima facie* RLUIPA violation: (1) "an imposition or implementation of a land-use regulation"; (2) "by a government"; (3) "on a religious assembly or institution"; and (4) the religious assembly is treated "on less than equal terms with a nonreligious assembly or institution." *New Harvest Christian Fellowship v. Township of Salinas*, 29 F.4th 596, 604 (9th Cir. 2022). *Tree of Life III*, 905 F.3d at 368-70, and *Tree of Life II*, 823 F.3d at 369-72. Leland Township's zoning scheme violates all four elements of RLUIPA's Equal Terms provision.

(1) It is undisputed that Leland Township has adopted and enforced a land use regulation.⁹

(2) No one doubts Leland Township is a "government entity."¹⁰

(3) No one disputes Leland Township told the Plaintiffs and Youth for Christ Club that individuals could not assemble for prayer and Bible study at the North Lake Street property. There is likewise no dispute that the Planning Commission twice denied Youth for Christ's application for a special use permit.¹¹

⁹ Verified Complaint, P. 9, n 4.

¹⁰ Verified Complaint Para. 13-16.

¹¹ Verified Complaint and April 15 and May 6 Findings and Conclusions adopted by the Planning Commission.

(4) The text of Leland Township’s Zoning Ordinance explicitly treats “churches and religious institutions” less favorably than comparable secular and nonreligious assemblies.

Leland Township’s Zoning Ordinance defined “church[es]” and “religious institutions” as distinct from nonreligious entities such as restaurants, retail businesses, museums, and libraries. Leland Township’s Zoning Ordinance even treats “adult related businesses” (*i.e.* strip clubs and businesses selling pornography) more favorably than “church[es] and religious institutions.”

In Leland Township strip clubs are permitted but “Churches and Religious Institutions” are forbidden. Leland Township permits whiskey distilleries, marijuana dispensaries, massage parlors but prohibits religious assemblies in church-free zoning districts.

Once a plaintiff establishes the four elements of an Equal Terms violation, the burden shifts to the government to refute the plaintiff’s *prima facie* case. Section 2000cc-2(b) states, “If a plaintiff produces *prima facie* evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff’s exercise of religion. ...”

Leland Township’s land use scheme establishing a religious gerrymander and church-free zones violates the Equal Terms provision of RLUIPA. This is established beyond cavil. One needs only read the text of the Township’s Zoning Ordinance.

B. Leland Township violated RLUIPA by imposing a “substantial burden” on churches and religious assemblies.

RLUIPA prohibits “government from imposing a ‘substantial burden’ on a person’s or religious institution’s ‘religious exercise’ unless the burden is the least restrictive means of furthering a compelling governmental interest.” (42 U.S.C. § 2000cc(a)(2)(C)). In *Catholic*

Healthcare, 82 F.4th at 449-451, the Sixth Circuit found a substantial burden when the Township's land use regulation caused plaintiffs to suffer extensive delay, uncertainty, and expense. Citing *Livingston Christian Schools v. Genoa Charter Township*, 858 F.3d 996 (6th Cir. 2017).

Leland Township's *absolute prohibition* against high school students assembling for prayer and Bible study at Plaintiffs' private property and the threat of a \$500 fine and 93-days in jail for every time a person violates this prohibition is unquestionably a "substantial burden" upon the right to assemble for religious expression at private property. And, for even those zoning districts where the Township may allow religious assembly, the requirement that those wishing to assemble for religious speech must first pay the Township a fee, apply for a permit, participate in public hearings and not assemble until (and unless) the Planning Commission votes to grant the application, is a substantial burden. Leland Township's permitting requirements imposed on religious assemblies, is a prior restraint upon, and a substantial burden upon, First Amendment freedoms.

