

No. 24-3625

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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DAD'S PLACE OF BRYAN, OHIO,

*Plaintiff-Appellant,*

v.

CITY OF BRYAN, OHIO, *et al.*,

*Defendants-Appellees.*

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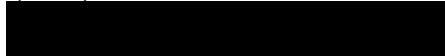
On Appeal from the United States District Court  
for the Northern District of Ohio  
Case No. 3:24-cv-00122  
The Honorable Jack Zouhary

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PLAINTIFF-APPELLANT'S EMERGENCY MOTION FOR  
ADMINISTRATIVE STAY AND  
PRELIMINARY INJUNCTION PENDING APPEAL

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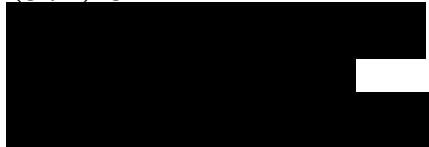
Philip D. Williamson  
Taft Stettinius & Hollister LLP  
425 Walnut St., Suite 1800  
Cincinnati, OH 45202  
(513) 381-2838



Stephen D. Hartman  
Spengler Nathanson P.L.L.  
900 Adams St.  
Toledo, OH 43604  
Ph: 419/690-4604  
Fax: 419/241-8599



David J. Hacker  
Jeremy Dys  
Ryan Gardner  
First Liberty Institute  
2001 W. Plano Pkwy., Suite 1600  
Plano, TX 75075  
(972) 941-4444



*Counsel for Plaintiff Dad's Place of Bryan, Ohio*

## INTRODUCTION

Dad's Place is a church in Bryan, Ohio, with a simple mission: Share the love of Jesus with anyone who walks through the doors. Its doors are open 24/7 for anyone who needs rest or refuge. Unsurprisingly, some sleep at the Church overnight. The Church does not disturb them without a biblically valid reason to make them leave.

The City does not want people to spend the night at Dad's Place, and has deployed the zoning and fire code to force them out. The Church sought injunctive relief to protect its religious exercise and its congregants' right to rest and shelter. The District Court denied relief.

The Church now appeals. Consistent with the relief it requested below, the Church moves for an administrative stay and an emergency injunction to bar the City from burdening the Church's religious exercise by taking or continuing any action to enforce the zoning and fire codes against the Church during this appeal.

The stakes are not just free exercise rights. At least one congregant died because he was forced out of Dad's Place and into an apartment; he had a seizure in his sleep with no one to help him, and passed away. Other congregants have diabetes, end stage renal disease, and other

maladies that leave them with few options—if any—outside of the shelter of Dad’s Place. The Court should enter an administrative stay and grant an injunction pending appeal.

## FACTS

Dad’s Place opened in downtown Bryan, Ohio, in 2018. Verified Complaint, R. 1 ¶ 15, PageID #4. Chris Avell is its pastor. *Id.* The Church is situated in the City’s C-3 Central Business District. *Id.* ¶ 24, PageID #24.

Dad’s Place ministers to the hurting, marginalized, and outcast living in and around Bryan. *Id.* ¶¶ 15–16, PageID #4. The Church’s primary goal is to save souls by showing people the love of Jesus Christ. *Id.* ¶ 19. It informally opened its doors at all hours for years on an as-needed basis when it received calls from the local hospital, other churches, or even the Bryan Police. Deposition of Chris Avell, R. 39, PageID #910-911. In March 2023, it formally opened its doors 24/7. R. 1 ¶ 49, PageID #10.

In October 2023, Mayor Carrie Schlade observed people going in and out of the Church one night. Deposition of Carrie Schlade, R. 36, PageID #467-469. Shortly thereafter, she directed the City’s police,

zoning, and fire officials to investigate the Church. *Id.*; Deposition of Doug Pool, R. 37, PageID #555. Those investigations culminated in a November 2023 letter from Zoning Administrator Andrew Waterston, ordering the Church to “cease use of housing people.” R. 43-7, PageID #1085. After the Church refused to kick anyone out, the City filed 18 criminal charges against Pastor Avell—at the Mayor’s direction—for allegedly violating the City’s zoning ordinances. R. 1 ¶ 82, PageID #17; R. 36, PageID #468-470; R. 43-11, PageID #1091-1106; R. 43-26, PageID #1196.

