UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAGANNATH ORGANIZATION FOR GLOBAL AWARENESS INC., *et al.*,	)	
Plaintiffs,	)	Civil Action No. 17-cv-02436-ELH
v.	)	
HOWARD COUNTY, MARYLAND, *et al.*,	)	
Defendants.	)	

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

In accordance with 28 U.S.C. § 517, the United States of America files this Statement of Interest to address important issues under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc(a)(1), raised by the parties in their briefing on the Defendants' motion to dismiss. Section 517 authorizes the Attorney General "to attend to the interests of the United States in a suit pending in a court of the United States." 28 U.S.C. § 517. The Department of Justice is responsible for the enforcement of RLUIPA, and therefore has an interest in how courts interpret and apply the statute. 42 U.S.C. § 2000cc-2(f). The interpretation of RLUIPA in this case could affect current and future enforcement actions brought by the Department of Justice. To help ensure the correct and consistent interpretation of RLUIPA, the Department has previously filed statements of interest with district courts and amicus briefs at the appellate level in a number of RLUIPA cases raising similar issues.[1] The

[1] *See, e.g.*, *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Hist. Dist. Comm'n*, 768 F.3d 183 (2d Cir. 2014); *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548 (4th Cir. 2013); *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007); *Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter*, 456 F.3d 978 (9th Cir. 2006); *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005); *The Roman Archdiocese of Kansas City in Kansas v. The City of Mission Woods, Kansas*, No. 2:17-cv-02186-DDC, Dkt. No. 57 (D.

United States submits this Statement of Interest to aid the Court in identifying the proper standard for assessing the plaintiffs' claims under RLUIPA's substantial burden provision, 42 U.S.C. § 2000cc(a)(1).[2]

SUMMARY OF ARGUMENT

Plaintiff Jagannath Organization for Global Awareness, Inc. ("JOGA") is a Maryland-based religious organization of Indian-American Hindus that follow and promote the teachings of the Hindu deity, Lord Jagannath. Plaintiff Naresh Das, as chairman of JOGA, filed a land use application and variance petition seeking to construct a Hindu temple on property located in Cooksville, Howard County, Maryland, to fully engage in the religious activity required by plaintiffs' faith to worship at a facility specifically dedicated to Lord Jagannath. There is no Jagannath-dedicated temple in Howard County, where the majority of JOGA's congregants live, or anywhere else in the State of Maryland.

JOGA alleges that the Howard County Board of Appeals denied its application in violation of RLUIPA. JOGA asserts that the denial was issued despite a recommendation of approval from the Howard County Department of Planning and Zoning and a finding by the County Board of Appeals that JOGA's application met the requirements for its land use request, with the exception of the requirement on sight distance. JOGA also asserts that the County issued a complete denial rather than considering whether to approve the application conditionally, subject to review and approval by the County's Department of Planning and Zoning, the County agency that conducts technical evaluations for sight distance during the property development stage. JOGA alleges that the County has approved applications with

Kan. May 24, 2018); *Garden State Islamic Ctr. v. City of Vineland, N.J.*, No. 1:17-cv-01209-JHR-KMW, Dkt. No. 15 (D.N.J. Sept. 5, 2017).

[2] The United States does not take a position on the plaintiffs' other state and federal claims.

inadequate sight distance by religious and secular entities in the past. JOGA and Das filed this suit and brought claims under RLUIPA's substantial burden, equal terms, and nondiscrimination provisions. The County now moves to dismiss under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

The Fourth Circuit has explained that a substantial burden exists under RLUIPA where a "government regulation puts substantial pressure on [a religious organization] to modify its behavior." *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 556 (4th Cir. 2013). Other courts addressing RLUIPA's substantial burden provision have adopted a similar definition of substantial burden. *See, e.g.*, *Livingston Christian Schs. v. Genoa Charter Twp.*, 858 F.3d 996, 1003-04 (6th Cir. 2017), *cert. denied*, 2018 WL 1994815 (No. 18-914) (2018). To evaluate whether a substantial burden exists, those courts evaluate the practical impact caused by the government's zoning denial, in addition to other factors. Those factors include whether the religious institution had a reasonable expectation of receiving approval, whether there was a complete denial of an application, and whether pursuing alternatives would result in undue delay, uncertainty, and expense.