The process Leland Township imposed upon Plaintiffs required Plaintiffs to retain legal counsel, incur more than \$100,000 (to date) in legal fees, permit fees. VanSteenhouse Declaration. Leland Township even required Plaintiffs pay \$8,000 to fund the Township's opposition to Plaintiffs' appeal of the Township's denial of Plaintiffs' permit application. VanSteenhouse and Parker Declarations. *Id.*

The regulatory and administrative gauntlet Leland Township required Plaintiffs endure began last October and is still unresolved. The year-long denial of the right to assemble at private property for religious speech is a "substantial burden." See *Elrod* 427 U.S. at 373 ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionable constitutes irreparable injury.").

C. Leland Township violated RLUIPA's non-discrimination provision.

A plaintiff exercising religious freedom is “entitled to neutral and respectful consideration of his claims in all the circumstances of the case.” *Masterpiece Cakeshop v. Colo. Civil Rts. Comm'n*, 584 U.S. 617, 634 (2018). “The principle that government may not enact laws that suppress religious belief or practice is so well understood that few violations are recorded in our opinions.” *Church of the Lukumi*, 508 U.S. at 523.

When evaluating government restrictions upon religious assembly, a court should “examine ‘the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decision-making body.’” *Fellowship of Christian Athletes v. San Jose Unified School Dist. Bd. of Educ.*, 82 F.4th 664, 690 (9th Cir. 2023) (*en banc*) (quoting *Masterpiece Cakeshop, Ltd. v. Colorado Civil Right Comm’n*, 584 U.S. 617, 638 (2018)). *Church of the Lukumi* held, “Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature.” 508 U.S. at 533.

The record demonstrates that those opposing Youth for Christ did so out of anti-Christian bigotry. The transcripts of the Planning Commission hearings and the written statements of the opponents make this clear. See Verified Complaint, Para. 87-107, 174-183, 214-216, and 263-264. It is also clear the Planning Commission’s denial of the permit was based *entirely* upon the content of the religious speech and nature of the assembly of those gathering at the North Lake Street property. Indeed, the Planning Commission did not even suggest its denial of the permit application was pursuant to a neutral, generally applicable policy that was the least restrictive means to achieve a compelling government interest. Furthermore, even though advised by its own legal counsel that denying Youth for Christ Club the right to assemble was a potential violation of

RLUIPA and the Plaintiffs' constitutional rights, the Planning Commission proceeded to deny the Plaintiffs' application for a permit to assemble.

While anti-Christian bigotry motivated the opponents of Youth for Christ Club, it is not necessary for Plaintiffs to establish that Leland Township acted out of anti-Christian bigotry to find that Leland Township violated RLUIPA. "Nor does it make a difference that faith-based bigotry did not motivate the orders. The constitutional benchmark is "government neutrality," not "governmental avoidance of bigotry." *Roberts v. Neace*, 958 F.3d 409, 415 (6th Cir. 2020). See, *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1260 (10th Cir. 2008).

A law is not neutral and generally applicable unless there is "neutrality between religion and non-religion." *Hartmann v. Stone*, 68 F.3d 973, 978 (6th Cir. 1995). And a law can reveal a lack of neutrality by protecting secular activities more than comparable religious ones. See *Id.* at 979; *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1233–35, 1234 n.16 (11th Cir. 2004); see also *Shrum v. City of Coweta*, 449 F.3d 1132, 1145 (10th Cir. 2006) ("[T]he Free Exercise Clause is not confined to actions based on animus.").

Leland Township's zoning scheme does not even pretend to be neutral in the prohibition and regulation of religious assemblies. To the contrary, Leland Township's Zoning Ordinance *explicitly* discriminates against religious assemblies and specifically treats religious assemblies less favorably than comparable secular activities.

