CITY COURT CITY OF AUBURN

CITY OF AUBURN, NEW YORK,

Plaintiff,

-vs-

Index No. 14-0983

FIRST PRESBYTERIAN CHURCH OF AUBURN, NEW YORK,

Defendant.

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

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PRELIMINARY STATEMENT

Since its founding in 1810, the First Presbyterian Church of Auburn, New York ("Church") has played an integral role in the development of Auburn, especially in the areas of education, vocational training, community services, and the arts. The Church considers its ongoing legacy of community service to be a key component of its religious mission – every bit as important and vital as its regular Sunday services – because this service is the active translation of faith into action. Since 1975, the Church has conducted these ministries at its 108-112 South Street campus within the City of Auburn ("City"); the campus is located within an R-2 Residential Zoning District.

In furtherance of its religious mission and its religiously motivated historical support for the arts, the Church has hosted a musical theater summer day camp ("Glee Camp") for children and teens for the past three years (2012-2014). The Church donated the use of its campus, and campers paid a fee to a local couple operating the three-week-long session to offset costs of instructors and materials. The couple was first introduced to the Church through their Christian praise band, which performs at the Church several times per year.

For the first two years it was held, the Glee Camp faced no objection or challenge from the City. On July 9, 2014, however, the City's Codes Enforcement Officer issued a citation to the Church, alleging the Glee Camp was a "commercial use" that was not allowed within the R-2 Zoning District, and was thus barred under the zoning code. The citation is the subject of the City's current enforcement action being heard in this Court.

The Church contests the City's enforcement action on three principal grounds:

(1) the Glee Camp is not a "commercial use" under the City Zoning Code, thus the City's citation was improperly issued;

(2) even if the Glee Camp use was assumed to be commercial in nature, the City's attempt to ban it from the Church's campus is a violation of the Religious Land Use and Institutionalized Persons Act's ("RLUIPA") Equal Terms Clause, because the Church can make a *prima facie* showing that the City is banning activity, *i.e.* alleged commercial activity, that it allows others to engage in within the same R-2 Zoning District classification; and

(3) even if the Glee Camp use was assumed to be commercial in nature, the City's attempt to ban it from the Church's campus is a violation of the Free Exercise Clause of the First Amendment – because the City's zoning code contains exceptions and exemptions allowing commercial activity in the R-2 District, the City's ban *by definition* is not the neutral enforcement of a generally applicable law and thus cannot stand.

For these reasons, it is respectfully submitted that the City's enforcement action against the Church should be dismissed in its entirety with prejudice.

STATEMENT OF FACTS

For the sake of brevity, the Court is respectfully referred to the December 18, 2014 Affidavit of Eileen J. Winter ("Winter Aff."), current Pastor of the Church, for a full recitation of the relevant facts in this case.

ARGUMENT

POINT I

BECAUSE THE GLEE CAMP IS NOT A "COMMERCIAL USE", THE CITY'S CITATION SHOULD BE DISMISSED.

On July 9, 2014, the City's Codes Enforcement Officer issued a citation to the Church, alleging a violation of Auburn City Code Sections 305-34(A) and (B). The citation stated: "Immediately cease use of property in an R-2 zone for commercial use. Cease operating a summer glee camp @$100/camper in a residential district. This is not an allowable use here." Winter Aff., ¶12. The citation's own language makes its rationale clear and unmistakable: the City considers the Glee Camp to be a "commercial use", and the City claims it does not allow commercial uses in the R-2 Zoning District in which the Church's campus is located, thus the citation aims to ban the Glee Camp use from that campus now and in the future.

