

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

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CHURCH OF THE ROCK, INC., *d/b/a* THE  
ROCK,

*Plaintiff,*

*v.*

Case No. \_\_\_\_\_

THE TOWN OF CASTLE ROCK, COLORADO,

*Defendant.*

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**PLAINTIFF CHURCH OF THE ROCK INC.'S MEMORANDUM IN  
SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION**

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## INTRODUCTION

Plaintiff Church of the Rock, Inc., *d/b/a* The Rock (hereinafter, the “Church”) is a non-denominational Christian church located in the Town of Castle Rock, Colorado. As relevant to this lawsuit, the Church has long operated an On-Site Temporary Shelter Ministry, providing temporary shelter in RVs/trailers parked on its property to individuals and small families experiencing homelessness. The Church also has taken part in a partnership with the Red Cross, serving as a temporary shelter for needy individuals during local emergencies. These ministries are squarely within the long tradition of American “churches . . . offer[ing] their help” to “homeless people,” a laudable practice that is as “common now as it was at the founding,” and which the Office of the Solicitor General recently praised before the U.S. Supreme Court. Oral Argument Tr. at 84, *City of Grants Pass v. Johnson*, No.23-175 (U.S. Apr. 22, 2024).<sup>1</sup>

The Town of Castle Rock has, remarkably, shut down the Church’s On-Site Temporary Shelter Ministry and its Red Cross Partnership, apparently operating on the cynical thesis that it does not want the homeless in its area. So, as a direct result of the Town’s actions, the Church is no longer able to offer temporary shelter to individuals or small families experiencing homelessness as part of its On-Site Temporary Shelter Ministry, or to offer temporary shelter to displaced individuals during times of emergency as part of its Red Cross Partnership. This means that,

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<sup>1</sup> Available at [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2023/23-175\\_dc8f.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/23-175_dc8f.pdf) (all websites last accessed May 8, 2024).

due to the Town's actions, the Church must now turn away homeless or displaced individuals and small families in the Town of Castle Rock. Indeed, since the Town shut down the Church's relevant ministries, the Church has already been contacted with requests to provide temporary shelter to a father and his son experiencing homelessness and, separately, to a mother and her three small children also experiencing homelessness. Because of the Town's unlawful actions, the Church could not provide housing to these needy individuals, in violation of the Church's religious tenets.

The Town's shutting down of the Church's On-Site Temporary Shelter Ministry and Red Cross Partnership is not only deeply cruel, but it also violates the Church's fundamental free-exercise rights, as protected by the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.*, and the Free Exercise Clause of the First Amendment, U.S. Const. amend. I. The Church now respectfully moves for a preliminary injunction against the Town, so that the Church may continue to serve the homeless and displaced in the Town during the pendency of this lawsuit.

The Church has a strong likelihood of success on the merits on the three counts it presents here. First, the Town enforcing its zoning code to shut down the Church's On-Site Temporary Shelter Ministry and its Red Cross Partnership violates RLUIPA's substantial-burden provision, because the Town has prohibited the Church's efforts to provide temporary shelter to needy individuals—as the Church's religious beliefs and mission command—with no possible way for the Town to satisfy

strict scrutiny, as RLUIPA demands. Second, the Town enforcing its zoning code in this manner also violates the Free Exercise Clause for many of the same reasons. Finally, the Town has taken multiple adverse actions against the Church in retaliation for the Church's operation of these disfavored ministries and for the Church seeking judicial and administrative review of the Town's zoning determinations, and those retaliatory actions also violate both the First Amendment and RLUIPA.

All equitable factors and the balance of the equities fall squarely on the side of the Church and its continued operation of its On-Site Temporary Shelter Ministry and its Red Cross Partnership, as the Church's religious faith and mission command. The Church will suffer irreparable harm without a preliminary injunction, as the Town's banning of the ministries infringes upon the Church's free exercise of its sincerely held religious beliefs by requiring the Church to turn away homeless and displaced individuals rather than provide them with temporary shelter. The Town's actions injure the same poor and needy individuals that the Church seeks to serve with these two ministries, thus impeding the Church's religious mission and inflicting still more irreparable harm. The Town, for its part, will suffer no harm from a preliminary injunction, while such an injunction will decidedly further the public interest. The Church's On-Site Temporary Shelter Ministry and its Red Cross Partnership provide essential aid for needy individuals. Further, the Church is the *only* source of such aid in the Town of Castle Rock; thus, without a preliminary injunction here, individuals experiencing homelessness in the Town during the



pendency of this case must either seek shelter in far-away facilities outside of the Town, which is extremely disruptive, or forego this essential human need. These harms are sure to happen multiple times during the life of this case—given that the Church is already aware of a father and his son and a mother and her three small children needing temporary shelter, as noted above, and has experienced homeless families coming to the Church for help regularly over the years.

This Court should grant the Church’s Motion For A Preliminary Injunction. Specifically, the Church respectfully requests that the Court enjoin the Town during the pendency of this lawsuit from: (1) interfering with the Church’s operation of its On-Site Temporary Shelter Ministry as to two RVs/trailers on the Church’s Property; (2) interfering with the Church’s Red Cross Partnership; and (3) taking any adverse action against the Church or those with whom the Church affiliates in retaliation for the Church’s exercise of its constitutionally or statutorily protected rights.

### **STATEMENT OF THE CASE**

A. The Church is an evangelical, non-denominational Christian church with approximately 250 members located in Castle Rock, Colorado. *See* Decl. of Pastor Micah Polhemus (“Pastor Mike Decl.”) ¶¶ 14–16. The Church’s mission is to “pursue God, embrace people, and transform society through real family.” *Id.* ¶ 17 (capitalization altered).

The Church currently occupies a 54-acre property located on the western edge of Castle Rock (hereinafter, the “Property”). *Id.* ¶¶ 32–33. The Church purchased the Property in 1999 when it was a vacant lot, began construction around 2004, and

then moved to the Property from downtown Castle Rock once construction was complete in 2006. *Id.* ¶¶ 34–36. The Property contains a main building situated at the center of the Property, which building contains the Church’s sanctuary or worship area; various offices; a gym/student center auditorium; a commercial kitchen; a food bank; large foyer spaces for a nursery, a preschool, and a K–6 school; a coffee bar; and various storage areas for the Church’s many ministries. *Id.* ¶¶ 38–40. The Church’s paved parking lot and associated driving lanes encircle the main Church building, and the Church’s open, undeveloped land extends outward from the paved parking lot. *Id.* ¶ 41. Cherokee Drive, an approximately 850-foot paved road that is connected to, and accessible from, other Castle Rock residential streets, is the only way a vehicle can reach the main Church building and surrounding parking lot. *Id.* ¶ 42. The Church owns the portion of Cherokee Drive that is located on the Property. *Id.* ¶ 43. A 4,000-acre master planned community named “The Meadows” borders the 54-acre Property on three sides. *Id.* ¶¶ 44–46. The distance from the northern edge of the Church’s paved property to the nearest property on the edge of The Meadows neighborhood is about 300 feet. *Id.* ¶ 47. Beyond the western edge of the Property is more open, undeveloped land that is in unincorporated Douglas County and is not owned by the Church. *Id.* ¶ 46.

B. The Town of Castle Rock controls its own zoning through rights derived from the Colorado Constitution. Colo. Const. art. XX, § 6. The Castle Rock Zoning Division is led by the Town’s Zoning Manager, who implements and oversees the zoning code. Castle Rock, Colo., Mun. Code §§ 17.01.030, 17.01.060. Some parcels, such as the

Property, are zoned as a Planned Development (“PD”) zone. *Id.* § 17.32.010. The PD Regulations specify the permitted uses, densities, and other important development controls for each permitted use and the Property as a whole. Pastor Mike Decl., Ex.26. In 2003, after public notice and hearing, the Town zoned the Property as a PD Zone, with the Town approving a PD Agreement on August 12, 2003, which agreement remains in place today. Pastor Mike Decl. ¶ 49; Pastor Mike Decl., Ex.11. The related PD Regulations allow the Church to use the Property for the “Church and [its] Related Uses” and lists specific permitted uses, including church, church-related educational facilities, and indoor and outdoor church related recreational facilities. Pastor Mike Decl., Ex.26, § F.1.<sup>2</sup>

C. Among its other religious activities, the Church operates numerous ministries to help needy members of the local community, as a direct result of its religious beliefs. Pastor Mike Decl. ¶¶ 54–71. For example, the Church operates a food bank that annually distributes around 400,000 pounds of food to needy individuals and families throughout Colorado and that has served over 60,000 full-course hot meals to struggling families and the elderly from 2018 to February 2020, only to be halted due to the Covid-19 pandemic, *id.* ¶¶ 72–74; runs a clothing pantry that is filled with men’s, women’s, and children’s clothing, shoes, accessories, and

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<sup>2</sup> The PD Regulations also allow the Church to use the Property for church related educational facilities; church related day care center subject to licensing requirements of the State; trails, pedestrian and bicycle; open space and ponds to include storm water drainage detention areas; and utilities and appurtenant facilities including but not limited to water and sewer, electric service, gas service, telephone and cable service, and drainage facilities. Pastor Mike Decl., Ex.26 § F.1.

home-decor and small kitchen items, *id.* ¶¶ 76–80; previously participated in the Winter Shelter Network to provide shelter within the Church’s building to women and children during winter months, *id.* ¶¶ 81–86; and provides direct financial assistance to families struggling to pay the costs of rent and/or utilities, which assistance has totaled about \$2.5 million dollars over the past three years, helping to prevent about 120 evictions since 2021, *id.* ¶¶ 87–89.

