UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

HOPE LUTHERAN CHURCH, a not for profit ecclesiastical corporation, Plaintiff, v. CITY OF ST. IGNACE, a Michigan Municipal corporation, Defendant.	)	CASE NO. 2:18-cv-0155-PLM-TPG

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(b)(1), raised by the parties in their briefing on Plaintiff's Motion for Preliminary/Permanent Injunction and Defendant's 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]

[1] See, *e.g.*, *Jesus Christ is the Answer Ministries, Inc.* v. *Baltimore Cty., Maryland*, No. 18-1450, 2019 WL 469715 (4th Cir. Feb. 7, 2019); *Chabad Lubavitch of Litchfield Cty., Inc.* v. *Litchfield Hist. Dist. Comm'n*, 768 F.3d 183 (2d Cir. 2014); *Bethel World Outreach Ministries* v. *Montgomery Cty. Council*, 706 F.3d 548 (4th Cir. 2013); *Living*

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

FACTUAL ALLEGATIONS

Plaintiff Hope Lutheran Church's ("Hope") complaint ("Complaint") alleges that it is a Michigan religious not-for-profit organization that follows and promotes the Lutheran Christian faith. Compl. (ECF No. 1) ¶¶ 6, 11, 12. In February 2018, Hope purchased property in which to assemble for religious worship, hold Bible study, and operate a non-profit coffee shop located at 132 S. State Street in St. Ignace, Michigan. *Id.* at ¶¶ 18, 20, 22. The property is located in the General Business District ("GBD") of the City of St. Ignace (the "City"), which is "designed to provide for the general retail stores and service establishments of the community . . . [and] to promote convenient shopping for motorists as well as pedestrians, with off-street parking being provided by each business." *Id.* at ¶ 25 (citing City Ord., Sec. 38-251).

The GBD allows municipal buildings, assembly halls, and theaters, among other uses, to operate in the district, but does not allow religious assemblies. *Id.* at ¶¶ 27 (citing City Ord., Sec. 38-252(1)), 28. Hope alleges that nonreligious assembly uses and not-for-profit uses are operating in the GBD, and Hope alleges that a City official stated that other non-profit organizations were operating on the main street in the City's business district. *Id.* at ¶¶ 29, 39.

Water Church of God v. *Charter Twp. of Meridian*, 258 F. App'x 729, 731 (6th Cir. 2007); *Westchester Day Sch.* v. *Vill. of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007); *Guru Nanak Sikh Soc'y of Yuba City* v. *Cty. 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); *Jagannath Organization for Global Awareness Inc.* v. *Howard Cty., Maryland*, No. 17-cv-02436-ELH, Dkt. No. 42 (D. Md. July 23, 2018); *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. 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 Plaintiff's other state and federal claims.

The City's ordinance does not mention revenue maximization among the purposes identified for the GBD. *Id.* at ¶ 25 and Exhibit B. The City's current master plan recognizes the "City's downtown area as the commercial and retail center of the community," but there is no mention of revenue maximization anywhere in the master plan. St. Ignace, Mich., Master Plan §§ 3-5, B-2.[3]

The Complaint alleges that on June 14, 2018, Hope applied for a property tax exemption, which the City denied, stating that the property was not zoned to include churches. Compl. ¶¶ 23-24. Hope alleges that on the same date, it requested a zoning variance to allow the church to operate in the GBD, which was also denied. *Id.* at ¶¶ 31-32. Hope appealed the denial to the City's Zoning Board of Appeals, and on July 12, 2018, the Zoning Board unanimously denied Hope's variance request. *Id.* at ¶¶ 33-35.

Hope alleges that the City denied its application for a tax exemption and for a zoning variance of the property in violation of RLUIPA. *Id.* at ¶¶ 65-80. Hope alleges that the City is treating religious assembly uses differently than nonreligious assembly uses, such as municipal buildings, assembly halls, and theaters in the GBD by permitting those nonreligious assembly uses as of right but not churches. *Id.* at ¶ 75. Hope also alleges that Zoning Board members did not want the church in the downtown area because of the loss of property tax revenue, and concerns that a church on the property would negatively impact some businesses in the GBD because Michigan's Liquor Control Code limits businesses with liquor licenses from locating

[3] The City's zoning ordinance is available at http://www.cityofstignace.com/files/ZoningOrdinance2017.pdf (last visited Mar. 7, 2019). The St. Ignace master plan is available at http://www.cityofstignace.com/media/1315413442.pdf (last visited Feb. 19, 2019). In reviewing a motion to dismiss, a court may consider matters of public record. *Lynch* v. *Leis*, 382 F.3d 642, 648 n.5 (6th Cir. 2004); *Kostrzewa* v. *City of Troy*, 247 F.3d 633, 644 (6th Cir. 2001).

within 500 feet of a church. *Id.* at ¶¶ 36, 38, 40. Finally, Hope alleges that the City's zoning ordinance, both on its face and as applied, violates RLUIPA. *Id.* at ¶¶ 1-3, 43, 75.

Along with its Complaint, Hope filed a Motion for Preliminary/Permanent Injunction. The City has moved to dismiss Plaintiff's claims under Rule 12(c) of the Federal Rules of Civil Procedure.

