No.26-2072

In the United States Court of Appeals
FOR THE THIRD CIRCUIT

HOLY TRINITY UKRAINIAN CATHOLIC CHURCH,
PLAINTIFF-APPELLANT,

v.

COLLIER TOWNSHIP, GABE BENVENUTI, WAYNE CHIURAZZI, TIM DOWNEY, JR., JULIE MURPHY, KARI SUTER, DAWNLEE VAUGHN, AND MARY ANN CUPPLES-WISNIOWSKI,
DEFENDANTS-APPELLEES.

On Appeal from the United States District Court
for the Western District of Pennsylvania
No.2:26-cv-24 (Wiegand, J.)

PLAINTIFF-APPELLANT'S PETITION FOR PANEL REHEARING AND REHEARING EN BANC

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, Plaintiff-Appellant Holy Trinity Ukrainian Catholic Church represents that it does not have any parent entities and does not issue stock.

Dated: November 2, 2026

/s/ Joshua D. Davey
Joshua D. Davey

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L.A.R. 35.1 STATEMENT

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to decisions of the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States, and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court, *i.e.*, the panel's decision is contrary to the decision of this court or the Supreme Court in *Anash, Inc. v. Borough of Kingston*, 184 F.4th 214 (3d Cir. 2026); *Mahmoud v. Taylor*, 606 U.S. 522 (2025); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020) (per curiam); *Tandon v. Newsom*, 593 U.S. 61 (2021) (per curiam); and *Elrod v. Burns*, 427 U.S. 347 (1976) (plurality op.).

Dated: November 2, 2026

/s/ Joshua D. Davey
Joshua D. Davey

INTRODUCTION AND RULE 40(b) STATEMENT

Holy Trinity Ukrainian Catholic Church wishes to build a Shrine on its property in Collier Township, Pennsylvania, to further its religious mission. The Township's Zoning Code forbids Holy Trinity from doing so as a matter of right anywhere in the Township despite granting such rights to multiple comparable secular uses. Thus, Holy Trinity was forced to submit a Rezoning Application to the Township before proceeding. Yet, the Township denied that application, likely based on "unconstitutional religious hostility and content-based discrimination"—as the entire Panel of this Court recognized. Slip.Op.7; Dissent.Slip.Op.7 (Matey, J., dissenting). One of the Township's Commissioners stated that the Township "might have dodged a bullet" in rejecting Holy Trinity's application, as the "'true inten[t] of the shrine' was pro-life," which "could have been a disaster." Slip.Op.7 (brackets in original). Given that flagrant religious hostility, the Panel agreed Holy Trinity is "very likely to succeed on the merits" of its Religious Land Use and Institutionalized Persons Act ("RLUIPA") claim against the Township, sufficient for preliminary-injunctive relief. Slip.Op.8.

Nevertheless, the Panel majority refused to award Holy Trinity relief. In its view, Holy Trinity's claim of irreparable harm from the loss of its free-exercise rights was "rebutted" because "Holy Trinity will not suffer a time-sensitive, spiritual harm that a preliminary injunction could prevent." Slip.Op.10. Additionally, the Panel incorrectly concluded the status quo was "enforcement of the township's zoning ordinance"—a facially unconstitutional scheme, administered by officials who openly expressed hostility to Holy Trinity's religion, that forbids religious land use anywhere as of right.

The Panel's irreparable-harm and equities analyses create an intracircuit and intercircuit conflict, while also contravening Supreme Court precedent. The *en banc* Court should resolve those conflicts. First, the Panel's decision conflicts with this Court's recent decision in *Anash, Inc. v. Borough of Kingston*, 184 F.4th 214 (3d Cir. 2026), while attempting to wave away that conflict by invoking a slightly newer decision in *Americans for Prosperity Foundation v. Albence*, 2026 WL 2563151, ___F.4th___ (3d Cir. 2026) ("*AFP*"). As Judge Matey explained in his dissent, this is the case of "one panel decision washing away the foundation of another before the ink dried," Dissent.Slip.Op.1—a

circumstance necessitating *en banc* review. Second, the Panel's decision splits with other Circuits in the RLUIPA preliminary-injunction context. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279 (5th Cir. 2012); *Cath. Healthcare Int'l v. Genoa Charter Twp.*, 82 F.4th 442, 450 (6th Cir. 2023). Indeed, the decision fails to cite *any* circuit-court case finding a strong likelihood of success on the merits of a free-exercise claim but refusing to also find irreparable harm. And it violates Supreme Court precedent holding that loss of First Amendment freedoms is *per se* irreparable harm that also balances the equities in favor of preliminary-injunctive relief, *see, e.g.*, *Elrod v. Burns*, 427 U.S. 347 (1976) (plurality op.)—precedent fully applicable here because Holy Trinity also raised meritorious facial and as-applied free-exercise claims unaddressed by the Panel.

Finally, this Circuit's law simply cannot be what the Panel says it is. The Township has applied facially discriminatory ordinances to block Holy Trinity from proceeding with its Shrine based on unrepentant religious animus. Yet, according to the Panel, that unconstitutional bigotry neither inflicts irreparable harm to Holy Trinity nor tilts the equities in its favor simply because it will take some time to build the

Shrine. Under this view, no church in this Circuit seeking to construct a new building could get preliminary-injunctive relief on a meritorious RLUIPA or Free Exercise Clause claim challenging a preexisting, facially-discriminatory zoning code—even when the municipality has acted out of religious intolerance. Nothing in the First Amendment, RLUIPA, or the equitable practice of preliminary injunctions countenances that extraordinary result, which is why this Court's decision in *Anash*, the decisions of other Circuits, and the Supreme Court all reject it.

This Court should grant the Petition.

STATEMENT

A. Founded in 1951, Holy Trinity is a small Ukrainian Catholic parish in Collier Township. It is in full communion with the Roman Catholic Church "but with rituals and architecture that are distinctively Ukrainian." Slip.Op.2. Many parishioners descend from families who fled from Soviet persecution to America seeking religious freedom. Dkt.28 ("App.") at 42–43. Holy Trinity owns a largely undeveloped 41-acre property in the Township ("Property"), which holds a small cemetery and mausoleum. Slip.Op.2.

B. A five-member Board of Commissioners ("Board") enforces the Township's Zoning Code. Slip.Op.3. The Code lists permitted, conditional, and prohibited uses for its 15 zoning districts. To engage in a permitted use requiring over 10,000 square feet of construction, the owner must complete a major-land-use-application process. App.966–77. Once that is complete, the Board lacks discretion to stop construction. App.147. A conditional use requires a conditional-land-use-application process and then, if needed, the major-land-use-application process. App.979–83. The Board may approve or deny a conditional-land-use application in its discretion. App.146. "Church" is not a permitted use in any district and is a conditional use in only five districts. App.931. So, an owner wishing to build a church must *always* obtain the Board's discretionary approval. App.147.

Holy Trinity's Property spans two districts: a smaller portion in a "Rural Residential" or "R-1 Zone" and a larger portion in a "Planned Economic Development District" or "PEDD Zone." App.142, 146.

C. In 2023, Holy Trinity felt called by God to build a Shrine to honor Mary, the Mother of God, drawing pilgrims to worship and pay homage to the sanctity of life. Slip.Op.2; App.364–74. Holy Trinity anticipated

needing two years to fundraise for, and five years to build, the Shrine, and it has already incurred $160,000 out of an estimated $60–100 million in expenses. App.374, 393, 401–02.

D. Under the Zoning Code, the only way Holy Trinity could build the Shrine on its Property was to amend the Code to add a new conditional use to the PEDD and to rezone a portion of its Property. App.256. In December 2023, it submitted a Rezoning Application proposing a new "Planned Cultural Center" conditional use in the PEDD to cover the Shrine, along with detailed submissions. App.646–52.

In September 2024, after a public hearing, the Board unanimously denied the Application. Slip.Op.3. Some Commissioners voiced general traffic concerns, App.796, while community members objected to Holy Trinity's pro-life views, Slip.Op.6–7. Discovery revealed that religious animus also motivated the denial. Commissioner Cupples-Wisniowski testified that Holy Trinity had not "been honest" about its pro-life beliefs, App.215–16, and that it would be "appropriate" to reject an application "based on the nature of the religious service to be held in the building," Slip.Op.7; App.227. The day after the hearing, she emailed "the rest of the Board" and stated that the Township "'might have dodged a bullet'"

because "'[t]he true inten[t] of the shrine' was pro-life and '[t]his could have been a disaster.'" Slip.Op.7 (quoting App.874) (first brackets in original). "Nothing in the record suggests that any other Board member responded and disagreed," and these objections "strongly suggest that the Board resists ever approving the shrine project." Slip.Op.7.

