JURY INSTRUCTIONS
REACHING HEARTS INTERNATIONAL, INC. V. PRINCE GEORGE'S COUNTY, et al.

Ladies and gentlemen, before you begin your deliberations, I am going to give you my instructions on the law. Please pay close attention and I will try to be as clear as possible.

It has been obvious to me and the attorneys that until now you have faithfully discharged your duty to listen carefully and observe each witness who testified. Your interest never waned, and you have followed the testimony with close attention.

I ask you to give me that same careful attention as I instruct you on the law.

You have now heard all of the evidence in the case and you are about to hear the final arguments of the lawyers for the parties.

My duty at this point is to instruct you as to the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them, just as it has been my duty to preside over the trial and decide what testimony and evidence is relevant under the law for your consideration.

On these legal matters, you are required to follow the law as I give it to you. If any attorney states a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow.

Please do not single out any instruction as alone stating the law, but instead consider my instructions as a whole when you retire to deliberate in the jury room.

You should not be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law may be--or ought to be--it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you.

As members of the jury, you are the sole and exclusive judges of the facts. You pass upon the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them, and you determine the weight of the evidence.

In determining these issues, no one may invade your province or functions as jurors. In order for you to determine the facts, you must rely

upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their objections, or in their questions or what they may say in their closing arguments is not evidence. Nor is what I may have said--or what I may say in these instructions--about a factual issue evidence. In this connection, you should bear in mind that a question put to a witness is never evidence, it is only the answer which is evidence. But you may not consider any answer that I directed you to disregard or that I directed struck from the record. Do not consider such answers.

Since you are the sole and exclusive judges of the facts, I do not mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not any indication of my views of what your decision should be as to whether or not the plaintiff has proven its case.

Please understand that I have no opinion as to the verdict you should render in this case.

As to the facts, ladies and gentlemen, you are the exclusive judges. You are to perform the duty of finding the facts without bias or prejudice to any party.

It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. The attorneys also have the right and duty to ask me to make rulings of law and to request conferences at the bench out of the hearing of the jury. All those questions of law must be decided by me. You should not show any prejudice against an attorney or his or her client because the attorney objected to the admissibility of evidence, or asked for a conference out of the hearing of the jury or asked me for a ruling on the law.

As I already indicated, my rulings on the admissibility of evidence do not, unless expressly stated by me, indicate any opinion as to the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

This is a civil case and as such the plaintiff has the burden of proving the material allegations of its complaint by a fair preponderance of the evidence.

If after considering all of the testimony you are satisfied that the plaintiff has carried its burden on each essential point as to which it has the burden of proof, then you must find for the plaintiff on its claims. If after such consideration you find the testimony of both parties to be in balance or equally probable, then the plaintiff has failed to sustain its burden and you must find for the defendant.

The party with the burden of proof on any given issue has the burden of proving every disputed element of its claim to you by a preponderance of the evidence. If you conclude that the party bearing the burden of proof has failed to establish its claim by a preponderance of the evidence, you must decide against it on the issue you are considering.

What does a "preponderance of evidence" mean? To establish a fact by a preponderance of the evidence means to prove that the fact is more likely true than not true. A preponderance of the evidence means the greater

weight of the evidence. It refers to the quality and persuasiveness of the evidence, not to the number of witnesses or documents. In determining whether a claim has been proved by a preponderance of the evidence, you may consider the relevant testimony of all witnesses, regardless of who may have called them, and all the relevant exhibits received in evidence, regardless of who may have produced them.

If you find that the credible evidence on a given issue is evenly divided between the parties--that it is equally probable that one side is right as it is that the other side is right--then you must decide that issue against the party having this burden of proof. That is because the party bearing this burden must prove more than simple equality of evidence–it must prove the element at issue by a preponderance of the evidence. On the other hand, the party with this burden of proof need prove no more than a preponderance. So long as you find that the scales tip, however slightly, in favor of the party with this burden of proof--that what the party claims is more likely true than not true--then that element will have been proved by a preponderance of evidence.

Some of you may have heard of proof beyond a reasonable doubt, which is the proper standard of proof in a criminal trial. That requirement does not apply to a civil case such as this and you should put it out of your mind.

The evidence in this case is the sworn testimony of the witnesses, the exhibits received in evidence, and any stipulations.