Under that fact-intensive analysis, JOGA more than sufficiently alleges that the County's denial of its land use application and variance petition constitutes a substantial burden. JOGA contends that the complete denial of its land use application and variance petition imposes a substantial burden because it deprives its congregants of a place to worship consistent with the requirements of their faith. JOGA also alleges that it has been exposed to expense, delay, and uncertainty by the County's denial because it spent a significant amount of time finding suitable property and participating in public hearings on its application and petition. Further, JOGA asserts that the County's denial is arbitrary and departs from previous decisions in which the

County has approved secular and religious entities with inadequate sight distance. Finally, JOGA contends that its application should have been approved because it can meet each of the County's requirements for approval. These allegations, if true, are sufficient to establish a plausible substantial burden claim.

ARGUMENT

I. Dismissal would be inappropriate because JOGA has sufficiently alleged that the County's denial imposed a substantial burden on its religious exercise in violation of RLUIPA.

A. The substantial burden standard.

RLUIPA prohibits a government from "impos[ing] or implement[ing] a land use regulation that imposes a substantial burden on the religious exercise of a person" unless the burden "is in furtherance of a compelling governmental interest [and] is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §2000cc(a)(1). The statute defines "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," and specifies that "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise . . . ." 42 U.S.C. § 2000cc-5(7). Although RLUIPA does not define the term "substantial burden," the Act should be "construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3(g).

The Fourth Circuit has held that "a plaintiff can succeed on a substantial burden claim by establishing that a government regulation puts substantial pressure on [the plaintiff] to modify its behavior." *Bethel*, 706 F.3d at 556; *see also Andon, LLC v. City of Newport News, Va.*, 813 F.3d 510, 514 (4th Cir. 2016). Such pressure must cause more than mere "inconvenience" to

constitute a substantial burden. *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004). Additionally, there must be a "close nexus between the coerced or impeded conduct and the institution's religious exercise . . . ." *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007).

Thus, a court assessing substantial burden should determine whether, given the totality of the circumstances, the government's imposition or application of land use regulations substantially inhibits religious exercise rather than merely inconveniences it. *See, e.g.*, *Bethel*, 706 F.3d at 558; *Livingston Christian Schs.*, 858 F.3d at 1003-05; *Chabad Lubavitch of Litchfield Cnty. v. Town of Litchfield*, 768 F.3d 183, 195-96 (2d Cir. 2014); *Westchester Day Sch.*, 504 F.3d at 349, 350-51; *Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006). In so doing, a court should take into account a party's religious needs. For example, a religious institution's need to establish a place of worship on a new property or to expand or modify its existing property to facilitate or accommodate its growing congregation may implicate the substantial burden provision. *See, e.g.*, *Bethel*, 706 F.3d at 558; *Chabad Lubavitch*, 768 F.3d at 188; *Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 898 (7th Cir. 2005); *Westchester Day Sch.*, 504 F. 3d at 347-348, 352.

In determining whether a burden is substantial, the Fourth Circuit has considered "significant" whether a land use decision forecloses or seriously diminishes the possibility that a party ever may be able to use its property for the proposed development or expansion. *Bethel*, 706 F.3d at 558; *see also Westchester Day Sch.*, 504 F.3d at 349; *Guru Nanak*, 456 F.3d at 989. Because of the evident difference between being completely foreclosed from using a property for religious exercise and having that use denied conditionally subject to certain modifications, courts have given great weight to this factor. As the Second Circuit has explained, "whether the

denial . . . was absolute is important; if there is a reasonable opportunity for the institution to submit a modified application, the denial does not place substantial pressure on [a plaintiff] to change its behavior . . . ." *Westchester Day Sch.*, 504 F.3d at 349.

Complete foreclosure from all religious uses of a property is not required to establish a substantial burden, however. Rather, courts consider whether the government's decision—including a decision that restricts the size or scope of a proposed use rather than forbidding religious use altogether—prevents a party from carrying out its religious functions. *See, e.g.*, *Bethel*, 706 F.3d at 557-60; *Livingston Christian Schs.*, 858 F.3d at 1006; *Westchester Day Sch.*, 504 F.3d at 349, 352.

