ORAL ARGUMENT REQUESTED

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Case No. 16-2060

LIVINGSTON CHRISTIAN SCHOOLS,

Plaintiff-Appellant,

v.

GENOA CHARTER TOWNSHIP

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

BRIEF OF PLAINTIFF-APPELLANT LIVINGSTON CHRISTIAN SCHOOLS

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November 4, 2016

CORPORATE DISCLOSURE STATEMENT

Pursuant to Sixth Circuit Rule 26.1, Plaintiff-Appellant Livingston Christian Schools makes the following disclosure:

1. Livingston Christian Schools is not a subsidiary or affiliate of a publicly-owned corporation; and

2. There is no publicly-owned corporation, not a party to this appeal, that has a financial interest in the outcome.

November 4, 2016

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Appellant respectfully requests oral argument in light of the importance and novelty of the issues presented. If the District Court's basis for granting summary judgment is upheld, it would represent a significant narrowing of this Circuit's construction of the "substantial burden" test that lies at the core of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc, *et seq*., undermining federal statutory protections for religious exercise.

JURISDICTIONAL STATEMENT

The District Court for the Eastern District of Michigan had subject matter jurisdiction because this action was brought to vindicate federal constitutional and statutory rights – namely, those embodied in U.S. Const. amend. I, U.S. Const. amend. XIV, and 42 U.S.C. § 2000cc, *et seq*. *See* 28 U.S.C. § 1331.

This is an appeal from a district court order granting a motion for summary judgment, issued on June 30, 2016. Accordingly, this Court has jurisdiction under 18 U.S.C. § 1291. A timely notice of appeal was filed on July 21, 2016.

STATEMENT OF ISSUE PRESENTED

RLUIPA was enacted to ensure, among other things, that local land use proceedings would not be used as a pretext for discrimination against religious institutions. Congress recognized that the discretion afforded to local authorities

could be abused to stack the deck against churches, religious schools, and other religious organizations when they seek routine permits that are often needed to secure facilities for religious worship and education. RLUIPA guards against such abuses by prohibiting local authorities from imposing a "substantial burden" on religious exercise unless the means chosen are narrowly tailored to serve a compelling interest.

Livingston Christian Schools ("LCS" or "Appellant") found itself unable to survive as a viable religious institution unless it could move to a larger facility in close proximity to its current and prospective students. Although the ideal location that it leased at a local church required a special use permit, the local Planning Commission recommended approving the permit, based on the findings of various expert consultants. In an unprecedented act, the Township Board nonetheless countermanded the Planning Commission's ruling and denied the permit. In so doing, the Township threatened the survival of the school as a religious institution because, as the record demonstrates, the school has no viable alternative location.

The District Court held that the denial of the permit did not result in a "substantial burden" within the meaning of RLUIPA, but based its decision on a narrow reading of that standard that is inconsistent with the controlling law of this Circuit and that would significantly circumscribe RLUIPA's protections for the free exercise of religion. This Court should reverse.

STATEMENT OF THE CASE

LCS, a non-denominational Christian school serving students from pre-kindergarten through high school, was incorporated in 2005 to provide religious, Christian education to children in Livingston County, Michigan. *See* LCS Articles of Incorporation, RE 4-3, Page ID # 144. For the nine years prior to the 2015-2016 school year, LCS operated in a building at 550 E. Hamburg Street, Pinckney, Michigan (the "Pinckney Property"). Declaration of Scott Panning, RE 43-2, Page ID # 1245. During its time at the Pinckney Property, LCS's finances began to deteriorate. *Id.*, Page ID # 1246. Under the terms of a land contract between LCS and the Catholic Diocese of Lansing (the "Diocese"), LCS owed $1,365,750 on August 1, 2012, in order to complete a purchase of the Pinckney Property. *Id.*, Page ID # 1245-1246. Due to the Pinckney Property's location in Livingston County and the extensive maintenance required to continue operating at that facility, LCS became financially unable to make the payment. *Id.*, Page ID # 1246.

LCS's financial predicament posed an existential threat to its survival. Indeed, as LCS's Treasurer Scott Panning testified, "the LCS Board determined in late-2012 that LCS would end in dissolution if the school remained in Pinckney on a long-term basis." *Id.* LCS believed that its "only means of survival" as a "faith-based school in Livingston County was to relocate the school to the Brighton or Howell area that is more-populated, contains many more churches of various

Christian faiths from which to attract students, and which possesses greater access to the interstate and major commuter roads." *Id.* LCS accordingly began to search for potential sites "that would be suitable for relocation of the school operations." *Id.*

The search for a new location did not go well. LCS considered relocating to a former elementary school, numerous churches in the Brighton area, and several vacant buildings. *Id.*, Page ID # 1247-1248. Each location was fatally flawed for cost reasons or because of limited space. *Id.*, Page ID # 1248. LCS found only one viable location to house their religious school: a building owned by the Bright-on Nazarene Church ("BNC") in Genoa Township. *Id.*

On November 25, 2014, LCS entered into a written lease agreement with BNC, allowing LCS to relocate its operations to BNC's Genoa Township property (the "BNC Property"), beginning on June 1, 2015. *Id.; see also* Lease Agreement, RE 43-4, Page ID # 1258. LCS would begin operating for the 2015-2016 school year in existing BNC buildings. No new facilities would need to be built. Lease Agreement, RE 43-4, Page ID # 1258. At that time, LCS was unaware, however, that BNC would need additional zoning approvals from the Township to enable LCS to occupy its new space. Declaration of Scott Panning, RE 43-2, Page ID # 1248.

The Township informed BNC in early 2015 that an amendment to BNC's then-existing special use permit would be required for the proposed school. Transcript of Deposition of Kelly VanMarter, RE 43-7, Page ID # 1315. BNC accordingly applied for an amendment on March 18, 2015 (the "Application"). Special Land Use Application, RE 43-8, Page ID # 1320.

Because LCS's ongoing financial difficulties made it impossible to continue operating at the Pinckney Property, LCS began arranging to move to BNC's property. After signing the lease with BNC, but before learning that zoning approvals were required, LCS invested substantial funds in preparing the BNC facility for school use, and began marketing its new location to families of current and prospective students. Declaration of Scott Panning, RE 43-2, Page ID # 1248. Meanwhile, after years of negotiation, the Diocese agreed to forgive LCS's $1,365,750 obligation in exchange for a $300,000 payment. *Id.*, Page ID # 1249. LCS therefore now owns the Pinckney Property.

