UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CHRISTIAN FELLOWSHIP CENTERS OF NEW YORK, INC. a New York non-for-profit corporation,	)	
Plaintiff,	)	CASE NO. 8:19-cv-00191-LEK-DJS
v.	)	
VILLAGE OF CANTON, a New York municipal corporation,	)	
Defendant.	)	

UNITED STATES' STATEMENT OF INTEREST IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

The United States respectfully submits this Statement of Interest under 28 U.S.C. § 517, which authorizes the Attorney General "to attend to the interests of the United States in a suit pending in a court of the United States." The United States has an interest in protecting the rights guaranteed by the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc *et seq*. In addition to creating a private cause of action, RLUIPA charges the Attorney General with enforcing its provisions. See § 2000cc-2(f).

In the United States' view, the Christian Fellowship Centers of New York, Inc., ("Church") has established that it is likely to succeed on the merits of its claim that the Village of Canton ("Canton") is in violation of RLUIPA's equal terms provision, 42 U.S.C. § 2000cc(b)(1). Canton's zoning law cannot stand because it prohibits religious assemblies and worship in zoning districts that permit non-commercial secular assemblies. Accordingly, the Christian Fellowship Center should have an easy victory. Canton cannot keep it out of a zoning district that allows secular assemblies, but not religious ones.

FACTUAL ALLEGATIONS

The Complaint alleges that the Church purchased the property of a former "gentleman's club" to conduct religious services, among other planned church activities. Compl. (ECF No.1) ¶¶ 7, 13, 15. This property is located in Canton's "C-1" Retail Commercial District ("C-1 district"), which is delineated for "shopping, recreational and cultural facilities" that "are provided for the community as a whole." Compl. ¶¶ 29, 53 (citing Village Zoning Use Regulation § 325-11. C-1 A(1)). Churches are not permitted. But, many nonreligious assembly uses are allowed. *Id.* ¶ 54 (citing Village Zoning Use Regulation § 325-11. C-1 B(1)).

ARGUMENT

To obtain a preliminary injunction on its RLUIPA claim, the Church must show that it is likely to succeed on the merits *Winter* v. *Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *Salinger* v. *Colting*, 607 F.3d 68, 79-80 (2d Cir. 2010) (stating that "at minimum, we must consider whether 'irreparable injury is *likely* in the absence of an injunction,' we must 'balance the competing claims of injury,' and we must 'pay particular regard for the public consequences in employing the extraordinary remedy of injunction'") (quoting *Winter*, 555 U.S. at 22, 24-25 (emphasis in original)). Here, the Church's success seems assured by a zoning law that bars churches but welcomes similarly situated assemblies.[1]

RLUIPA's "equal term" provision, stating that "[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution," 42 U.S.C. § 2000cc(b)(1), must be

[1] The Church must also show that it is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in its favor, and that an injunction is in the public interest. *Winter*, 555 U.S. at 20. The United States expresses no opinion on whether the Church has satisfied these three requirements.

"construed in favor of a broad protection for religious exercise, to the maximum extent permitted by the terms of [RLUIPA] and the Constitution." 42 U.S.C. § 2000cc-3(g).

Generally, a plaintiff asserting such an equal terms claim is entitled to a preliminary injunction if it shows that the government "treats the religious institution on less than equal terms," *Congregation Rabbinical Coll. of Tartikov, Inc.* v. *Vill. of Pomona*, 138 F. Supp. 3d 352, 441 (S.D.N.Y. 2015) (citing *Primera Iglesia Bautista Hispana of Boca Raton, Inc.* v. *Broward Cty.*, 450 F.3d 1295, 1307-1308 (11th Cir. 2006)); *Chabad Lubavitch of Litchfield Cty., Inc.* v. *Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 197 (2d Cir. 2014), unless the government responds with proof that "the inequality of treatment has ceased or is, for other reasons of substance, non-discriminatory." *Third Church of Christ, Scientist* v. *City of New York*, 626 F.3d 667, 672 (2d Cir. 2010) (affirming the issuance of a preliminary injunction where the city was unable to refute the "plain terms" of city documents that barred church activities that were permitted by hotels). Here, Canton's rebuttal merely reinforces the Church's proof of unequal treatment.

First comes the Church's evidence. A plaintiff can show "less than equal" treatment in any one of several ways, see *Third Church of Christ*, 626 F.3d at 669-70 (discussing standards from three other circuits, including by pointing to a zoning ordinance that discriminates against religious uses on its face); *River of Life Kingdom Ministries* v. *Vill. of Hazel Crest, Ill.*, 611 F.3d 367, 371 (7th Cir. 2010) (en banc) (discussed in *Third Church of Christ*, 626 F.3d at 670); see also *Vill. of Pomona*, 138 F. Supp. 3d at 403-04, 441-42 (plaintiff can establish a prima facie case by showing that a statute facially differentiates between religious and secular assemblies and institutions, a facially neutral statute is gerrymandered to place a burden solely on religious

assemblies or institutions, or a neutral statute is selectively enforced against religious assemblies or institutions).