A substantial burden may also exist where government action leaves an organization without "quick, reliable, and financially feasible alternatives" to expand or locate facilities as part of its religious exercise, *Westchester Day Sch.*, 504 F.3d at 352, or imposes "delay, uncertainty, and expense" of identifying another suitable property, *e.g.*, *Bethel*, 706 F.3d at 557.

Additionally, courts may consider whether the government's decision (or decisionmaking process) was arbitrary and capricious or unlawful, such that the institution received "less than even-handed treatment" that frustrates its use of the property for religious exercise. *Westchester Day Sch.*, 504 F.3d at 351. In such instances, RLUIPA's substantial burden provision may "backstop[] the explicit prohibition of religious discrimination" in RLUIPA's nondiscrimination provision. *Id*. (quotation omitted); *see also Chabad Lubavitch*, 768 F.3d at 195; *Saints Constantine & Helen*, 396 F.3d at 899-900.

Finally, courts may assess whether the burden alleged is attributable to the government or, instead, to the plaintiff. In determining whether a burden is "self-imposed," the Fourth Circuit has considered whether the plaintiff had a "reasonable expectation" to use a property for

religious exercise. *See, e.g.*, *Andon*, 813 F.3d at 516; *see also Bethel*, 706 F.3d at 558; *Livingston Christian Schs.*, 858 F.3d at 1004; *Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007), *cert. denied*, 552 U.S. 1131 (2008). A plaintiff's willingness to modify its proposed use to comply with applicable zoning requirements to the extent possible while meeting its religious needs may be relevant to whether the burden is attributable to the government or self-imposed. *See Guru Nanak*, 456 F.3d at 989-90.

In sum, whether a government's application of a land use regulation constitutes a substantial burden on a plaintiff's religious exercise is a fact-intensive inquiry that often is not well suited for disposition at the motion to dismiss stage. *See Adkins v. Kaspar*, 393 F.3d 559, 571 (5th Cir. 2004) (noting that the test for substantial burden "requires a case-by-case, fact-specific inquiry to determine whether the government action or regulation in question imposes a substantial burden on an adherent's religious exercise"); *see also Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp. 2d 309, 319 (D. Mass. 2006) (noting that the Supreme Court has "made clear" that what constitutes a substantial burden is "intensely fact-specific").

B. Application to this case.

JOGA sufficiently alleges facts that, if established as true, could constitute a substantial burden on its religious exercise. JOGA clearly pleads its need for a place of worship. JOGA alleges that its congregants largely originate from the Indian state of Odisha where "Lord Jagannath is widely worshipped," and that no temple is specifically devoted to Lord Jagannath in Howard County or anywhere in the State of Maryland. (Pl.'s Am. Compl., Dkt. No. 36 at ¶¶25, 32-34.) JOGA also alleges that its congregants reside primarily in Howard County and have been without a permanent place of worship for sixteen years. (*Id*. at ¶¶2, 32-34.) Instead, JOGA's congregants, according to the First Amended Complaint, must travel from Howard

County to Adelphi, Maryland in Prince George's County, to worship at the Hindu Temple of Metropolitan Washington. (*Id*. at ¶36.)

JOGA alleges that the Adelphi temple is incompatible with its religious mandates because it is not specifically dedicated to Lord Jagannath, congregants can only use the temple once a month and not daily as their faith requires, and temple priests do not perform the daily rituals required. (*Id*. at ¶¶27, 31, 36-37, 40-50.) Further, JOGA alleges that it cannot hold the religious festivals of Holi, Ratha Jatra, and Diwali at the times required by its members' faith because observance of those festivals must be "squeezed in the [Adelphi] [t]emple's schedule without regard for the traditional timing of rituals." (*Id*. at ¶46; *see also id*. at ¶¶40-50.)