Leland Township's attorney, Brad Wierda, advised the Planning Commission members that Youth for Christ Club's application for a permit was consistent with the Zoning Ordinance and that denying Youth for Christ Club the right to meet at the North Lake Street property raised significant constitutional issues and was a potential violation of RLUPA. See ECF 11, Exhibit 13. The members of the Planning Commission were also provided memorandum and legal opinions

from other attorneys advising the members that denying Plaintiffs' right to assemble violated the Constitution and RLUIPA. See *Id.* Exhibits 11, 16, 21 and 32. Those attending the public hearings told the Planning Commission that denying Youth for Christ Club a permit to meet violated the First Amendment and RLUIPA.¹²

Yet, a majority of the Planning Commission rejected attorney Wierda's advice and hired a new attorney to provide a second opinion. The opponents of Youth for Christ Club argued that Brad Wierda was not qualified to advise the Township because Wierda attended Calvin College that was originally established as a Christian college.¹³

The new attorney, Tom Grier, did not provide a contrary legal opinion but wrote two alternative draft Findings and Conclusions, one approving Youth for Christ Club's right to assemble and one denying Youth for Christ Club's right to assemble at the private property.¹⁴ Despite this contrary advice on April 15, a majority of the Planning Commission voted to deny Youth for Christ Club the right to assemble at the North Lake Street property.¹⁵ Attorney Grier then advised the Planning Commission that the findings the Commission adopted were incorrect and the Commission had to consider corrected Findings and Conclusions. The Commission met again on May 6 and, again, voted to deny Youth for Christ Club's application for a permit to assemble.¹⁶

The Planning Commission's denial of Plaintiffs' permit application violates the "First Amendment's guarantee that our laws be applied in a manner that is neutral toward religion,"

¹² Verified Complaint, Para. 217-222.

¹³ Verified Complaint, Exhibit 24 at 8. Were this objection to Brad Wierda credible, no attorney who attended Harvard, Yale, Princeton, Notre Dame, or even University of Michigan could represent the Township because all those universities were founded to advance Judeo-Christian values.

¹⁴ Verified Complaint Para. 267, and Exhibits 8-A and 8-B.

¹⁵ Verified Complaint, Para. 269.

¹⁶ Verified Complaint, Para. 282 and Exhibits 9-A, 9-B, and 33.

Masterpiece Cakeshop, 584 U.S. at 640. Accordingly, this Court should conclude Plaintiffs are likely to succeed in showing that Leland Township violated RLUIPA's non-discrimination provision.

D. Leland Township cannot refute the presumption that Leland Township violated RLUIPA.

Once a plaintiff satisfies its *prima facie* burden, the burden shifts to the Township to refute a *prima facie* violation of RLUIPA. Leland Township bears “the burden of persuasion” that it has not violated the Equal Terms, Substantial Burden, and Non-Discrimination elements of RLUIPA. It is unlikely, indeed unimaginable, that Leland Township will carry this burden.

Leland Township has not identified *any* legitimate zoning criterion that justifies the Township's religious gerrymander. The Township provides no justification explaining why a “Church or Religious Institution” may not assemble in any zoning district of Leland Township while banks, travel agencies, medical offices, adult related businesses, bars and whiskey distilleries, art galleries, and secular not-for-profit organizations may assemble. Leland Township provides no justification or explanation for the site development and “Special Performance Standards” imposed exclusively upon churches and religious institutions.

As the Ninth Circuit observed, “the Equal Terms Provision of RLUIPA would be toothless if the government could justify treating religious assemblies poorly by choosing a few unlucky nonreligious groups such as a chess club or sewing circle to treat just as poorly. The Township must do more than identify some similarly situated nonreligious assemblies that are treated as badly as religious assemblies—the Township must show that it treats “every” similarly situated nonreligious assembly equally to religious assemblies. *New Harvest*, 29 F.4th at 607.

Leland Township cannot identify *any* compelling interest that supports the Township denying high school students their right to assemble for prayer and Bible study at private property

while treating nonreligious assemblies and institutions, such as “adult related businesses,” more favorably.

“[A] compelling interest is an “interest[] of the highest order.” *Church of the Lukumi*, at 546. “Where government restricts only conduct protected by the First Amendment and fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the interest given in justification of the restriction is not compelling.” *Id.* at 546-47. Additionally, “[g]overnment justifications for interfering with First Amendment rights must be genuine, not hypothesized or invented post hoc in response to litigation.” *Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 543 n.8 (2022) (alterations and quotation omitted).