By contrast, the question of a lawyer is not to be considered by you as evidence. It is the witnesses' answers that are evidence, not the questions. At times, a lawyer on cross-examination may have incorporated into a question a statement which assumed certain facts to be true, and asked the witness if the statement was true. If the witness denied the truth of a statement, and if there is no direct evidence in the record proving that assumed fact to be true, then you may not consider it to be true simply because it was contained in the lawyer's question.

The famous example of this is the lawyer's question of a married witness: "When did you stop beating your wife?" You would not be permitted to consider as true the assumed fact that he ever beat his wife,

unless the witness himself indicated he had, or unless there was some other evidence in the record that he had beaten his wife.

Testimony that has been stricken or excluded is not evidence and may not be considered by you in rendering your verdict. You will recall that I ordered that a portion of the testimony of Mr. Antonetti be stricken, and you must follow that instruction.

Arguments by lawyers are not evidence, because the lawyers are not witnesses. What they have said to you in their opening statements and what they will say in their closing arguments is intended to help you understand the evidence to reach your verdict. However, if your recollection of the facts differs from the lawyers' statements, it is your recollection which controls.

Exhibits which have been marked for identification may not be considered by you as evidence until and unless they have been received in evidence by me.

To constitute evidence, exhibits must be received in evidence. Exhibits marked for identification but not admitted are not evidence, nor are materials brought forth only to refresh a witness' recollection.

It is for you alone to decide the weight, if any, to be given to the testimony you have heard and the exhibits you have seen.

There are two types of evidence which you may properly use in reaching your verdict.

One type of evidence is direct evidence. Direct evidence is when a witness testifies about something he knows by virtue of his own senses--something he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is its present existence or condition.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. There is a simple example of circumstantial evidence which is often used in this courthouse.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. As you know, this courtroom has no

windows and you cannot look outside. As you were sitting here, someone walked in with an umbrella which was dripping wet. Then a few minutes later another person also entered with a wet umbrella. Now, you cannot look outside of the courtroom and you cannot see whether or not it is raining. So you have no direct evidence of that fact. But on the combination of facts which I have asked you to assume, it would be reasonable and logical for you to conclude that it had been raining.

That is all there is to circumstantial evidence. You infer on the basis of reason and experience and common sense from one established fact the existence or non-existence of some other fact.

Circumstantial evidence is of no less value than direct evidence; for, it is a general rule that the law makes no distinction between direct evidence and circumstantial evidence but simply requires that your verdict must be based on a preponderance of all the evidence presented.

A stipulation of facts is an agreement among the parties that a certain fact is true. You must regard such agreed facts as true.

During the trial you have heard the attorneys use the term "inference," and in their arguments they may ask you to infer, on the basis of your reason, experience, and common sense, from one or more established facts, the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical conclusion that a disputed fact exists on the basis of another fact which has been shown to exist.

There are times when different inferences may be drawn from facts, whether proved by direct or circumstantial evidence. The plaintiff asks you to draw one set of inferences, while the defense asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion which you, the jury, are permitted to draw--but not required to draw-- from the facts which have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense.

So, while you are considering the evidence presented to you, you are permitted to draw, from the facts which you find to be proven, such reasonable inferences as would be justified in light of your experience.

You may have noticed that the Prince George's County council members and other county officials did not testify during this trial. In an earlier proceeding, I ruled that the council members were entitled to a legislative testimonial privilege, meaning that they may not be compelled to testify regarding matters of legislative conduct. Therefore, they were not obligated to testify or to submit to depositions. Accordingly, you should not draw any inferences, either negative or positive, from the failure of either party to present testimony from Thomas Dernoga, David Harrington, Samuel H. Dean, Camille Exum, Prince George's County Executive Jack Johnson, or Judy Thatcher.

You have had the opportunity to observe all the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of the witness' testimony.

It must be clear to you by now that you are being called upon to resolve various factual issues raised by the parties in the face of very different pictures painted by both sides. In making these judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence which may help you decide the truth and the importance of each witness' testimony.

How do you determine where the truth lies? You watched the witness testify. Everything a witness said or did on the witness stand counts in your determination. How did the witness impress you? Did the witness appear to be frank, forthright and candid, or evasive and edgy as if hiding something? How did the witness appear; what was the demeanor of the witness--that is, the carriage, behavior, bearing, manner and appearance of the witness while testifying? Often it is not what a person says but how he or she says it that moves us.