The City proceeds under two false assumptions in this regard: (1) that the Glee Camp is a "commercial use" in the context of the City's Zoning Code; and (2) that commercial uses are not allowed in the R-2 Zoning District. The latter assumption is disproven by the fact that commercial uses plainly do exist within R-2 Districts throughout the City (*see* Winter Aff., ¶14 and Exhibit C); the import of that fact in terms of federal law is addressed in Point II, *infra.*

While the City Zoning Code utilizes the term "commercial" in forty different subsections, it contains no specific definition as to what makes a use commercial in nature; instead, the Code merely lists examples of what it considers to be commercial uses within its Commercial Zone section (Article VI).[1] Churches are not labeled as commercial uses, nor are summer camps (musical or otherwise); meanwhile, professional and medical offices, restaurants, bars,

[1] The City Zoning Code is accessible online at http://ecode360.com/8971650.

beauty/barber shops, funeral homes, health and fitness facilities, medical laboratories, hospital supply sales, auto sales, grocery stores and photography studios are all specifically identified as being appropriate for location in commercial – not residential – zones, per Code Section 305-43.

Code Section 305-22(C) states that "[w]ords not defined within the text of this chapter or the New York State Uniform Fire Prevention and Building Code ["NYS Building Code"] shall be assumed to have a meaning of standard usage." Because the NYS Building Code does not define the word "commercial" or even utilize it as a classification of occupancy, nor is the word defined in New York case law, we must follow the Code's directive and look to standard usage for a definition.

Webster's Dictionary defines the word "commercial" as follows[2]:

1. (a)(1): occupied with or engaged in commerce or work intended for commerce <a commercial artist> (2): of or relating to commerce <commercial regulations> (3): characteristic of commerce <commercial weights> (4): suitable, adequate, or prepared for commerce <found oil in commercial quantities>
   (b)(1): being of an average or inferior quality <commercial oxalic acid> <show-quality versus commercial cattle> (2): producing artistic work of low standards for quick market success
2. (a): viewed with regard to profit <a commercial success>
   (b): designed for a large market
3. emphasizing skills and subjects useful in business <a commercial school>
4. supported by advertisers <commercial TV>

The word "commerce", in turn, is defined as "activities that relate to the buying and selling of goods and services".[3]

While the City has to date provided no written explanation behind its issuance of the citation for the Glee Camp beyond the language of the citation itself, it is reasonable to assume from that citation language that the key factor propelling the City's action was the campers'

[2] http://www.merriam-webster.com/dictionary/commercial
[3] http://www.merriam-webster.com/dictionary/commerce

payment of a registration fee to participate in the Glee Camp. To this point, the citation states in relevant part: "...Cease operating a summer glee camp @$100/camper in a residential district." This language appears to best fit Definition #2 above, making the key question whether the activity in question generates a profit.[4]

The facts are clear that the Church made no monetary "profit" from hosting the Glee Camp, and had no intention to do so; 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. Given this simple fact, the City's basis for issuing a citation for a commercial use in a residential zone is fatally flawed. Carrying the City's flawed logic to its extreme, one might imagine an overzealous Codes Official citing the Church because its members engaged in commerce by contributing money to the collection plate in exchange for religious messaging and inspirational words and music at Sunday services. While it is easy to recognize such an absurd outcome as far beyond the realm of the City's intent in establishing and maintaining separate residential and commercial zones, the City's present action against the Glee Camp is on that same road – micromanaging religious activities that harm no one and benefit the community at large – and should be dismissed with prejudice.

The fallacy of the City's citation logic is further evidenced by the fact that many types of uses specifically included within the Commercial Zone section of the Code (Article VI) are located within R-2 Zoning Districts throughout the City (Winter Aff., Exhibit C) prompting the

[4] It would be sheer conjecture at this time to assume the City has a bright line for enforcement purposes in this situation, or to assume that bright line is connected to the payment of money over a specific threshold sum. But the question may be worth asking: if the campers had each paid only ten cents to attend the camp instead of one hundred dollars, would the City still have initiated an enforcement action?

obvious question: if the City believes the Glee Camp truly is a commercial use, why does it seek to ban that particular use from the R-2 District when all these other commercial activities are allowed to continue unabated? Unfortunately for the City, the defenses of "prosecutorial discretion" or "qualified exception/exemption" cannot shield its actions from the reach of federal law, as is demonstrated in Points II and III, *infra*.

POINT II

ASSUMING *ARGUENDO* THE GLEE CAMP IS COMMERCIAL ACTIVITY, THE CITY IS IN VIOLATION OF FEDERAL LAW BY BANNING IT.