This resistance was confirmed when Holy Trinity "tried again with a smaller project" as a good-faith compromise, proposing "a modest chapel entirely on its rural-residential land." *See* Slip.Op.3. The Board approved that project subject to blatantly unconstitutional conditions like limiting memorials to "persons deceased after June 9, 2025." App.150; Slip.Op.3. Holy Trinity timely challenged these conditions in state court before opting to pursue federal relief.

E. In January 2026, Holy Trinity sued the Township over the denial of the Rezoning Application, asserting RLUIPA substantial-burden and equal-terms claims and a Free Exercise Clause claim as relevant. R.1. Holy Trinity simultaneously moved for a preliminary injunction, Slip.Op.4, seeking to enjoin the Township from enforcing its Zoning Code to deny the Rezoning Application or to bar the Shrine in the PEDD as a

matter of right, Dkt.27 at 25–26. The District Court denied the motion, and Holy Trinity appealed. Slip.Op.4.

F. On October 19, 2026, a divided Panel rejected Holy Trinity's appeal.

The Panel held that Holy Trinity "has a strong case on the merits," Slip.Op.1, and is "very likely to prevail on its RLUIPA substantial-burden claim," Slip.Op.8. The Township's denial of the Rezoning Application was "effectively absolute," making the "degree of burden" on Holy Trinity "substantial." Slip.Op.7–8. "[A]nd most troubling, both community and Board members objected to the shrine's pro-life message." Slip.Op.6–8. These "objections hint at unconstitutional religious hostility and content-based discrimination" and "strongly suggest that the Board resists ever approving the shrine project." Slip.Op.7. The Township cannot survive strict scrutiny. Slip.Op.7.

The Panel then concluded Holy Trinity had not shown irreparable harm. Slip.Op.9–12. While acknowledging a presumption of "irreparable injury whenever an impediment delays a party's religious exercise," the Panel suggested that this presumption may not apply to RLUIPA. Slip.Op.10. Then, for the first time in this Circuit's history, the Panel

found the presumption rebutted because Holy Trinity would "still need to file project-specific applications before the Board finally approves the shrine." Slip.Op.10–11.

The Panel also concluded "the balance of equities favors the status quo." Slip.Op.8–9. "The status quo is enforcement of the township's zoning," Slip.Op.8–9—a facially unconstitutional scheme the Panel did not examine despite full briefing on the issue. The Panel also faulted Holy Trinity for waiting "almost a year and a half to file this suit" (without discussing Holy Trinity's efforts to compromise and avoid litigation) and concluded that "the relief Holy Trinity sought was unclear" (without discussing Holy Trinity's request to operate its Shrine as a matter of right on its Property). *See* Slip.Op.9.

The Panel also did not address Holy Trinity's RLUIPA equal-terms or Free Exercise Clause claims. Indeed, its framing of irreparable harm did not consider the harm inflicted by a Zoning Code that forbids Holy Trinity from constructing its Shrine anywhere in the Township as of right.

Judge Matey dissented, describing this case as "one panel decision washing away the foundation of another before the ink dried."

Dissent.Slip.Op.1. Specifically, the Panel applied "the freshly minted decision in [*AFP*]," rather than the Court's slightly earlier decision in *Anash*, to "insist[ ] on preserving the status quo of religious discrimination." Dissent.Slip.Op.1. But "this appeal differs from *AFP*" because: (1) *AFP* arose in the "pending election" context, Dissent.Slip.Op.3; (2) the *AFP* plaintiff had not satisfied the likelihood-of-success-on-the-merits factor, Dissent.Slip.Op.3–7; and (3) the Court could issue relief "narrowly tailored to enjoin discriminatory enforcement of the Zoning Code against a single, small undeveloped tract on a rural road," Dissent.Slip.Op.8. Judge Matey would have applied *Anash*, which granted preliminary-injunctive relief to a yeshiva on its RLUIPA substantial-burden claim, given that "*Anash* fits the facts and law of this case crisply." Dissent.Slip.Op.4. Finally, he explained that the Panel's status-quo concerns were misplaced because "the Township never held power to discriminate against homes of religious worship in the first place." Dissent.Slip.Op.9–15. Indeed, the Township's "extraordinary, explicit religious hostility" violates federal law. Dissent.Slip.Op.7.

REASONS FOR GRANTING REHEARING

The Panel and Judge Matey rightly concluded that Holy Trinity is "very likely to prevail on its RLUIPA substantial-burden claim." Slip.Op.8; Dissent.Slip.Op.4–7. The Township denied Holy Trinity's Rezoning Application—thus preventing Holy Trinity from "engag[ing] in the religious exercise the Shrine is intended to facilitate"—after engaging in "extraordinary, explicit religious hostility." Dissent.Slip.Op.9; *see also* Slip.Op.7. Nevertheless, the Panel declined to grant Holy Trinity a preliminary injunction based on a novel and incorrect understanding of the irreparable-harm and equities factors. Slip.Op.8–13.

This decision creates both an intracircuit and intercircuit conflict over how to analyze irreparable harm and the equities in the RLUIPA context. *Infra* Part I. Additionally, the Panel overlooked Holy Trinity's meritorious Free Exercise Clause claim, which independently satisfies the irreparable-harm and balance-of-the-equities factors, violating Supreme Court precedent analyzing those factors when the loss of First Amendment rights is at issue. *Infra* Part II.

I. The Panel's Decision Creates An Intracircuit And Intercircuit Conflict Over How To Analyze The Irreparable-Harm And Balance-Of-The-Equities Factors In The RLUIPA Preliminary-Injunction Context

A. The Panel's Decision Conflicts With This Court's Recent Decision In *Anash*

1. This Court should grant rehearing to maintain uniformity of its own decisions. Fed. R. App. P. 40(b)(2)(A). Just months ago, this Court in *Anash* granted preliminary-injunctive relief to a yeshiva asserting an RLUIPA substantial-burden claim against a municipality. 184 F.4th at 224–32, 249. There, the municipality amended its zoning code and then condemned, closed, and fined the yeshiva for housing about ten students. *Id.* at 225–30. The yeshiva sued, and this Court held that the yeshiva was likely to "succeed on the merits of [its] substantial-burden claim" for purposes of preliminary-injunctive relief. *Id.* at 246. *Anash* then held that the yeshiva established irreparable harm because of its likelihood-of-success showing. *Id.* at 246–47. "[T]he loss of religious freedom" under RLUIPA "is itself an irreparable harm." *Id.* (citing *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam)). Deprivation of those religious-land-use rights "for even minimal periods of time . . . *unquestionably* constitutes irreparable injury." *Id.* (emphasis added) (citation omitted). Finally, the equities

weighed heavily in the yeshiva's favor because of the merits showing too. *Id.* at 247–48. The municipality's actions likely deprived the yeshiva of its free-exercise rights, yet its own zoning interests were not compelling. *Id.* "[I]nterests protected by federal legislation take precedence over conflicting interests preserved in state or municipal law." *Id.* at 247.

2. *Anash* compels the conclusion that Holy Trinity has established the irreparable-harm and balance-of-the-equities factors here. As in *Anash*, Holy Trinity is "very likely to prevail on its RLUIPA substantial-burden claim." Slip.Op.8. So, as in *Anash*, Holy Trinity's "loss of religious freedom," 184 F.4th at 246—its "loss of years in which [it] could engage in the religious exercise [with] the Shrine," as well as its suffering of "specifically stated . . . discriminat[ion]," Dissent.Slip.Op.8–9—"is itself an irreparable harm," 184 F.4th at 246. Independently, *Anash* also requires an irreparable-harm finding here due to the deprivation of Holy Trinity's "access to or use of real property for which [it] has a right to access or use." 184 F.4th at 246; Dissent.Slip.Op.8–9. Additionally, as in *Anash*, the equities weigh strongly in Holy Trinity's favor because it is suffering loss of fundamental free-exercise rights, yet the Township has no compelling reason for such deprivation. Slip.Op.6–8. If anything, this

case is stronger than *Anash* because of the Township's recognized "unconstitutional religious hostility and content-based discrimination." Slip.Op.7; Dissent.Slip.Op.6–7.