A narrowly tailored action must be neither underinclusive nor overinclusive, and there must be no viable action that the government could take that would “burden[] religion to a far lesser degree.” *Church of the Lukumi*, at 546. If the government cannot show “it has even considered less restrictive measures than those implemented,” then the government will “fail[] at least the tailoring prong of the strict scrutiny test.” *Fellowship of Christian Athletes* 82 F.4th at 694.

Leland Township cannot show that denying Youth for Christ Club's application for a permit to assemble is a narrowly tailored action serving a compelling interest. A government “interest is not compelling [if] it is too ‘broadly formulated’ to be “of the highest order.” *Fulton v. Township of Philadelphia*, 593 U.S. 522, 541 (2021).

Some opponents of Youth for Christ Club argued high school students should be denied the right to assemble for prayer and Bible study because property in this part of Leland should only be used for commercial and retail businesses. But, as the Ninth Circuit recognized, “preservation of industrial lands for industrial uses does not by itself constitute a ‘compelling interest’ for

purposes of RLUIPA.” *Foursquare Gospel*, 673 F.3d 1059, 1071 (9th Cir. 2011) (quoting *Grace Church v. Township of San Diego*, 555 F. Supp. 2d 1126, 1140 (S.D. Cal. 2008)).

The contention that Leland Township has a compelling interest to deny religious assembly because private property in certain areas should only be used for retail and commercial uses is wrong for two additional reasons.

First, that is not what the Zoning Ordinance says. The Zoning Ordinance expressly allows non-retail and non-commercial uses of property in the C-1 zoning district. For example, libraries, museums, art galleries, and administrative offices for not-for-profit organizations are permitted by right or with a permit.

Second, and most importantly, favoring retail uses and disfavoring religious assembly (even if the Zoning Ordinance actually said that) is not a compelling justification sufficient to overcome First Amendment rights and RLUIPA.

How can Leland Township explain that the Township has a compelling interest in forbidding a group of high school students meeting for prayer and Bible study while “adult related businesses” such as a strip club or whiskey distillery are allowed?

Leland Township simply cannot bear its “burden of persuasion” necessary to overcome Plaintiffs’ *prima facie* showing that Leland Township violated all three elements of RLUIPA. Thus, Plaintiffs are likely to succeed on the merits of their RLUIPA action. Accordingly, this Court should enjoin Leland Township from prohibiting Plaintiffs and other from assembling for prayer and Bible study at the North Lake Street property.

E. Plaintiffs satisfy the remaining preliminary injunction factors.

1. Irreparable Harm

Because the likelihood-of-success factor is “the most important factor” to be considered when evaluating whether a plaintiff is entitled to a preliminary injunction, a plaintiff who “shows

he is likely to prevail on the merits” of a constitutional claim “will almost always demonstrate he is suffering irreparable harm as well.” *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023). The Supreme Court holds, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod*, 427 U.S. at 373. Thus, “most courts hold that,” when a plaintiff demonstrates that his or her constitutional rights are at issue, “no further showing of irreparable injury is necessary.” *Baird* at 1042. See also *Kennedy v. Bremerton School District*, 597 U.S. 507, 524 (2022) (noting the First Amendment “does perhaps its most important work by protecting the ability of those who hold religious beliefs” to “live out their faiths” through “performance”).

Accordingly, this Court should conclude the irreparable harm factor weighs in favor of a preliminary injunction.

2. Balance of the equities and the public interest.

Just as a plaintiff who is likely to succeed on the merits of his constitutional claim “almost always” demonstrates an irreparable injury, “[a] plaintiff’s likelihood of success on the merits of a constitutional claim also tips the merged third and fourth factors decisively in his favor.” *Baird*, 81 F.4th at 1042. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Fellowship of Christian Athletes*, 82 F.4th at 695. Leland Township “cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983). Thus, “plaintiffs who are able to establish a likelihood that a policy violates the U.S. Constitution have also established that both the public interest and the balance of the equities favor a preliminary injunction.” *Baird*, 81 F.4th at 1042 (quotation and alterations omitted).