Most relevant here, the Church operates two ministries to provide temporary shelter to individuals experiencing homelessness and/or to displaced individuals: the Church’s On-Site Temporary Shelter Ministry and its Red Cross Partnership. *Id.* ¶¶ 96–139. As with the Church’s many other ministries, the Church operates its On-Site Temporary Shelter Ministry and its Red Cross Partnership as a direct result of its Christian faith and the Church’s mission to “Pursue God, Embrace People, and Transform Society through Real Family.” *Id.* ¶¶ 56, 100, 139. In line with the teachings of the Holy Bible, the Church also seeks with these ministries to serve “the least of these,” *Matthew 25:40* (New International Version),<sup>3</sup> and to “share [ ] food with the hungry and to provide the poor wanderer with shelter,” *Isaiah 58:7*, because “faith by itself, if it is not accompanied by action, is dead,” *James 2:17*, see Pastor Mike Decl. ¶¶ 54–70, 100, 139. That is, these two ministries are how the Church fulfills the Christian commandment to care for the downtrodden and forsaken, serving others out of love, so that the Church may be welcomed into the Kingdom of

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<sup>3</sup> All subsequent quotations of the Holy Bible in this Memorandum are also taken from the New International Version (NIV).

God. *Id.* ¶¶ 70, 100, 139. These two ministries are described in turn immediately below.

*On-Site Temporary Shelter Ministry.* The Church's On-Site Temporary Shelter Ministry provides individuals and small families experiencing homelessness temporary shelter in parked RVs/trailers on the Church's Property. *Id.* ¶¶ 96–131. The Church's overall purpose with this ministry is to provide individuals and small families experiencing homelessness with a safe, temporary shelter—together with food, clothing, other material necessities, as well as access to religious and community offerings—so that they may get back on their feet and obtain or reobtain a sustainable level of self-sufficiency, including by finding stable employment and a stable place to live. *Id.* ¶ 99.

The Church currently uses two temporary shelters—a standard, well-maintained RV and a standard, well-maintained camping trailer—as part of its On-Site Temporary Shelter Ministry. *Id.* ¶¶ 101–09. The Church keeps the temporary shelters parked on the western edge of the Church's parking lot that surrounds the main church building, over 400 feet away from The Meadows neighborhood. *Id.* ¶¶ 101–02. Out of the approximately 50 to 60 homes in The Meadows that are located around the Church's Property, only approximately five homes within 1,000 feet of the RV/trailer potentially provide a view of the RV/trailer—and, even then, only the roofs of the parked shelters can be seen by most of these homes, and only when looking out of a window on a second or third story of these homes. *Id.* ¶ 103. The Church provides electricity and a nearby portable toilet for the parked shelters. *Id.* ¶ 109.

The Church carefully ensures that only those individuals or small families suitable for the On-Site Temporary Shelter Ministry utilize it. *Id.* ¶¶ 114–21. The Church uses a third-party company to conduct a formal background check on any individual or family the Church identifies as suitable for the On-Site Temporary Shelter Ministry, which check the potential beneficiary or beneficiaries must pass to participate in the ministry. *Id.* ¶¶ 115–16. Individuals who pass the background check must then be interviewed by staff and, if invited, sign a contract with the Church, which contract sets forth requirements that the individual must adhere to while staying in one of the parked shelters, such as maintaining peaceful and non-criminal behavior. *Id.* ¶¶ 116–20. The Church revisits the contracts on a week-by-week basis, inspects each vehicle, and re-evaluates the contracts to set goals and requirements specific to the beneficiary. *Id.* ¶ 116. While the goals in each contract are specific to each individual’s unique situation, the contracts typically require the individual to take measurable steps toward obtaining or reobtaining self-sufficiency such as submitting job applications, obtaining/maintaining employment, and searching for/securing housing. *Id.* ¶ 117. There is no requirement for beneficiaries to attend religious services or programs, or to be (or pledge to be) a member of the Church’s religious faith or of any religious faith. *Id.* ¶ 121. The Church has never experienced any public safety or other related issues while carrying out this ministry. *Id.* ¶¶ 129–31.

Since the On-Site Temporary Shelter Ministry’s inception in 2018, the Church has helped many individuals and small families as part of this ministry. *Id.* ¶¶ 122–

28. The length of time each individual or family has stayed in the Church's parked shelters has varied according to their unique needs and circumstances, and there have been periods of time when neither parked shelter was occupied. *Id.* ¶ 122. In every case, the ministry has delivered aid (*i.e.*, food, clothing, transportation, pastoral support, and more) to the participating individuals and families, and its impact on their lives has been significant. *Id.* ¶¶ 122–28. For example, Fred Krueger was provided temporary shelter after he lost his insurance-sales job during the COVID-19 pandemic and had no place to stay, and he stayed in the temporary shelter until he found a new job and apartment, *id.* ¶ 124—as Mr. Krueger powerfully explains in his Declaration, *see* Decl. of Fred Kreuger (“Krueger Decl.”). Without the Church's ministry, Mr. Krueger would have remained homeless and been forced to relocate to another city or live on the streets. Krueger Decl. ¶¶ 12–13. The Church's On-Site Temporary Shelter Ministry also helped another beneficiary, Joseph Ridenour, escape a 24-year long methamphetamine addiction, break his cycle of homelessness, and secure gainful employment, as he too explains in his Declaration. *See* Decl. of Joseph Ridenour (“Ridenour Decl.”); *see also* Pastor Mike Decl. ¶ 125. Mr. Ridenour was at rock bottom, and, without the Church's ministry, Mr. Ridenour would have returned to his former city and almost certainly succumbed again to his former drug addiction. Ridenour Decl. ¶¶ 15–16; *see also* Declaration of Taylor Price (“Price Decl.”) ¶¶ 11–12.

*Red Cross Partnership.* The Church has also entered into a partnership with the Red Cross, as a ministry, where the Church provides shelter in its main church

building for needy individuals in times of emergency, such as during or after a severe winter storm or fire. Pastor Mike Decl. ¶¶ 132–39. The Church’s partnership with the Red Cross began around 2021 as a three-way partnership with the Douglas County Sheriff, the Church, and the Red Cross. *Id.* ¶ 133. The Red Cross initiated this partnership with the Church by inquiring whether the Church would be willing to serve as a Red Cross site. *Id.* ¶ 134. Church staff then met with the Red Cross, and the Red Cross held onsite trainings of Church parishioners, staff, and volunteers to conduct Red Cross operations. *Id.* The logistics of the operation of the partnership between the Church and the Red Cross depends upon the size of the emergency that the Red Cross is responding to in Castle Rock. *Id.* ¶ 135.

For emergencies with a more limited scope, the Church takes on more of a leadership role in the partnership. *Id.* ¶ 136. The Red Cross will assist with relocation of needy individuals to the main church building for purposes of receiving temporary shelter, and then the Church’s staff and volunteers will primarily manage the relief efforts from the main church building, using resources from both the Red Cross and the Church itself. For example, in 2022 there was a major blizzard before Christmas in Castle Rock, so Douglas County, in connection with the Red Cross, sent needy individuals to the Church for shelter while the blizzard was ongoing. *Id.* ¶ 137. To serve these needy individuals, the Red Cross provided box lunches and forty cots in the main church building, and the Church’s staff and volunteers prepared and served breakfast and dinner. *Id.* Additionally, Douglas County provided sheriff deputies to ensure security on the Property during this time. *Id.* Only the staff and



volunteers from the Church and the sheriff deputies remained onsite with the needy individuals overnight. *Id.*

For more major emergencies, such as a widespread fire in Castle Rock, the Red Cross will take on more of a leadership role in the partnership. *Id.* ¶ 138. Under these circumstances, the Church anticipates that the Red Cross would take over the entire main church building and manage the relief efforts, with the Church's staff and volunteers providing assistance under the direction of the Red Cross. *Id.* The Church anticipates that it could temporarily shelter hundreds of needy individuals, if needed, during a major emergency. *Id.* Thankfully, Castle Rock has not experienced an emergency of this magnitude, thus the Church and the Red Cross have not yet had to implement these particular emergency plans. *Id.*

D. The Church carried out its On-Site Temporary Shelter Ministry and its Red Cross Partnership without interference from the Town until November 2021. On November 10, 2021, the Zoning Manager sent the Church a "Notice of Zoning Violation" regarding the presence of the Church's parked RV/trailer on the back lot of its Property. Pastor Mike Decl., Ex.17 ("Notice Letter"). The Notice Letter informed the Church that a local neighbor complained to the Town about the presence of the parked shelters but did not identify any sections of the zoning code that the Church was allegedly violating. *Id.* After receiving the Notice Letter, however, Pastor Mike was told to disregard the notice of violation and that the issue was resolved. Yet, on April 6, 2022, the Zoning Manager requested a meeting with the Church and, the next month, the Church leadership met with the Town Manager,