3. The Panel's contrary decision splits with *Anash*, creating an intracircuit conflict.

First, unlike *Anash*, the Panel adopted a *rebuttable* presumption-of-irreparable-harm framework to analyze Holy Trinity's loss of free-exercise rights. Slip.Op.10–11. Then, applying that framework, the Panel concluded that Holy Trinity's claim of irreparable "spiritual harm" was rebutted because it could not build the Shrine for some years even with preliminary-injunctive relief. *Id.*[1] *Anash* did not apply a *rebuttable* presumption-of-irreparable-harm framework. It held that "loss" of free-exercise rights "*is itself*," or "*unquestionably constitutes*," irreparable harm. 184 F.4th at 246 (citations omitted) (emphases added). Nor did the Panel explain why Holy Trinity's loss of use of its Property did not qualify as irreparable under *Anash*. The Panel rebutting Holy Trinity's

[1] The Panel concluded Holy Trinity's "primary" asserted harm was its loss of its fundraising ability. Slip.Op.10–11. But Holy Trinity's lead harm was loss of its free-exercise rights. Dkt.7 at 24; Br.62; Reply.Br.27–28.

irreparable harm here also contravened RLUIPA, as the process to develop the Shrine is protected religious exercise. *See* 42 U.S.C. § 2000cc-5(7)(B) (defining religious exercise to include the "use, building, or conversion of real property for the purpose of religious exercise"). Its suggestion that RLUIPA provides less protection than the First Amendment is equally atextual. *See id.* § 2000cc-3(g) (stating RLUIPA must be "construed in favor of a broad protection of religious exercise, to the maximum extent permitted by . . . the Constitution").[2]

Second, the majority's status-quo considerations, Slip.Op.4–5, 8–9, conflict with *Anash*. *Anash*'s balance-of-the-equities analysis did not turn on such considerations, but rather on its conclusion that the yeshiva's loss of free-exercise rights outweighed the municipality's zoning interests. *See* 184 F.4th at 247. The absence of status-quo considerations in *Anash* comports with RLUIPA, as RLUIPA reflects Congress' "strong interest in protecting the First Amendment right to the free exercise of

[2] The Panel faulted Holy Trinity for "delay," Slip.Op.9, but did not consider that the bulk of any "delay" was due to Holy Trinity's effort to negotiate in good faith with the Township by pursuing a smaller project, Br.63–64 (citing *Times Mirror Mags., Inc. v. L.V. Sports News, L.L.C.*, 212 F.3d 157, 169–70 (3d Cir. 2000)). Regardless, any delay here cannot displace *Anash*'s holding that loss of free-exercise rights itself satisfies the irreparable-harm and equities factors.

religion," which "take[s] precedence over conflicting interests in state or municipal law." *See id.* Those interests are paramount here when analyzing a challenge to a facially discriminatory zoning scheme, which the Panel refused to consider. But as Judge Matey explained, that "enjoining the Township here will eliminate its power of religious discrimination" should "trouble no one" because "the Township never held power to discriminate against homes of religious worship in the first place." Dissent.Slip.Op.9–10.

Third, the majority relied on this Court's post-*Anash* decision in *AFP* to bolster its irreparable-harm and balance-of-the-equities conclusions, Slip.Op.5, 8, but it is *Anash* that "fits the facts and law of this case crisply," not *AFP*, Dissent.Slip.Op.4. In *AFP*, this Court rejected a denial-of-preliminary-injunction appeal from a nonprofit challenging a campaign-finance-disclosure law on the eve of an election. 2026 WL 2563151, at *1–2. The nonprofit had not shown a likelihood of success on the merits, so its "unclear" irreparable harm did not outweigh "the state's weighty interest in enforcing its law." *Id.* at *5. "[T]his appeal" thus "differs from *AFP* in at least three ways," as Judge Matey detailed.

Dissent.Slip.Op.3–8. Regardless, any conflict between *AFP* and *Anash* and this case counsels in favor of *en banc* review.

B. The Panel's Decision Also Conflicts With The Decisions Of Other Circuits

Rehearing is also necessary because the Panel's decision conflicts with authoritative decisions of other Circuits over how to analyze the irreparable-harm and balance-of-the-equities factors in the RLUIPA-preliminary-injunction context. Fed. R. App. P. 40(b)(2)(C).

In addition to *Anash*, at least the Fifth and the Sixth Circuits have held RLUIPA plaintiffs satisfy the irreparable-harm and/or the balance-of-the-equities factors for preliminary-injunctive relief by demonstrating a likelihood of success on the merits. *Opulent Life*, 697 F.3d at 295–98 (holding that "[the church] has satisfied the irreparable harm requirement because it has alleged violations of its First Amendment and RLUIPA rights"); *Cath. Healthcare Int'l*, 82 F.4th at 450 (finding both factors satisfied for this reason). The Fifth Circuit, moreover, reached its conclusion when adjudicating a plaintiff-church's RLUIPA claim over renovating its new church building to expand its religious mission by welcoming more members and visitors, *Opulent Life*, 697 F.3d at 295–98—materially similar circumstances here.

Other Circuits have reached identical conclusions under RLUIPA's "sister statute," *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014), the Religious Freedom Restoration Act, *see, e.g.*, *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996); *Korte v. Sebelius*, 735 F.3d 654, 665–66 (7th Cir. 2013); *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 608–09 (8th Cir. 2022); *Hobby Lobby Stores v. Sebelius*, 723 F.3d 1114, 1145–47 (10th Cir. 2013) (en banc).

The Panel conflicts with these decisions and charts a course that no other Circuit has endorsed by denying a preliminary injunction despite finding a strong likelihood of success on the merits of an RLUIPA claim. Indeed, the Panel's decision forecloses preliminary-injunctive relief to RLUIPA plaintiffs in this Circuit who seek to "put [their] land to a new use," Slip.Op.5, even in the face of "unconstitutional religious hostility and content-based discrimination," Slip.Op.7. Thus, RLUIPA plaintiffs in this Circuit, but not others, "can expect zealous denial of their reserved rights to become the norm" in the preliminary-injunction context. Dissent.Slip.Op.2.

II. The Panel's Holding Conflicts With Longstanding Supreme Court Precedent Analyzing Loss Of First Amendment Rights In The Preliminary-Injunction Context

Rehearing is also necessary because the Panel decision conflicts with Supreme Court precedent. Fed. R. App. P. 40(b)(2)(B). Separate from its RLUIPA claim, Holy Trinity sought a preliminary injunction for its facial and as-applied Free Exercise Clause claims. *Supra* pp.7, 9. The Free Exercise Clause forbids the government from burdening sincere religious exercise with laws that are neither "neutral" nor "generally applicable," unless it satisfies "strict scrutiny." *Fulton v. City of Phila.*, 593 U.S. 522, 533 (2021). Government action is not neutral if it has "proceed[ed] in a manner intolerant of religious beliefs." *Id.* at 533. Actions rooted in "animosity" toward or "disapproval of" religious beliefs "must be set aside" without further inquiry. *Masterpiece Cakeshop v. Colo. Civil Rights Comm'n*, 584 U.S. 617, 639 (2018).

The Supreme Court has consistently held a violation of a plaintiff's First Amendment rights is *per se* irreparable harm and that, in those circumstances, the equities favor preliminary-injunctive relief. *See Roman Cath. Diocese*, 592 U.S. at 19 (quoting *Elrod*, 427 U.S. at 373) ("The loss of First Amendment freedoms, for even minimal periods of

time, unquestionably constitutes irreparable injury."); *Tandon v. Newsom*, 593 U.S. 61, 64 (2021) (same); *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025) (same). So, under Supreme Court precedent, plaintiffs who establish a likelihood of success on a Free Exercise Clause claim also simultaneously establish irreparable harm, and the equities tilt in their favor too.

Here, the Panel's conclusion on Holy Trinity's likelihood of success on its RLUIPA claim also establishes Holy Trinity's likelihood of success on its as-applied Free Exercise Clause claim. The Panel concluded that the "Board members objected to the shrine's pro-life message," Slip.Op.6–8, and "hint[ed] at unconstitutional religious hostility and content-based discrimination," yet could not satisfy strict scrutiny, Slip.Op.7. This shows that the Township likely did not act neutrally toward Holy Trinity and so has violated the Free Exercise Clause, in addition to RLUIPA. Slip.Op.7–8 (citing *Masterpiece Cakeshop*, 584 U.S. at 638).