Pastor Avell first learned of the charges on the front page of a newspaper. R. 1 ¶ 84, PageID #17. A month later, the City served him with the criminal complaints in front of his congregation on a Sunday morning, just before services began. *Id.* ¶ 89, PageID #18. The City has also threatened ruinous fines against the Church and Pastor Avell, R. 43-11, PageID #1091-1106; R. 43-25, PageID #1192, and is trying to force the Church’s landlord to evict the Church. R. 1 ¶ 97, PageID #20.

The City also used its fire code to harass the Church. Between November 2023 and January 2024, the City conducted at least 7 fire inspections of the Church. R. 37, PageID #666; Fire Inspection Reports,

R. 44-1, PageID #1208-1249. The Church worked diligently to resolve all alleged code violations, but the City kept moving the goalposts. *See id.*, R. 43-19–R. 43-22, PageID #1162-1184.

The City also threatened to take additional action against the Church. R. 43-14, PageID #1112-1113. So the Church sued to protect its free exercise rights under the Ohio and U.S. Constitutions, and RLUIPA, and its congregants’ right to shelter under the Fair Housing Act.<sup>1</sup>

The parties attempted mediation, but that fell apart when the City conducted surprise fire inspections this spring and filed new charges against Pastor Avell. R. 43-23–43-25, PageID #1185-1192. So the Church again sought injunctive relief, which the district denied. R. 47, PageID #1378-1401. The Church appealed and now moves for emergency relief.

## ARGUMENT

### I. Standard of Review

Under Federal Rule of Appellate Procedure 8(a)(2), this Court may grant an injunction while an appeal is pending. A party may move in this Court in the first instance if “moving first in the District Court would be

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<sup>1</sup> For the sake of brevity, this motion focuses on the Free Exercise and RLUIPA-Substantial Burden claims, but the Church wins on all claims.

impracticable.” FRAP 8(a)(2)(A)(i). Here, the District Court denied preliminary injunctive relief after full briefing and a hearing. Having just denied preliminary injunctive relief, the District Court seems unlikely to reverse course.

The Court considers the usual four stay factors when deciding whether to grant an injunction pending appeal. *Monclova Christian Academy v. Toledo-Lucas Cnty. Health Department*, 984 F.3d 477, 479 (6th Cir. 2020). But in cases involving RLUIPA or free-exercise rights, only one question usually matters: Has the plaintiff shown a likelihood of success on the merits? *Cath. Healthcare Int’l, Inc. v. Genoa Charter Twp*, 82 F.4th 442, 447 (6th Cir. 2023). And that dispositive question—whether the City’s conduct violates the Church’s religious exercise rights—is a legal question this Court reviews de novo. *Monclova*, 984 F.3d at 479.

## **II. Dad’s Place should prevail on the merits.**

Dad’s Place is likely to prevail on appeal because the City is violating the Church’s free exercise and RLUIPA rights. The City has discriminated against Dad’s Place in two ways: targeted enforcement of the zoning code and pretextual enforcement of the fire code. The Free

Exercise Clauses of the U.S. Constitution and the Ohio Constitution govern application of both codes. RLUIPA applies to the zoning code.

The City's actions are subject to strict scrutiny. Under the Free Exercise Clause of the Ohio Constitution, any regulation that burdens religious exercise—including those that are “religion-neutral” and “generally applicable”—must pass strict scrutiny. *Humphrey v. Lane*, 89 Ohio St. 3d 62, 68 (2000). The Free Exercise Clause of the U.S. Constitution adds one hoop: any regulation that (a) burdens religious exercise and (b) is not *both* religion-neutral and generally applicable must likewise face strict scrutiny. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022). And under RLUIPA, a zoning ordinance that substantially burdens religious exercise triggers strict scrutiny. The City's policies and practices fail this scrutiny.

**A. The City's application of its zoning and fire codes violates the Free Exercise Clause of the Ohio Constitution.**

The District Court never addressed the Church's request for injunctive relief based on the Ohio Constitution. That omission alone merits an injunction pending appeal and, ultimately, reversal.