But the Pinckney Property remains insufficient for long-term LCS operations. Accordingly, LCS leased the Pinckney Property to Light of the World Academy ("LOTWA") to operate a public charter school. *Id.* Testimony from LOTWA's President, Laura Burwell, confirms that while the Pinckney Property is sufficient for charter school operations, it would not be a financially viable location

for an unsubsidized, tuition-based school like LCS. *See* Transcript of Deposition of Laura Burwell, RE 43-5, Page ID # 1273-1274. Ms. Burwell testified that LOTWA had previously been a private school, but it became a public charter school when it moved into the Pinckney Property. *Id.*, Page ID # 1271. LOTWA made that change "in order to maintain a student population" that was "shrinking" as a private school in the Pinckney area. *Id.*, Page ID # 1273. Simply put, the Pinckney Property would not enable LOTWA to remain private. According to Ms. Burwell, "25 or 30" LOTWA students said they would leave the school "[b]ecause of financial reasons" if LOTWA operated as a tuition-based school at the Pinckney Property. *Id.*, Page ID # 1274. LCS had the same issues with the Pinckney Property as LOTWA. But transitioning to a public charter school model would force LCS to abandon its religious mission of providing a Christian education to Livingston County students.

LCS's hopes, therefore, rested entirely on the BNC Property and the Township's approval of the Application. The special use permit review process is governed by Article 19 of the Township's zoning ordinance. *See* Genoa Township Zoning Ordinance, RE 43-6. Section 19.01, that ordinance's "STATEMENT OF PURPOSE," provides:

> This Article is intended to provide regulations for Special Land Uses which may be compatible with permitted uses in zoning district, under

> specific locational and site criteria[.] This Article provides standards for the Planning Commission to determine the appropriateness of a given Special Land Use covering factors such as: compatibility with adjacent zoning, location, design, size, intensity of use, impact on traffic operations, potential impact on groundwater, demand on public facilities and services, equipment used and processes employed. Approval of any Special Land Use requires a Special Land Use Permit.

Id., Page ID # 1277. But first the "special land use application shall be reviewed by township staff and consultants for completeness and compliance with appropriate sections of this Ordinance. Technical reviews may be submitted to the Planning Commission." *Id.* (Section 19.02.03). The ordinance then provides the following standards for the Planning Commission's review of an application for a special use permit:

> **REVIEW AND APPROVAL OF SPECIAL LAND USES: GENERAL REVIEW STANDARDS**
>
> Prior to approving a special land use application the Planning Commission shall require the following general standards shall be satisfied for the use at the proposed location, in addition to specific standards for individual special land uses listed in the districts. The proposed special land use shall:
>
> 19.03.01 **Master Plan.** Be compatible and in accordance with the goals, objectives and policies of the Genoa Township Master Plan and promote the Statement of Purpose of the zoning district in which the use is proposed;
>
> 19.03.02 **Compatibility.** Be designed, constructed, operated and maintained to be compatible with, and not significantly alter, the existing or intended character of the general vicinity;

> 19.03.03 **Public Facilities and Services.** Be served adequately by essential public facilities and services such as: highways, streets, police and fire protection, drainage structures, water and sewage facilities, refuse disposal and schools;
>
> 19.03.04 **Impacts.** Not involve uses, activities, processes, or materials detrimental to the natural environment, public health, safety or welfare by reason of excessive production of traffic, noise, vibration, smoke, fumes, odors, glare or other such nuisance; and
>
> 19.03.05 **Mitigation.** Provide mitigation necessary to minimize or prevent negative impacts.

Id., Page ID # 1279-1280 (Section 19.03). The Planning Commission makes a determination as to whether or not an application should be approved, and then it forwards its determination to the Township Board for final action. *Id.*, Page ID # 1277-1278. The Township Board then "shall" take one of the following actions:

> (3) Approval: Upon determination that a special land use and plan proposal is in compliance with the standards and requirements of this Ordinance and other applicable ordinances and laws, the Township Board shall approve the application.
>
> (4) Conditional Approval: The Township Board may impose reasonable conditions with the approval of a special land use, to mitigate impacts associated with the proposed use or activity to ensure that public services and facilities affected by a proposed special land use or activity will be capable of accommodating increased service and facility loads generated by the new development; protect the natural environment; ensure reasonable compatibility with adjacent uses of land and the overall character of the Township, to the extent practical for the use; ensure the standards of this Article and the Zoning Ordinance are met.
>
> (5) Denial of Special Land Use and Site/Sketch Plan Application: Upon determination that a special land use or site/sketch plan proposal

> does not comply with standards and regulations set forth in this Ordinance, or requires extensive revision in order to comply with said standards and regulations, the Township Board shall deny the application. Resubmittal of an application which was denied shall be considered a new application.

Id., Page ID # 1278. Prior to its consideration of the Application submitted by BNC, the Township Board had never acted contrary to the Planning Commission's determination, according to Kelly VanMarter, the Assistant Township Manager. Transcript of Deposition of Kelly VanMarter, RE 43-7, Page ID # 1318.

The Planning Commission engaged LSL Planning ("LSL") and Tetra Tech for a "Technical Review" of the Application. *See generally* LSL Planning Report dated July 8, 2015, RE 43-12; Tetra Tech Report, RE 43-13. LSL, the Township's professional planning consultants since before 2003, "reviewed the [application] in accordance with the applicable provisions of the Genoa Township Zoning Ordinance[.]" LSL Planning Report, RE 43-12, Page ID # 1375. According to LSL Planning's Brian Borden, LSL determines whether or not an application and supporting materials meet the standards set forth in Section 19.03 of the zoning ordinance and communicates its determination to the Township. Transcript of Deposition of Brian Borden, RE 43-11, Page ID # 1366. And in this case, LSL concluded that the Application met all relevant standards. *See* LSL Planning Report, RE 43-12. LSL found the Application to be "consistent with" the "overall goal" of the Township's Master Plan. *Id.*, Page ID # 1376-1377. LSL identified

only two potential problems: the ongoing driver's training program taking place in the BNC parking lot, which LSL believed "should be discontinued," and the potential of the new school "to create severe *on-site* congestion in the form of stacking/traffic back-up[.]" *Id.*, Page ID # 1377 (emphasis added). As to the latter issue, LSL "will defer to the Township Engineer for any technical comments[.]" *Id.*, Page ID # 1379.