Accordingly, cases like *Roman Catholic Diocese*, *Tandon*, *Mahmoud*, and *Elrod* apply. Holy Trinity's loss of its First Amendment rights alone constitutes irreparable harm. *See, e.g.*, *Roman Cath.*

Diocese, 592 U.S. at 19; Dissent.Slip.Op.8–9. All equitable considerations thus strongly favor Holy Trinity, given that fundamental free-exercise rights are at issue and the Township has no justification for infringing those rights. *See* Dissent.Slip.Op.14; *see also, e.g.*, *Tandon*, 593 U.S. at 64.

Nevertheless, the Panel did not consider Holy Trinity's facial or as-applied Free Exercise Clause claims at all.[3] Its failure to contend with the Zoning Code's facial discrimination led to an improper framing of the status quo along with an incomplete assessment of the irreparable harm suffered by Holy Trinity. *See Roman Cath. Diocese,* 592 U.S. at 17–19 (examining a law's disparate treatment of religious activities compared to secular activities); *Tandon*, 593 U.S. at 64 (same). But even as-applied here, the Panel's failure to hold that Holy Trinity had satisfied the irreparable-harm and balance-of-the-equities factors under *Roman Catholic Diocese*, *Tandon*, and *Elrod* conflicts with that Supreme Court precedent. Fed. R. App. P. 40(b)(2)(B).

[3] The Panel likewise failed to consider Holy Trinity's facial and as-applied RLUIPA equal-terms claims, which equally entitle Holy Trinity to a preliminary injunction.

CONCLUSION

This Court should grant the Petition.

Dated: November 2, 2026

Respectfully Submitted,

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CERTIFICATE OF BAR MEMBERSHIP

I certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit. *See* 3d Cir. R. 28.3(d) & 46.1(e) (2011).

/s/ Joshua D. Davey
JOSHUA D. DAVEY

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify this Petition complies with the requirements of Fed. R. App. P. 32(a)(5)–(6) because it has been prepared in 14-point Century Schoolbook font, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 40(d)(3) because it contains 3,899 words, according to the count of Microsoft Word.

Dated: November 2, 2026

/s/ Joshua D. Davey
JOSHUA D. DAVEY

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on November 2, 2026, I electronically filed the foregoing Petition with the Clerk of the U.S. Court of Appeals for the Third Circuit using the CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

Dated: November 2, 2026

/s/ Joshua D. Davey
JOSHUA D. DAVEY

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 26-2072

HOLY TRINITY UKRAINIAN CATHOLIC CHURCH,
Appellant

v.

TOWNSHIP OF COLLIER; GABE BENVENUTI; WAYNE CHIURAZZI; TIM DOWNEY, JR.; JULIE MURPHY; et al.

On Appeal from the U.S. District Court, W.D. Pa.
Judge Christy Criswell Wiegand, No. 2:26-cv-00024

Before: BIBAS, MATEY, and MONTGOMERY-REEVES,
Circuit Judges
Argued: Sept. 9, 2026; Filed: Oct. 19, 2026

OPINION OF THE COURT

BIBAS, *Circuit Judge*. Preliminary injunctions exist to preserve cases, not decide them. Even when the merits are strong, courts may properly deny a preliminary injunction because the feared injury is reparable without preliminary relief, an injunction would needlessly disrupt the status quo, or one is not needed to keep the case alive. All three are true here.

A church says that its township violated federal law by denying its rezoning application. It seeks a preliminary injunction and has a strong case on the merits; but it does not show

why temporary relief is helpful, let alone necessary. So we will AFFIRM the District Court's denial of a preliminary injunction.

I. THE ZONING BOARD BLOCKS A PRO-LIFE SHRINE

Holy Trinity is a Ukrainian Catholic parish outside Pittsburgh. It practices the Catholic faith, but with rituals and architecture that are distinctively Ukrainian. The parish owns two plots of land. On one of them, in Carnegie, sits a church, where it holds regular liturgies. The other plot, in nearby Collier Township, has been owned by the parish for more than seven decades. That 41-acre plot houses the parish's cemetery and mausoleum but is otherwise mostly wooded.

About three years ago, Holy Trinity's pastor felt called to turn the second plot into a shrine, a pilgrimage destination for faithful to gather from "near and far." App. 783–84. The shrine would "honor Mary, the Mother of God, and would pay homage to the sanctity of life." Appellant's Br. 16. With the help of lawyers, architects, and traffic consultants, Holy Trinity designed the shrine. It envisioned a 13,000-square-foot chapel with gold domes, a bell tower, a museum, a gift shop, and a retreat center.

But the plot is constrained by Collier Township's zoning code. The code divides the township into districts, each of which allows certain types of buildings. The northern, wooded half of the plot lies in a planned-economic-development district, allowing larger projects like business offices, amusement parks, or country clubs. The southern half is in a rural-residential district, allowing farms and single-family homes. Neither district contemplates shrines.

The zoning code is enforced by Collier's five-member Board of Commissioners. The Board has power not only to rezone land or amend the code, but also to approve or deny some building projects, because the code makes some land uses conditional. For instance, the code conditionally allows new churches in rural-residential districts, but only if the Board approves them. In any event, anything as big as Holy Trinity's shrine needs the Board's approval.

To fit the shrine project into the zoning code, Holy Trinity applied to do two things. First, it asked the Board to amend the zoning code to allow planned cultural centers, including the shrine, in economic-development districts. Second, it sought to rezone some of its rural-residential land into economic-development land, to make a larger plot for the shrine. As part of its application, Holy Trinity included sketches of its shrine plus a traffic study showing minimal impact on the surrounding community. After a live hearing with concerned residents, the Board denied Holy Trinity's application, expressing concern about traffic and Holy Trinity's fundraising projections. Some residents, and at least one Board member, were also troubled once they learned that the shrine's message would be pro-life.

So Holy Trinity tried again with a smaller project. It applied to build a modest chapel entirely on its rural-residential land. Though the Board approved the new application, it came with strings attached, limiting bell ringing, the height of the chapel, and who could be remembered at memorial services. At first, Holy Trinity appealed in state court, but then it abandoned that appeal to file this federal lawsuit. It claims that the township's zoning code facially violates the First Amendment's Free Exercise Clause and the Religious Land Use and Institutionalized

Persons Act (RLUIPA), and that the denial of its initial rezoning application violated those laws.

Holy Trinity moved for a preliminary injunction. But the District Court denied it, finding that Holy Trinity was not substantially likely to succeed on the merits, was unclear about what relief it sought, and was seeking to change the status quo. In sum, it explained, no injunction was needed to keep the case alive.

We have jurisdiction to review the denial of a preliminary injunction under 28 U.S.C. § 1292(a)(1). We review the District Court's legal rulings de novo, its findings of fact for clear error, and its ultimate decision for abuse of discretion. *Del. State Sportsmen's Ass'n, Inc. v. Del. Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 198 (3d Cir. 2024). We review "deferentially" because "the denial of a preliminary injunction is almost always based on an abbreviated set of facts, requiring a delicate balancing that is the responsibility of the district judge." *Id.* (internal quotation marks omitted). And in seeking to overturn a denial, Holy Trinity "bears a heavy burden." *Chesimard v. Mulcahy*, 570 F.2d 1184, 1187 (3d Cir. 1978).

II. THE DISTRICT COURT PROPERLY PRESERVED THE STATUS QUO

The parties here, like most parties disputing preliminary injunctions, devote almost their entire briefs to the merits—as if they are leaping to final judgment. That is a common error. The "purpose of a preliminary injunction" is not to leapfrog over trial and final judgment to the court of appeals, but "merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Tex. v. Camenisch*, 451

U.S. 390, 395 (1981). The main reason to grant this "extraordinary remedy" is "to preserve the court's power to render a meaningful decision after a trial on the merits." *Del. State Sportsmen's*, 108 F.4th at 201 (internal quotation marks omitted).

In exercising its discretion to grant a preliminary injunction, a trial court does look to the likelihood of success on the merits. But it also weighs the risk of irreparable injury absent preliminary relief, the balance of equities, and the public interest. *Winter v. NRDC*, 555 U.S. 7, 20 (2008). When the government is the defendant, the last two factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The moving party bears the burden of persuading the trial court "by a clear showing." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam) (cleaned up). Holy Trinity's burden is especially heavy because it seeks to disrupt the status quo, putting its land to a new use. *See Ams. for Prosperity Found. v. Albence*, 2026 WL 2563151, at *2–3, ___ F.4th ___, ___ (3d Cir. 2026). It has not borne it.