Plaintiffs’ likelihood of success on the merits “tips the merged third and fourth factors decisively” in Plaintiffs’ favor. *Id.* Leland Township has not offered any reason for this Court to

conclude otherwise. Accordingly, this Court should conclude that the balance of the equities and the public interest support this Court enjoining Leland Township from denying Plaintiffs and others right to assemble for prayer and Bible study at private property.

3. There is no need for Plaintiffs to post a bond.

When a district court grants a motion for a preliminary injunction, the plaintiff may be required to post security “in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” FRCP 65(c). A district court has wide discretion in determining the amount of bond and may dispense with the security requirement altogether. Courts routinely impose either no bond or a minimal bond in cases involving public interests. That is particularly true when, as here, a plaintiff seeks to vindicate a constitutional right.

“The rule in [the Sixth] Circuit has long been that the district court possesses discretion over whether to require the posting of security.” *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995); accord *Appalachian Reg’l Healthcare, Inc. v. Coventry Health & Life Insurance Co.*, 714 F.3d 424, 431–32 (6th Cir. 2013). The Court also possesses “broad discretion in setting the bond amount.” *Static Control Components, Inc. v. Lexmark International, Inc.*, 697 F.3d 387, 400 (6th Cir. 2012). In *Moltan*, the Sixth Circuit affirmed the complete waiver of security based on the strength of the plaintiff’s case and the strong public interest served by the injunction. 55 F.3d at 1176. In *Appalachian Regional Healthcare*, the court affirmed a zero-bond determination where the enjoined party demonstrated little cognizable injury and supplied no estimate of potential damages. 714 F.3d at 432.

Those considerations warrant waiver of any bond here. Plaintiffs seek to prevent Leland Township from enforcing its zoning ordinance because doing so violates RLUIPA and the First Amendment. The Township has no legitimate interest in suppressing constitutionally protected

religious exercise and First Amendment freedoms. Nor will allowing high school students to assemble for prayer and Bible study inflict any monetary loss upon Leland Township. By contrast, requiring Plaintiffs to post a bond would further burden Plaintiffs. *Moltan*, 55 F.3d at 1176; *B K v. Noem*, No. 1:25-cv-419, slip op. at 19 (W.D. Mich. May 7, 2025). The Court should therefore waive any requirement that Plaintiffs post a bond.

III. Plaintiffs’ First Amendment and RLUIPA claims are ripe.

“[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod*, 427 U.S. at 373. When government causes a reasonable person to curtail protected religious activity, the injury to constitutional rights is immediate and real – regardless of whether additional administrative proceedings have concluded. The denial of religious exercise is a present, immediate, and ongoing constitutional violation.

“The Constitution can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to its demands.” *Shuttlesworth*, 394 U.S. at 150–52, (citing and quoting, *Jones v. City of Opelika*, 316 U.S. 584, 602 (1942) (Stone, C.J., dissenting), adopted *per curiam* on rehearing.)

In *Wineries of Old Mission Peninsula Association v. Township of Peninsula, Michigan*, 2024 WL 1152521, W.D. Mich. (February 16, 2024), this Court considered the Supreme Court’s finality and exhaustion jurisprudence following *Williamson County Reg. Plan. Com’n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180 (2019), *Pakdel v. City and County of San Francisco, California*, 594 U.S. 474 (2021), and *Horne v. Department of Agriculture*, 576 U.S. 350 (2015).

In *Williamson* at 193, the Supreme Court distinguished “finality” and “exhaustion.”

While [finality and exhaustion] often overlap, the finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete, injury; the exhaustion requirement generally

refers to administrative and judicial procedures by which an injured party may seek review of an adverse decision and obtain a remedy if the decision is found to be unlawful or otherwise in appropriate.