That engineer, Tetra Tech, the Township's civil and traffic engineering firm, analyzed the two traffic studies submitted with the Application. The studies were performed by Boss Engineering ("Boss") and Fleis & VandenBrink ("F&V"), who determined that LCS "will have minimal impact on Brighton Road" and "no impact" on the nearby traffic signals. Traffic Impact Studies, RE 43-9, Page ID # 1329. Tetra Tech agreed with these findings, and informed the Township that it had no objection to LCS's occupancy of the BNC Property so long as LCS implemented the on-site traffic management measures proposed as part of the Application. *See* Tetra Tech Report, RE 43-13, Page ID # 1381-1382. Similarly, Michael Goryl of the Livingston County Road Commission concluded that LCS would have a "relatively minor impact on Brighton Road." Letter from Michael Goryl, RE 43-10, Page ID # 1359. In sum, all experts and engineers who assessed LCS's environmental impact concluded that permitting LCS to operate on the BNC

Property would not disrupt the neighborhood nor conflict with the Township's Master Plan.

The Township Planning Commission agreed. The Planning Commission determined that the Application was consistent with the zoning ordinance and recommended approval, subject to certain conditions. *See* July 13, 2015 Planning Commission Meeting Minutes, RE 43-14. "In an effort to move this item forward and allow [LCS] to prepare for the start of school," VanMarter then prepared a memorandum to the Township Board recommending "APPROVAL of the [Application] with conditions." VanMarter Memorandum, RE 43-15, Page ID # 1391. "This approval is recommended based upon consistency with the standards of section 19.03 of the zoning ordinance." *Id.* Michael Archinal, the Township Manager and Zoning Administrator for the past 18 years, signed Ms. VanMarter's memorandum and testified in his deposition that he agreed with Ms. VanMarter's conclusions and recommendations. *Id.*; Transcript of Deposition of Michael Archinal, RE 43-16, Page ID # 1399.

Despite the traffic studies from Boss and F&V, despite the planning review by LSL, despite the traffic review by Tetra Tech, despite the determination made by the Planning Commission, despite multiple formal comments from members of the community in support of, and none opposed to, the Application, and despite

Ms. VanMarter's recommendation, the Township Board denied the Application without explanation. Genoa Board Meeting Minutes, July 20, 2015, RE 43-17. Consistent with the Planning Commission's determination, the Township Board voted on a motion to approve with conditions. *Id.*, Page ID # 1407-1408. But the motion failed. *Id.*, Page ID # 1408. Ms. VanMarter testified that because this denial did not constitute formal action required by the Township Board to deny a special use permit, she drafted proposed grounds for the denial. Transcript of Deposition of Kelly VanMarter, RE 43-7, Page ID # 1310-1312. Then the Township Board, contrary to the findings of Tetra Tech, LSL, the Planning Commission, and Ms. VanMarter herself, formally denied the Application on August 3, 2015—several weeks after denying the Application without explanation—purportedly for the following reasons:

> 1.) The expanded use of the church to include a K-12 school will exacerbate the existing and historical negative impacts of the church on the adjacent neighborhood. The need for active traffic management and restricted egress from the facility provides that the site cannot accommodate the use properly and it increases the potential for negative off-site traffic impacts.
> 2.) The proposed use is not consistent with the following goals of the Master Plan:
>
> a. "Achieve well-planned, safe, balanced, and pleasant residential neighborhoods."
>
> b. "Promote harmonious and organized development consistent with adjacent land uses."
>
> 3.) The project is contrary to the statement of purpose for the Single Family Residential Zoning in regard to items 3.01.02(e.) and (g.) and (i

4.) .) [sic] as follows:

a. 3.01.02(e.) – "Discourage any use of land which may overburden public infrastructure and services and the areas natural resources."

b. 3.01.02(g.) – "Discourage land use which would generate excessive traffic on residential streets."

c. 3.01.02(i.) – "Prohibit any land use that would substantially interfere with the development, utilization or continuation of single family dwellings in the District."

5.) The proposed use significantly alters the existing or intended character of the general vicinity.

6.) The need for traffic management personnel and the potential offsite impacts created by forced right-turn only exiting will be detrimental to the natural environment, public health, safety or welfare by reason of excessive production of traffic. The proposed "D" condition on exit from Church grounds during pick-up and drop-off provides a detriment to the existing walking path, other neighborhoods/buildings for turn-around, in addition to an impact on neighborhood travel including traffic from Worden Lake, Pine Creek, and travelers from the west towards Brighton. In addition, current conditions of this area also include the primary hub for the Brighton Area Schools, with Hornung (elementary), Maltby (intermediate), Scranton (7/8th grade) and Brighton High School. While not all students attending Scranton will flow through Brighton Road, Scranton was not taken into consideration. It is reasonable to suggest parents with students at both schools drop off at the High School and then proceed to Scranton which starts school at 7:50 a.m.

7.) The potential negative impacts to be created by the use will not be sufficiently mitigated by the conditions of the proposal.

8.) The Nazarene Church has a history of non-compliance with past site plan and ordinance requirements resulting in a negative impact on surrounding neighborhoods, notably found in Planning Commission minutes from August 28, 2000, May 12, 2003, July 22, 2013 and April 2015 through current. Historical and consistent behavior suggests further non-compliance from petitioners. Specific issues include the following:

a. The applicant has not yet fully implemented the project approved by the Township in 2013. Of particular note are the installation of additional landscaping and parking lot islands;

> b. The applicant has continued to allow a driver's testing operation, despite being informed that it is an illegal nonconforming use of the property; and
> c. The applicant has demonstrated disregard for existing approvals by making significant changes to their building design contrary to the approved 2013 plans and without necessary permits or approvals to do so.

Genoa Board Meeting Minutes, August 3, 2015, RE 43-18, Page ID # 1410-1412.