A. At trial, Holy Trinity is likely to win some relief

Holy Trinity rightly argues that it is likely to win on at least one of its claims. The township would have us believe that Holy Trinity need only reapply to get its shrine—no harm, no foul. But the record strongly suggests that the township is hostile to the shrine project. If so, reapplying would be futile, and Holy Trinity's right to build a shrine is substantially burdened.

RLUIPA specifically protects the right to "use, build[ ], or conver[t]" "real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5(7)(B). The township may not invoke its zoning code "in a manner that imposes a substantial burden"

on Holy Trinity's right to build unless it can show that doing so is the least restrictive way to further a compelling interest. §2000cc(a)(1).

So we ask whether the burden on Holy Trinity is substantial. Substantiality is "a question of degree." *Anash, Inc. v. Borough of Kingston*, 184 F.4th 214, 239 (3d Cir. 2026). At one end of the spectrum, the burden would be substantial if Holy Trinity were kicked off its land or barred from ever building its shrine. *See id.* at 240. (*Anash*'s facts were that extreme: The town there had effectively evicted an existing congregation. *Id.* at 246.) But merely having to jump through hoops, like reapplying for rezoning, might not count on its own. *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007). Indeed, Holy Trinity conceded as much at oral argument. If the parish can clear that hurdle "quickly or easily," it is hard to view the burden as substantial. *Anash*, 184 F.4th at 240. But if reapplying is futile, then the Board's denial is tantamount to barring the project.

We think Holy Trinity is likely to show that the township's rejection effectively bars the project and thus substantially burdens its chosen land use. First, although Holy Trinity was just taking the first step of seeking rezoning (to be followed by project-specific applications), the Board focused on the ultimate shrine project. Second, residents overwhelmingly disapproved of the shrine project, not just the rezoning application.

Finally, and most troubling, both community and Board members objected to the shrine's pro-life message. One resident worried that "Father Jason has been very involved in pro life. This is to be a pro life museum … [W]hen you think very

political rights, either side, it brings a lot of danger, a lot of protests, as well as costs that could be incurred by the community." App. 820. Another complained that "the intent of the shrine was a celebration for *Roe vs. Wade* being overturned … [and] reparation for sin of abortion and counseling, spiritual direction …. this will bring a bunch [of people] potentially for a rally and this could also bring the opposite as well for protest." App. 825–26.

Privately, at least one of the Board's members agreed. The day after the hearing, that commissioner forwarded an email about the shrine's pro-life stance to the rest of the Board: "Looks like we might have dodged a bullet last night. The true inten[t] of the shrine" was pro-life and "This could have been a disaster." App. 874. Another township officer, copied on the email, seemed to affirm those sentiments. Nothing in the record suggests that any other Board member responded and disagreed. And in her deposition, the Board member who wrote the email confirmed that "one of the reasons" that the Board had denied the application was Holy Trinity's pro-life purpose. App. 215. She also defended denying land-use approval "based on the nature of the religious service to be held in the building." App. 227.

These objections hint at unconstitutional religious hostility and content-based discrimination, concerns that would be better addressed on a more developed factual record. *Masterpiece Cakeshop v. Colo. Civil Rights Comm'n*, 584 U.S. 617, 638 (2018); *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015). But at the very least, they strongly suggest that the Board resists ever approving the shrine project. If so, the rezoning denial is effectively absolute, and the "degree" of burden on Holy

Trinity is substantial. *Anash*, 184 F.4th at 239. Plus, the township does not show that denying approval altogether is the least-restrictive means to serve a compelling interest. That is enough to show that Holy Trinity is very likely to prevail on its RLUIPA substantial-burden claim.

B. But the balance of equities favors the status quo

Preliminary relief does not automatically follow whenever a party is likely to win on the merits. That is because the "goal of preliminary injunctive relief" is not to decide the case, but merely to "preserv[e] the status quo" as it proceeds. *Ortho Pharm. Corp. v. Amgen, Inc.*, 882 F.2d 806, 813 (3d Cir. 1989) (cleaned up). So for preliminary injunctions, the balance of equities strongly favors preserving the status quo. *Ams. for Prosperity*, 2026 WL 2563151, at *1. The situation that the parties have endured before a dispute is a proxy for how much harm each side will suffer (or not) while awaiting trial. *Id.* at *3. Here, the District Court recognized that the point of a preliminary injunction is to keep the case alive and preserve the status quo. It properly declined to upset it.

The status quo is enforcement of the township's zoning code. Holy Trinity has owned its property for nearly three-quarters of a century without building a shrine. It does not suggest that the zoning restrictions are anything new. Holy Trinity, not the township, is the one seeking to change the rules.

This is not a case in which a court must act to restore the status quo ante. Here, the government is not scattering a congregation or disrupting ongoing, time-sensitive religious exercise. *Cf. Anash*, 184 F.4th at 228–30; *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020) (per curiam)

(preliminarily enjoining enforcement of Covid restrictions on ongoing worship).

Holy Trinity's delay in seeking an injunction also weighs in favor of the status quo. Holy Trinity waited almost a year and a half to file this suit. *Cf. Anash*, 184 F.4th at 230 (filing in nine days). Equity aids the diligent, not those who slumbered on their rights. *Bowman v. Wathen*, 42 U.S. (1 How.) 189, 193 (1843).

What is more, the relief Holy Trinity sought was unclear. An injunction must "describe in reasonable detail … the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1). Simply ordering a defendant to "obey the law" is unmanageable, for defendants and courts alike. *McLendon v. Cont'l Can Co.*, 908 F.2d 1171, 1182 (3d Cir. 1990). In the District Court, Holy Trinity did not spell out concretely who would have to do what or refrain from doing what. The court described the request as "broad, vague, and likely to lead to immediate disputes between the parties over the Township's compliance." App. 16. Without a clear demand for relief, the District Court reasonably balked.

C. And the parish does not need interim relief to avert irreparable harm

We grant that Holy Trinity is likely to win relief, even a final injunction, at trial. Still, a preliminary injunction is not a shortcut to that final relief. It is a temporary patch to ensure that a court can see a case through to final judgment. Or in the words of the dissent's source, preliminary injunctions "preserv[e] the status quo as a means of safeguarding the court's remedial options." Samuel L. Bray, *The Purpose of the Preliminary Injunction*, 78 Vand. L. Rev. 809, 845 (2025). So

we ask whether the parish has shown that, without preliminary relief, it will suffer "irreparable injury" that would "nullify" court proceedings. *Ortho Pharm.*, 882 F.2d at 814. It has not. After trial, the District Court will have power to issue a final injunction letting Holy Trinity build its shrine; that power will not go away without a preliminary injunction. *Compare Minard Run Oil Co. v. U.S. Forest Serv.*, 670 F.3d 236, 256 (3d Cir. 2011), *as amended* (Mar. 7, 2012) (denying preliminary injunction would forever deprive plaintiff of mineral rights); *Sullivan v. City of Pittsburgh*, 811 F.2d 171, 179–80 (3d Cir. 1987) (denying preliminary injunction could result in irreversible physical injury or death).

We presume irreparable injury whenever an impediment delays a party's religious exercise. *Del. State Sportsmen's*, 108 F.4th at 204. We do that because religious exercise is often time-sensitive and secular courts are ill-equipped to weigh religious harms. *Id.* It is not clear that this First Amendment presumption always applies to RLUIPA, but even if it does, "presumptions are rebuttable," and here, the presumption is rebutted. *Binderup v. Att'y Gen.*, 836 F.3d 336, 350 (3d Cir. 2016) (en banc) (Ambro, J., op.). Holy Trinity will not suffer a time-sensitive, spiritual harm that a preliminary injunction could prevent.

The primary harm that Holy Trinity alleges as the basis for preliminary relief is monetary, not spiritual. The denial of a preliminary injunction, it argues, "prevents Holy Trinity from fundraising for the Shrine during this litigation." Appellant's Br. 62. Maybe so. But it does not follow "that lost time pursuing this essential aspect of the project cannot be recovered." *Id.* Lost time for worshipping is irreparable; lost time for

fundraising can be compensated with money damages. *Liberty Lincoln-Mercury, Inc. v. Ford Motor Co.*, 562 F.3d 553, 557 (3d Cir. 2009).

