CITY COURT CITY OF AUBURN

CITY OF AUBURN, NEW YORK,

Plaintiff,

-vs-

Index No. 14-0983

FIRST PRESBYTERIAN CHURCH OF AUBURN, NEW YORK,

Defendant.

REPLY MEMORANDUM OF LAW ON BEHALF OF DEFENDANT FIRST PRESBYTERIAN CHURCH OF AUBURN, NEW YORK

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COUNTERSTATEMENT OF FACTS

Plaintiff First Presbyterian Church of Auburn, New York ("Church") respectfully refers the Court to the Affidavit of Eileen J. Winter, sworn to on December 18, 2014 ("Winter Aff."), for a full recitation of the relevant facts in this case. In reply to the statement of facts presented in the City of Auburn's January 20, 2015 responding brief ("City Brief"), Plaintiff notes the following points of clarification and rebuttal:

- The Case Mansion property at 108 South Street is not a "former residential mansion within a residential zone" (City Brief, p.2). The Case Mansion's residential component – providing shelter to those in need within our community – has continued for over four decades under the auspices of the City's express sanction, and will continue to remain a key part of the Church's mission and its use of the Mansion property for a host of mission-related purposes.

- The City asks the Court to hold the 2011-2012 use variance application process against the Church as "evidence" of the non-religious nature of the Glee Camp. This is an inappropriate and misguided request, as is demonstrated in the Reply Argument section to follow.

- The 2011-2012 use variance process before the City Zoning Board of Appeals never specifically included the Glee Camp, and the Church never needed any variance to hold the Glee Camp on its premises. The Glee Camp was first held on the Church grounds (including the Case Mansion) in the summer of 2012 – while the use variance process was still pending – in full view of and absent any objections from the City. The Glee Camp use was continued in 2013, long after the use variances were overturned, again without any City objections or demands for approvals.

- The use variance process was entered into in good faith by Ministro Ministries (overseeing Mansion activities on the Church's behalf) in response to statements by representatives from the City's Code Enforcement Office that a use variance was required for future non-residential activities at the Case Mansion. Now that the Church has gleaned a deeper understanding of the laws applicable to its current and future planned activities, it has determined that the prior use variance process was wholly unnecessary, and is consequently irrelevant to the current codes enforcement action..

REPLY ARGUMENT

POINT I

THE CITY MISCASTS PLAINTIFF'S REQUEST FOR RELIEF.

Contrary to the City's opening claims (City Brief, p. 3), Plaintiff is not asking this Court to declare any portion of the City's Zoning Code ("Code") invalid for lack of a definition of the term "commercial", nor is Plaintiff demanding that the City specifically define that term. Rather, Plaintiff asks this Court to simply recognize current Code Section 305-22(C)'s instruction that such undefined words "…shall be assumed to have a meaning of standard usage." In this case, the standard usage of "commercial" – the dictionary definition – focuses upon the generation of a profit in the course of commerce. It is uncontroverted by the City that the Church made no monetary profit from hosting the Glee Camp, and had no intention to do so. Camper registration fees were used to offset the cost of instructors and materials. Winter Aff., ¶¶13, 17. The Church's motivation to host the Glee Camp was not profit-driven, but religious-based; it was a continuation of the Church's longstanding religious mission to support arts in the community.

Winter Aff., ¶11. In this case, the Glee Camp did not constitute a "commercial "use per that term's standard usage and meaning.

The City also incorrectly alleges that Plaintiff seeks a declaration that the Code is illegally vague by virtue of its allowance of so many different non-residential uses in the R-2 Zoning District. That list of non-residential, for-profit uses is extensive – including photographic studios, funeral homes, HVAC companies, chiropractors, realtors, attorneys, dentists, opticians, day spas, barber shops, groceries, restaurants, taverns and retail stores [*see* Winter Aff., Exhibit C]. It is not presented in support of a vagueness argument, but rather as evidence of the City's own direct contradiction of its supposed black-and-white test for R-2 zone legality (*i.e.*, residential uses are allowed, commercial uses are prohibited) – a test the City now asks this Court to sanction vis-à-vis the Glee Camp. Indeed, the City cannot and does not dispute the continued existence of these for-profit uses in R-2 zones throughout the City, nor for that matter does the City attempt to explain why the Code allows as of right carnivals and circuses – obvious for-profit ventures with potential neighborhood impacts far beyond that of a summer Glee Camp or other common Church-related activity – in R-2 zones.

POINT II

NO GOVERNMENT OR COURT MAY ASSESS THE TRUTH OR FALSITY OF A STATED RELIGIOUS BELIEF.

The City of Auburn asserts no defenses to the Church's RLUIPA claims. The City's sole position is that the Church's hosting of a Glee Camp is not a religious exercise. This position is both wrong and irrelevant. It is wrong because, as Reverend Winter's affidavit

clearly outlines, hosting the Glee Camp is part of the church's religious mission. Once that fact is asserted, absent any recantation from the Church, the City is prohibited from attempting to prove the falsity of that fact. *See United States v. Ballard*, 322 U.S. 78, 87 (1944) ("The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain.").