It is clear that the glee camp is not commercial activity under the City Zoning Code or any other conceivable definition of commercial activity. *See* Point I, *supra*. However, even if the Court were to assume *arguendo* that the Glee Camp is commercial activity and that it is in violation of city ordinances, citing the Church for the Glee Camp and banning the Glee Camp are violations of RLUIPA, 42 U.S.C. § 2000cc *et seq*. RLUIPA "is the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens." *Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005). RLUIPA contains its own rule of construction: RLUIPA "shall be construed in favor of a broad protection of religious exercise." 42 U.S.C. § 2000cc-3(g).

RLUIPA offers four different causes of action, or in this case, defenses, to the City of Auburn's ban on the summer Glee Camp.[5] Each cause of action or defense under RLUIPA is

[5] *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 290 (5th Cir. Miss. 2012) ("The first subsection contains the Substantial Burden Clause, which prohibits the imposition or implementation of a land use regulation in a manner that imposes a "substantial burden" on the religious exercise of a person, assembly, or institution unless the government can show that the regulation furthers a "compelling governmental interest" by "the least restrictive

independent. In other words, if a church can prevail on the Equal Terms Clause, the Court need not address the other potential causes of action or defenses in RLUIPA. The Church's summer Glee Camp easily prevails under the Equal Terms Clause. Therefore, while the Church would likewise prevail under other sections of RLUIPA, the Court need not address those issues and the Church will likewise focus its analysis on the straightforward application of the Equal Terms Clause of RLUIPA to this case.

A. RLUIPA is a proper defense in this case.

Section 2 of RLUIPA applies to any land use regulation, which is defined as "a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use . . . of land (including a structure affixed to land), if the claimant has an ownership . . . interest in the regulated land." 42 U.S.C. § 2000cc-5(5). RLUIPA may be invoked as "[a] defense in a judicial proceeding" against a municipality. 42 U.S.C. § 2000cc-2(a); 42 U.S.C. § 2000cc-5(4) (defining "government" to include a "municipality"). Thus, the Church may properly assert RLUIPA as a defense in this matter.

B. The City's prosecution of the Church in this case is a violation of the Equal Terms Clause of RLUIPA.

The Equal Terms Clause under RLUIPA provides that "[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less

(..continued)
means." § 2000cc(a). The second subsection contains three provisions under the heading "Discrimination and exclusion." § 2000cc(b). The Equal Terms Clause prohibits imposing or implementing a land use regulation so as to treat a religious assembly "on less than equal terms" than a nonreligious assembly. § 2000cc(b)(1). The Nondiscrimination Clause prohibits imposing or implementing a land use regulation so as to discriminate against an assembly or institution on the basis of religion. § 2000cc(b)(2). The third provision concerns "Exclusions and limits" and contains two subparts that prohibit: (A) "totally exclud[ing] religious assemblies from a jurisdiction"; and (B) imposing or implementing a land use regulation that "unreasonably limits religious assemblies, institutions, or structures within a jurisdiction." § 2000cc(b)(3).").

than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1). The first step in asserting a violation of the Equal Terms Clause is for the Church to make a *prima facie* showing that the City is banning activity, *i.e.* alleged commercial activity, that it allows others to engage in within the same zone. This difference in treatment can be discerned by the ordinances themselves, *see, e.g., Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 291 (5th Cir. 2012); *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1171 (9th Cir. 2011), or by the application of the ordinances to another secular institution. *See, e.g., Third Church of Christ, Scientist v. City of New York*, 626 F.3d 667, 669 (2d Cir. 2010) ("Determining whether a municipality has treated a religious entity 'on less than equal terms' requires a comparison between that religious entity and a secular one"). If the Court determines that the activity, *i.e.* alleged commercial activity, is allowed in the same zone by others on the face of the ordinances or in comparison to other secular uses, then the City bears the burden of proof and persuasion on each element of the Equal Terms Claim. *See* 42 U.S.C. § 2000cc-2(b); *Opulent Life Church*, 697 F.3d at 291.