The Ohio Constitution provides broad protections for religious exercise, forbidding “any interference with the rights of conscience.” Ohio



Const. Art. I, § 7. To state a claim, a plaintiff need only show that a government enactment “has a coercive effect against him in the practice of his religion” and that his religious belief is sincerely held. *Humphrey*, 89 Ohio St.3d at 68. The burden then shifts to the government to show that the enactment passes strict scrutiny—“the state enactment must serve a compelling state interest and must be the least restrictive means of furthering that interest.” *Id.*

**1. The City’s application of its zoning and fire codes burdens the Church’s religious exercise.**

The first question is what is the religious belief at issue? Dad’s Place believes it has a religious obligation to operate 24/7 to lead people to Christ, particularly those who might take refuge in the church at night. Deposition of Chris Avell, R. 39, PageID #913-914. It seeks to be a place of refuge where people can find rest; thus the Church will not ask people to leave unless it has a biblically valid reason. *Id.* at PageID #915-916. The Church does not believe that people sleeping within its building violates any biblical standards, *id.* at PageID #949, so asking anyone to leave on this basis would break its “biblical conscience” and undermine its mission of “offering a place that anyone can come in and encounter

the love of Jesus, 24/7.” *Id.* at PageID #918. The sincerity of these beliefs is undisputed and self-evident from Pastor Avell’s testimony.

The next question is whether the City’s code enforcement has a “coercive effect” against the Church’s religious exercise. *Humphrey*, 89 Ohio St.3d at 68. Each individual Defendant has stated they want people out of the Church at night. *See* R. 1 ¶ 72, PageID #15 (Mendez); R. 39, PageID #917, 950 (Waterston); R. 37, at PageID #640 (Pool); R. 43-15, PageID #1154-1156 (Pool); R. 43-16, PageID #1158 (Pool); Email from Mayor Carrie Schlade, R. 43-26, PageID #1196. This directly contravenes the Church’s religious beliefs.

The City has filed criminal charges against Pastor Avell for alleged violations of both the zoning code and the fire code. R. 43-11, PageID #1091-1108 (zoning); R. 43-25, PageID #1192 (fire). The fire code charges include the threat of fines of \$1000 per day until the Church kicks its congregants out. That is unmistakably coercive—it is meant to be.

The City skirts the burden analysis by arguing that it does not object to the Church remaining open 24/7, but objects to the Church allowing people to sleep overnight. R. 47, PageID #1385. There are two problems with the City’s position.

First, after the City sent its first cease-and-desist letter to Dad's Place in November 2023, Pastor Avell asked Mr. Waterston what he suggested the Church do in order to comply with the letter. Mr. Waterston said to open at 8am and close at 10pm. R. 39, PageID #917. That makes for 14 hours of ministry per day, not 24. The City changed its tune only after the Church sued.

The second problem is that the City—and the District Court—wrongly assume that the Church can separate providing “a place that [a person] can find rest,” R. 39, PageID #916, from allowing that person to sleep. But the Church's faith is “not so neatly compartmentalized.” *Monclova*, 984 F.3d at 480. As Pastor Avell explained, it is “core to [his] faith” not to send someone away without a valid biblical reason. R. 39, PageID #916. It is not for the City or the court to dictate how a Church must understand or carry out its own mission. The Church believes its mission is to provide a place of refuge and rest 24-hours a day, which includes the physical rest of sleep. The City has ordered the Church to stop providing that rest. The City's actions therefore plainly burden the Church's religious exercise.

With respect to the zoning code, the District Court defined the “burden” on Dad’s Place as merely the need to apply for a zoning variance or conditional use permit (CUP). R. 47, PageID #1386. It does not view the permitting scheme as a burden; indeed, it accepted the City’s counsel’s unsubstantiated statement that the City would approve a CUP. But the City told Dad’s Place exactly the opposite in November 2023, when Mr. Waterston stated that the City would *deny* any request for a zoning variance or CUP. R. 1 ¶ 70, PageID #15. Again, the City changed its tune only when faced with the preliminary injunction hearing.

As to the fire code, the District Court again defined the burden as merely a matter of paperwork: Dad’s Place must apply for a certificate of occupancy for residential use from the Ohio Department of Commerce. R. 47, PageID #1396. And the Court again overlooked the City’s obstruction: at the preliminary injunction hearing, Defendants’ counsel indicated that the City might oppose the Church’s application.

Paperwork is not the problem. Asked directly whether there is “a place inside the Bryan City limits where Dad’s Place could operate as a church and allow people to stay overnight,” Mayor Schlade offered two locations: The Sanctuary and First Lutheran Church. Deposition of

Carrie Schlade, R. 36, PageID #477. But Mayor Schlade admitted that neither was a viable location because neither entity was willing to sell its building to Dad's Place. *Id.* So there is nowhere in the City of Bryan that Dad's Place can operate its 24/7 ministry, and the City already told Dad's Place that it would deny any request for exemptions that would allow Dad's Place to so operate.