Next, JOGA alleges that the County completely denied its application and related variance petition, rather than imposing conditions, and that the denial foreclosed it from using its property for religious worship. (*Id*. at ¶¶157, 190.) A complete denial strongly supports a substantial burden claim. In *Bethel*, for example, the Fourth Circuit considered it "significant" that "the County has completely prevented Bethel from building any church on its property, rather than simply imposing limitations on a new building." 706 F.3d at 558; *Westchester Day Sch.*, 504 F.3d at 349; *cf. Guru Nanak*, 456 F.3d at 989 (substantial burden found where rationales behind denials to operate temple at two properties in different zones significantly diminished prospect that future applications on any property might be successful). JOGA further alleges that the County could have approved its application subject to approval for sight distance by the Department of Planning and Zoning—the County's agency for making technical evaluations for adequacy of sight distance during the property-development stage—but instead denied its application even though it has approved applications from religious and secular entities in the past with inadequate sight distance. (Pl.'s Am. Compl., Dkt. No. 36 at ¶¶192, 219-

42.) JOGA also alleges that its traffic engineer and project engineer provided unrefuted expert testimony that a driveway for JOGA's proposed temple would provide safe access with adequate sight distance. (*Id*. at ¶122.)

JOGA also alleges facts that, if true, establish that the County's denial has caused it "delay, uncertainty, and expense," and left it without quick, reliable, and viable alternative options for its operations. *Sts. Constantine & Helen*, 396 F.3d at 901; *see also Bethel*, 706 F.3d at 557; (Pl.'s Am. Compl., Dkt. No. 36 at ¶¶55-69, 96-101.) In *Bethel*, the Fourth Circuit explained that "[w]hen a religious organization buys property reasonably expecting to build a church, governmental action impeding the building of that church may impose a substantial burden." *Bethel*, 706 F.3d at 557 (citing *Petra Presbyterian*, 489 F.3d at 851). The Fourth Circuit recognized that governmental action could impose a burden even where "other suitable properties might be available, because the 'delay, uncertainty, and expense' of selling the current property and finding a new one are themselves burdensome." *Id*. at 557-58 (quoting *Sts. Constantine & Helen*, 396 F.3d at 899-901).

Similarly, JOGA, too, alleges that it has incurred expense by conducting a four-year property search and participating in two years of administrative hearings that ultimately led to the denial of its land use application and variance petition. (Pl.'s Am. Compl., Dkt. No. 36 at ¶¶52, 102-95, 248, 252.) Further, JOGA asserts that it faces uncertainty in finding a feasible alternative place to worship because no other property has the same central location and amount of acreage. (*Id*. at ¶¶52, 60-68, 248, 252.) That expense, delay, and uncertainty is substantial because JOGA has no permanent place for worship and no temple specifically devoted to Lord Jagannath in accordance with its religious mandates. (*Id*. at ¶¶2, 32-34.)

Moreover, JOGA alleges that the County's decisionmaking process was biased and that its decision relating to sight distance was unjustified and inconsistently applied. (Pl.'s Am. Compl., Dkt. No. 36 at ¶¶192, 219-42.) These facts, if true, indicate that it is not certain that any proposal JOGA submits in the future would gain County approval. (*Id*.) That, too, supports a plausible substantial burden claim. *See, e.g.*, *Guru Nanak*, 456 F.3d at 990-91 (noting that "inconsistent decision-making" by city government constitutes a substantial burden because it is "fraught with uncertainty"); *Westchester Day Sch.*, 504 F.3d at 350-51 (noting that "arbitrary, capricious, or unlawful" decision-making could be proof of substantial burden); *Sts. Constantine & Helen*, 396 F.3d at 900-01 (noting that a substantial burden may exist where the government's "delegat[ion] of standardless discretion" in land use decisions causes a religious institution "delay, uncertainty, and expense").

In its motion to dismiss, the County relies upon *Andon* to argue that JOGA's burden is "self-imposed" because it assumed the risk of submitting an application for a conditional use where it knew that approval was not guaranteed. But *Andon* is distinguishable. In *Andon*, before the church signed its lease and filed its application for a zoning variance, a city zoning administrator informed the church that its application would be denied because it could not meet the applicable setback requirement and churches were generally prohibited uses in the area. *Andon*, 813 F.3d at 515. Because the church "knowingly entered into a contingent lease agreement for a non-conforming property," any burden arising from the city's denial was knowing and self-imposed. *Id*.