There is some differentiation between the federal circuit courts of appeals regarding the next steps in the analysis. *See Opulent Life Church*, 697 F.3d at 291-93 (collecting cases); *Third Church of Christ, Scientist*, 626 F.3d at 669-70. This Court need not wade into such nuanced analytical shoal waters. A common thread among the circuits is that the purpose of the ordinances or the purported harm the city is seeking to prevent is the prevailing basis upon which the church's use of its land may be compared to other allowed uses within the same zone. *See Third Church of Christ, Scientist*, 626 F.3d at 670 (finding it sufficient that "the Church's and the hotels' catering activities [are] similarly situated with regard to their legality under [the City's] law.").

In *Third Church of Christ, Scientist*, New York City was attempting to ban a church from allowing a for-profit commercial catering business to fully operate on its property because it was a prohibited commercial use of the property. *Id.* at 668. The church was having a difficult time raising money for needed renovations and thus partnered with a catering company to have the company pay money that would be used for renovations and in return have use of the premises for its commercial activities. *Id.* As the Second Circuit noted, the church engaged in large scale catering activities. *Id.* at 671. The problem for New York City was that it allowed hotels to have accessory uses for catering purposes within the same residential zone. *Id.* at 670. The analysis at that point was quite simple. If other entities are allowed to have similar commercial uses then the City must allow the church to engage in the same kind of commercial uses.

Here, the analysis is equally simple. The City of Auburn cited the church and made the demand that the church "immediately cease use of property in an R-2 zone for commercial use." Winter Aff., Exhibit B. In response under RLUIPA, the Church merely needs to identify that there are in fact commercial uses allowed under the City's ordinances in an R-2 zone or that, like in *Third Church of Christ, Scientist*, there are other commercial uses currently ongoing in an R-2 zone in the City of Auburn regardless of whether such uses are allowed under the ordinances. While there is evidence of other commercial uses in an R-2 zone in the City of Auburn, see Winter Aff., ¶14 and Exhibit C, the Court need not look beyond the City's ordinances themselves to see commercial uses are indeed allowed in R-2 zones.

First, home occupations are allowed in R-2 zones pursuant to § 305-24(D)(15). In fact, that ordinance provides standards the City enforce to prevent "adverse effects of commercial and business uses conducted in residential areas." § 305-24(D)(15)(a). The City has the burden of proving that these allowed home occupations are not commercial activity. With the admission in

this ordinance alone, this case is over and the Church prevails. But there is more. The City specifically allows "offices of sales representatives and consultants" and "babysitting of children." § 305-24(D)(15)(i)(6-7). Furthermore, even though the City bans restaurants, private clubs and retails sales as home occupations, it specifically states in its ordinance that such uses may nevertheless be permitted by special permit. *See* § 305-24(D)(15)(k). This allowance of clearly commercial use in residential zones, including the R-2 zone, whether by right or by special permit, dooms the City. Under RLUIPA, the City cannot allow accessory commercial uses and then ban the Church from engaging an alleged accessory commercial use. The Court may end its analysis here. If the Court continues, there is a second reason the City's attempted ban on the summer Glee Camp fails under RLUIPA's Equal Terms Clause.

Second, the summer Glee Camp is both religious and educational. The summer Glee Camp is an essential part of the Church's religious mission. The summer Glee Camp brings people to the Church with whom the Church wants to build a faith relationship who may be reluctant to visit the Church or may be looking for a church home. The camp advances the church's religious mission of supporting the community and the love of music. Music is an integral part of religious worship as recorded in both the Old and New Testaments as well as the traditions of the Church. The camp helps train an upcoming generation of future worship leaders and participants for the community and the church specifically. As such, the Glee Camp is at least the equivalent of an "appropriate public use" as defined in § 305-24(D)(19)(a) as "activities of a welfare, educational, religious, recreation and cultural nature" that are allowed uses in residential zones. For comparative purposes on RLUIPA, the summer Glee Camp need not be compared to a "secular comparator that proposes the same combination of uses." *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 264 (3d Cir. 2007). Instead, it is

enough to determine that the "impact of the allowed and forbidden [uses] . . . in light of the purpose of the regulation" are similar *Id.* at 265. The objective criteria of the regulation is paramount in this analysis. *See River of Life Kingdom Ministries v. Village of Hazel Crest*, 611 F.3d 367, 371 (7th Cir. 2010) (*en banc*). There is no appreciable difference between a summer glee camp and any other conceivable educational, religious, recreation or cultural use. If there is, it is the City's burden to prove such. Therefore, for this second independent reason, the City's attempt to ban the summer Glee Camp violates RLUIPA's Equal Terms Clause.