David Corliss, and Zoning Manager to discuss the On-Site Temporary Shelter Ministry. Pastor Mike Decl. ¶ 141. During this discussion, Pastor Mike explained the Church’s view that its On-Site Temporary Shelter Ministry was an inexpensive and effective way to provide much-needed shelter and that the Church was prepared to handle up to seven RVs/trailers—five more than the ministry was using at that time. *Id.* As a result of this discussion, the Town Manager and Zoning Manager agreed that the Town’s objection to the RVs/trailers would be considered resolved if the Church agreed to limit the parked shelters to two RVs/trailers. *Id.* The Church agreed. *Id.*

Nevertheless, the Town ultimately went back on this agreement and sent the Church further letters alleging that the On-Site Temporary Shelter Ministry violated the Town’s zoning code. Pastor Mike Decl., Ex.18 (“As previously discussed, RV’s parking on the property for either storage or use to live in, is not an allowed use on the property under the current zoning.”); Pastor Mike Decl., Ex.19 (informing the Church that residential use of the parked RVs/trailers was not permitted under the PD Regulations); Pastor Mike Decl. ¶ 144 (in-person meetings). On September 29, 2023, the Town issued an adverse Letter of Determination which formally charged the Church with violating the zoning code because “parsonage” was the only accessory residential use permitted under the PD Regulations for the Property, and “RV’s parked onsite, that serve as a residence are not an allowed use.” *Id.* ¶ 145; Pastor Mike Decl., Ex.20. On October 13, 2023, the Church appealed the Town’s Letter of Determination to the Town’s Board of Adjustment (“BOA”), asserting that the On-

Site Temporary Shelter Ministry is a proper religious use of the Property as permitted by the PD Regulations and RLUIPA. *See generally* Pastor Mike Decl., Ex.21.

On December 7, 2023, the BOA heard the Church's appeal and ultimately approved the Town's motion to affirm the Zoning Manager's Letter of Determination, meaning that it formally concluded that the Church's use of RVs/trailers for the On-Site Temporary Shelter Ministry violated the PD Regulations. Pastor Mike Decl. ¶ 148 (citing Bd. of Adjustment Meeting, Town of Castle Rock, at 2:04:20–2:08:25 (Dec. 7, 2023)<sup>4</sup>).

Separately, the Town has also taken action to inhibit the Church's Red Cross Partnership. Specifically, after the Church provided temporary shelter to needy individuals during the major blizzard in 2022 as part of this Red Cross Partnership with Douglas County, Douglas County informed the Church around January 2023 that the Town had informed it to end any further coordinated emergency sheltering at the Church. None of this was officially brought to the Church's attention by the Town; however, the Church has not been asked to provide emergency sheltering since December 2022. Pastor Mike Decl. ¶ 150.

Since the Town issued its adverse determination against the Church's On-Site Temporary Shelter Ministry—affirmed by the BOA—and has inhibited the Red Cross Partnership, the Church has been unable to carry out these two vital ministries. *Id.*

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<sup>4</sup> Available at <https://castlerock-co.granicus.com/player/clip/1668>. The Town Manager's adverse determination led the Church to initially file a state-court action, *Church of the Rock, Inc. v. Town of Castle Rock*, No.2024CV30004 (Colo. Dist. Ct., Douglas Cnty.), which action will be dismissed due to this present federal lawsuit to restore the Church's religious rights.

¶ 163. In addition to substantially burdening the Church’s religious exercise, *see infra* pp.19–34, the Town’s closure of the Church’s ministries has also meant that individuals and small families in Castle Rock in need of temporary shelter have nowhere else to turn in the Town, *see infra* pp.42–44. For example, the Church is aware of a father and son who are in need of temporary shelter such as the Church had previously provided, yet the Church is currently unable to provide this much-needed assistance due to the Town’s actions. Pastor Mike Decl. ¶ 168. The Church was also contacted by the Douglas County Human Services regarding a mother with three small children—aged seven, four, and three—who were without shelter. *Id.* ¶ 169. The Church was unable to provide temporary shelter to this mother and her children as well, given that the Town shut down the Church’s On-Site Temporary Shelter Ministry. *Id.*

E. After the Church challenged the Zoning Manager’s Letter of Determination in the BOA appeal in December 2023, the Town took retaliatory actions to limit the Church’s operations and ministries.

To take just one example, the Town took adverse actions against the Church’s coffee service. The Church has served coffee at the Property since 2006, like many churches in Castle Rock and across the country. *Id.* ¶ 152. In 2024, the Church decided to partner with a local Christian coffeeshop in downtown Castle Rock, Lost Coffee, to serve its coffee at the Property, under the name, “Lighthouse Coffee.” *Id.* ¶ 153. The Church planned to open Lighthouse Coffee to the public on April 1, 2024, with operation hours of 6:00 a.m. to 6:00 p.m., six days a week, to serve individuals

associated with the school on the Church's Property, as well as members of the surrounding community visiting the Church, as an outreach program to the community. *Id.* Lost Coffee planned to utilize the Church's existing coffee bar and common area to brew coffee at Lighthouse Coffee to serve, sell, and give away. *Id.* The Church has a current business and sales-tax license with Douglas County and the Town, which license includes the ability to sell coffee, and which license the Church understood to cover the Lighthouse Coffee operation. *Id.* ¶ 154.

On April 2, 2024—after the BOA's Notice of Zoning Violation determination, and right when Lighthouse Coffee was set to open—the Zoning Manager sent two letters, one addressed to Scott Gaerte, the owner of Lost Coffee, and the other addressed to the Church, raising several alleged problems with Lighthouse Coffee. *Id.* ¶¶ 155–57; Pastor Mike Decl., Exs.23, 28. The letters claimed that Lost Coffee's partnership with the Church violated the Town's zoning code and (in the letter to Mr. Gaerte) threatened to revoke Lost Coffee's license for its downtown Castle Rock location if it continued in the partnership. Pastor Mike Decl., Ex.23. The letters also asserted that Lighthouse Coffee was operating without a business license, although the Church has a retail business license, as noted. Pastor Mike Decl. ¶ 156. Additionally, the letters stated that “[i]f Lost Coffee would like to serve coffee during service times to church members, and NOT in a retail capacity, a building and fire inspection are still needed,” Pastor Mike Decl., Ex.23, despite the Church serving coffee since 2006 without issue and without “coffee service” inspection, Pastor Mike Decl. ¶ 156.

Beyond these letters, the Douglas County Health Department also performed a surprise inspection of Lighthouse Coffee the day it opened. Pastor Mike Decl. ¶¶ 158–60. The Douglas County Health Department had informed Lost Coffee that the first inspection of Lighthouse Coffee was to be between 30 and 60 days after opening, but then appeared on the first day Lighthouse Coffee opened in a surprise inspection. *Id.* ¶¶ 159–60. Lighthouse Coffee possesses a business license to operate a coffee shop, meaning that, according to Health Department custom, the Health Department should have abided by its declared schedule to inspect Lighthouse Coffee 30 to 60 days after opening. *Id.*

So far as the Church is aware, no other churches have received threats or citations from the Town for serving coffee, despite the practice of serving coffee being widespread among Castle Rock churches. *Id.* ¶ 160. Further, after the Town took these adverse actions, Pastor Mike met with several other community churches' leaders, and each expressed dismay at the Town's actions and fear that the Town would pursue similar harmful actions towards their practices of serving coffee, especially since they have never been inspected for building and fire regulations as such regulations relate to coffee service. *Id.* ¶ 161.

The Town has taken still more adverse action against the Church. The Church has also had a long-standing relationship with the Douglas County Housing Partnership (“Housing Authority”). Since July 2022, the Housing Authority had been working with the Church to consult and advocate for a low-income workforce housing project that the Church is pursuing. *Id.* ¶ 162. However, after the BOA's adverse

determination and the Church's decision to challenge that decision in court, the Housing Authority abruptly ended its relationship with the Church. *Id.* In a letter dated April 19, 2024, the executive director of the Housing Authority explained that the current adversarial and legal nature between the Church and the Town impaired the Housing Authority's ability to act as a neutral for its board, which board includes the Town of Castle Rock. Pastor Mike Decl., Ex.24.

F. On May 13, 2024, the Church has filed its Complaint against the Town in this court to restore its free-exercise rights to operate its On-Site Temporary Shelter Ministry and its Red Cross Partnership. Specifically, the Church's Complaint alleges that the Town's prohibition on the Church's On-Site Temporary Shelter Ministry and Red Cross Partnership violates RLUIPA's substantial-burden provision, Compl. ¶¶ 247–63, the First Amendment's Free Exercise Clause, Compl. ¶¶ 265–83, and the First Amendment's Establishment Clause, Compl. ¶¶ 310–16; and that the Town's adverse actions against the Church's Lighthouse Coffee operation, as well as its pressuring of the Housing Authority to sever ties with the Church, are unconstitutional retaliation, Compl. ¶¶ 285–97, and also violations of RLUIPA, Compl. ¶¶ 299–308.