**2. The City's enforcement of the zoning and fire codes fails strict scrutiny.**

With the burden on the Church's exercise established, the burden then shifts to the City to show that its enforcement of the zoning and fire codes passes strict scrutiny. It does not.

Start with the zoning code. The City asserts a compelling interest in "protecting the health and safety of those individuals who seek shelter at Dad's Place." Memo in Opposition to the Motion for a Preliminary Injunction, R. 19, PageID #319-320. But the City never explains how the *zoning* code advances that interest. Neither the code establishing the C-3 zone, nor the criminal complaints filed to enforce that code speak to "health and safety" at all. *See* City of Bryan Codified Ordinances § 1155.03; R. 43-11, PageID #1092-1108.

The City's actions have not served the health and safety of the congregants at Dad's Place. Jamy Shaffer, a congregant who had participated in the Church's Rest and Refresh ministry each night, suffered from a medical condition that caused him to have seizures while he slept. Declaration of Chris Avell, R. 23-1, PageID #355. For that reason, he preferred to sleep at the Church so he would not be alone at night. *Id.* Earlier this year, the City asked the Church to relocate Mr. Shaffer to an apartment. *Id.* On April 12 of this year, Mr. Shaffer, alone in an apartment in the middle of the night, suffered a seizure and passed away. *Id.* at PageID #356. The City's actions have endangered the congregants at Dad's Place, not protected them.

It naturally follows that enforcement of the *zoning* code is not the least-restrictive means of furthering the City's broadly-framed "health and safety" interests. In any event, the City never attempted—in briefing or argument—to show that its enforcement of the zoning code against Dad's Place is the least-restrictive means of protecting the health and safety of anyone seeking shelter there. Yet the District Court concluded that the *Church* failed to identify a lesser restrictive means. R. 47, PageID #1390.

The City's enforcement of the fire code likewise fails strict scrutiny. The City nods to the same ostensibly compelling interest: the safety of the Dad's Place congregants. R. 19, PageID #319-320. But the City ignores the fact that exposure to extreme cold, extreme heat, driving rain, and "a number of conditions" can be dangerous or life-threatening. Deposition of Doug Pool, R. 37, PageID #654-655. Indeed, according to Chief Pool, "you can freeze in very warm temperatures if you're not adequately protected and other conditions exist." *Id.* at PageID #655.

In the name of health and safety, the City would force people out of shelter and into the elements. People suffering from diabetes, suffering from end stage renal disease, or confined to a wheelchair will not survive that move. R.1 ¶ 185, PageID #37.

But even assuming that the risk of a fire in Dad's Place outstrips the risk of death from the elements, the City has not pursued the least-restrictive means of advancing its interests. The City insists that Dad's Place install a sprinkler system, but that is not the least-restrictive means of addressing the City's fire-safety concerns. The City could allow the Church to engage in an ongoing fire watch; Ohio law expressly

authorizes a fire watch when a building’s sprinkler system malfunctions. Ohio Fire Code § 901.7.

The City insisted—and the District Court agreed—that a fire watch is not an adequate alternative because it “serves as a contingency plan.” R. 47, PageID #1398. That argument misses the mark. The Ohio Fire Code allows for a fire watch in at least some instances where there is no operable sprinkler system. The City cannot argue that a fire watch is inadequate if the building has no sprinkler, but *is* adequate if the building has a sprinkler that does not work.

The District Court also declared that Dad’s Place has not shown an instance where a fire watch has been permitted as a permanent alternative to a sprinkler system. *Id.* That flips the burden of proof; the City must show that the fire watch is *not* an adequate, less-restrictive means of advancing its fire safety interests. And that ensures that the government will always pass strict scrutiny: if the District Court is right, a City can say that its ordinance is the least-restrictive means *so long as* it has never tried or contemplated an alternative. “Strict scrutiny” surely requires more than just taking the government’s word for it.

**B. The City’s application of its zoning and fire codes violates the Free Exercise Clause of the U.S. Constitution.**



Under the U.S. Constitution, a Free Exercise plaintiff must meet one additional requirement before courts apply strict scrutiny. The plaintiff must show a burden on his sincere religious practice is “pursuant to a policy that is not ‘neutral’ or ‘generally applicable.’” *Kennedy*, 597 U.S. at 525.