For Canton to prevail, it must rebut this prima facie case. In sum, once the religious organization establishes that it is prohibited by a zoning law that facially differentiates between religious and secular assembly uses, a violation of RLUIPA is proven unless the government demonstrates that the apparent unequal treatment is "for other reasons of substance, nondiscriminatory." *Third Church of Christ*, 626 F.3d at 672; see also *Tree of Life Christian Schs.* v. *City of Upper Arlington, Ohio*, 905 F.3d 357, 370-71 (6th Cir. 2018). Here, as in other cases, "[t]he burden is not on the [C]hurch to show a similarly situated secular assembly, but on the city to show that the treatment received by the [C]hurch should not be deemed unequal, where it appears to be unequal on the face of the ordinance." *Centro Familiar Cristiano Buenas Nuevas* v. *City of Yuma*, 651 F.3d 1163, 1166-67 (9th Cir. 2011). Because Canton cannot show that the facial unequal treatment is in fact nondiscriminatory based on "reasons of substance," *Third Church of Christ*, 626 F.3d at 672, the Church is likely to prevail on the merits.

I. Plaintiff is Likely to Succeed on the Merits of Its RLUIPA Equal Terms Claim

A. On its Face, Canton's Zoning Law Treats Religious Assemblies and Nonreligious Assemblies on Less Than Equal Terms in the C-1 District in Violation of the Equal Terms Provision of RLUIPA.

The Church has establish a prima facie case of a RLUIPA violation by pointing to unequal zoning terms that are plain from the face of Canton's Zoning Use Regulation. *Chabad Lubavitch*, 768 F.3d at 196, 198 n.11 (citing § 2000cc-2(b)) (a prima facie violation of RLUIPA is established when a zoning law facially treats religious assemblies less favorably than their secular counterparts). Generally, it is sufficient for a church to show that a zoning regulation treats nonreligious institutions or assemblies more favorably than religious ones "located in the

same . . . zone." *Third Church of Christ*, 626 F.3d at 670. The Church has made this showing. Canton does not allow churches to operate within the C-1 district as of right, yet, it places no similar zoning restriction on secular assemblies or organizations. Theaters, pool halls, hotels, motels, municipal buildings, and museums, as well as fraternal, social, educational, charitable, and philanthropic clubs, organizations and businesses may all operate secular assembly spaces in the C-1 district, whether for commercial or non-commercial use. Compl. ¶ 54. Churches may not. This "less than equal term[ ]" for religious assemblies and institutions is a straightforward violation of RLUIPA.

B. Canton's Purported Legitimate Non-Discriminatory Reasons for Treating A Religious Assembly on Less Than Equal Terms Are Unlikely to Prevail.

Canton contends that the legitimate regulatory purposes that justify the exclusion of churches from the C-1 district are (1) the promotion of commercial enterprise in the C-1 district and (2) the mitigation of adverse impacts that a church may have on current and future commercial ventures in the C-1 district. Vill. Op. Br. at 17, 19. Neither rationale demonstrates that the "less than equal" treatment apparent from the face of relevant regulations is in fact nondiscriminatory. To the contrary, Canton's permissive C-1 zoning's rules, which allow non-commercial assemblies and establishments to operate and flourish within the C-1 district, both refute Canton's "commercial enterprise" evidence of purported nondiscrimination and support the Church's prima facie case. Accordingly, the Church is likely to prevail on the merits of its equal terms claim.

1. Commercial Enterprise

Canton cannot rebut the Church's prima facie case by asserting that the promotion of commercial enterprise is a non-discriminatory regulatory purpose in the C-1 district because Canton's Zoning Use Regulation does not create a purely commercial enterprise district in the C-

1 district. For example, Canton permits many non-commercial secular assemblies and other uses including municipal buildings, libraries, theaters, museums, and other non-commercial or charitable establishments including "fraternal/social clubs/education/charitable or philanthropic." Compl. ¶ 54. Canton welcomes these non-commercial assemblies and institutions so long as they do not engage in or provide assemblies for religious worship. This is "less than equal" treatment for religious assemblies and institutions.

In any event, the stated goal in Canton's Zoning Use Regulation for the C-1 district makes no mention of "commercial enterprise" or the creation of a purely commercial district, and Canton does not have one. Instead, the stated goal is to "[d]elineate a central area where shopping, recreational and cultural facilities are provided for the community as a whole." *Id.* ¶ 53. Canton seeks to further the goal by excluding religious assemblies and churches from the district, violating RLUIPA in the process.