You should use all the tests for truthfulness that you would use in determining matters of importance to you in your everyday life. You should

consider any bias or hostility the witness may have shown for or against any party as well as any interest the witness has in the outcome of the case. You should consider the opportunity the witness had to see, hear, and know the things about which he or she testified, the accuracy of his or her memory, his or her candor or lack of candor, his or her intelligence, the reasonableness and probability of his or her testimony and its consistency or lack of consistency and its corroboration or lack of corroboration with other credible testimony.

In other words, what you must try to do in deciding credibility is to size a witness up in light of his or her demeanor, the explanations given and all of the other evidence in the case. Always remember that you should use your common sense, your good judgment and your own life experience.

You have heard evidence that at some earlier time a witness may have said or done something which an attorney may argue is inconsistent with the witness' trial testimony.

Evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence in determining liability. Evidence of a prior

inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself. If you find that the witness made an earlier statement that conflicts with his or her trial testimony, you may consider that fact in deciding how much of the witness' trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency, and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so how much, if any, weight to give to the inconsistent statement in determining whether to believe all or part of the witness' testimony.

I will now address the specific claims made by the plaintiff.

In Count I of the Complaint, plaintiff claims that defendant intentionally discriminated against it on the basis that it is a religious institution by preventing it from building its church and school, and that this violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

The Equal Protection Clause prohibits any state or local government from denying a religious institution equal protection through the enactment, administration, or enforcement of its laws and regulations.

If the wording of a local law, regulation on administrative action is neutral on its face, as here, its administration or enforcement can nevertheless result in a violation of the Equal Protection Clause by favoring one class of persons or disfavoring another.

Under these circumstances, in order to prove a violation of the Equal Protection Clause, Plaintiff has the burden of showing that a law, regulation, or administrative action disparately impacted it and the law, regulation, or administrative action was motivated, at least in part, by discriminatory intent based on its status as a religious institution.

Several factors have been recognized as probative of whether a decision-making body was motivated by a discriminatory intent, including: (1) evidence of a "consistent pattern" of actions by the decision-making body disparately impacting members of a particular class of persons; (2) the historical background of the decision, which may take into account any history of discrimination by the decision-making body or the jurisdiction it represents; (3) the specific sequence of events leading up to the particular decisions being challenged, including any significant departures from normal procedures; and (4) contemporary statements by decision makers on the record or in minutes of their meetings.

It is not necessary for a plaintiff to show that the challenged governmental action rested solely on a discriminatory intent in order to demonstrate that the government or its officials acted with an intent to illegally discriminate. As long as the government or its officials made a decision at least in part based on an entity's religious classification, discriminatory intent has been demonstrated.

A local government or its officials may not base their land use decisions on the public's discriminatory biases.

If plaintiff carries its burden of proving that the challenged action was taken at least in part on the basis of religious discrimination, the burden shifts to the defendant to prove that the law, regulation, or administrative action in question:

1. Serves a legitimate governmental purpose; and

2. Is narrowly tailored to serve a compelling state interest.

Whether the defendant has met this burden is a question of law, not fact, and will be decided by me in the event that you find that the plaintiff has met its burden of proving discrimination that I just provided.

In Count II of its Complaint, plaintiff claims that defendant's actions have prevented it from using its property to build a church and church school, in violation of the Religious Land Use and Institutionalized Persons Act (or "RLUIPA" for short), 42 U.S.C. § 2000 (c).

RLUIPA prohibits local and state governments from imposing or implementing a land use regulation, such as a zoning provision, 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 is:

1. in furtherance of a compelling governmental interest; and
2. is the least restrictive means of furthering that compelling governmental interest.

Under RLUIPA, the use, building, or conversion of real property for the purpose of religious exercise is a religious exercise of the person or entity that uses or intends to use the property for that purpose. For example, the use or building of a church or church school is a religious exercise under RLUIPA.

For RLUIPA purposes with respect to a land use decision, a substantial burden is something that puts substantial pressure on a religious entity or person to modify its behavior.

The burden need not be insurmountable to be held substantial. For example, where a religious entity has no ready alternatives or where the

alternatives require substantial delay, uncertainty, and expense, a complete denial of the religious entity's land use application can be indicative of a substantial burden. On the other hand, a mere inconvenience is not enough to meet the requirement of a substantial burden, and it is not a substantial burden when a law merely operates so as to make the practice of religious beliefs more expensive.

Under RLUIPA, once a religious entity or person has demonstrated that its religious exercise has been substantially burdened, the burden shifts to the local government to prove both of the following:

1. That it acted in furtherance of a compelling governmental interest; and
2. That its action is the least restrictive means of furthering that interest.