### **LEGAL STANDARD**

To obtain a preliminary injunction, “the party moving for an injunction must show: (1) a likelihood of success on the merits; (2) a likely threat of irreparable harm to the movant; (3) the harm alleged by the movant outweighs any harm to the non-moving party; and (4) an injunction is in the public interest.” *Hobby Lobby Stores,*

*Inc. v. Sebelius*, 723 F.3d 1114, 1128 (10th Cir. 2013), *aff'd sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). None of these “prerequisites has a fixed quantitative value”; rather, a sliding scale is utilized, which takes into account the intensity of each in a given calculus.” *Mock v. Garland*, 75 F.4th 563, 587 (5th Cir. 2023) (citations omitted). In the context of free-exercise rights protected by the First Amendment and RLUIPA, “the likelihood of success on the merits will often be the determinative factor’ because of the seminal importance of the issues at stake.” *Verlo v. Martinez*, 820 F.3d 1113, 1126 (10th Cir. 2016) (quoting *Hobby Lobby*, 723 F.3d at 1145); *Hobby Lobby*, 723 F.3d at 1145 (holding as such in the Religious Freedom Restoration Act (“RFRA”) context); *see generally Hobby Lobby*, 573 U.S. at 730 (calling RLUIPA the “sister statute” of RFRA); *Grace United Methodist Church v. City Of Cheyenne*, 451 F.3d 643, 661 (10th Cir. 2006) (RLUIPA must “be interpreted by reference to” RFRA).

## ARGUMENT

### **I. The Church Is Likely To Succeed On The Merits Of Its RLUIPA Count, Free Exercise Clause Count, And Retaliation Counts**

#### **A. The Church Is Likely To Succeed On Its RLUIPA Count**

1. Under RLUIPA’s substantial-burden provision, a municipality may not “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, unless the government demonstrates that” such imposition or implementation is both “(A) in furtherance of a compelling governmental interest” and “(B) the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C.



§ 2000cc(a)(1); *see id.* § 2000cc-5(4)(A); *see generally id.* § 2000cc-5(4) (defining “the government[s]” covered by RLUIPA to include a “municipality” and “official[s] of [such] an entity”). RLUIPA defines “religious exercise” to include “[t]he use . . . of real property for the purpose of religious exercise,” *id.* § 2000cc-5(7), and defines a covered “land use regulation” to include “a zoning . . . law, or the application of such a law, that limits or restricts a claimant’s use . . . of land,” *id.* § 2000cc-5(5). Thus, RLUIPA establishes “a strict scrutiny standard” for a municipality’s “implementation of land use regulations” like a zoning ordinance that substantially burdens a religious institution’s use of its real property for purposes of religious exercise. *Grace United Methodist Church*, 451 F.3d at 661 (citations omitted).

While RLUIPA “fails to define substantial burden,” its “legislative history reveals” that the term “is to be interpreted by reference to [RFRA] and First Amendment jurisprudence.” *Id.* (citations omitted); *see* 146 Cong. Rec. 7774-01, 7776; *see generally Hobby Lobby*, 573 U.S. at 730 (calling RLUIPA the “sister statute” of RFRA). Under RFRA, “a government act imposes a ‘substantial burden’ on religious exercise if it: (1) ‘requires participation in an activity prohibited by a sincerely held religious belief,’ (2) ‘prevents participation in conduct motivated by a sincerely held religious belief,’ or (3) ‘places substantial pressure on an adherent . . . to engage in conduct contrary to a sincerely held religious belief.’” *Hobby Lobby*, 723 F.3d at 1138–39 (quoting *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1315 (10th Cir. 2010) (further explaining that a substantial burden may be “direct[ ] or indirect[ ]”). RLUIPA’s substantial-burden inquiry considers whether the government has substantially

burdened the specific religious exercise at-issue—“not whether the RLUIPA claimant is able to engage in other forms of religious exercise,” despite the challenged law at issue. *Holt v. Hobbs*, 574 U.S. 352, 361–62 (2015). On the other hand, if there are “quick, reliable, or economically feasible alternatives” to “meet the *same* needs” of the RLUIPA claimant, that may show the lack of a substantial burden from the law at issue. *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 352 (2d Cir. 2007) (emphasis added). So, at bottom, whenever a government takes an action “putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a [substantial] burden upon religion exists.” *Hobby Lobby*, 723 F.3d at 1139 (citation omitted).

Once a claimant shows that a land-use regulation substantially burdens its exercise of religion, “the burden shift[s]” to the government” to pass RLUIPA’s strict-scrutiny framework, *Holt*, 574 U.S. at 362—“even at the preliminary injunction stage,” *Hobby Lobby*, 723 F.3d at 1143. For the compelling-interest prong of RLUIPA’s strict-scrutiny test, the court must “look[ ] beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[ ] the asserted harm of granting *specific exemptions to particular religious claimants*.” *Id.* (emphasis added) (citation omitted). Thus, RLUIPA “contemplates a more focused inquiry and requires the [g]overnment to demonstrate that the compelling interest test is satisfied through *application of the challenged law to . . . the particular claimant* whose sincere exercise of religion is being substantially burdened.” *Holt*, 574 U.S. at 362–63 (emphasis added) (citations omitted). As for the

narrow-tailoring prong of RLUIPA’s strict-scrutiny test, the government must “prove that denying the exemption is the least restrictive means of furthering a compelling governmental interest” by “sho[wing] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party.” *Id.* at 364–65 (quoting *Hobby Lobby*, 573 U.S. at 728) (citation omitted). In other words, even where the government “has a compelling interest,” RLUIPA requires the government to still show that its challenged policy is the least restrictive means of furthering that interest by explaining how its interest would be “undermine[d]” or “seriously compromised by allowing” the specific “requested accommodation.” *Id.* at 363–64, 369. So, at bottom, to pass strict scrutiny, the government must show that its compelling interest is specifically furthered “through application of the challenged law to . . . the particular claimant . . . in that particular context” and that there are no “less restrictive means [ ] available for the [g]overnment to achieve its goals.” *Id.* at 363, 365 (citations omitted). If the government fails to satisfy both strict-scrutiny prongs, then RLUIPA prohibits the challenged application of the land-use regulation to the RLUIPA claimant. *See id.* at 364–65.

Applying this framework, federal courts have routinely held that land-use regulations that restrict a church’s ability to shelter or serve on its property individuals experiencing homelessness violate RLUIPA. *First Lutheran Church v. City of St. Paul*, 326 F. Supp. 3d 745, 761 (D. Minn. 2018) (collecting cases); *accord Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570, 575 (2d Cir. 2002)

(holding, in preliminary-injunction posture, that a church’s “provision of outdoor sleeping space for the homeless effectuates a sincerely held religious belief”); *St. Timothy’s Episcopal Church v. City of Brookings*, No.1:22-CV-00156-CL, 2024 WL 1303123, at \*7 (D. Or. Mar. 27, 2024) (“Courts across the country have recognized that ministering to the poor is an exercise of a sincerely held ‘religious duty to feed the hungry and clothe the naked.’”). For example, in *Harbor Missionary Church Corp. v. City of San Buenaventura*, 642 Fed. App’x 726 (9th Cir. 2016), the Ninth Circuit held that a municipality’s denial of a church’s conditional-use permit to operate “its homeless ministry”—which ministry provided “religious teachings, worship music, prayer, clothing, food, showers, counseling, and other support” to homeless individuals on its property—substantially burdened the church’s religious exercise under RLUIPA. *Id.* at 727–28. Similarly, *City Walk - Urban Mission Inc. v. Wakulla County*, 471 F. Supp. 3d 1268 (N.D. Fla. 2020), held that application of a county zoning code to limit a church’s “use of [its] Property to house and rehabilitate as many unrelated adults as it can” violated RLUIPA’s substantial-burden provision because it forced the church “to turn away adults that it is called upon by God to serve, even though [the church] is willing and able to serve them.” *Id.* at 1284. And *First Lutheran Church*, 326 F. Supp. 3d 745, likewise held that a zoning resolution that required a church to post a “No Trespassing” sign on its property violated RLUIPA’s substantial-burden provision because it undermined the church’s stated mission of being “welcoming and inviting to the homeless, lonely, and needy” by “limiting the

use of [church] property after hours [and] preventing [the church] from being welcoming for two-thirds of the day.” *Id.* at 761.

2. Here, the Church is likely to succeed on the merits of its claim that the Town’s imposition of its PD Regulations to prohibit the Church’s On-Site Temporary Shelter Ministry and Red Cross Partnership violates RLUIPA’s substantial-burden provision.

This case falls within the scope of RLUIPA’s substantial-burden provision. The Town is a “government” covered by RLUIPA, it is a “municipality” and run by “official[s] of [such] an entity.” 42 U.S.C. § 2000cc-5(4). Further, the Town’s PD Regulations are “land use regulation[s]” within RLUIPA, as they are “a zoning [ ] law” that “limits or restricts” how the Church may “use” its “land,” *id.* § 2000cc-5(5)—specifically, whether the Church may temporarily shelter individuals in RVs/trailers on its Property (the On-Site Temporary Shelter Ministry) or in its main church building during times of emergency (the Red Cross Partnership), *supra* pp.5–14. And the Church, for its part, is a “religious assembly or institution” protected by RLUIPA, 42 U.S.C. § 2000cc(a)(1), that is entitled to raise RLUIPA claims in court, *id.* § 2000cc-5(1), as it is an evangelical, non-denominational Christian Church, *supra* pp.4–5.