Third, and certainly the most egregious comparison, is that the City allows circuses and carnivals on a temporary basis in residential zones. *See* § 305-68(F). The City allows a "carnival or circus...in any residential district on property owned by any not-for-profit group or organization . . . [for a time] period not to exceed 21 days." *Id.* The summer Glee Camp actually takes place for 21 days on property owned by the Church. If a secular non-profit organization can have a circus or carnival set up shop on its property then the Church may have a glee camp for 21 days. This is not like the comparison of catering operations in *Third Church of Christ, Scientist.* Rather, it is the equivalent of the church in New York City having a 21 day small catering operation and New York City allowing a massive food truck festival for 21 days but banning the small catering operation. In other words, this comparison is so far removed from equal treatment and the ordinance on its face so devoid of regulatory purpose distinguishing a glee camp from a carnival or circus in terms of regulatory impact that not only is it a high burden for the City to justify such a distinction, it is actually impossible to do so as a matter of law. *See, e.g., Opulent Life Church*, 697 F.3d at 293 (noting the inverse that enforcing a ban on non-commercial activity in a commercial zone is not justifiable when other non-commercial uses are allowed).

This is not a hard matter to resolve in favor of the Church. In sum, the Equal Terms Clause of RLUIPA does not allow the City to ban alleged commercial activity by the Church or at the Church, whether it be an arguably tenuously connected commercial catering operation as in *Third Church Christ, Scientist v. New York City*, or a glee camp that is essential to the religious mission of the Church, when it allows other commercial activity in residential zones. This is especially true when the objective regulatory purpose for any distinctions is not clearly articulated in the ordinances themselves. The Court need not analyze any of the other independent avenues of relief for the Church under RLUIPA, including a substantial burden claim that could clearly be made here or an unreasonable conditions claim that is likewise favorable for the Church. If the Court desires briefing on additional claims and defenses the Church may make under RLUIPA, the Church is certainly willing to provide such analysis but it is completely unnecessary in a case such as this where the Equal Terms claim is so easily established on the face of the City's ordinances themselves.

POINT III

THE CITY'S BAN ON THE GLEE CAMP IS A VIOLATION OF THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT.

The Court need not engage in any analysis of the Church's First Amendment defense once it finds the City's ban on the Glee Camp to be a violation of RLUIPA. However, because the analysis is similar under the First Amendment and the Equal Terms clause of RLUIPA in this particular case, the First Amendment analysis may be helpful to the Court. Normally, a neutral law of general applicability does not violate the Free Exercise Clause of the First Amendment. *See Employment Division v. Smith*, 494 U.S. 872, 878-82 (1990). Thus, if the City truly banned all commercial activity from residential zones and allowed no exceptions at all as a matter of

right, by special use permit, or by any other type of variance, then the Church would not be able to overturn such a neutral and generally applicable ban with a Free Exercise Clause claim. In fact, it is precisely for this reason that Congress enacted RLUIPA and other similar laws. *See Cutter*, 544 U.S. at 714-17 (detailing the history and purpose of RLUIPA in light of *Smith*). Congress intended churches to win RLUIPA cases that were unwinnable under the First Amendment. But this case is winnable under both – and quite easily so under the First Amendment – because the City's ban on the Glee Camp is not the neutral enforcement of a generally applicable law.