True, Holy Trinity alleges some spiritual harm from the delay in building its shrine. Appellant's Br. 62. But it has not asked for relief that would fix it. Holy Trinity says it will suffer delay because it cannot ask for money "in good faith" without first getting an injunction to secure "preliminary approvals." *Id.* But this requested relief, preliminary approvals, will not ensure that Holy Trinity can build its shrine. It asks us only to approve its rezoning application; it will still need to file project-specific applications before the Board finally approves the shrine. And its whole substantial-burden theory of harm presumes that the Board will *never* approve the shrine, at this stage or later on. So even if the District Court ordered the township to approve its initial rezoning application, the parish would not have the certainty it says it needs to fundraise, and its slog through the township's approval process would be no quicker.

Nor could *any* form of preliminary relief give Holy Trinity the certainty it says it needs to start fundraising, let alone to start building. A preliminary injunction is "transient," ending at final judgment. *Lackey v. Stinnie*, 604 U.S. 192, 201, 203 (2025). If Holy Trinity gets its preliminary injunction, breaks ground, but then loses at trial, it will be worse off, stuck with a half-built shrine that it cannot use. A preliminary injunction makes for a shaky foundation.

At bottom, the harm that Holy Trinity fears is not time-sensitive. Holy Trinity waited almost a year and a half from

the denial of its shrine application to file this lawsuit. *Cf. Anash*, 184 F.4th at 230. We do not doubt that the shrine is important to Holy Trinity's religious mission and that federal law protects its right to build. But its own actions tell us that we need not act immediately, before trial, to vindicate that right. And even if we did act now, a preliminary injunction would not give Holy Trinity its shrine. Before breaking ground, the parish must first raise most of the project's $60 to $100 million cost. Holy Trinity expects that the fundraising phase "could be two years." App. 402**.** It does not anticipate "completion of the project" for "five years." App. 401. So the parish does not expect to start building (let alone worshipping in the new complex) for years, with or without preliminary relief.

In response, Holy Trinity and our dissenting colleague try to rest their case on *Anash*. But this case is a far cry from *Anash*'s extreme facts. There, a rabbi had run a yeshiva for more than a year before the borough changed the zoning code. 184 F.4th 226–27. Then the borough condemned the rabbi's yeshiva, kicking him out the day before Rosh Hashanah, the start of the Jewish High Holy Days. *Id.* at 228. By doing so, the borough changed the status quo, disrupted his congregants' worship, and broke up and scattered his congregation. *Id.* at 230, 246. It jeopardized not only the congregation's survival as a body, but also the court's ability to see the case through. That was classic irreparable harm. There was no time to wait for final judgment—so much so that *Anash* took the extraordinary step of *not* remanding for the District Court to exercise its usual discretion, but rather instructing it to grant the injunction on specific terms. *Id.* at 249. *Cf. Del. State Sportsmen's*, 108 F.4th at 197 ("This equitable remedy is never automatic: It always

involves a district court's sound discretion."). *Anash* is the rare exception for preliminary relief, not the rule.

* * * * *

Holy Trinity wants to raise funds for a shrine, secure in the knowledge that it can build it. But that is a promise that preliminary relief cannot make. What the parish needs is expedited final judgment. The District Court has moved with admirable swiftness, proceeding from complaint to preliminary-injunction ruling in three months. We trust that it will continue with that speed.

Holy Trinity has a solid case on the merits of at least its RLUIPA substantial-burden claim. Though the township says the parish need only reapply to build its shrine, the township's actions and statements suggest that reapplying is futile. We trust the District Court to assess the township's motives and actions carefully on the merits and grant appropriate relief after final judgment. In the meantime, though, the court did not abuse its discretion by staying its hand. So we will AFFIRM its denial of a preliminary injunction.

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MATEY, *Circuit Judge*, dissenting.

It might be easy to lament today's opinion as another *curia dedit, curia abstulit* with one panel decision washing away the foundation of another before the ink dried. Indeed, that is a familiar practice where decisional law decides little, until it suddenly seeks to settle everything. That is how the majority is able to acknowledge that Holy Trinity is likely to succeed on the merits of its RLUIPA claim *and* that re-application would be futile, yet still force the Church to return to municipal purgatory to await the inevitable denial of their proposed religious shrine. That result would have been impossible at the beginning of August under our decision in *Anash, Inc. v. Borough of Kingston,* 184 F.4th 214 (3d Cir. July 30, 2026). But thirty days changed the world—of equity, RLUIPA, the First Amendment, and perhaps all constitutional claims raised in our Circuit—because, writes the majority, the freshly minted decision in *Americans for Prosperity Foundation v. Albence*, 2026 WL 2563151, __ F.4th __ (3d Cir. Aug. 31, 2026) ("*AFP*"), insists on preserving the status quo of religious discrimination.[1]

Respectfully, that cannot be correct. *AFP* rightly ended using federal litigation to alter state electoral rules on the eve of a vote. But it did not wrestle with *Anash*, discuss RLUIPA,

[1] Today's result is all-the-more unusual since Holy Trinity filed this appeal on May 11, 2026, more than a month before the Americans for Prosperity Foundation filed its appeal. But *AFP* was expedited, presumably because of the approaching elections, and so argued and decided before Holy Trinity's first-filed appeal.

or address whether the special concerns that counsel judicial restraint in the election context have any force when a municipality discriminates against religious land-use in zoning. If *AFP* silently purported to raise "preservation of the status quo" above all other considerations in religious discrimination suits—indeed in constitutional claims of all kinds—litigants like Holy Trinity can expect zealous denial of their reserved rights to become the norm. Seeing no grounds for that conclusion, I respectfully dissent.

I.

I start by canvassing the case reporters to demonstrate the proper scope of our holding in *AFP*, which involved a First Amendment challenge to certain provisions of the Delaware Elections Disclosure Act. 2026 WL 2563151, at *1. We had upheld these same provisions against a similar First Amendment challenge in 2015. *Del. Strong Fams. v. Att'y Gen. of Del.*, 793 F.3d 304, 309–13 (3d Cir. 2015). Nevertheless, and on the eve of the 2026 Midterms, the challengers in *AFP* sought to preliminarily enjoin Delaware from enforcing its longstanding campaign-finance law, on the strained theory that *Delaware Strong Families* had been abrogated by the Supreme Court. *See AFP,* 2026 WL 2563151, at *1.

The District Court denied the request for a preliminary injunction, and this Court correctly affirmed. Despite occasional flourishes,[2] our otherwise narrow holding in *AFP*

[2] For example, while *AFP* mused that "[i]t makes no difference that challengers invoke the First Amendment," 2026 WL 2563151, at *4, the Supreme Court has explained that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."

rested on a careful consideration of case-specific factors: 1) the primacy of state election-law, 2) the challengers' scant factual support, 3) the looming election deadlines, and 4) the nature of the potential harm to both parties by upending the long-established rules applicable to all parties, political and legal. All leading to the familiar proposition that "[o]rdinarily, the balance of equities strongly favors preserving the status quo, not disrupting it." *Id.* And ordinarily (perhaps always) in state election litigation in federal court, that is the right result. But this appeal differs from *AFP* in at least three ways.

A.

First, the challengers in *AFP* asked us to disrupt a pending election at the last minute. But as we explained, "[t]he Supreme Court has repeatedly warned lower courts not to 'alter the election rules on the eve of an election.' Two months out from an election, caution is a virtue." *AFP,* 2026 WL 2563151, at *5 (quoting *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam)). There are no comparable concerns in Holy Trinity's requested relief, which merely asks for the restoration of neutral zoning treatment for religious purposes as already required under federal law, not a bespoke rule tailored to the interests of a political party on election eve.

Second, the challengers in *AFP* were unlikely to succeed on the merits of their First Amendment claim. As the panel noted, the challengers had made "almost no factual record to flesh out their likelihood of success and the injuries

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Roman Cath. Diocese of Brooklyn v. Cuomo, 592 U.S. 14, 19 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)).

they fear," and their threshold legal argument—that *Americans for Prosperity Foundation v. Bonta,* 594 U.S. 595 (2021), abrogated *Delaware Strong Families*—likely required lengthy study by "a panel of this Court, and possibly our entire Court sitting en banc." *AFP,* 2026 WL 2563151, at *1, 3. And even if "*Delaware Strong Families* is no longer good law, the record before us says little about whether Delaware demands more disclosure than its interests justify." *Id.* at *4. Given the scant factual record and their reliance on an untested legal theory, the challengers' likelihood of success was "hazy" at best. *Id.* at *3.