Whether the defendant has met this burden is a question of law, not fact, and will be decided by me in the event that you find that the plaintiff has met its burden of proving a substantial burden that I just provided.

If you find that the plaintiff has proven by a preponderance of the credible evidence either that (1) the defendant's actions were motivated, at least in part, on the basis of religious discrimination, as alleged in Count I of the Complaint, or (2) that the defendant's actions imposed a substantial burden on its religious exercise, as alleged in Count II, then, as I have previously explained, I will have to determine as a matter of law whether the defendant, with respect to Count I, has proven that the law, regulation or administrative action serves a legitimate governmental purpose and is narrowly tailored to serve a compelling state interest or, with respect to Count II, the law, regulation or administrative action furthers a compelling governmental interest and is the least restrictive means of furthering that compelling government interest.

In the event that you find in favor of the plaintiff on either of the issues that I just described and if I were to then find that the defendant has not met the burden I described, the plaintiff will be entitled to an award of damages, and determination of such an award is for you to decide. Accordingly, I will now instruct you on damages that may be awarded.

However, you should not infer that the plaintiff is entitled to recover damages merely because I am instructing you on the elements of damages. It is exclusively your function to decide upon whether the plaintiff has met the burdens that I have described, and I am instructing you on damages only so that you will have guidance should you decide that the plaintiff has met its burden on either Count I or Count II.

The purpose of the law of damages is to award, as far as possible, just and fair compensation for the loss, if any, which resulted from the defendant's violation of the plaintiff's rights. If you find that the plaintiff has met its burden on either of the claims, as I have explained them, then you must determine the amount of damages which will compensate it for any injury proximately caused by the defendant's actions.

These are known as "compensatory damages." Compensatory damages seek to make the plaintiff whole--that is, to compensate it for the damage suffered.

I remind you that you may award compensatory damages only for injuries that a plaintiff proves were proximately caused by a defendant's

allegedly wrongful conduct. The damages that you award must be fair and reasonable, neither inadequate nor excessive. You should not award compensatory damages for speculative injuries, but only for those injuries that a plaintiff has actually suffered or which it is reasonably likely to suffer in the near future.

In awarding compensatory damages, if you decide to award them, you must be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require a plaintiff to prove the amount of its losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

In all instances, you are to use sound discretion in fixing an award of damages, drawing reasonable inferences where you deem appropriate from the facts and circumstances in evidence.

If you find, after considering all the evidence presented, that the plaintiff has met its burden, but that the plaintiff suffered no injury as a result of the defendant's actions, you may award the plaintiff "nominal

damages." "Nominal damages" are awarded as recognition that the plaintiff's rights have been violated. You would award nominal damages if you conclude that the only injury that a plaintiff suffered did not result in any financial damage.

You may also award nominal damages if, upon finding that some injury resulted from a given act, you find that you are unable to compute monetary damages except by engaging in pure speculation and guessing.

You may not award both nominal and compensatory damages to a plaintiff; either it was measurably injured, in which case you must award compensatory damages, or else it was not, in which case you may award nominal damages.

Nominal damages may not be awarded for more than a token sum.

You are about to go into the jury room and begin your deliberations. All of the exhibits will be brought into the jury room.

Any communication with me should be made in writing, signed by your foreperson, and given to one of the court security officers. In any

event, do not tell me or anyone else how the jury stands on any issue until after a unanimous verdict is reached.

You will now return to decide the case. In order to prevail, the plaintiff must sustain its burden of proof as I have explained to you with respect to each element of its claims. If you find that the plaintiff has succeeded, you should return a verdict in its favor on that claim. If you find that the plaintiff failed to sustain the burden on any element of the claim, you should return a verdict against the plaintiff.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide the case for himself or herself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. Your verdict must be unanimous, but you are not bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Discuss and weigh your respective opinions dispassionately, without regard to

sympathy, without regard to prejudice or favor for either party, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

Again, each of you must make your own decision about the proper outcome of this case based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

Juror number one is your foreperson. That person will preside over the deliberations and speak for you here in open court.

After you have reached a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the court security officer outside your door that you are ready to return to the courtroom.

I will stress that each of you should be in agreement with the verdict which is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

I have prepared a special verdict form for you to use in recording your decision. The special verdict form is made up of questions concerning the important issues in this case. These questions are to be answered "yes" or "no." Your answers must be unanimous and must reflect the conscientious judgment of each juror. You should answer every question, except where the verdict form indicates otherwise.