By contrast, in *Bethel*, the Fourth Circuit found that the church had a reasonable expectation because the county permitted churches in the zoning area at the time the church purchased its property. *Bethel*, 706 F.3d at 558. The fact that there "were no guarantees" that

the church would receive approval was irrelevant to the Fourth Circuit's conclusion. *Id*. That, according to the Court, simply reflected "modern zoning practices," which "are such that landowners are rarely *guaranteed* approvals." *Id*. (emphasis in original).

Bethel and *Andon* together support the proposition that reasonable expectation depends on whether religious use is generally permitted on a property, not on whether a specific land use proposal is certain to gain approval. As this Court recently explained, the difference between the two decisions came down to the fact that the church's proposed use in *Bethel* was "not categorically contrary to law," unlike in *Andon*. *Hunt Valley Baptist Church, Inc. v. Baltimore Cnty.*, No. 17-804, 2017 WL 4641987, at *27 (D. Md. Oct. 17, 2017). The County's argument ignores this key distinction between those cases in seeking dismissal of JOGA's substantial burden claim.

Here, JOGA's allegations resemble those in *Bethel*. Similar to *Bethel*, JOGA alleges facts that, if true, establish that it had a reasonable expectation of using its property for religious use. The property is located in a zone where religious use is permitted, even if additional permitting steps may be required to use the property as a place of worship. (Pl.'s Am. Compl., Dkt. No. 36 at ¶¶63-64, 105-08; *see also* Def.'s Mot. to Dismiss Mem., Dkt. No. 37-1 at 7); *Bethel*, 706 F.3d at 558. JOGA alleges that the property is "in character with the surrounding neighborhood, which consists of residential, institutional, agricultural, and nearby commercial land uses," (Pl.'s Am. Compl., Dkt. No. 36 at ¶66), and asserts that within one mile of the property there are six churches, a school serving more than 600 students, multiple strip malls, fast food restaurants, automotive repair shops, bars, liquor stores, and numerous other large commercial and public entities. (*Id*. at ¶¶70-81.) JOGA also alleges that its proposed temple is located a substantial distance from other residences, which would allow JOGA to properly

perform its outdoor festivals of Holi and Ratha Jatra without disturbing neighboring residences. (*See id*. at ¶¶66, 98.) And finally, JOGA's allegations that the County found that JOGA's application complied with every zoning requirement, except for the adequacy of sight distance (which the parties dispute), supports its argument that it had a reasonable expectation. (*Id*. at ¶¶122, 131-47, 157, 190-92, 219-42.) Indeed, JOGA alleges that, under the correct sight-distance standard, it can satisfy all requirements necessary for approval of its application. (*Id*. at ¶¶122, 129, 152-53.) This Court found a similar allegation critical in *Hunt Valley*. *Hunt Valley*, at *27 (refusing to dismiss substantial burden claim where church alleged its proposal met each requirement imposed by the county). Thus, JOGA's allegations show that the subject property's location, surrounding uses, and overall zoning designation, which allows places of worship, created an expectation that the temple could operate on the property.[3] Those allegations, in addition to JOGA's allegations that the denial of its application and variance petition is the product of biased and arbitrary decisionmaking that caused it expense, delay, and uncertainty, if true, are sufficient to state a plausible substantial burden claim.

CONCLUSION

For the foregoing reasons, JOGA sufficiently alleges a substantial burden claim, and therefore, the County's motion to dismiss that claim should be denied.

[3] The County cites *Jesus Christ is the Answer Ministries, Inc. v. Baltimore County*, --- F. Supp. 3d ---, 2018 WL 1521873, at *1 (D. Md. Mar. 27, 2018), to support its position. (Def.'s Reply in Supp. of Mot. to Dismiss, Dkt. No. 40 at 5-8.) That case is on appeal to the Fourth Circuit, and the United States submitted an amicus brief in support of the Appellant in that case, arguing that the Court's opinion misapplied Fourth Circuit precedent. *See Jesus Christ is the Answer v. Baltimore County, Md.*, No. 18-1450, Dkt. No. 21-1.

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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 District of Maryland through the CM/ECF system, which will send a Notice of Electronic Filing to registered CM/ECF participants.

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