This Court explained that, while *Knick* overturned the ripeness requirement before a plaintiff could bring a federal action the finality requirement remains. In *Pakdel* the Supreme Court “explained that [finality] is ‘relatively modest.’ Finality ensures that a plaintiff has actually been injured by the government’s action and is not prematurely suing over a hypothetical harm.” *Wineries* at *3 (citing and quoting *Pakdel* at 478, and *Horne* at 525).

This Court then explained that the Sixth Circuit followed the Supreme Court’s jurisprudence concluding “a claim is unripe when, ‘it rests upon contingent future events that may not occur as anticipated or indeed may not occur at all.’” *Wineries* at *3 (quoting *Catholic Healthcare* 82 F.4th at 448. This Court then noted the Sixth Circuit “put *Pakdel* to work and held that a Catholic group’s land use claim was ripe after the Township had twice derived the group’s special use permit for their religious displays.” *Wineries* at *3. As this Court noted, “the Sixth Circuit overturned the district court in *Catholic Healthcare* because [the district court] ‘conflate[d] ripeness (sometimes called ‘finality’ in this context) and exhaustion.’ ” *Id.* citing *Miles Christi Religious Order v. Township of Northville*, 629 F.3d 533 (6th Cir. 2010).

Plaintiffs’ facial and as applied challenge to Leland Township’s Zoning Ordinance is final and ripe for this Court to resolve. “[T]he initial decisionmaker [Leland Township’s Planning Commission] has arrived at a definitive position” and the Township has denied Plaintiffs’ the right to assemble at the North Lake Street property. Indeed, the Planning Commission *twice* denied the permit application and the Township has forbidden Plaintiffs from assembling at the property for almost a year. There is nothing speculative or hypothetical about the constitutional injury Leland Township visited upon Plaintiffs and those persons desiring to assemble at the private property for prayer and Bible study.

RLUIPA prevents a government from using land-use schemes to suppress religious assembly and speech. 42 U.S.C. § 2000cc(a)(1), (b)(1)-(3). Congress wrote RLUIPA using *present-tense* verbs describing ongoing government conduct suppressing religious assembly and speech not the past tense. Every day since last October Plaintiffs and others seeking to assemble at the North Lake Street property are under threat of jail and significant financial penalty should they assemble at the property.

Congress intended to prevent precisely the conduct Leland Township has engaged in here – denying individuals the right to engage in religious speech and assembly while simultaneously seeking to avoid judicial review by requiring those denied their First Amendment rights to first submit to a lengthy, protracted and expensive multi-layered administration process before seeking a judicial remedy. A First Amendment injury does not await a final administrative determination. The injury occurs the moment government prevents individuals from exercising their First Amendment rights.

Here Leland Township’s denial of Plaintiffs’ First Amendment rights occurred a year ago when Leland Township told Plaintiffs and others they could not meet at private property for prayer and Bible study and, if they did assemble, they faced fines and up to 93-days in jail.

CONCLUSION

Courts are frequently presented controversies that involve a close call on questions of fact and law. This is not such a case. Leland Township’s denial of Plaintiffs’ First Amendment freedoms is a clear and obvious violation of the United States Constitution and those civil rights guaranteed by federal and Michigan law including RLUIPA. As written and as enforced, Leland Township’s denial of Plaintiffs’ right to assemble and speak at their private property is a content-specific, targeted suppression and denial of the freedom of religion, speech, and assembly. “[B]arring many [persons] from attending religious services, strike at the very heart of the First

Amendment's guarantee of religious liberty.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 20 (2020).

Plaintiffs ask this Court to grant: Plaintiffs' motion for a preliminary injunction and, during the pendency of this action, enjoin Leland Township and its officials and agents from preventing Plaintiffs from assembling at the North Lake Street property or take any other action denying or interfering with Plaintiffs and others from exercising their First Amendment freedom to speak, assemble, or worship at private property in Leland Township. See the attached Proposed Order.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Plaintiffs certify that, pursuant to Local Rule LCivR 7.2(b)(ii), the total number of words in this memorandum are 10,204 according to the Microsoft Word Program.

/s/ Mark F. (Thor) Hearne, II
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