The Church’s On-Site Temporary Shelter Ministry and Red Cross Partnership also constitute the Church’s protected “religious exercise” under RLUIPA, *id.* § 2000cc(a)(1), as both involve the “use” of the Church’s “real property for the purpose of religious exercise,” *id.* § 2000cc-5(7)(B). With both the On-Site Temporary Shelter Ministry and Red Cross Partnership, the Church is using its real property, *id.*—either

its trailer and RV on its parking lots, or its main church building, respectively—to temporarily shelter needy individuals and small families specifically because of the Church’s “sincerely held religious belief[s],” *Hobby Lobby*, 723 F.3d at 1138 (citation omitted); see *Hobby Lobby*, 573 U.S. at 730 (RLUIPA is “sister statute” of RFRA); *Grace United Methodist Church*, 451 F.3d at 661 (RLUIPA must “be interpreted by reference to” RFRA). The Church carries out its On-Site Temporary Shelter Ministry and Red Cross Partnership specifically because numerous teachings from the Holy Bible, as well as the Church’s own religious mission, compel the Church to “serv[e] the least of these” by temporarily sheltering individuals and small families who are experiencing homelessness or have been displaced by an emergency. Pastor Mike Decl. ¶¶ 54–70 (quoting *Matthew* 25:40 and citing multiple verses in both the Old and New Testaments). The directness with which the Holy Bible compels churches to care for the needy and homeless is why federal courts across the country regularly recognize church ministries similar to the Church’s ministries here as exercises of religion within RLUIPA’s scope. See, e.g., *Harbor Missionary Church Corp.*, 642 Fed. App’x at 729; *First Lutheran Church*, 326 F. Supp. 3d at 761; *City Walk - Urb. Mission Inc.*, 471 F. Supp. 3d at 1282; *St. Timothy’s Episcopal Church*, 2024 WL 1303123, at \*7; accord *Fifth Ave. Presbyterian Church*, 293 F.3d at 575.

Finally, the Town’s imposition of its PD Regulations to end the Church’s On-Site Temporary Shelter Ministry and Red Cross Partnership here substantially burdens the Church’s religious exercise in violation of RLUIPA’s substantial-burden provision. With its PD Regulations, the Town has “prevent[ed] [the Church’s]

participation in conduct motivated by a sincerely held religious belief.” *Hobby Lobby*, 723 F.3d at 1138 (citation omitted); *see Hobby Lobby*, 573 U.S. at 730; *Grace United Methodist Church*, 451 F.3d at 661. That is, according to the Town, its PD Regulations prohibit the Church from temporarily sheltering individuals and small families in its trailer and RV on its property under its On-Site Temporary Shelter Ministry, and from temporarily sheltering displaced individuals in its main Church building during emergencies with its Red Cross Partnership. *Supra* pp.5–14. Such a ban by a government on a form of sincere religious expression plainly qualifies as “a substantial burden on [ ] religious exercise” under RLUIPA’s substantial-burden provision, 42 U.S.C. § 2000cc(1)(a)—even more so than the other provisions found to impose substantial burdens by federal courts in other cases, including the Tenth Circuit in *Hobby Lobby*, 723 F.3d 1114.<sup>5</sup> In other words, the Town’s PD Regulations have left the Church with no means to “meet [its] same needs” met by the On-Site Temporary Shelter Ministry and the Red Cross Partnership, let alone alternative means that are “quick, reliable, or economically feasible alternatives.” *Westchester Day Sch.*, 504 F.3d at 352.

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<sup>5</sup> *See, e.g., Hobby Lobby*, 723 F.3d at 1140 (concluding that mandate within the Affordable Care Act imposed substantial burden under RFRA, although plaintiffs could avoid mandate by “dropping health insurance” and “pay[ing] about \$26 million per year” and “put[ting] themselves at a competitive disadvantage” (citations omitted)); *Harbor Missionary Church Corp.*, 642 F. App’x at 729 (concluding that denial of church’s conditional-use permit imposed substantial burden under RLUIPA because it prevented church “from conducting its homeless ministry . . . without suffering substantial delay, uncertainty, and expense”); *City Walk - Urb. Mission Inc.*, 471 F. Supp. 3d at 1284, 1287 (concluding that zoning ordinance that “reduce[s] the number of individuals [p]laintiff can serve by two-thirds” imposed substantial burden under RLUIPA).

3. RLUIPA thus shifts the burden to the Town to show how its application of its PD Regulations here satisfies strict scrutiny. 42 U.S.C. § 2000cc(a)(1); *Holt*, 574 U.S. at 362; *Hobby Lobby*, 723 F.3d at 1143. The Town will be unable to meet this heavy, strict-scrutiny burden, as the Town’s prohibition on the Church’s On-Site Temporary Shelter Ministry and Red Cross Partnership do not further even a legitimate interest of the Town, let alone a compelling interest in the least-restrictive means. *See* 42 U.S.C. § 2000cc(a)(1)(A)–(B); *see also Hobby Lobby*, 573 U.S. at 728 (stating the least-restrictive means test is “exceptionally demanding”). To the extent that the Town seeks to invoke some form of public-safety rationale, the Church takes great care to ensure the safety of its On-Site Temporary Shelter Ministry, such that the Town could have no sufficient reason to prohibit this ministry. Pastor Mike Decl. ¶¶ 114–21. Toward this end, the Church conducts formal background checks on the individuals or small families whom the Church identifies as suitable for the On-Site Temporary Shelter Ministry and inspects each temporary shelter weekly. *Id.* ¶¶ 115–19. Further, those individuals and small families who pass this background check must also sign a contract with the Church that generally requires them to take measurable steps toward obtaining or reobtaining self-sufficiency and prohibits them from engaging in various disruptive behaviors. *Id.* ¶¶ 116–20. And, since beginning this ministry in 2018, the Church has never experienced any public-safety or other related issues while carrying out this ministry, even as it has temporarily housed numerous individuals and small families. *Id.* ¶¶ 129–31.



**B. The Church Is Likely To Succeed On Its Free Exercise Clause Count**

Under the Supreme Court’s existing Free Exercise Clause doctrine—established in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990)—courts must apply strict-scrutiny review to laws that substantially burden the exercise of religion and that are not neutral and generally applicable, while a rational basis standard of review applies to neutral and generally applicable laws. *Infra* Part I.B.1.a. Here, the Town’s PD Regulations are not generally applicable, thus the Court must subject them to strict-scrutiny review. *Infra* Part I.B.1.a. That said, if the courts were to conclude that the PD Regulations were neutral laws of general applicability, the Church preserves its argument that the Supreme Court should partially overrule *Smith* and subject any law that substantially burdens a church’s use of its property to care for the poor to strict-scrutiny review, even neutral and generally applicable laws. *Infra* p.31 n.7. Regardless, under any standard of review, the Town’s application of its PD Regulations to prohibit the Church’s On-Site Temporary Shelter Ministry and Red Cross Partnership violates the Free Exercise Clause.

**1. The Free Exercise Clause Protects Against Substantial Burdens On A Church’s Free Exercise Of Religion, Including Under Existing Supreme Court Doctrine**

a. The Free Exercise Clause of the First Amendment, incorporated against the States by the Fourteenth Amendment, mandates that “Congress shall make no law . . . prohibiting the free exercise” of religion. U.S. Const. amend. I; *see Fulton v. City of Philadelphia*, 593 U.S. 522, 532 (2021). Under existing Free Exercise Clause

doctrine, the Supreme Court has held that a law that burdens the free exercise of religion is subject to strict scrutiny, except if the law is *both* “neutral and generally applicable.” *Fulton*, 593 U.S. at 533 (citing *Smith*, 494 U.S. at 878–82; *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531–32 (1993)). If a law is “neutral and generally applicable,” *Fulton*, 593 U.S. at 533, then courts review that law for compliance with the Free Exercise Clause under a rational-basis standard, *see Grace United Methodist Church*, 451 F.3d at 649.

The Supreme Court’s current Free Exercise Clause doctrine defines when a law is neutral and when a law is generally applicable. To be “neutral,” a law’s object must be “something other than the infringement or restriction of religious practices,” *Grace United Methodist Church*, 451 F.3d at 649–50, meaning that the “[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature,” *Fulton*, 593 U.S. at 533 (citations omitted). To be “generally applicable,” on the other hand, a law must not “prohibit[] religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Id.* at 534 (citation omitted). A law fails this general-applicability test if, among other ways, it creates a “system of individual exemptions” from a particular legal regime, with the government “refus[ing] to extend that system to cases of ‘religious hardship’ without compelling reason.” *Id.* at 534 (citations omitted). Moreover, “[a] law is not generally applicable” if it “provid[es] ‘a mechanism for individualized exemptions’” that “‘invite[s]’ the government to consider the particular reasons for a person’s conduct,” *id.* at 533 (quoting *Smith*, 494

U.S. at 884); such “subjective assessment systems that ‘invite consideration of the particular circumstances’ behind an applicant’s actions . . . trigger strict scrutiny,” *Grace United Methodist Church*, 451 F.3d at 651 (quoting *Smith*, 494 U.S. at 884).

b. Here, the Town’s PD Regulations trigger strict scrutiny under existing Supreme Court doctrine, as the Town’s PD Regulations are not generally applicable. The PD Regulations establish specific Planned Development Zoning Regulations separate from the Town’s *general* zoning code that apply to the Church alone and govern land uses only on the Church’s Property. *See* Pastor Mike Decl., Ex.26. The Town’s application of those regulations does not constitute the enforcement of a generally applicable zoning code that applies to properties elsewhere in Castle Rock. Thus, the challenged PD Regulations are not generally applicable under the Free Exercise Clause.

