FIRST LIBERTY

December 18, 2025

Mark Delaney
Mayor, Village of The Branch
PO Box 725
Smithtown, NY 11787
[redacted]

Sent via email

Re: St. Patrick's Roman Catholic Church

Dear Mayor Delaney:

First Liberty Institute is a non-profit law firm dedicated to defending and restoring religious liberty for all Americans. We, along with Greenberg Traurig, LLP, represent St. Patrick's Roman Catholic Church (the "Church"), the owner of the property located at 280 E Main St, Smithtown, NY 11787 (the "Property"). The Church retained First Liberty and Greenberg Traurig after the Village of The Branch (the "Village") threatened to issue citations against the Church for selling Christmas trees along with other plants, grave blankets, and wreathes during the Christmas season as a means of raising funds for the Church's religious ministries, a practice the Church has engaged in for over 25 years without incident. Please direct all communications regarding this matter to me.

As explained below, the Church's right to use the Property for religious purposes is fully and clearly protected by the First and Fourteenth Amendments of the United States Constitution and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc *et seq.* ("RLUIPA"). The Village must immediately withdraw its threats to engage in any enforcement action against the Church for selling Christmas trees and affirm that the Village will not interfere with the Church's religious fundraising activities in the future.

"The Free Exercise Clause protects religious observers against unequal treatment and subjects to the strictest scrutiny laws that target the religious for special disabilities based on their religious status." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017). Thus, government entities must treat religious activity in a neutral manner, and any action "that targets religious conduct for distinctive treatment" is subject to strict scrutiny. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). Likewise, government entities violate principles of neutrality and general applicability "whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). And when laws provide discretion to government officials or are imposed pursuant to systems of "individualized exemptions," such laws are not generally applicable. *See Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021) (applying strict scrutiny to a law that gave city officials the "sole discretion" to determine exemptions from the law).

Here, the Village's enforcement of its fundraising ordinances against the Church is neither neutral nor generally applicable. The Village's recent demand that the Church apply for a Special Use Permit ("SUP") stands in stark contrast to its treatment of Island Fairs LLC's secular Fall Craft Fair that occurred last October at the Smithtown Historical Society. Even though the Fall Craft Fair engaged in comparable sales of various goods, the Village did not require any SUP for the secular event to occur. Indeed, the Village's ordinances do not require *any* for-profit entity to obtain a SUP before engaging in such fundraising events. *See* Village of The Branch Zoning Code § 275-61. Thus, both on its face and as-applied to the Church, the Village's ordinances target the Church's fundraising activities for disparate treatment because of the Church's religious status—something the Supreme Court has repeatedly held to be "odious to our Constitution." *Trinity Lutheran*, 582 U.S. at 467.

Additionally, the Village's fundraising ordinances are subject to strict scrutiny because they are not generally applicable. The Village's Code fails to provide any definition of what qualifies as a "fund-raising activity" subject to the SUP requirement, thereby leaving that determination to the unfettered discretion of Village officials. Such discretion, exercised at the "sole discretion" of Village officials, "invites the [Village] to decide which reasons for not complying with the [fundraising] policy are worthy of solicitude." *Fulton*, 593 U.S. at 537. Thus, the Village's fundraising ordinances are neither neutral nor generally applicable and are therefore presumptively unconstitutional.

The only way the Village may rebut this presumption is by proving its actions are furthering "interests of the highest order" by means that are "narrowly tailored to achieve those interests." *Id.* at 541; *see also Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) ("only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion"). Here, the Village has no compelling interest in suddenly regulating the Church's sale of Christmas trees and other related items, as demonstrated by the fact that it has allowed such sales to proceed uninhibited for over 25 years. Indeed, the timing of this change of policy strongly suggests the Village's action are motivated by personal animosity by the Village's Mayor toward the Church. Further, the Village has already allowed substantially similar activities to take place at the Fall Craft Fair a few months ago. "A law does not advance "an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited." *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 486 (2020).