**1. The City’s application of its zoning and fire codes burdens the Church’s exercise of religion.**

The Church has met its burden of proving the City’s actions burdened its sincere religious practice. See § II.A.1, *supra*. The Government burdens an exercise of religion when it “place[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs . . . or effectively bar[s] his sincere faith-based conduct.” *New Doe Child #1 v. Cong. of United States*, 891 F.3d 578, 589 (6th Cir. 2018). That standard is easily met where religious exercise triggers a criminal prosecution or crippling financial penalties—as the City threatens here. See *id.* (citing *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 426 (2006) and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014)).

**2. The City’s enforcement of its zoning and fire codes is not neutral or generally applicable.**

Settling the question of whether the City’s enforcement of its zoning and fire codes is “neutral” and “generally applicable” triggers strict scrutiny. *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). Government action is not neutral if it “proceeds in a manner intolerant of religious beliefs.” *Id.* And government action lacks general applicability if it “incorporates a system of individual exemptions” based on “individualized” assessments by a government official who retains “sole discretion” over the enforcement of a law. *Id.* at 533, 535. The same is true of state action that treats “any comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021).

The City’s application of the zoning code flunks both tests. The mere existence of exceptions to the zoning code—in the form of the CUP—means that the code is not one of general application. *Fulton*, 593 U.S. at 533. As for neutrality, Defendant Schlade explained in her deposition that all enforcement action against Dad’s Place began at her insistence, even though she had no reason to suspect unlawful activity. R. 36,

PageID #467.<sup>2</sup> She urged City officials to target the Church with investigations and inspections, issue the November 2023 cease-and-desist letter, and file 18 criminal charges against Pastor Avell. *Id.* at PageID #468-470; R. 1 ¶ 82, PageID #17; R. 43-26.

Mayor Schlade's involvement in the charging decision was far from typical. *See* Deposition of Jamie Mendez, R. 38, PageID #793 (stating that he had never had a conversation with the Mayor about whether to file criminal charges before). The City's conduct with those charges was likewise atypical. Pastor Avell first learned of the charges because of a front-page newspaper article. R. 1 ¶ 84, PageID #17. He was not served with the criminal complaints until a month later—when the City served him on a Sunday morning in front of his congregation, just before services were to begin. *Id.* ¶ 89, at PageID #18. The City also attempted to deprive Pastor Avell of counsel by opposing a slight continuance of his arraignment to accommodate his lawyers. *Id.* ¶¶ 86-87, at PageID #17-18. Outside of these legal proceedings, the City repeatedly used the threat of criminal charges to pressure the Church's landlord into evicting

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<sup>2</sup> Ironically, this case began with the Mayor wondering why someone was sleeping *outside* of Dad's Place, and snowballed into criminal charges against the pastor for allowing people to sleep *inside*.

the Church. *Id.* ¶ 97, at PageID #20. Indeed, the City made similar threats at the preliminary injunction hearing last month.

The City's enforcement of the fire code flunks both neutrality and general applicability. Between November 2023 and April 2024, the City engaged in at least 8 fire inspections of the Church—which Chief Pool admits was “not typical.” R. 37, PageID #666. Further, the City fire officials were often accompanied by the police, a similarly “not typical” practice. *Id.* at PageID #642. Equally atypical was the decision to barge into the Church at 5:30am in both March and April 2024, something the City has not demonstrated it has done to other businesses in Bryan. *Id.* at PageID #665-666.

Additionally, the City treats the comparable secular activities occurring at Sarah's Friends more favorably than the Church's religious exercise. Like the Church, Sarah's Friends offers temporary shelter to those in need. R. 36, PageID #493-494. But the City does not require Sarah's Friends to have a sprinkler system. R. 37, PageID #637. This differential treatment automatically triggers strict scrutiny. *See Tandon*, 593 U.S. at 62. And while the City argues that Sarah's Friends is not comparable because its temporary shelter is in second-floor apartments,

both *Tandon* and this Court’s precedent instruct that “[c]omparability is concerned with the risks various activities pose.” *Id.*; see also *Monclova*, 984 F.3d at 480 (“[C]omparability is measured against the *interests* the State offers in support of its restrictions on conduct.”). Here, the activity the City asserts to be creating a risk is people sleeping, which Defendant Pool testified makes people “more susceptible” to fire and smoke and being incapacitated than when they are awake. R. 37, PageID #634-635. This risk is the same whether people are sleeping in an apartment or the Church’s sanctuary—regardless of whether the City’s regulatory scheme treats them differently. See *Monclova*, 984 F.3d at 481.