As demonstrated previously under the RLUIPA analysis, the City's ordinances are riddled with exceptions that allow commercial activity in residential zones. Even where a City has a facially neutral law or policy, it often provides exceptions or exemptions. *See, e.g., Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144, 167 (3d Cir. 2002) (finding "the Borough has tacitly or expressly granted exemptions from the ordinance's unyielding language for various secular and religious...purposes"). Here, the law is not neutral on its face because the City has a variety of exemptions and exceptions that allow commercial activity in a residential zone as previously discussed. As the Supreme Court "noted in *Smith*, in circumstances in which individualized exemptions from a general requirement are available, the government may not refuse to extend that system to cases of 'religious hardship' without compelling reason." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993) (quotations and citations omitted). Therefore, the Court here should "conclude that the [City's| decision to provide [commercial activity] exemptions while refusing religious exemptions is sufficiently suggestive of discriminatory intent so as to trigger heightened scrutiny under *Smith* and *Lukumi*."

Fraternal Order of Police Newark Lodge No. 12 v. City of Newark, 170 F.3d 359, 365 (3d Cir. 1999) (Alito, J.).

This is not to say the Court must analyze the subjective intent of the City or City officials involved in the citation against the Church in this case or the city council that enacted the City's ordinances. Such subjective intent considerations are entirely irrelevant. *See Tenafly*, 309 F.3d at 168 n.30 (explaining "in determining the appropriate standard to apply, we do not believe it necessary to consider the subjective motivations of the Council members who voted to remove the eruv. *Lukumi* and *Fraternal Order of Police* inferred discriminatory purpose from the objective effects of the selective exemptions at issue without examining the responsible officials' motives") (citing Laurence H. Tribe, *American Constitutional Law* § 5-16, at 956 (3d. ed. 2000) ("Under *Smith*, a law that is not neutral or that is not generally applicable can violate the Free Exercise Clause without regard to the motives of those who enacted the measure.")).

Where, as here, a City seeks to enforce an ordinance that is not neutral or generally applicable, the City's enforcement action must survive strict scrutiny. *See Lukumi*, 508 U.S. at 546; *Tenafly*, 309 F.3d at 172. To survive strict scrutiny, the government "must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Lukumi*, 508 U.S. at 546 (quotations omitted). It is impossible for the City to meet this standard in this case. The City allows commercial activity in residential zones that is either much more permanent and regular than the Glee Camp, such as home-based businesses, or much larger and more intrusive in scope, such as carnivals and circuses. The City's targeting of the Church's Glee Camp – which is part of the Church's religious mission – and its simultaneous allowance of such other uses to go unchallenged (or in fact be sanctioned by the law) forecloses any argument the City is advancing compelling interests that are required under strict scrutiny. *See Lukumi*,

508 U.S. at 547 ("It is established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an interest 'of the highest order' . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.") (quoting *Florida Star v. B.J.F.*, 491 U.S. 524, 541-42 (Scalia, J., concurring in part and concurring in judgment)). Thus, the analysis ends with the noted exceptions and exemptions in the City's ordinances that allow commercial activity in residential zones. The Court need not engage in the second step of strict scrutiny by analyzing the "narrowly tailored" component.

In sum, this is an easy case for the Church. The City's application of its zoning laws to ban the summer Glee Camp violates the Free Exercise Clause even under post-*Smith* analysis. This is so because the City has exceptions to any alleged ban on commercial activity in residential zones. The City's position is made worse by the fact that Congress was not satisfied the Free Exercise Clause provided enough protection for religious liberty in the church land use context and thus Congress passed the more strident RLUIPA to provide greater protection to churches than the Free Exercise Clause provides. There are four ways in which a Church may prevail under RLUIPA. However, because the Equal Terms Clause violation here is so obvious, the Court need not analyze the other three tests under RLUIPA. The same exceptions and exemptions that doom the City's position under the Free Exercise Clause equally doom the City's position under the Equal Terms Clause of RLUIPA. It is also true that the Church could raise a strong Equal Protection Clause claim under the Fourteenth Amendment and an equally strong freedom of association claim under the First Amendment, but that briefing and analysis is unnecessary given the straightforward application of RLUIPA and the Free Exercise Clause prohibit the City from banning the Church's Glee Camp.

CONCLUSION

For the above stated reasons and authorities, 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: December 19, 2014
Syracuse, New York

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**Pro Hac Vice* Application forthcoming