Moreover, the system through which the Church would seek an exemption to the PD Regulations further shows that they are not generally applicable, as this system “invite[s] consideration of the particular circumstances behind [the Church’s] actions.” *Grace United Methodist Church*, 451 F.3d at 651 (citation omitted). To pursue a change to its zoning, the Church “needs to submit a formal application to the Town,” which application would then be evaluated for “compli[ance] with the Town’s Comprehensive Master Plan and . . . compatib[ility] with adjoining properties.” Town of Castle Rock, *FAQ: Is it true that The Rock church is considering building low-income housing in The Meadows?* (Nov. 3, 2023).<sup>6</sup> Then, the Town’s

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<sup>6</sup> Available at <https://www.crgov.com/FAQ.aspx?QID=1006>.

Planning Commission would hold a public hearing and “provide a recommendation to [the] Town Council,” which holds its own public hearing to determine “whether the application meets Code requirements.” *Id.* Such a system “invite[s] consideration of the particular circumstances behind [the Church’s] actions” and subjects the Church to the possibility of “unfair treatment on the basis of religious animus,” and therefore “trigger[s] strict scrutiny.” *Grace United Methodist Church*, 451 F.3d at 651 (quoting *Smith*, 494 U.S. at 884).<sup>7</sup>

## **2. The Town’s Application Of Its PD Regulations Here Violate The Free Exercise Clause Under Any Level Of Scrutiny**

Because the Town’s PD Regulations here are not generally applicable, the Town’s “actions are subject to ‘the most rigorous of scrutiny.’” *Fulton*, 593 U.S. at 541

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<sup>7</sup> The Church preserves its argument that the Supreme Court should partially overrule *Smith* and review under strict scrutiny even neutral and generally applicable laws that substantially burden a church’s use of its property to care for the poor—including the PD Regulations at issue here, if the courts were to conclude that those regulations are neutral and generally applicable. When considering whether to depart from *stare decisis* and overrule a prior decision, the Supreme Court considers “factors that should be taken into account,” including the “quality of [the decision’s] reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision.” *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 917 (2018). Each of the Court’s factors weigh in favor overruling *Smith* as it applies to neutral and generally applicable laws that substantially burden a church’s use of its property to care for the poor, because the decision plainly “failed to respect th[e] [Supreme] Court’s precedents,” *Fulton*, 593 U.S. at 618 (Gorsuch, J., concurring); “was mistaken as a matter of the Constitution’s original public meaning,” *id.*, including because it was as “common . . . at the founding” for “churches” to “offer their help” to “homeless people,” Oral Argument Tr. at 84–85, *City of Grants Pass*; and “has proven unworkable in practice,” *Fulton*, 593 U.S. at 618 (Gorsuch, J., concurring), with subsequent developments further weakening *Smith*’s already flimsy reasoning, *see id.* at 563, 612 (Alito, J., concurring).

(quoting *Lukumi*, 508 U.S. at 546). “A government policy can survive strict scrutiny only if it advances ‘interests of the highest order’ and is narrowly tailored to achieve those interests.” *Id.* (quoting *Lukumi*, 508 U.S. at 546). “That standard is not watered down; it really means what it says.” *Tandon v. Newsom*, 593 U.S. 61, 65 (2021) (per curiam) (citation omitted). Accordingly, when strict scrutiny applies, a state law “rare[ly]” survives. *Carson v. Makin*, 596 U.S. 767, 781 (2022).

The Town cannot satisfy this rigorous scrutiny. Indeed, its application of its PD Regulations to bar the Church’s two relevant ministries violates the Free Exercise Clause under *any* applicable level of scrutiny, *see Fulton*, 593 U.S. at 533, even the lower-level scrutiny that applies to neutral laws of general applicability under existing Supreme Court precedent, *see Grace United Methodist Church*, 451 F.3d at 649.

The Town can have no plausible reason for applying its PD Regulations to bar the Church’s On-Site Temporary Shelter Minister and Red Cross Partnership. Both of these ministries provide essential care to needy individuals and families suffering from homelessness or from displacement during an emergency in Castle Rock. *Supra* pp.7–12. The Church’s On-Site Temporary Shelter Ministry provides individuals and small families experiencing homelessness with a safe, temporary shelter—as well as food, clothing, other material necessities, and access to religious and community offerings—so that they may obtain or reobtain a sustainable level of self-sufficiency, including by finding stable employment and a stable place to live. *Supra* pp.7–10. The individuals who have benefitted from the On-Site Temporary Shelter Ministry

“would have remained homeless” without this ministry. *Supra* pp.9–10; *see* Krueger Decl. ¶ 12; Ridenour Decl. ¶ 15; *see also* Price Decl. ¶¶ 11–12. As they themselves have attested, “the temporary shelter and other assistance that the Church provided” to these beneficiaries when they were experiencing homelessness and other personal crises was an essential part of their journeys to becoming “self-sufficient, contributing member[s] of society.” Krueger Decl. ¶ 13; Ridenour Decl. ¶ 16; *see also* Price Decl. ¶¶ 11–12. Likewise, the Church’s Red Cross Partnership provides essential temporary shelter and other support to needy individuals in times of emergency, such as the 2022 blizzard where the Church and Red Cross provided cots and meals. *Supra* pp.10–12.

Further, these essential services are found nowhere else in the community, Pastor Mike Decl. ¶¶ 163–66, which only underscores the irrationality of the Town blocking these ministries here. At the time of the Town’s adverse actions against these ministries, the Church was the only resource available in the Town—and likely in all of Douglas County—that provided temporary shelter for individuals and small families experiencing homelessness and for those displaced due to emergency. *Id.* ¶ 164. And since the Town affirmed its adverse determination against the Church’s On-Site Temporary Shelter Ministry and inhibited the Church’s future ability to work with the Red Cross Partnership in Douglas County, the Church has been unable to carry out these vital ministries or provide these essential services. *Id.* ¶¶ 163–67. Thus, needy individuals experiencing homelessness in Castle Rock have nowhere to go in Castle Rock to receive temporary shelter. *Id.* ¶¶ 164–69. Instead, these

individuals now must leave their local support systems and travel to far-away shelters outside the community to obtain temporary shelter—assuming the County has the resources to provide the necessary transport—or simply go without these basic human necessities. *Id.*

Finally, the Town could not possibly claim that inhibiting the Church’s On-Site Temporary Shelter Ministry or Red Cross Partnership furthers any legitimate interest in public safety. As explained above, the Church takes numerous safety precautions as it operates its On-Site Temporary Shelter Ministry, and the Church has successfully carried this ministry with *no* health, safety, or welfare complaints for years. *Supra* pp.8–9. As for the Church’s Red Cross Partnership, there have been no suggestions, of any kind, that this somehow raises health, safety, or welfare concerns. On the contrary, both of the Church’s ministries manifestly further the health, safety, and welfare of Castle Rock by providing safe, dignified, temporary shelter for needy individuals in the community. *Supra* pp.7–12.

### **C. The Church Is Likely To Succeed On Its Retaliation Counts**

The Church is likely to succeed on its unconstitutional-retaliation claim, *infra* Part I.C.1, and its RLUIPA retaliation claim, *infra* Part I.C.2.

1. The Constitution prohibits the government from retaliating against individuals for exercising their constitutional rights. Specifically, “the Free Exercise Clause protects against . . . penalties on the free exercise of religion, not just outright prohibition[.]” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017) (citation omitted). Accordingly, “the First Amendment prohibits

government officials from subjecting an individual to retaliatory actions . . . for speaking out,” *Shimomura v. Carlson*, 17 F. Supp. 3d 1120, 1127 (D. Colo. 2014), *aff’d*, 811 F.3d 349 (10th Cir. 2015) (citing *Hartman v. Moore*, 547 U.S. 250, 256 (2006)), and prohibits “a government entity [from] s[ee]king to punish an individual for engaging in [actions] doubly protected by the Free Exercise and Free Speech Clauses of the First Amendment,” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 (2022). To make out a First Amendment retaliation claim for speech or the exercise of religion, “the plaintiff must show that (a) he or she was engaged in constitutionally protected activity; (b) the defendant’s actions caused the plaintiff to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity; and (c) the defendant’s adverse action was substantially motivated as a response to the plaintiff’s exercise of constitutionally protected conduct.” *Van Deelen v. Johnson*, 497 F.3d 1151, 1155–56 (10th Cir. 2007); *Irizarry v. Yehia*, 38 F.4th 1282, 1288 (10th Cir. 2022); *Perez v. Ellington*, 421 F.3d 1128, 1131–32 (10th Cir. 2005).

Further, the right “of citizens to petition the government for the redress of their grievances . . . is ‘among the most precious of the liberties safeguarded by the Bill of Rights.’” *Van Deelen*, 497 F.3d at 1155 (quoting *United Mine Workers v. Ill. State Bar Ass’n*, 389 U.S. 217, 222 (1967)). Indeed, “a private citizen exercises a constitutionally protected First Amendment right *anytime* he or she petitions the government for redress; the petitioning clause . . . does not pick and choose its causes.” *Id.* at 1156. Accordingly, government officials are prohibited from “wield[ing] the powers of their office as weapons against those who question their decisions” and may not retaliate



against individuals for exercising their constitutional right to file “lawsuits and administrative appeals” challenging governmental actions. *Id.* at 1155–56.

Here, the Church is likely to succeed on the merits of its First Amendment retaliation claim, as it satisfies each of the three essential elements for this claim.