Federal law does not permit Canton to give preferential treatment to cultural, recreational, and other secular assembly uses over religious assemblies and institutions. The fact of such a preference is not proof of *non*-discrimination; it *is* the very unequal treatment forbidden by RLUIPA. It does not rebut the Church's prima facie case. It affirms it. *River of Life*, 611 F.3d at 373 (stating that if a municipality were to create a commercial district but "allow other [non-commercial] uses, a church would have an easy victory if the municipality kept it out"); *Third Church of Christ*, 626 F.3d at 670 (regulatory objections cannot be considered non-discriminatory when it is not apparent from the face of its zoning law how church activities

"would cause greater harm to regulatory objectives" than the allowed secular uses) (quoting *Lighthouse Inst. for Evangelism, Inc.* v. *City of Long Branch*, 510 F.3d 253, 272 (3d Cir. 2007)).[2]

2. Mitigation of Church Impacts on Secular Businesses

Laws intended to *benefit* churches cannot be used by governments to discriminate against churches. However, Canton appears to offer such a law as evidence of non-discriminatory treatment when it states that it barred the Church from the C-1 district to mitigate the adverse effect that churches would have on businesses that sell libations and other items to the public. See Vill. Op. Br. at 17-19; Compl. ¶ 37.

Canton stresses its concern about "the impact that a church may have on current and future endeavors in the commercial district." It emphasizes that the "church is not in the business of selling items or libations to the public," in contrast to "retail stores, restaurants, hotels and convenience stores" which do focus on selling "libations." Vill. Op. Br. at 18. Of course, many uses within the C-1 district do not involve the selling or use of libations. Accordingly, the suggestion that a church operation would restrict libation sales in the C-1

[2] Similarly, if Canton's objective were the generation of tax revenue, the objective would fail to defeat the prima facie case because the C-1 district would only bar churches for this reason but permit numerous uses that also do not generate tax revenue. See *Centro Familiar*, 651 F.3d at 1173 (generation of tax revenue not a non-discriminatory reason for excluding religious assembly or institution if secular tax-exempt assemblies or institutions are permitted to operate in the district). Canton permits secular assemblies and institutions that are tax-exempt, and many of the secular assembly uses that are allowed in the C-1 district qualify as non-profit and tax-exempt under New York law. For example, a theater or institution fostering the development of education or the arts is both welcome in the district and eligible for tax exemption. See N.Y. Real Prop. Tax Law §§ 420-a., 427 (McKinney). In addition, the C-1 district also allows by-right non-commercial secular assembly uses such as municipal and governmental buildings that are tax exempt, *id.* § 404 (state government buildings), § 406 (village buildings), and fraternal, social clubs, charitable groups, education groups, and philanthropic groups, *id.* §§ 420-a, 420-b. By allowing non-profit and tax-exempt entities to locate as of right within the C-1 district, Canton fails to justify its exclusion of the Church and other religious assemblies on the basis that they are not commercial enterprises.

district does not defeat the prima facie case of unequal treatment. It is true that New York Alcohol Beverage Control Law ("ABC law") provides that "[n]o retail license for on-premises consumption shall be granted for any premises located on the same street or avenue and within two hundred feet . . . . of a school, church, synagogue, or other place of worship," N.Y. Alco. Bev. Cont. Law § 64-7 (McKinney), but this law is for the benefit of churches; it is not intended to segregate them. *Digrugilliers* v. *Consol. City of Indianapolis,* 506 F.3d 612, 616 (7th Cir. 2017) (reversing ruling that an Indiana liquor law justified a city's zoning distinction between churches and secular assemblies, holding "[the g]overnment cannot, by granting churches special privileges . . . furnish the premise for excluding churches from otherwise suitable districts"). RLUIPA straightforwardly prohibits treating religious assemblies and institutions on less than equal terms with nonreligious assemblies and institutions. Canton cannot justify unequal terms for churches as "an offset" to an advantage the Church might have under a different law. *Id.* at 615-17 ("a state cannot be permitted to discriminate against a religious land use by a two-step process in which the state's discriminating in favor of religion becomes a predicate for one of the state's subordinate governmental units to discriminate against a religious organization in violation of federal law"). RLUIPA's equal terms provision does not permit this. It contains no balancing test. Canton is not free to give favorable treatment to nonreligious assemblies and institutions that are less likely than churches to offend drinkers or those seeking or providing shopping, recreational, or cultural facilities. To do so violates federal law.

In sum, Canton has not shown, and is not likely to be able to show through any additional arguments, that "the [apparent] inequality of treatment" of the Church is "for other reasons of substance, non-discriminatory." *Third Church of Christ*, 626 F.3d at 672.

CONCLUSION

For the foregoing reasons, the Court should find that Christian Fellowship Centers has established a likelihood of success on the merits of its RLUIPA equal terms claim.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of New York through the CM/ECF system, which will send a Notice of Electronic Filing to registered CM/ECF participants.

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