Not so with Holy Trinity. The majority acknowledges that the Church is likely to succeed on the merits of its RLUIPA substantial-burden-provision claim. *See* Op. 5–8. That is not surprising, since *Anash* fits the facts and law of this case crisply. In *Anash*, a Jewish yeshiva and an associated residence were condemned following a change in the municipality's zoning code, preventing the yeshiva from using its properties for religious worship and study. *See Anash,* 184 F.4th at 224. Relying primarily on RLUIPA claims, the yeshiva sought a preliminary injunction enjoining enforcement of the municipality's zoning code against it. *See id.* We concluded that the yeshiva was likely to succeed on the merits because it could likely "establish a *prima facie* substantial-burden claim" and because "it is quite unlikely that the [municipality] will be able to demonstrate a compelling interest for the substantial burdens at issue here." *Id.* at 236, 241. Accordingly, after considering the remaining preliminary injunction factors, we reversed the District Court's denial of preliminary relief and

directed the entry of an injunction prohibiting enforcement of the zoning code against the yeshiva. *See id.* at 249.[3]

The Township's denial of Holy Trinity's rezoning application, as well as the Zoning Code's treatment of churches more broadly, falls squarely within the rule from *Anash*: that limiting the use of property for the "proposed exercise of religion so as to prevent the proposed exercise of religion on the property" constitutes a substantial burden on religion. *Id.* at 240. Nor is the Township likely to satisfy strict scrutiny. It cites a general interest in enforcing its Zoning Code, as well as speculative concerns about traffic and infrastructure, but those interests are insufficient. Neither a municipality's general

[3] In so doing, we noted that the "meaning of 'substantial burden' as used in RLUIPA's prohibitions regarding land use regulations presents a novel question for this Circuit," *Anash*, 184 F.4th at 236, and broadly held that a land use regulation substantially burdens religion if it: 1) "restricts *access* to real property that is otherwise available for the proposed exercise of religion," 2) "limits the *use* of real property that is otherwise available for the proposed exercise of religion so as to prevent the proposed exercise of religion on the property," or 3) "has a *significant adverse effect* on real property that is used or otherwise available for the proposed exercise of religion." *Id.* at 239–40. "[E]xcept when the implementation of a land use regulation satisfies strict scrutiny, the choice of where the exercise of religion can take place should be left to persons with rights of access to and use of real property—not to zoning codes and landmarking laws promulgated by governments." *Id.* at 244. Rather, "in all but the most dire circumstances, a land use regulation that prevents access to or use of real property for religious exercise will contravene RLUIPA." *Id.* at 245.

"interest in land use regulation," *id.* at 241, nor concerns regarding strains on infrastructure such as "increasing traffic and the demand for parking," *id.* at 244, are interests of the "highest order," *id.* at 242. And unlike the challengers in *AFP* who offered no factual support, Holy Trinity developed a substantial factual record to "flesh out their likelihood of success and the injuries they fear in the meantime," *AFP*, 2026 WL 2563151, at *1, including relevant discovery, deposition testimony and designations, stipulated facts, more than 50 jointly admitted exhibits, and live testimony at the preliminary injunction hearing.[4] The Township does not dispute the material facts supporting the Church's RLUIPA claim.[5] Nor

[4] The Township emphasizes the supposed "mandatory" nature of Holy Trinity's request and the corresponding heightened showing required. But I struggle to distinguish Holy Trinity's request from the "prohibitory" relief accorded the yeshiva in *Anash*. 184 F.4th at 232. An injunction would not require the Township to approve Holy Trinity's plans, issue permits, waive health-and-safety requirements, or authorize construction. Rather, relief would allow Holy Trinity to continue pursuing the ordinary zoning and land use approval process, including its applications, fundraising, and project planning, while this litigation proceeds. That the injunction might allow Holy Trinity to clear the preliminary step in the zoning process does not transform the relief into a "mandatory" injunction. Practical effect is not equivalent to mandatory relief, and there was some practical effect flowing from our decision in *Anash.* That is simply the way of judicial orders.

[5] Including that the zoning code does not allow churches anywhere in the Township as of right; that Holy Trinity was therefore required to seek both a variance and conditional-use approval for construction of the Shrine; that the Church spent

has the Township disavowed any of its statements of extraordinary, explicit religious hostility.[6] In light of this all, the lead opinion is forced to acknowledge Holy Trinity's persuasive merits argument. But rather than grant the requested relief, it reflexively imports *AFP*'s reasoning into a context where that reasoning is inapt.

B.

Which brings us to the final, significant, departure from *AFP*—the nature of harm to both parties, and the corresponding balancing of the equities. The panel in *AFP*

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more than $160,000 on design and site development efforts, engaging architects, builders, and engineers to analyze and plan the project; that Church representatives and contractors held an informal meeting with the Township's Director of Planning, Zoning & Land Development, Bob Caun, who provided feedback and recommendations that the Church then followed; and ultimately, that Holy Trinity's application was denied based ostensibly on concerns over traffic and infrastructure.

[6] Commissioner (now Board President) Cupples-Wisniowski candidly double-downed during her deposition, testifying that it would be "appropriate" for the Township to reject a proposal because of "the nature of the religious service to be held in the building." App. 227. Cupples-Wisniowski is the same Commissioner who, on the day after the contentious hearing, emailed the Board and other Township officials about a pro-life speech by Fr. Charron, and remarked that the Township "might have dodged a bullet last night" by denying Holy Trinity's request, as approving the Rezoning Application "could have been a disaster." App. 874.

offered that "[i]rreparable injury is not a light switch, but a spectrum. Challengers must show us where they sit on that spectrum, so that we can evaluate their harms in light of the equities on both sides." *AFP,* 2026 WL 2563151, at *4. The challengers in *AFP* "spen[t] little time showing irreparable harm" to themselves or their donors. *Id.* While the panel presumed that "First Amendment harm is irreparable," it also presumed that "enjoining enforcement of the law would irreparably harm Delaware," the severity of which was heightened by the looming Midterms and the fact that the statute had been on the books for decades. *Id.*

The competing harms between Holy Trinity and the Township are fundamentally distinct, starting with the claims. *AFP* made both a facial and as-applied challenge to the Act, meaning that Delaware would have been enjoined from enforcing its longstanding campaign-finance regulations against all covered entities. Our relief here, on the other hand, could be narrowly tailored to enjoin discriminatory enforcement of the Zoning Code against a single, small undeveloped tract on a rural road. Or consider the speculative harms hypothesized by the *AFP* plaintiffs (the Act had not been enforced against them), *id.* at *1, against the Township's actual denial of Holy Trinity's application for specifically stated, and deliberately discriminatory, reasons.

Nor is Holy Trinity's showing of irreparable harm dependent solely on the presumption that First Amendment injuries are irreparable. *See id.* at *4. The Township's denial inflicts concrete harms that cannot be remedied after final judgment including, most significantly, the lost years spent without celebrating Holy Trinity's devotion to Mary, the Mother of God, in "a place of pilgrimage," App. 363, to give thanks for the gifts of "faith, family, and life." App. 643.

Indeed, the majority acknowledges that "[l]ost time for worshipping is irreparable," but treats Holy Trinity's secondary fundraising goals as though they were the centerpiece of its irreparable harm showing. Op. 10. That is wrong and the principal problem is precisely the one the lead opinion concedes is irreparable: the loss of years in which Holy Trinity could engage in the religious exercise the Shrine is intended to facilitate. Absent relief now, Holy Trinity faces more years of litigation followed by more years of approvals, fundraising, and construction before it can realize the religious values of the Shrine Project.[7]

The majority recognizes all of this, but balks because granting Holy Trinity's relief from the discriminatory zoning laws would "disrupt" the status quo. I suppose that is correct in a sense: enjoining the Township here will eliminate its power of religious discrimination. That result should trouble no one. But we need not look through that side of the lens, because it is also correct to state that the Township never held power to

[7] Completely separate from these First Amendment harms, Holy Trinity will also suffer irreparable harm from the Township depriving it of its use of its own real property. "When a government deprives a person of access to or use of real property for which that person has a right to access or use, the resulting injury qualifies as irreparable harm." *Anash*, 184 F.4th at 246; *see also Minard Run Oil Co. v. U.S. Forest Serv.*, 670 F.3d 236, 256 (3d Cir. 2011), *as amended* (Mar. 7, 2012) ("[W]here 'interests involving real property are at stake, preliminary injunctive relief can be particularly appropriate because of the unique nature of the property interest.'") (quoting *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009))).