Without a suitable long-term facility, LCS was forced to settle for a stop-gap measure for the 2015-2016 school year. LCS spent that year at a former middle school building, on a short-term lease from Whitmore Lake Public Schools (the "Whitmore Lake Property"). Declaration of Scott Panning, RE 43-2, Page ID # 1249. This is not a viable long-term solution, however. The Whitmore Lake Property is merely a short-term fix because the Whitmore Lake School District intends to re-occupy the building for public school use sometime in the near future. Declaration of Ted Nast, RE 43-3, Page ID # 1253. LCS's lease also overlaps with several others at the Whitmore Lake Property, which poses a security risk. *Id.*, Page ID # 1254. And LCS is contractually prohibited from enrolling students from the Whitmore Lake School District. *Id.*, Page ID # 1253. LCS thus cannot make long-term investments in the Whitmore Lake Property, and this instability has harmed LCS's enrollment, according to LCS Principal Ted Nast. *Id.*, Page ID # 1253-1254.

Prospective new families have consistently stated that they are much less interested in enrolling in LCS if the school is located at the Whitmore Lake Property, than if it occupies its lease at the BNC Property. *Id.*, Page ID # 1254. In fact, as a direct result of the Township's denial of the Application for LCS to relocate to the BNC Property, LCS lost 15 returning students, as well as 18 new students who had planned to attend LCS for the 2015-2016 school year. *Id.*, Page ID # 1256. According to Principal Nast, "LCS is expecting an additional decrease in enrollment if LCS is unable to move into the BNC [Property] for school operations on a full-time basis." *Id.* LCS's survival is very much in doubt if it cannot move to the BNC Property.

Facing an uncertain future, and having been prevented from pursuing its religious mission, LCS sued to vindicate its rights. LCS brought suit in the Eastern District of Michigan on August 7, 2015, asserting claims under RLUIPA. *See* Complaint, RE 1. LCS moved for a temporary restraining order enjoining the Township from interfering with LCS's use of its leasehold as a school. LCS's Emergency Motion for Temporary Restraining Order, RE 4. The District Court denied the motion, and the parties engaged in discovery. *See* Opinion and Order Denying Plaintiff's Emergency Motion for Temporary Restraining Order, RE 22. The Township then moved for summary judgment on all of LCS's claims, which

the District Court granted. Township's Motion for Summary Judgment, RE 35; Order Granting Township's Motion for Summary Judgment, RE 47.

With regard to LCS's RLUIPA claim, the District Court held that the Township did not impose a "substantial burden" on LCS because denying the special use permit made it merely "less convenient or more expensive for LCS to operate its school[.]" Order Granting Township's Motion for Summary Judgment, RE 47, Page ID # 1509. The Township did not, according to the District Court, "prevent [LCS] from exercising its religious beliefs[.]" *Id.*, Page ID # 1510. Because the District Court's ruling threatens LCS's survival as a religious school in Livingston County, LCS appeals.

SUMMARY OF THE ARGUMENT

Livingston Christian Schools has no viable alternative but to move to the space it leased at Brighton Nazarene Church. Unless able to complete the move, it will not be able to continue its religious education mission. The Township's absolute denial of permission for the move not only forecloses LCS's ability to operate anywhere within the Township or Livingston County, it also threatens the school's very survival, imposing a substantial burden on LCS's free exercise of religion. In view of the Planning Commission's recommendation that the move be approved, based on the findings of expert consultants, the Township had no compelling interest in blocking the move. Though the Township was authorized to set conditions on the move, it opted simply to block it outright, reflecting the complete absence of narrow tailoring. The denial of a special use permit in this case therefore violated RLUIPA.

STANDARD OF REVIEW

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). There is no genuine issue of material fact where "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party[.]" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

"This court reviews *de novo* the district court's grant of Appellees' motion for summary judgment." *Emp'rs Ins. of Wausau v. Petroleum Specialties, Inc.*, 69 F.3d 98, 101 (6th Cir. 1995). "When evaluating this appeal, this court must view the evidence in the light most favorable to the non-moving party." *Id.* at 101-02 (citing *Matsushita Elec. Indus. Co.*, 475 U.S. at 587).

ARGUMENT

This Court should reverse the District Court's grant of summary judgment to Appellee because the Township failed to show "that there is no genuine dispute as to any material fact" and that it is "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Court should enter summary judgment for LCS pursuant to Fed. R. Civ. P. 56(f)(1), or, at a minimum, remand for further proceedings before the District Court. For the reasons set forth below, LCS is entitled to summary judgment on its RLUIPA claim.

I. The District Court Erred in Granting Summary Judgment to Appellee on Appellant's RLUIPA Claim.

The District Court granted summary judgment on LCS's RLUIPA claim on the ground that the original Pinckney Property and the short-term Whitmore Lake Property were "ready alternatives" for LCS. Order Granting Township's Motion for Summary Judgment, RE 47, Page ID # 1510. The court's reasoning was con-

trary to Sixth Circuit law, producing the exact outcome RLUIPA was enacted to prevent.

A. RLUIPA Prohibits Local Authorities From Imposing a Substantial Burden On The Free Exercise of Religion Through Land Use Decisions.

Congress enacted RLUIPA in order to protect religious organizations, including religious schools like LCS, from improper land use decisions by state and local governments. RLUIPA's sponsors recognized the importance of physical space to the free exercise of religion. "The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes." 146 Cong. Rec. S7774 (daily ed. July 27, 2000) (statement of Senators Edward Kennedy and Orrin Hatch, RLUIPA co-sponsors). The Senate "compiled massive evidence that this right is frequently violated." *Id.* "[N]ew, small, or unfamiliar [religious institutions] in particular" were deemed by Congress to face threats "in the highly individualized and discretionary processes of land use regulation." *Id.*

Congress recognized that often "it was within the complete discretion of land use regulators whether these individuals had the ability to assemble for worship." H.R. Rep. No. 106-219, at 19 (1999). Because "[t]he standards in individualized land use decisions are often vague, discretionary, and subjective[,] . . . [l]and use regulation has a disparate impact on churches and especially on small

faiths and nondenominational churches." *Id.* at 24. Thus, Congress intended RLUIPA specifically to protect religious organizations like LCS – a small, non-denominational institution that received an adverse ruling "within the complete discretion" of the Township's "land use regulators[.]" *Id.* at 19.