First, the Church has engaged in constitutionally protected activity, *Van Deelen*, 497 F.3d at 1155–56—namely its exercise of its religion through the On-Site Temporary Shelter Ministry and its Red Cross Partnership, *supra* pp.7–12, as well as its administrative appeal to the BOA challenging the Town’s Letter Determination regarding its On-Site Temporary Shelter Ministry, *supra* pp.13–15; *see Van Deelen*, 497 F.3d at 1156 (holding that one “exercises a constitutionally protected First Amendment right anytime he or she petitions the government for redress”).

Second, the Town’s adverse actions against the Church—its harassment of the Church’s Lighthouse Coffee operations on the Church’s Property, as well as its persuading the Housing Authority to cease cooperating with the Church on a proposed development, *supra* pp.15–18—would chill a person of ordinary firmness from engaging in similar First Amendment protected activity, *Van Deelen*, 497 F.3d at 1155–56. The Town’s swift, repeated, and adverse actions against the Church puts anyone on notice that, if he carries out a religious ministry that the Town condemns or dares to appeal the Town’s zoning decisions, the Town will look to punish that individual in various respects. Any “person of ordinary firmness” would thus sensibly conclude that he ought not “continu[e] to engage in” the activities that the Town disfavors, despite their constitutionally protected status. *Id.*

Third, the Town’s “adverse action[s]” against the Church could only possibly be “substantially motivated as a response to” the Church’s “constitutionally protected conduct.” *Id.* The timing of the Town’s adverse actions against the Church’s Lighthouse Coffee operations—coming right on the heels of the Church’s appeal of the Town’s zoning determination—indicates that the Town sought to retaliate against the Church for taking that appeal. That is especially true given that the Church has served coffee from its main Church building since 2006 and has a business and sales tax license that it understood to allow it to serve and sell coffee. *Supra* pp.15–17. And churches serving coffee is a common practice throughout Castle Rock (and, indeed, the Nation), yet the Town has apparently not taken any similar adverse actions against any other church. *Supra* p.16. Finally, in its letter terminating its relationship with the Church, the Housing Authority cited the Town’s adversarial relationship with the Church—a clear indication of the causal link between the Town’s adverse actions and the Church’s constitutionally protected conduct here. *Supra* p.17.

2. Similarly, RLUIPA prohibits the taking of adverse actions against a person in retaliation for the person’s exercise of his religion, as protected by RLUIPA. As noted above, RLUIPA’s substantial-burden provision provides that a municipality may not “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, unless the government demonstrates that” such imposition or implementation satisfies strict scrutiny. 42 U.S.C. § 2000cc(a)(1). Further, RLUIPA’s equal-terms

provision provides that “[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.” *Id.* § 2000cc(b)(1). And RLUIPA’s nondiscrimination provision provides that “[n]o government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.” *Id.* § 2000cc(b)(2).

These three RLUIPA provisions prohibit the government from taking adverse action against a church because that church has engaged in religious exercise, as protected by RLUIPA itself. That is, such retaliatory conduct: imposes a substantial burden on a church’s free exercise without justification, 42 U.S.C. § 2000cc(a)(1), *see Grace United Methodist Church*, 451 F.3d at 661; subjects a person to less-than-equal treatment than a nonreligious assembly or institution, 42 U.S.C. § 2000cc(b)(1); *see generally Rocky Mt. Christian Church v. Bd. of Cnty. Comm’rs*, 613 F.3d 1229, 1236–1237 (10th Cir. 2010) (analyzing RLUIPA’s equal terms provision); and/or discriminates against a church on the basis of its religion or religious denomination, 42 U.S.C. § 2000cc(b)(2); *see generally Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm’n*, 768 F.3d 183, 198–199 (2d Cir. 2014) (analyzing RLUIPA’s nondiscrimination provision).

Here, the Town violated these RLUIPA provisions by taking numerous adverse actions against the Church in retaliation for the Church operating its On-Site Temporary Shelter Ministry and its Red Cross Partnership, as well as for taking legal action to redress the Town’s unconstitutional prohibition of these ministries, which

ministries the Town disapproves. *Supra* pp.15–17. That is, the Town violated RLUIPA by using its zoning authority to abruptly shut down the Church’s on-site coffee operation, threaten the local coffee business that the Church had partnered with, and pressure the County Housing Authority to end its partnership in a low-income housing project with the Church—all because the Church operated these two ministries and sought to defend its right to do so before courts and administrative bodies. *Supra* pp.15–17. These adverse actions violate RLUIPA’s substantial-terms provision because they impose a substantial burden on the Church, without any adequate justification, by prohibiting the Church from carrying on its operations and ministries as usual. *See supra* pp.19–27; 42 U.S.C. § 2000cc(a)(1), *see Grace United Methodist Church*, 451 F.3d at 661. These adverse actions also violate RLUIPA’s equal-terms provision by treating the Church on less-than-equal terms than nonreligious institutions, given the Town’s abrupt departure the prior practice that had prevailed in the Town. *See supra* pp.16–17; 42 U.S.C. § 2000cc(b)(1); *see generally Rocky Mt. Christian Church*, 613 F.3d at 1236–1237. And these adverse actions violate RLUIPA’s nondiscrimination provision because they harm the Church on the basis of its Christian faith, given that the Town’s motivating factor for these actions was its antipathy for the Church’s religious mission to temporarily shelter the needy. *See supra* pp.15–17, 36–37; 42 U.S.C. § 2000cc(b)(2); *Chabad Lubavitch*, 768 F.3d at 198–199.

## II. The Rock Will Suffer Irreparable Harm From The Loss Of Its Fundamental Rights To Exercise Its Religion

The Church will suffer irreparable harm in the absence of a preliminary injunction because the Town's imposition of its PD Regulations to prohibit the Church's On-Site Temporary Shelter Ministry and Red Cross Partnership, as well as the Town's retaliatory conduct toward the Church, prevents the Church from exercising its sincerely held religious beliefs to care for the needy in its community.

A. A plaintiff suffers irreparable harm whenever a challenged government action substantially burdens its free-exercise rights, whether those rights are protected under the Free Exercise Clause or under RLUIPA. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam); see also, e.g., *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012). And “[t]his principle applies with equal force to the violation of RLUIPA rights because RLUIPA enforces First Amendment freedoms.” *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (citing *Elrod*, 427 U.S. at 373). Thus, a plaintiff's “likely” loss of free-exercise rights as protected by RLUIPA “satisfies the irreparable harm factor,” standing alone. *Hobby Lobby*, 723 F.3d at 1147 (holding as such in RFRA context and “analog[izing] to First Amendment cases”); see *Hobby Lobby*, 573 U.S. at 730 (RLUIPA is “sister statute” of RFRA); *Grace United Methodist Church*, 451 F.3d at 661 (RLUIPA must “be interpreted by reference to” RFRA). Accordingly, “government condemnation of religion”—whether in the Free Exercise Clause context or RLUIPA context—alone

establishes “irreparable injury” with “no further showing of irreparable injury [being] necessary.” *Awad*, 670 F.3d at 1131 (citations omitted); see *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1190 (10th Cir. 2003) (noting the “presumption” of irreparable injury “when infringement of First Amendment rights is alleged”).

B. Here, the Church will suffer irreparable harm in the absence of the entry of a preliminary injunction against the Town during the pendency of this case.

As the Church showed above, the Town’s imposition of its PD Regulations to prohibit the Church’s On-Site Temporary Shelter Ministry and Red Cross Partnership, as well as the Town’s retaliatory actions towards the Church, infringes upon the Church’s free exercise of its sincerely held religious beliefs. *Supra* Part I. The Church sincerely believes, as a matter of its Christian faith and mission, that it must serve the poor and needy of its community, including by offering temporary shelter and other services when needed. See, e.g., *Fifth Ave. Presbyterian Church*, 293 F.3d at 575 (“provision of outdoor sleeping space for the homeless effectuates a sincerely held religious belief”). “[T]he Bible specifically and repeatedly directs faithful Christians like the Church and its members to care for the poor and needy”—including by “provid[ing] the poor wanderer with shelter”—and teaches that “God will judge us . . . in part based on how we have cared for ‘the least of these.’” Pastor Mike Decl. ¶¶ 57, 59, 66. These core Christian beliefs are why the Church included “Embrace People” in its mission and established its On-Site Temporary Shelter Ministry and Red Cross Partnership to pursue that mission. *Id.* ¶¶ 54–56.

Yet, the Town's application of the PD Regulations here prevents the Church from carrying out these ministries and fulfilling its religious obligations to these needy members of the Town of Castle Rock community. *See supra* pp.5–15. If the Town's prohibition on the Church's On-Site Temporary Shelter Ministry and Red Cross Partnership remains in place, the Church will not be able to provide temporary shelter and other essential aid to the homeless, needy, and displaced in its community. *Supra* pp.25–26. Ending these ministries and requiring the Church to turn away such individuals would force the Church to violate its sincerely held religious belief that it is obligated to use its property to shelter and help those in need. *Supra* pp.6–7. That is a *per se* irreparable harm, whether the Court concludes that the Church's free-exercise rights here are protected by RLUIPA or the Free Exercise Clause. *See, e.g., Diocese of Brooklyn*, 141 S. Ct. at 67; *Opulent Life Church*, 697 F.3d at 295.