discriminate against homes of religious worship in the first place. That is why courts do not excuse constitutional and statutory violations merely because a state actor has a longstanding practice of acting contrary to federal law. It is also why courts, from the English Court of Chancery and its colonial counterparts, to American judges today, did not assign such magical power to the "status quo" and focused instead on irreparable harm.[8] This traditional concern aligns with our past

[8] The Supreme Court has explained that "the equity jurisdiction of the federal courts is the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act, 1789 (1 Stat. 73)." *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc*., 527 U.S. 308, 318 (1999). The majority reasons that the paramount purpose of a preliminary injunction is to avoid disrupting current events regardless of countervailing circumstances. Op. 4–5. But that approach appears to be a relatively modern innovation inconsistent with English practice. *See* Thomas R. Lee, *Preliminary Injunctions and the Status Quo*, 58 Wash. & Lee L. Rev. 109, 126 (2001) ("Advocates of the bifurcated standard [heightened showing for injunctions that disrupt the status quo] would have a difficult time tracing the roots of the status quo criterion to the eighteenth-century Court of Chancery."); *see id.* at 142 ("[T]he doctrinal focus was irreparable harm, not the form of the injunction."). At most, the nineteenth century English cases "offer[ed] an uncontroversial description of the usual *effect* of preliminary injunctive relief." *Id.* at 129*; see also id.* at 132–33 ("Thus, although the Chancery courts in the nineteenth century had begun to speak in terms of the status quo, they had not elevated the phrase to any sort of test or standard of any doctrinal significance.").

decisions noting that "[i]f the existing 'status quo' is currently causing one of the parties irreparable injury and thereby threatens to nullify" the integrity of the process, "then it is necessary to alter the situation to prevent the injury." *Ortho Pharm. Corp. v. Amgen, Inc*., 882 F.2d 806, 814 (3d Cir. 1989).

All these reasons make *AFP*'s election deadline emphasis on the "status quo" a poor precept for measuring the harm arising in this fight for religious freedom.[9] It is an

[9] Properly understood, the "status quo" does not refer to "the situation existing at the moment the law suit is filed" but the "last peaceable noncontested status of the parties." *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft,* 389 F.3d 973, 1013 (10th Cir. 2004) (McConnell, J., concurring); *see also Opticians Ass'n of Am. v. Indep. Opticians of Am.,* 920 F.2d 187, 197 (3d Cir. 1990) (defining the status quo as the "last, peaceable, noncontested status of the parties."); *Fredericks v. Huber,* 37 A. 90, 91 (Pa. 1897) (defining status quo as the "last actual, peaceable, noncontested status which preceded the pending controversy" and noting that "equity will not permit a wrongdoer to shelter himself behind a suddenly or secretly changed status, though he succeeded in making the change before the chancellor's hand actually reached him."). Indeed, "it is sometimes necessary to require a party who has recently disturbed the status quo to reverse its actions. Such an injunction restores, rather than disturbs, the status quo ante, and is thus not an exception to the rule." *O Centro,* 389 F.3d at 1013. That is why "[d]espite its name, the 'status quo' was not static—and it sometimes needed to be not only preserved but also restored" so "[c]ourts knew that references to the status quo were not to be taken literally" because "the one chosen might be a past state." Samuel L. Bray, *The Purpose of the Preliminary*

approach equally inconsistent with our foundational commitment to faith, and a faithful understanding of equity. It is difficult to discern how equity tolerates the Township shrouding itself behind an unlawful "status quo" that it created solely to oppose the natural right of religious worship.[10]

Injunction, 78 Vanderbilt L. Rev. 809, 842–43 (2025). That is the case here, where, absent relief, no court can compensate Holy Trinity's lost years of worship. *Georgia v. Brailsford*, 2 U.S. 402, 407 (1792) (Blair, J.) ("[T]hat an injury may not be done, which it may be out of our power to repair, the injunction ought, I think, to issue, till we are enabled, by a full enquiry, to decide upon the whole merits of the case."). And granting the relief would not thwart the court's power to render a meaningful decision after a trial on the merits: the parties can litigate to judgment while Holy Trinity pursues the remaining zoning approvals, and, if the Township ultimately prevails, the injunction can be dissolved before the Shrine approvals proceed further.

[10] *See* Adam J. MacLeod, *Why Equity Follows the Law*, 13 Laws 3, 4 (2024) ("[E]quity is just. Within its limited jurisdiction, equity acts for reasons of natural right, as defined by the ancient principles and procedures laid down in Roman, canon and civil law, and in later common law. The classical concept of equity as the jurisdiction 'founded in natural justice, in honest and right' was received early into Roman law and common law and plays a significant role in both the civil law and common law traditions.") (citing Joseph Story, Commentaries on Equity Jurisprudence as Administered in England and America, 19 (1836)). "[T]he equity administered by the early English chancellors . . . were confessedly borrowed from the *aequitas* and judicial powers of the Roman

II.

One final observation. We have not been shy about "disrupting" the status quo when granting preliminary relief that altered existing arrangements in state housing programs, drug-abuse treatment, workers' speech rights, and the detention of illegal immigrants.[11] Only less favored rights—

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magistrates . . . ." John Norton Pomeroy, 1 A Treatise on Equity Jurisprudence as Administered in the United States of America 2 (Bancroft-Whitney Co. 4th ed. 1918) (1881). The Roman praetor's "extraordinary jurisdiction" was "the prototype of English chancery procedure." *Id.* at 7. The praetors thought *aequitas* had "an absolute authority" so they "felt themselves . . . under an imperative obligation to bring the jurisprudence into harmony with this all-pervading morality." *Id.* at 11. Thus when "an adherence to the old *jus civile* would do a moral wrong, and produce a result inequitable (*inaequum*), the praetor . . . provided a remedy by means of an appropriate action or defense." *Id*.

[11] *See, e.g.*, *Sullivan v. City of Pittsburgh, Pa*., 811 F.2d 171, 175 (3d Cir. 1987) (affirming mandatory preliminary injunction that enjoined city from closing existing alcoholic treatment facilities, required city to issue zoning and building permits for new ones, and forced city to distribute certain federal community development grant funds); *Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty*., 39 F.4th 95, 101 (3d Cir. 2022) (affirming mandatory preliminary injunction that required an employer to rescind its discipline of its employees); *Osorio Martinez v. Att'y Gen*., 893 F.3d 153, 178–79 (3d Cir. 2018) (reversing the denial of a mandatory preliminary injunction to require petitioners' release from immigration detention).

usually faith and firearms—require retreat into sophisticated theories about restraint, error costs, and reliance interests.[12] *Anash* corrected course and returned balance to the distribution of equitable relief, and I would follow that precedent rather than relegating the natural right to worship to the lesser status of contests for civil office. In so doing, today's decision treats as secondary a right which receives tripartite protection under our laws: statutory protection under RLUIPA, constitutional protection under the First Amendment, and longstanding recognition in our legal tradition as a natural, pre-existing, and unalienable right. *See Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522, 574 (2021) (Alito, J., concurring) ("the right to religious liberty . . . was universally said to be an unalienable right") (citation omitted).

* * *

Religion is the "duty which we owe to our Creator and the Manner of discharging it,"[13] consisting of "offering service and ceremonial rights to a superior nature that men call divine."[14] What a strange place to plant new equitable vines

[12] *See, e.g.*, *Bullock v. Carney,* 2020 WL 7038527 (3d Cir. June 4, 2020); *Delaware State Sportsmen's Ass'n, Inc. v. Delaware Dep't of Safety & Homeland Sec*., 108 F.4th 194, 200 (3d Cir. 2024), *cert. denied sub nom. Gray v. Jennings*, 145 S. Ct. 1049 (2025).

[13] 2 James Madison, *Memorial and Remonstrance Against Religious Assessments, in* The Writings of James Madison 184 (Gaillard Hunt ed., 1901) (1785).

[14] Thomas Aquinas, *Summa Theologiae*, II-II Q. 82, a. 1, s.c. (Aquinas Inst. ed., 2012) (quoting Marcus Tullius Cicero, *Rhetoric*, ii, 53).

that will entangle efforts to honor that solemn duty and choke the virtuous impulse to worship from our collective will. The rules of elections should not change on a whim, essential as they are for our municipal laws and republican form of government. But they are not paramount because "[o]f all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. . . . The mere politician, equally with the pious man, ought to respect and to cherish them."[15] So too should the federal judge and therefore I respectfully dissent.

[15] George Washington, Farewell Address (1796), in 35 The Writings of George Washington 229 (John C. Fitzpatrick ed., 1940).