Under RLUIPA, "[n]o government shall impose or implement a land use regulation in a manner that imposes a *substantial burden* on the religious exercise of a . . . religious assembly or institution[.]" 42 U.S.C. § 2000cc(a)(1) (emphasis added). To overcome this prohibition, "the government [must] demonstrate[] that imposition of the burden . . . (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest." *Id.*

RLUIPA makes clear that its provisions protecting religious exercise are "to be construed broadly and 'to the maximum extent permitted by the terms of this chapter and the Constitution.'" *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 347 (2d Cir. 2007) (quoting § 2000cc-3(g)).

B. The Township Imposed a Substantial Burden on LCS's Exercise of Religion.

LCS is entitled to relief under RLUIPA because, as discussed below, the Township imposed a "substantial burden" on the exercise of its religion, as that term is defined in this Circuit. The Township has articulated no "compelling inter-

est" that would justify this substantial burden, nor did it use the "least restrictive means of furthering" any purported governmental interest. The District Court's decision granting summary judgment to the Township therefore should be reversed.

1. The District Court Did Not Correctly Apply the Standard for "Substantial Burden" Established by This Court in *Living Water.*

When this Court first defined "substantial burden" under RLUIPA, it declined to "set a bright line test" but instead created a two-pronged inquiry:

> [T]hough the government action may make religious exercise more expensive or difficult, does the government action place substantial pressure on a religious institution to violate its religious beliefs *or* effectively bar a religious institution from using its property in the exercise of its religion?

Living Water Church of God v. Charter Twp. of Meridian, 258 F. App'x 729, 737 (6th Cir. 2007) (emphasis added). The satisfaction of either prong of this test constitutes a substantial burden. *Id*. In this case, LCS satisfies both prongs of the *Living Water* test.

Relocating to the Brighton Nazarene Church is the *only* viable solution for LCS to continue as a religious school. Contrary to the court's holding below, LCS has no "ready alternatives." The Pinckney Property was not financially viable for an unsubsidized religious school like LCS, as opposed to a non-religious, publicly-supported charter school. And the Whitmore Lake Property was only available to

LCS on a short term basis. *See* Declaration of Ted Nast, RE 43-3, Page ID # 1253. Thus, the denial of a special use permit confronts LCS with a substantial likelihood of closing its doors, placing substantial pressure on LCS to abandon its religious mission – to serve the community of Livingston County. Moreover, with respect to the second prong of the *Living Water* test, LCS leases property for the purpose of running a school in Livingston County. LCS's only use of this property, in the exercise of its religion, is to run a religious school. The denial of a special use permit to run that school has effectively barred LCS from using its property in the exercise of its religion. Accordingly, under either prong, the Township has placed a "substantial burden" on LCS's religious exercise.

2. The Township Placed Substantial Pressure on LCS to Violate its Religious Beliefs Because LCS Had No Readily Available Alternative to the BNC Property.

The District Court held that the Township did not impose a substantial burden on LCS's religious exercise because LCS "had ready alternatives in the form of both the Pinckney and Whitmore Lake locations." Order Granting Township's Motion for Summary Judgment, RE 47, Page ID # 1510. According to the District Court, "[w]hile it may be less convenient or more expensive for LCS to operate its school from a different location, the circumstances present here do not constitute a substantial burden under the *Living Water* analysis." *Id.*, Page ID # 1509. But the

District Court misread *Living Water,* the controlling law in this Circuit, and dismissed important concerns raised in persuasive decisions from other Circuits.

The District Court misread *Living Water* to say that a local government may make religious exercise "less convenient or more expensive" so long as it does not prevent it entirely. This is neither the holding in *Living Water* nor consistent with RLUIPA. In *Living Water*, a church had applied for a Special Use Permit ("SUP") to construct new, larger facilities on land it already owned. The church had dealt with "space constraints" due to increasing enrollment in its school and daycare program. 258 F. App'x at 730-32. Charter Township of Meridian denied the requested SUP, though, and the church was unable to expand. *Id.* at 732. The church sued under RLUIPA, and the district court entered judgment for the church. *Id.* This Court reversed:

> We find no substantial burden because Living Water has failed to demonstrate that, without the SUP that the Township has refused to approve, it cannot carry out its church missions and ministries. Instead, Living Water has demonstrated only that it cannot operate its church on the *scale* it desires.

Id. at 741 (emphasis in original).

The Court's italics say it all: *Living Water* is a decision about "*scale*." *Id.* (emphasis in original). *Living Water* does not stand for the proposition, as the court below asserted, that a burden is not "substantial" so long as it only makes religious exercise "less convenient or more expensive" rather than prohibiting it

outright. Rather, that decision, "grounded in the facts before [the court,]" held simply that denying a religious institution the right to expand its facilities in order to grow its ministry does not violate RLUIPA. *Id*. Contrary to the holding of the District Court, *Living Water* is about *scale*.[1]

This case is not about scale. This case is about *survival*. LCS's enrollment has been falling, and it will fall further if the Township is allowed to stop LCS from relocating to the only viable location in Genoa Township and in all of Livingston County – the BNC Property. Declaration of Ted Nast, RE 43-3, Page ID # 1253-1254. The *Living Water* court faced the polar opposite: a thriving religious institution that was denied the right to expand in order to enjoy even greater success. While the burden in *Living Water* meant that the religious institution could not increase the size of its school and daycare programs, the burden here will put LCS out of business. *Living Water* was about the right to scale up. The case before the Court today is about the right to survive to engage in the free exercise of religion.

The District Court premised its denial of a temporary restraining order and its granting of summary judgment on the notion that "where there is a ready alternative, there is no substantial burden," citing *Westchester*, 504 F.3d at 349, for that

[1] The District Court's reading of *Living Water* is also inconsistent with other Circuits' interpretations of RLUIPA, as set forth below, and contrary to Congress's command that "the Act's aim of protecting religious exercise is to be construed broadly[.]" *Westchester*, 504 F.3d at 347.

proposition. Order Granting Township's Motion for Summary Judgment, RE 47, Page ID # 1510. But even under the standard adopted in *Westchester,* LCS had no "ready alternative" within Genoa Township or all of Livingston County, meaning that the Township imposed a substantial burden.