The City's position is irrelevant because under RLUIPA, the Church need not establish that a law or sanction is a substantial burden on its religious exercise to advance an equal terms claim, as the Church is doing in this case. *See Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 264 (3rd Cir. 2007) ("We now hold as well that a plaintiff challenging a land-use regulation under section 2(b)(1) of RLUIPA does not need to present evidence that the regulation imposes a substantial burden on its religious exercise."); *Konikov v. Orange County*, 410 F.3d 1317, 1327-29 (11th Cir. 2005) (holding that although the zoning code at issue did not impose a substantial burden on plaintiff's religious exercise, it violated RLUIPA's equal terms provision because it was enforced in a way that treated religious organizations on less than equal terms with secular ones); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1229-35 (11th Cir. 2004) (a zoning ordinance prohibiting churches in a certain district violated RLUIPA's equal terms provision although it did not impose a substantial burden on plaintiffs); *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 762 (7th Cir. 2003) ("the substantial burden and nondiscrimination provisions are operatively independent of one another"). Further, the United States Court of Appeals for the Second Circuit applied

RLUIPA to a church hosting a commercial catering operation. *See Third Church of Christ, Scientist v. City of New York*, 626 F.3d 667 (2d Cir. 2010). In short, the City presents no valid defense for its RLUIPA violation.

The City likewise presents no valid defense to its First Amendment Free Exercise Clause violation. The City goes so far as to compare hosting a Glee Camp with adult entertainment venues, suggesting (via its citations to the cases of *Young v. American Mini Theatres* and *Town of Islip v. Cavaglia*) that the same legal standard should apply to the Glee Camp as applies to sexually oriented businesses. This comparison is wholly inappropriate. Indeed, even if hosting the Glee Camp was a commercial operation, that would not preclude the application of the Free Exercise Clause, as the Supreme Court recently recognized in *Burwell v. Hobby Lobby Stores, Inc.*, 189 L. Ed. 2d 675, 697 (U.S. 2014). While in this case the hosting of the Glee Camp was clearly not commercial activity, being commercial activity in itself does not preclude the First Amendment's application; Justice Alito explained this point in *Hobby Lobby* when analogizing the Court's past application of First Amendment jurisprudence within the commercial context to the statutory application of the Religious Freedom Restoration Act to Hobby Lobby, a commercial enterprise.

Finally, while irrelevant as outlined above, the City mistakenly relies on four cases for the erroneous proposition that the Church's hosting of the Glee Camp was not a religious exercise. The City mistakenly cites *Westchester Day Sch. v. Vill. of Mamaroneck*, 386 F.3d 183 (2nd Cir. 2004) for the proposition that it may determine the truth or falsity of a claim of religious exercise. In that case, because it was unclear whether some of the classrooms of a school building proposal for a Jewish day school would be for purely secular purposes or both secular

and religious purposes, the Second Circuit remanded the case with instructions to the District Court to resolve that open issue. The District Court eventually resolved that issue based on the evidence, "finding that Gordon Hall and the other facilities renovated as part of the project, in whole and in all their constituent parts, would be used for religious education and practice." *Westchester Day Sch. v. Vill. Of Mamaroneck*, 504 F.3d 338, 348 (2nd Cir. 2007). The difference between the 2004 and the 2007 decisions at the Second Circuit was the amount of evidence placed into the record by the religious school. Here, there is ample evidence in the affidavit of Reverend Winter to support the religious mission of the Church is fulfilled by hosting the Glee Camp and the City produced no evidence to the contrary. Even if the City tried to offer such evidence, nothing short of a specific recanting by the Church would allow the City to challenge the truth or falsity of Reverend Winter's testimony regarding the Church's religious mission, pursuant to *United States v. Ballard.*

The City's citation *to Westgate Tabernacle v. Palm Beach*, 14 So.3d 1027 (Fla. Dist. Ct. App. 4th Dist. 2009) is misplaced. *Westgate Tabernacle* brought a case under the substantial burden prong of RLUIPA, which requires the church to prove a substantial burden on its religious exercise, a task that Westgate Tabernacle failed to do in its case. Here, the Church brings an Equal Terms claim under RLUIPA, not a substantial burden claim. "The equal-terms section is violated whenever religious land uses are treated worse than comparable nonreligious ones, whether or not the discrimination imposes a substantial burden on religious uses." *Digrugilliers v. Consol. City of Indianapolis*, 506 F.3d 612, 616 (7th Cir. 2007). There is no finding in *Westgate Tabernacle* that the homeless shelter is not a religious exercise under RLUIPA, as the City currently claims. In fact, the case specifically notes the opposite: "[t]he

County does not dispute that the plaintiffs house the homeless based on deeply cherished religious beliefs." *Westgate Tabernacle*, 14 So.3d at 1031.