The Town's imposition of its PD Regulations to prohibit the Church's On-Site Temporary Shelter Ministry and Red Cross Partnership also gravely injures the same poor and needy individuals that the Church seeks to serve with these two ministries, thus impeding the Church's religious mission. *See generally Hobby Lobby*, 723 F.3d at 1147; *Awad*, 670 F.3d at 1131; *Heideman*, 348 F.3d at 1190. The Church is the only resource available in the Town—and, likely, in Douglas County—that provides temporary shelter for individuals and small families experiencing homelessness and for individuals displaced due to emergency. Pastor Mike Decl. ¶ 164. So, without the Church's ministries, either the County would have to transport individuals and

families experiencing homelessness to far-away shelters outside of the Castle Rock community—thus removing these individuals from their social supports, and likely requiring the splitting of families—or these individuals would simply go without this basic human necessity. *See id.* ¶¶ 165–69. Indeed, one of the individuals who benefitted from the Church’s On-Site Temporary Shelter Ministry stated that, without the Church’s ministry, he “would have remained homeless” because “the only other location where [he] could have stayed was a shelter in another city that [he] had no means of traveling to and would have required [him] relocate [his] life.” Krueger Decl. ¶ 12. And another beneficiary stated that he similarly “would have most likely remained homeless” and may not “be alive today” if he had not received “temporary shelter and other assistance from the Church.” Ridenour Decl. ¶ 15; *see also* Price Decl. ¶¶ 11–12.

These harms to the Church and the people whom it serves have already occurred and will continue to occur unless and until this Court acts. The Church regularly receives individuals needing temporary shelter and other aid, whether through referrals from Douglas County or by these individuals finding the Church on their own. *Supra* pp.7–12. Thus, individuals in its community will continue to need and seek out the Church for the help that the Church’s On-Site Temporary Shelter Ministry and Red Cross Partnership provide during the pendency of this suit. Indeed, the Church is currently aware of a father and his son who are in need of temporary shelter and who sought this help from the Church—yet the Church had to turn these individuals away because of the Town’s prohibition. *Supra* p.15. On another



occasion, the Douglas County Human Services reached out to the Church to ask whether any of the Church's temporary shelters were available for a mother with three small children—aged seven, four, and three—who were without shelter. *Supra* p.15. The Douglas County Human Services explained that, unless the mother and her children could obtain temporary shelter from the Church, the County would be required to remove these children from the custody of the mother to find suitable shelter for them. *Supra* p.15. But because the Town shut down the Church's On-Site Temporary Shelter Ministry, the Church was required to turn away the mother and her children. *Supra* p.15. So, unless the Court acts, these needy individuals, individuals whom the Church has a religious duty to help, will go without temporary shelter and the aid they need. *Supra* p.15. That is, the Church already has turned away needy individuals since the Town's actions here, and it will continue to be forced to turn away such individuals during the Pendency of this case unless this Court issues a preliminary injunction. *Supra* p.15.

Finally, a preliminary injunction is also necessary to prevent irreparable harm to the Church from the Town's retaliatory actions against the Church. As referenced above, the Town has taken multiple adverse actions against the Church for the Church's operation of its ministries and its challenging of the Town's Notice of Zoning Violation, which retaliatory actions have made it more difficult for the Church to carry out its religious mission on a daily basis. *Supra* pp.15–17. That is, these retaliatory actions have chilled the Church from exercising its right to free religious exercise, as protected by the Free Exercise Clause and/or RLUIPA, and to petition

the government for redress, as protected by the First Amendment. *See supra* pp.34–39. Indeed, the Town has already harassed the Church by shutting down its coffee operations—which operations are common among churches in the community, and completely innocuous—and has targeted the Church’s partnership with the Housing Authority. *See supra* pp.15–17. These retaliatory actions have and will continue to impede the Church’s ability to minister to the needy in its community. Without action from this Court, the Church is only left to imagine and fear how the Town will next seek to disrupt its ministry in Castle Rock—precisely the kind of chilling effect on protected activity that the unconstitutional-retaliation doctrine and RLUIPA seek to prevent. *See supra* pp.34–39.

### **III. A Preliminary Injunction Will Not Cause Defendant Any Harm, And Such Relief Is Decidedly In The Public Interest Here**

Where, as here, a plaintiff seeks preliminary-injunctive relief against the government, the harm-to-the-nonmovant factor and the public-interest factor “merge.” *Denver Homeless Out Loud v. Denver*, 32 F.4th 1259, 1278 (10th Cir. 2022) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). “[W]hen a law is likely unconstitutional, the interests of those the government represents . . . do not outweigh a plaintiff’s interest in having its constitutional rights protected,” as “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Citizens United v. Gessler*, 773 F.3d 200, 218 (10th Cir. 2014) (citations omitted); *Hobby Lobby*, 723 F.3d at 1146–47. And although “violations [of RLUIPA] are not constitutional violations, Congress has given [RLUIPA] similar importance” as the Free Exercise Clause, such that demonstrating a “likely” violation of RLUIPA

likewise shows that “an injunction would be in the public interest.” *Hobby Lobby*, 723 F.3d at 1147 (holding in RFRA context); *see Hobby Lobby*, 573 U.S. at 730 (RLUIPA is “sister statute” of RFRA); *Grace United Methodist Church*, 451 F.3d at 661 (RLUIPA must “be interpreted by reference to” RFRA).

Here, the public interest strongly favors granting the Church’s request for a preliminary injunction. The Church has demonstrated that the Town’s imposition of its PD Regulations to prohibit the Church’s On-Site Temporary Shelter Ministry and inhibit the Red Cross Partnership will likely “violat[e] [the Church’s] constitutional rights” under the First Amendment, *see Citizens United*, 773 F.3d at 218, and its rights under RLUIPA, *see Hobby Lobby*, 723 F.3d at 1147; *supra* pp.19–34. Such actions from the Town directly frustrate the Church’s primary religious mission, based on its sincerely held Christian beliefs and grounded in the Holy Bible, to care for the needy and homeless. *See supra* pp.7–12, 24–26.

Moreover, a preliminary injunction is particularly in the public interest here because the Church’s two ministries provide essential aid to the public by temporarily sheltering and caring for needy individuals. *See supra* pp.7–12. As explained above, the Church’s ministries are the *only* available resources for temporary shelter and aid to homeless or displaced individuals in the Town—and, likely, in Douglas County—thus ending these ministries would either force the County to send individuals experiencing homelessness to distant locations outside of the Castle Rock community, or result in individuals lacking this essential human need. *Supra* pp.14–15, 33. As multiple prior beneficiaries of the Church’s ministries explained, they had

nowhere else to go when they sought help from, or were referred to, the Church, such that if the Church had not provided them temporary shelter and aid, they would have remained homeless—living in their cars or *on the streets*. See Ridenour Decl. ¶¶ 15–16; Krueger Decl. ¶¶ 12–13. Moreover, even if any of the needy small families whom the Church has historically helped are able to relocate to far away shelters, they would likely be separated, with the children being placed in the foster care system. See Pastor Mike Decl. ¶¶ 166–67. And the Church is right now aware of two small families in need of temporary shelter that it will have to turn away under the Town’s application of the PD Regulations. *Supra* pp.14–15, 33, 43–44. Forcing the homeless and needy to go without shelter and/or to relocate and be separated from their children does not serve the public interest. On the contrary, “the public interest is better served here by [the Church] continuing to maintain a welcoming environment to the community, especially to the homeless, poor, and disadvantaged.” *First Lutheran Church*, 326 F. Supp. 3d at 769. The Town, for its part, has no legitimate interest in enforcing an unconstitutional or unlawful regulation. See *Citizens United*, 773 F.3d at 218; *supra* pp.25–34. And any asserted interest the Town may have is far “outweigh[ed]” by “the public interest to prevent the violation of [the Church’s] constitutional rights.” *Citizens United*, 773 F.3d at 218 (citations omitted).

### CONCLUSION

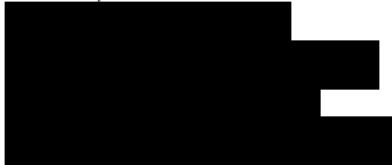
The Court should grant the Church’s Motion For A Preliminary Injunction, specifically ordering that, during the pendency of this suit, Defendant is enjoined from: (1) interfering with the Church’s operation of its On-Site Temporary Shelter

Ministry as to two RVs/trailers on the Church's Property; (2) interfering with the Church's Red Cross Partnership; and (3) taking any adverse action against the Church or those with whom the Church affiliates in retaliation for the Church's exercise of its constitutionally or statutorily protected rights.

Dated: May 13, 2024.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2024, I sent a copy of the foregoing to be served on the following parties in the way described below each party's name:

Party's Name: Town of Castle Rock, Colorado

How Served: Personal service upon Jason Gray, in his official capacity as Mayor of Castle Rock, Colorado, and upon Lisa Anderson, in her official capacity as Town Clerk of Castle Rock, Colorado, pursuant to Colo. R. Civ. P. 4(e)(6).

Party Attorney's Name: (attorney not yet appeared)

Address:

100 N. Wilcox St.,  
Castle Rock, CO 80104

Telephone Number: [REDACTED]

Email Addresses:

Jason Gray: [REDACTED]

Lisa Anderson: [REDACTED]

*/s/Misha Tseytlin*

MISHA TSEYTLIN

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