In *Westchester*, a religious school sought to expand its then-deficient facilities because "its effectiveness in providing the education Orthodox Judaism mandates has been significantly hindered[.]" 504 F.3d at 345. The school applied for a modification of its special use permit, and the town's Zoning Board of Appeals ("ZBA") determined that the planned expansion would have minimal negative environmental impacts. Following sustained community pressure, however, the ZBA reversed its determination, effectively rejecting the school's application. *Id.* at 345-46. The district court there found that the town had imposed a substantial burden in violation of RLUIPA, and the Second Circuit affirmed because "when an institution has a ready alternative—be it an entirely different plan to meet the same needs or the opportunity to try again in line with a zoning board's recommendations—its religious exercise has not been substantially burdened." *Id.* at 352.

The court in *Westchester* found that neither of those "ready alternatives" was available to the school there, just as neither is available here. The school could not attempt to use a new plan because its existing facilities were inadequate, and "the

planned location . . . was the only site that would accommodate the new building." *Id.* So too here: LCS would "end in dissolution" if it remained at the Pinckney Property, and the *only* viable location for LCS operations is at BNC. Declaration of Scott Panning, RE 43-2, Page ID # 1246, 1248. The zoning decision in *Westchester* was final because the zoning board could have approved the application with conditions, but instead denied it in its entirety. The Township Board did exactly the same thing here, despite Ms. VanMarter's recommendation of approval with conditions. *See* Genoa Board Meeting Minutes, August 3, 2015, RE 43-18; VanMarter Memorandum, 43-15, Page ID # 1391. LCS thus had no ready alternative because, as in *Westchester*, LCS's existing facilities were inadequate and the Application's denial was final.

Nor, as the District Court suggested, was the Whitmore Lake location a ready alternative. Order Granting Township's Motion for Summary Judgment, RE 47, Page ID # 1510. As discussed above, several prospective students said they would not enroll if LCS operated out of the Whitmore Lake Property, and LCS will soon be kicked out of that location regardless because the Whitmore Lake School District intends to reoccupy the property. *See generally* Declaration of Ted Nast, RE 43-3. Thus, because all "alternatives require substantial 'delay, uncertainty, and expense,'" they are not "ready alternatives" at all. *Westchester*, 504 F.3d at 349 (citation omitted). *See also Sts. Constantine & Helen Greek Orthodox*

Church, Inc. v. City of New Berlin, 396 F.3d 895, 901 (7th Cir. 2005) (finding substantial burden where all alternatives involved "delay, uncertainty, and expense"); *see id*. ("[t]hat the burden would not be insuperable would not make it insubstantial.").

In another case that the District Court erroneously distinguished, *Harbor Missionary Church Corp. v. City of San Buenaventura*, a church was forced to choose between paying $1.4 million or foregoing its "sacred dut[y]" of ministering to the homeless. 642 F. App'x 726, 728-29 (9th Cir. 2016). Thus, the church "had no ready alternative" to making a financially infeasible payment. Order Granting Township's Motion for Summary Judgment, RE 47, Page ID # 1510. The Township's denial of the Application here placed an even greater burden on LCS, as virtually no amount of money would have made the Pinckney Property and the Whitmore Lake Property adequate religious school facilities.

The Township did not merely make it "less convenient or more expensive" for LCS to operate its school – the Township doomed LCS to operate out of inadequate facilities as its student population continues to dwindle. *See* Declaration of Ted Nast, RE 43-3, Page ID # 1256 ("LCS is expecting an additional decrease in enrollment if LCS is unable to move into the BNC [Property] for school operations on a full-time basis."). *Living Water* never contemplated that the school before it

might go out of business absent the special use permit. And the court in *Westchester* found a substantial burden on nearly identical facts to those in the instant case.

Moreover, a town cannot functionally bar a religious organization from within its borders merely by referring the organization to other outside locations. Barring a religious organization from operating anywhere within a town is a substantial burden, subject to strict scrutiny. *See Islamic Ctr. of Miss., Inc. v.City of Starkville*, 840 F.2d 293, 300 (5th Cir. 1988) ("As the Supreme Court observed in *Schad*, the availability of other sites outside city limits does not permit a city to forbid the exercise of a constitutionally protected right within its limits.") (citing *Schad v. Mt. Ephraim*, 452 U.S. 61, 62 (1981)); *Barr v. City of Sinton*, 295 S.W.3d 287, 298 (Tex. 2009) (holding that a zoning ordinance that "effectively banned [a] ministry from the city" substantially burdened the ministry); *see also Fortress Bible Church v. Feiner*, 694 F.3d 208, 219 (2d Cir. 2012) (holding a "complete denial of the Church's ability to construct an adequate facility rather than a rejection of a specific building proposal" substantially burdened the church). Here both of the purported alternative properties are located outside of Genoa Township, and therefore there is no dispute that the township has effectively barred LCS from operating within its borders.[2] Thus, LCS's religious mission of serving the

[2] The Township has consistently suggested that LCS should simply carry out its religious mission elsewhere. *See* Township's Motion for Summary Judgment, RE 35, Page ID # 970 (LCS "had a ready alternative — the Pinckney facility — when (continued…)

community has been substantially burdened by the denial of any viable alternate location – both inside and outside of Genoa Township.

3. The Township Effectively Barred LCS from Using Its Property in the Exercise of Its Religion.

In addition to considering the effect of substantial pressure on religious institutions, this Court in *Living Water* pointed out that government action that "effectively bar[s] a religious institution from using its property in the exercise of its religion" creates a substantial burden under RLUIPA. *Living Water,* 258 F. App'x at 737.

In *Living Water*, this Court found no substantial burden because the government action in that case did not stop the Living Water Church of God from using its property in the exercise of its religion but rather limited the expansion of an already functioning church. In other words, the government action in that case did not amount to a total deprivation of the religious institution's use of its property for religious exercise – only a partial one.

Instead of considering the ability of LCS to use its property in the exercise of its religion, the District Court cites the entire *Living Water* standard and then

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the Township denied a special use permit."); Township's Reply Brief in Support of Township's Motion for Summary Judgment, RE 45, Page ID # 1469 ("The Township did not prevent the School from continuing to provide religious education at the Pinckney facility."). But a municipality "may not escape the constitutional protection afforded against its actions by protesting that those who seek an activity it forbids may find it elsewhere." *Islamic Ctr. of Mississippi, Inc.*, 840 F.2d at 299.

completely ignores this second half of the inquiry. Order Granting Township's Motion for Summary Judgment, RE 47, Page ID # 1508-1509. The Court focused solely on whether alternatives were readily available to LCS, neglecting to address whether LCS was "effectively bar[red]" from practicing its religion on its lease-hold. Indeed, the existence of alternatives is entirely irrelevant to the question of whether there was an effective bar on the use of property for religious exercise. Had the District Court addressed this question, it would have been forced to conclude that the Township's denial amounted to a substantial burden for the reasons discussed below.