The City's citation of *Cal-Nev Methodist Church v. City of San Francisco*, 2014 U.S. Dist. LEXIS 164402 (N.D. Cal. Nov. 24, 2014) is inapplicable. There, the church specifically disclaimed that the property sale was a religious exercise. Absent such a disclaimer, Reverend Winter's statement of the Church's religious mission being advanced by hosting Glee Camps such as the one that occurred from 2012 through 2014 is dispositive of any issue of religious exercise.

Finally, it appears the City misunderstood the court's holding in *Mintz v. Roman Catholic Bishop*, 424 F. Supp.2d 309 (D. Mass. 2006). *Mintz* holds the opposite of what the City claims – the court held that a church's proposed development of a "parish center" that would "house an office for religious education[,] and…serve as a meeting place for the parish council…[and as] the locus of small gatherings related to church services" constituted "religious exercise" under RLUIPA. *Id.* at 319.

POINT III

THE CHURCH MAY CONDUCT RELIGIOUS USES IN AND UPON THE CASE MANSION BUILDING AND GROUNDS, WHICH ARE PART OF ITS CAMPUS.

The City urges this Court to treat the Case Mansion building and grounds at 108 South Street as a separate and distinct entity from the Church, and subscribe to the City's claim that only "religious office uses" are permitted at the Mansion by virtue of some mysterious "property

tax code" of "E03" (City Brief, p. 7).[1] In the next breath, the City then claims for itself the authority to determine what is and is not a religious office use, concluding that because the Glee Camp is not such a use, it should be prohibited.

The City ignores key facts in making this leap of logic. First, the City offers no Code definition of a "religious office use", yet confidently concludes that the Glee Camp cannot qualify as one; if the City is not allowed under law to adjudge what is and is not a religious purpose, how can it do so for religious office uses? Second, the City chooses to overlook four decades of City-sanctioned Mansion usage for all manner of activities that have benefited the community and helped to further the Church's mission – social, cultural and civic activities alike. For example, over the course of 30+ years, Unity House – with the City's active support and praise – offered a wide array of mental health, disability assistance and recovery services to the community from its Mansion headquarters; none of these services involved formal "worship" of God, but any or all of them could conceivably constitute "religious office uses" as an extension of the Church and its mission. The City's claim that the Glee Camp could not possibly be a religious office use flies in the face of not only the Mansion's historical diversity of uses, but runs afoul of *United States v. Ballard*'s stern admonishment that governments and courts should avoid rendering such subjective judgments where religious purposes are concerned.

The Church has used and continues to use the Mansion for a host of purposes that further its religious mission, regardless of how the City seeks to limit those purposes using obscure

[1] The City claims the property tax code for the Church's 112 South Street property is different because it is classified as "Z32", a place of worship. It should be noted that both 108 and 112 South Street are classified by Cayuga County Real Property Services under the standard assessment-based New York State Property Type Classification Codes as "620-Religious"
(see http://imate.cayugacounty.us/IMO/propdetail.aspx?swis=050100&printkey=11607700010250000000 and http://imate.cayugacounty.us/IMO/propdetail.aspx?swis=050100&printkey=11607700010240000000).

administrative codes lacking legal import. The Church's longstanding, multidimensional use of the Mansion easily distinguishes it from two pre-RLUIPA cases cited by the City: *International Church of Foursquare v. City of Chicago Heights*, 955 F. Supp. 878 (N.D. Ill. 1996) (church denied a discretionary special permit for relocation to former retail store in business zone that was targeted for commercial redevelopment); and *Christian Gospel Church v. City and County of San Francisco*, 896 F.2d 1221 (9th Cir. 1990) (church denied a discretionary conditional use permit for relocation to residential district because of potential community impacts). While the Mansion may have originally been constructed as a single-family residence in the 1930s, it has been used for religious and related purposes with the City's sanction and encouragement since 1946, and no reasonable persons foresee a return to its original single-family or even two-family residential use.

CONCLUSION

The City fails to justify its ban and sanction on the Church's hosting of the Glee Camp with any argument or evidence that is remotely akin to the type of argument and evidence necessary to prevail under the City Code, RLUIPA or the First Amendment. If the City allows all manner of for-profit and nonreligious commercial uses plus circuses or carnivals as a matter of right in the same R-2 zone, it must allow the Church to host a Glee Camp on its campus.

For the above-stated reasons and authorities, and those provided in Plaintiff's prior submittals, it is respectfully submitted that the Court should dismiss the City's enforcement action against the Church in its entirety with prejudice, and grant the Church or such other and further relief as the Court deems just and proper, including fees, costs and disbursements of this action.

Dated: February 4, 2015
Syracuse, New York

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