The City’s enforcement of the fire code likewise fails general applicability. The City seeks to enforce Sections 102.3.3 (regarding changes of use) and 903.2.8 (regarding the necessity of an automatic sprinkler system) of the Ohio Fire Code. Section 102.3.3 states that an occupant cannot change the use or occupancy of a structure unless the structure complies with certain provisions of the building code, including Section 903.2.8’s requirements for automatic sprinkler systems for

certain residential uses. OFC 102.3.3.<sup>3</sup> However, it goes on to state that “[s]ubject to the approval of the fire code official,” the use of a building can be changed without conforming to the fire code “provided the new . . . use is less hazardous, based on life and fire risk, than the existing use.” *Id.* Chief Pool confirmed that he possesses broad discretion in applying the fire code. *See, e.g.*, R. 37, PageID #558, 579, 583-586, 602-604, 611-613, 617-620, 624, 649-651. He has discretion in the first instance to define a “sleeping area,” which is what makes a structure “Residential Use” and subject to the sprinkler requirement. *Id.* at PageID #613. So he has discretion to decide whether there has been a change in use (by deciding whether the Church is engaged in residential use) and whether to permit a change in use based on an individualized assessment of life and fire risks. This is exactly the type of “sole discretion” based on “individualized assessments” that render a law not “generally applicable.” *Fulton*, 593 U.S. at 533, 535.

Further, the Byzantine requirements of the Ohio Fire Code are riddled with exceptions. For example, even if Section 102.3.3 (regarding

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<sup>3</sup> Available at <https://www.law.cornell.edu/regulations/ohio/Ohio-Admin-Code-1301-7-7-01>.

change of use) applies to Dad's Place, certain R-2 residential structures are exempt from the sprinkler requirement. *See* OFC 903.2.8.<sup>4</sup> This system of exemptions again makes the fire code not generally applicable and therefore subject to strict scrutiny. *Fulton*, 593 U.S. at 533.

Because the Church has met its burden, the City must satisfy strict scrutiny, but it made no effort to do so below. At no point did it explain what the fire code says or why it applies here, beyond urging the District Court to rubber stamp its general interest in fire safety. Further, the City provided *zero* evidence to support its argument that forcing the Church to cast out anyone who sleeps in its sanctuary is the least restrictive means of achieving its asserted interest in fire safety. And the District Court's order contains no analysis of the point; only an unadorned declaration that "the City's adherence to its fire safety code is the least restrictive means of reducing fires and protecting life and property." R. 47, PageID #1397. The Court can and should grant an injunction pending appeal (and reverse) on this point alone. But even if it does not, the record demonstrates that the City cannot satisfy strict scrutiny. *See* § II.A.2,

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<sup>4</sup> Available at <https://www.law.cornell.edu/regulations/ohio/Ohio-Admin-Code-1301-7-7-09>.

*supra*. Strict scrutiny is the “most rigorous” scrutiny a federal court can apply, and when it applies, a state law rarely survives. *Carson v. Makin*, 596 U.S. 767, 780–781 (2022); *Fulton*, 593 U.S. at 541.

**C. The City’s application of its zoning code violates RLUIPA.**

**1. The City’s application of its zoning code substantially burdens Dad’s Place’s religious exercise.**

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 regulation can pass strict scrutiny. 42 U.S.C. § 2000cc(a)(1).

Courts interpret “substantial burden” by reference to RFRA and First Amendment jurisprudence. *See Holt v. Hobbs*, 574 U.S. 352, 358 (2015); *Hobby Lobby*, 573 U.S. at 730. Under RFRA, the “substantial burden” question is whether the government is “effectively forcing plaintiffs to choose between engaging in conduct that violates sincerely held religious beliefs and facing a serious consequence.” *New Doe Child #1*, 891 F.3d at 589. Crippling fines and criminal prosecution will suffice—and that is precisely what the City has threatened here. *Id.* Other relevant factors include (1) whether the alleged burden was self-



imposed; (2) whether a feasible alternative location exists for the religious exercise; (3) whether the plaintiff will suffer substantial delay, uncertainty, and expense due to the regulation; and (4) whether the government's decision-making process was arbitrary, capricious, or discriminatory. *Livingston Christian Sch. v. Genoa Charter Twp.*, 858 F.3d 996, 1004 (6th Cir. 2017).