The Township's denial of a special use permit has completely deprived LCS of the use of its own property for religious exercise. LCS has a leasehold interest in property in the Township. Lease Agreement, RE 43-4. As explained by Scott Panning and Ted Nast, LCS's sole religious mission is to operate a Christian school to serve Livingston County. Declaration of Scott Panning, RE 43-2, Page ID # 1245; Declaration of Ted Nast, RE 43-3, Page ID # 1254. The lease between LCS and BNC confirms as much: LCS's property interest is explicitly limited to the operation of a school. Lease Agreement, RE 43-4, Page ID # 1260-1261 (outlining the parameters of LCS's "USE AND OCCUPANCY" of the BNC Property). Thus, the only way for LCS to use its leased property in the exercise of its religion is by operating a religious school. But it is uncontested that the Township's denial

of a special use permit prevents LCS from operating such a school on the property that it leased. Therefore, the Township's denial of the special use permit has placed a substantial burden on LCS's religious exercise under *Living Water*.

In addressing LCS's request for a temporary restraining order, the District Court made a telling statement that "[i]t is relevant that the township's decision does not bar *the church* from exercising its religious beliefs or using its property in furtherance of its religious exercise. There has not been an absolute bar on religious exercise at the property." Opinion and Order Denying Plaintiff's Emergency Motion for Temporary Restraining Order, RE 22, Page ID # 656-657 (emphasis added). Apart from reading half of the *Living Water* two-pronged standard for substantial burden out of existence, this mistakenly shifts the focus to the impact on BNC, which is not a party to this lawsuit, rather than on LCS, which is.[3] The District Court's logic implies that if LCS had leased its property from a secular landlord, which did not use the property for its own religious purposes, the result might have been different. That cannot be the rule. Whether or not BNC can prac-

[3] When addressing this prong of the *Living Water* inquiry, it is important not to conflate the religious practice of BNC with the religious practice of LCS. It is true that the burden created for BNC by the denial of the special use permit is similar to the burden discussed and ultimately held to be insubstantial in *Living Water*. BNC can still hold services and can still use its property for various religious activities. However, LCS is not affiliated with BNC except insofar as BNC is its landlord. LCS is an interdenominational school that is doctrinally unconnected to the Nazarene denomination of BNC. They do not share the same religious mission, and BNC's ability to engage in religious exercise on its un-leased property is immaterial to the inquiry into the burden placed on LCS's religious exercise.

tice its religion, LCS is denied the right to exercise its own religion at the property that it leased from BNC.

RLUIPA expressly protects "leasehold" interests in property. 42 U.S.C. § 2000cc-5(5). *See also Dilaura v. Ann Arbor Charter Twp.*, 30 F. App'x 501, 507 (6th Cir. 2002) (recognizing various property interests, including leases, that generate cognizable interests under RLUIPA). The clear implication of this protection is that burdens on leasehold interests must be evaluated separately from the interests of lessors. Just because a landlord will continue to use some of its un-leased property in the exercise of *its* religion, the locality does not have carte blanche to deprive a lessee of the right to use its leased property in the exercise of its own religion.

C. The Township Has Not and Cannot Demonstrate that It Furthered a Compelling Governmental Interest in the Least Restrictive Manner Possible.

A government-imposed substantial burden on religious exercise violates RLUIPA "unless the government demonstrates that imposition of the burden on that person, assembly, or institution—(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1). The court below did not discuss whether the Township acted to further a compelling interest or employed the least restrictive means available because the court concluded, in error,

that no substantial burden existed. Order Granting Township's Motion for Summary Judgment, RE 47, Page ID # 1508-1510. Indeed, the Township itself never addressed this issue, and for good reason.

Compelling state interests are "interests of the highest order." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). Here the Township offered vague concerns about traffic and neighborhood fit – concerns that its own professional consultants and the Township's Planning Commission directly contradicted. *See generally* Traffic Impact Studies, RE 43-9; LSL Planning Report, RE 43-12; Genoa Board Meeting Minutes, August 3, 2015, RE 43-18. Senators Hatch and Kennedy, in co-sponsoring RLUIPA, noted that "often, discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics, or 'not consistent with the city's land use plan.'" 146 Cong. Rec. S7774 (daily ed. July 27, 2000). The Township's proffered excuses for denying this permit reflect precisely the kind of discrimination against which RLUIPA was designed to guard.

The Township also relied on allegations of BNC's historical non-compliance with site plan conditions to deny LCS's proposed religious exercise. However, the Supreme Court has made clear that RLUIPA contemplates a "'more focused' inquiry" and "requires the Government to demonstrate that the compelling interest

test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. ___; 134 S. Ct. 2751, 2779 (2014) (quoting *Gonzalez v. O Centro Espirita*, 546 U.S. 418, 430-31 (2006)).[4]

Not only does consideration of BNC's past behavior conflict with *Hobby Lobby*, the Township's actual motivation is transparently discriminatory. The Township cites the use of the BNC parking lot for an unapproved secular driving school as a justification for denying the LCS permit while at the same time assuring the driving school that no action would be taken to curtail its secular use of the property. *See* Transcript of Deposition of Kelly VanMarter, RE 43-7, Page ID # 1305, 1309-1310 ("Q. But in any event is it the Township -- has the Township made a decision that it's not going to take any enforcement action against this driver's certification program because of the fact that this [zoning ordinance] amendment is in the works that will ultimately permit that as a use? A. Yes."); Genoa Board Meeting Minutes, August 3, 2015, RE 43-18, Page ID # 1410, 1412.

[4] In this section of its opinion, the Supreme Court discusses the Religious Freedom Restoration Act ("RFRA") and explains that RLUIPA "imposes the same general test as RFRA but on a more limited category of governmental actions." *Hobby Lobby Stores, Inc.*, 134 S. Ct. at 2761 (2014). In other words, the compelling-interest inquiry under RLUIPA is the same as under RFRA.