Even assuming the Village's interest was compelling—which it is not—it cannot show how applying its ordinances so stringently as to encompass an activity as innocuous as a Christmas tree fundraiser is the least restrictive means of advancing that interest. Indeed, the Village's newfound application of its ordinances to an activity it had previously considered outside the ordinance's scope shows the Village is now engaging in a far more restrictive application of its law. "[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 593 U.S. at 541. Because the Village has failed to so do, its actions violate the Free Exercise Clause.

Additionally, the Village's actions impermissibly intrude upon the First Amendment's guarantee of autonomy to the Church. The church autonomy doctrine protects religious institutions' fundamental right "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of*

Russian Orthodox Church in N. Am., 344 U.S. 94, 116 (1952). One such vital matter of church governance is the raising of funds to support a church's religious mission. After all, "[i]t is plain that a religious organization needs funds to remain a going concern." *Murdock v. Com. of Pennsylvania*, 319 U.S. 105, 111 (1943). Here, by limiting a fundraising activity to once every 90 days, the Village is unlawfully and arbitrarily intruding on internal church affairs. This intrusion is only exacerbated by the Village's newfound interpretation of its ordinances to apply to minor activities like the sale of Christmas trees to support the Church's ministries. Indeed, under this new understanding of the Village's ordinances, "the passing of the collection plate in church would make the church service a [fundraising activity]." *See id.* The First Amendment prohibits this kind of intrusion on internal church affairs.

In addition to violating the First Amendment, the Village's actions also violate RLUIPA. RLUIPA's provisions provide, in pertinent part:

> No government shall impose or implement a land use regulation in a manner that imposes a *substantial burden* on the *religious exercise* of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—
>
> (A) is in furtherance of a compelling governmental interest; and
>
> (B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1) (emphasis added). For the same reasons that the Village's actions and interests cannot satisfy the First Amendment's strict scrutiny test, they also cannot satisfy RLUIPA and its strict scrutiny test. RLUIPA also prevents cities from "impos[ing] or implement[ing] a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1). As discussed above, the Village is treating the Church on less than equal terms than the secular Fall Craft Fair. The Village cannot permit a secular craft fair to operate uninhibited while barring the Church from engaging in substantially similar activities for religious purposes. *See id.* Thus, the Village's prohibition on the Church's Christmas tree fundraiser violates RLUIPA.

In sum, the Village's actions against the Church violate the First Amendment and RLUIPA, giving rise to liability for declaratory, injunctive, and compensatory relief, as well as attorney fees. *See* 42 U.S.C. §§ 1983, 1988, 2000cc-2. Furthermore, damages are available against government officials in their individual capacities when they deprive a person, or group of people, of rights secured by the U.S. Constitution. *See Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("an award of damages against an official in his personal capacity can be executed . . . against the official's personal assets.").

The Village must immediately abandon its discriminatory treatment of the Church and its religious fundraising activities. Should the Village nevertheless persist in its course of conduct, the Church is prepared to pursue all available legal options, not limited to the principles articulated herein. As demonstrated by a recent New York court order awarding First Liberty attorneys over

$800,000 in attorneys' fees, *see His Tabernacle Fam. Church, Inc. v. James*, No. 6:22-CV-6486 (JLS), 2025 WL 2945655 (W.D.N.Y. Sept. 2, 2025), and a recent settlement in which the Village of Atlantic Beach, New York agreed to pay a First Liberty client $950,000 to resolve a lawsuit,[1] the Village's financial exposure for continuing in its unlawful conduct is significantly high.

Thank you for your attention to this matter. I can be reached at [redacted] or [redacted]. I look forward to hearing from you soon.

Respectfully,

FIRST LIBERTY INSTITUTE

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Roger Botto, Trustee, Village of The Branch
Adam Ronkowski, Trustee, Village of The Branch
Christine Cozine, Village Clerk, Village of the Branch
Joe Arico, Building Inspector, Village of The Branch

[1] *See* Brian Norman, *Atlantic Beach settles Chabad lawsuit for $950,000*, LI HERALD (July 11, 2025), https://www.liherald.com/fivetowns/stories/atlantic-beach-settles-chabad-lawsuit-for-950000,216116.