It is undisputed that RLUIPA governs the City's application of the zoning code against Dad's Place. The District Court concluded that the City's actions imposed no substantial burden on the Church's religious exercise. But as explained in § II.A.1., *supra*, the City has used its power to end that religious exercise.

Contrary to the decision below, the Church's burden is not "self-imposed." The Church obtained a CUP from the City to operate as a house of worship on the back half of its property. R. 1 ¶ 47, PageID #10. The City's own Code defines a house of worship to include churches "and their uses and activities that are customarily related." Bryan Municipal Code § 1103.02(97). In Ohio, a transient residence is "customarily incidental" to the use of a property as a church. *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 149 (2000). And given the City's practice of

allowing people to sleep at the Church—and even bringing some of them there—the Church had every right to believe its ministry followed the City’s zoning laws. *See* R. 1 ¶ 62, PageID #13; R. 39, PageID #905-906; R. 43-1, PageID #1073; R. 43-6, PageID #1084.

Further, as the Mayor admitted, there are no feasible alternative locations in the City of Bryan for the Church to perform its ministry. R. 36, PageID #477. And the District Court’s suggestion that the Church transform its second floor into a residential facility or open an additional facility, R. 47, PageID #1387, attempts to transform the nature of the Church’s ministry. It is the Church, not the City or the District Court, that defines the contours of its religious exercise. *See Hobby Lobby*, 573 U.S. at 723–26.

The City’s actions also create great uncertainty, delay, and expense for the Church. The City has made clear that it wants people out of the Church while the Church jumps through the City’s regulatory hoops—which have shifted over the course of this litigation. For example, the sprinkler requirement triggering this appeal appeared for the first time in April 2024, *after* the Church had already remediated the existing fire code violations. R. 44-1, PageID #1281.

Because the Church has shown a substantial burden on its religious exercise, the burden shifts to the City to show that its regulation passes strict scrutiny. *Cath. Healthcare Int'l*, 82 F.4th at 450. For the reasons stated in § II.A.2., *supra*, the City fails that test.

Of note, the City made no argument about least-restrictive means below. The District Court excused this glaring omission with virtually no analysis on this issue, and then shockingly (and incorrectly) shifted the burden to the Church to identify the “means’ it believes are too restrictive.” R. 47, PageID #1390. The City’s omission constitutes a waiver of the argument, and the District Court’s error commands reversal.

### **III. The remaining factors favor an injunction.**

Because the Church is likely to succeed on the merits, the Court need not dwell on the other factors. *Monclova*, 984 F.3d at 482. The Church’s loss of its First Amendment rights is irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Pastor Avell was back in municipal court today (July 23) for a scheduling hearing in his criminal case, a proceeding that further threatens to chill the Church’s religious exercise. Also, it is always in the public interest to prevent constitutional violations, and the

government is never harmed by doing so. *Bays v. City of Fairborn*, 668 F.3d 814, 825 (6th Cir. 2012).

### CONCLUSION

The Court should issue an injunction pending appeal forbidding the City from enforcing its zoning or building codes in a way that burdens the Church's religious exercise. The Church also requests an administrative stay while the Court considers this motion.

Dated: July 23, 2024

Respectfully submitted,

/s/ Philip D. Williamson

Philip D. Williamson  
Taft Stettinius & Hollister LLP  
425 Walnut St., Suite 1800  
Cincinnati, OH 45202

Stephen D. Hartman  
Spengler Nathanson P.L.L.  
900 Adams St.  
Toledo, OH 43604

David J. Hacker  
Jeremy Dys  
Ryan Gardner  
First Liberty Institute

2001 W. Plano Pkwy., Suite 1600  
Plano, TX 75075  
(972) 941-4444



*Counsel for Plaintiff Dad's Place  
of Bryan, Ohio*

## CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 5156 words, excluding the parts of the Brief exempted by Fed. R. App. P. 32(f) and 6 Cir. R. 32(b)(1).

This Brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface in 14-point Century font.

Dated: July 23, 2024

/s/ Philip D. Williamson  
Philip D. Williamson

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was filed electronically on July 23, 2024 using the Court's CM/ECF system, which will serve notice of this filing on counsel of record:

/s/ Philip D. Williamson

Philip D. Williamson