Even if the vague traffic related concerns raised by the Township, in the face of consultant reports dismissing such concerns, could constitute a compelling interest, which they do not, the Township did not use the least restrictive means available to address them. Instead of issuing an outright denial, the Township Board was authorized by Section 19.02.04(f)(4) of the Township's zoning ordinance to "impose reasonable conditions" on approval of the special use permit. Genoa Township Zoning Ordinance, RE 43-6, Page ID # 1278 (Article 19 (Special Land Uses) and Article 25 (Definitions)). Indeed the Township's own engineer and planning staff provided a blueprint for the least restrictive means of furthering the various governmental interests. *See generally* Traffic Impact Studies, RE 43-9; LSL Planning Report dated July 8, 2015, RE 43-12; Tetra Tech Report, RE 43-13. The Township ignored this blueprint. *See generally* Genoa Board Meeting Minutes, August 3, 2015, RE 43-18. Categorical prohibitions like the one issued by the Township cannot stand in the face of readily available and more permissive alternatives.

II. The District Court Correctly Held that LCS Has Standing.

The District Court correctly found – on multiple occasions – that LCS had standing to bring all of its claims. Opinion and Order Denying Plaintiff's Emergency Motion for Temporary Restraining Order, RE 22, Page ID # 647-649; Order Granting Township's Motion for Summary Judgment, RE 47, Page ID # 1514-

1516. As the Township continues to deny LCS the right to operate a school on the property it leased from BNC, LCS maintains standing to bring this appeal.

The Township's denial of BNC's special use permit directly impacts LCS's ability to operate its school on its leasehold property. Without approval of a special use permit, LCS will continue to lose the value of its lease. This constitutes an injury in fact.[5] *See Dilaura*, 30 F. App'x at 506–07 (explaining that plaintiffs with interests in property, like LCS, can be injured by adverse zoning determinations).

The injury that LCS has suffered can be traced directly to the illegal permit denial by the Township. This establishes causation. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). *See also* Opinion and Order Denying Plaintiff's Emergency Motion for Temporary Restraining Order, RE 22, Page ID # 648 (finding that "the special use permit specifically relates to allowing LCS to operate a school on the church's property"). And a decision by the court that the Township's denial of a special use permit was illegal would redress LCS's injury because LCS could begin operating on its leased property. *See Lujan*, 504 U.S. at 561. *See also* Opinion and Order Denying Plaintiff's Emergency Motion for Tem-

[5] Nor does it matter that BNC, rather than LCS, submitted the Application. A party may have "a sufficient interest in the property" to support standing even where that party did not own the property or apply for the special use permit. *See Dilaura*, 30 F. App'x at 507. *See also* RLUIPA, 42 U.S.C. § 2000cc–5(5) (emphasis added) (defining "land use regulation" to include "a zoning or landmarking law, or the application of such a law . . . if the claimant has an ownership, *leasehold*, easement, servitude or other property interest in the regulated land").

porary Restraining Order, RE 22, Page ID # 649 (finding that a decision in LCS's favor would "provide redress for LCS's injury").

CONCLUSION

The District Court's grant of summary judgment was based on a misreading of Sixth Circuit precedent and adopted a crabbed understanding of the "substantial burden" standard that is at the heart of RLUIPA. Because the Township imposed a substantial burden on LCS's exercise of its religion, as that term is properly understood, this Court should reverse.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 9,180 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 point font.

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2016, I caused the foregoing Brief to be filed with the Clerk of the U.S. Court of Appeals for the Sixth Circuit using the appellate CM/ECF system and to be served upon counsel for all parties via the CM/ECF system.

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DESIGNATION OF RELEVANT DOCUMENTS

Pursuant to Sixth Circuit Rules 28(b)(1)(A)(i) and 30(g), the following documents from the District Court are relevant to this appeal:

Description	D. Ct. Docket #	Page ID # Range	Date
Complaint	1	1-16	08/07/15
LCS's Emergency Motion for Temporary Restraining Order	4	100-135	08/12/15
LCS Articles of Incorporation	4-3	144-148	08/12/15
Township Community Development Director Recommendation of Approval	4-9	210-212	08/12/15
U.S. Department of Justice Civil Rights Division, A Guide to Federal Religious Land Use Protections	4-14	231-234	08/12/15
Declaration of Laura Burwell, Light of the World Academy	4-15	235-239	08/12/15
Opinion and Order Denying Plaintiff's Emergency Motion for Temporary Restraining Order	22	635-663	09/15/15
First Amended Complaint	23	664-688	09/15/15
Township's Motion for Summary Judgment	35	904-991	03/07/16
Scott Panning Declaration	43-2	1244-1250	04/19/16
Ted Nast Declaration	43-3	1251-1256	04/19/16
Lease Agreement	43-4	1257-1268	04/19/16
Transcript of Deposition of Laura Burwell	43-5	1264-1275	04/19/16
Genoa Township Zoning Ordinance	43-6	1276-1282	04/19/16

Transcript of Deposition of Kelly VanMarter	43-7	1283-1318	04/19/16
Application	43-8	1319-1323	04/19/16
Traffic Impact Studies	43-9	1324-1357	04/19/16
Letter from Michael Goryl	43-10	1358-1359	04/19/16
Transcript of Deposition of Brian Borden	43-11	1360-1373	04/19/16
LSL Planning Report	43-12	1374-1379	04/19/16
Tetra Tech Report	43-13	1380-1382	04/19/16
Genoa Township Planning Commission Meeting Minutes, July 13, 2015	43-14	1383-1389	04/19/16
VanMarter Memorandum	43-15	1390-1392	04/19/16
Transcript of Deposition of Michael Archinal	43-16	1393-1405	04/19/16
Genoa Board Meeting Minutes, July 20, 2015	43-17	1406-1408	04/19/16
Genoa Board Meeting Minutes, August 3, 2015	43-18	1409-1413	04/19/16
Kelly VanMarter Deposition Exhibits 20 and 18	43-19	1414-1417	04/19/16
Kelly VanMarter Deposition Exhibit 19	43-20	1418-1423	04/19/16
Highland Charter Township and Macomb Township Ordinances	43-23	1450-1457	04/19/16
Township's Reply Brief in Support of Township's Motion for Summary Judgment	45	1459-1484	05/24/16
Order Granting Township's Motion for Summary Judgment	47	1498-1521	06/30/16
Notice of Appeal	49	1523-1529	07/21/16