SUMMARY OF ARGUMENT

An "equal terms" violation exists under RLUIPA where a government "treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1). The City's zoning ordinance permits municipal buildings, assembly halls, and theaters to locate as of right in the GBD, but does not allow religious assemblies such as churches. This differential treatment on the face of the ordinance constitutes a prima facie violation of RLUIPA. Under the standard articulated by the Sixth Circuit in *Tree of Life Christian Schools* v. *City of Upper Arlington, Ohio*, 905 F.3d 357, 370-71 (6th Cir. 2018), once a prima facie facial violation has been shown, the burden shifts to the City to show that legitimate zoning criteria justify the difference in treatment. See also 42 U.S.C. § 2000cc-2(b).

Here, the City has stated that its interests in treating religious assembly differently from other assembly uses in the GBD are (1) tax revenue maximization and (2) maintaining the character of the GBD by prioritizing the availability of liquor licensing. Def.'s Resp. Mot. Permanent Inj. (ECF No. 17) at pp. 10-11. The City cannot properly argue that these interests provide a basis for treating religious assemblies differently from nonreligious assemblies because there is nothing in either the zoning ordinance or the City's master plan that mentions revenue maximization as a goal for the City. Moreover, there are other assembly uses that can operate as of right in the GBD that are eligible for tax exemptions. Further, the City cannot use protections

provided to churches under Michigan's Liquor Control Code as a defense to an equal terms claim under RLUIPA when all of the requirements of a claim are otherwise met.

ARGUMENT

I. The Plaintiff has Stated a Claim that the City's Zoning Ordinance Treats Religious Assemblies on Less Than Equal Terms With Nonreligious Assemblies in Violation of RLUIPA.

A. The equal terms standard

RLUIPA prohibits a government from "impos[ing] or implement[ing] 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). Although Congress is silent on the meaning of the term "equal" in the statute, *Tree of Life*, 905 F.3d at 367, 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).

Courts have ruled that the equal terms provision of RLUIPA codifies the standard of the United States Constitution's Free Exercise Clause, which requires that a government accord equal treatment to religion-based claims for exceptions as it would for secular exceptions that are already in place. See *Lighthouse Inst. for Evangelism, Inc.* v. *City of Long Branch*, 510 F.3d 253, 264 (3d Cir. 2007), cert. denied, 128 S. Ct. 2503 (2008); *Midrash Sephardi, Inc.* v. *Town of Surfside*, 366 F.3d 1214, 1232 (11th Cir. 2004), cert. denied, 543 U.S. 1146 (2005).

In *Tree of Life*, the Sixth Circuit, adopting the Eleventh Circuit's standard, stated that the elements of a prima facie case under the equal terms provision of RLUIPA are: "(1) the plaintiff [is] a religious assembly or institution, (2) subject to a land use regulation, that (3) treats the [plaintiff] on less than equal terms, [compared] with, (4) a nonreligious assembly or institution."

905 F.3d at 367 (quoting *Primera Iglesia Bautista Hispana of Boca Raton, Inc.* v. *Broward County*, 450 F.3d 1295, 1307–08 (11th Cir. 2006)).

Defendant concedes that elements one and two are met here. Br. Supp. Def.'s Mot. to Dismiss Pl.'s Compl. (ECF No. 26) at p. 18. To satisfy elements three and four of a prima facie case, a comparison must be made of how a government treats religious assembly uses and nonreligious assembly uses under zoning law. This can be accomplished by looking at: (1) how the text of the law on its face treats religious and nonreligious assemblies; (2) how governments apply a facially neutral zoning law to religious and nonreligious assembly uses and whether the law is selectively enforced; or (3) whether a facially neutral statute is "gerrymandered" to burden only religious, as opposed to nonreligious assemblies or institutions. *Primera Iglesia*, 450 F.3d at 1308. If the terms of the zoning law on their face treat religious assemblies differently than nonreligious assemblies, "[t]hat is the disparate treatment that the [e]qual [t]erms provision prohibits." *Tree of Life*, 905 F.3d at 381.

The Sixth Circuit articulated the standard for evaluating a RLUIPA equal terms claim in *Tree of Life*, holding that the question in an equal terms case is whether a church is treated on a less than equal basis with a secular comparator "similarly situated with respect to a legitimate zoning criteria." 905 F.3d at 370; see also *Centro Familiar Cristiano Buenas Nuevas* v. *City of Yuma*, 651 F.3d 1163, 1173 (9th Cir. 2011). Because *Tree of Life* was a case of first impression in the Sixth Circuit, the Court examined the decision of the Ninth Circuit in *Centro Familiar*, 651 F.3d at 1173, and a similar decision of the Seventh Circuit, *River of Life Kingdom Ministries* v. *Village of Hazel Crest*, 611 F.3d 367 (7th Cir. 2010), both of which adopted a test that requires the comparison of a religious and nonreligious assembly "in light of 'accepted zoning criteria' advanced by the regulation." 905 F.3d at 368. The Sixth Circuit adopted this approach nearly

verbatim, substituting "legitimate" for "accepted" before "zoning criteria." *Id.* at 369. Once a plaintiff establishes that a religious assembly is treated less favorably, the burden is on the city to show that the facially differential treatment is justifiable because the uses are not in fact similarly situated with respect to a "legitimate zoning criterion." *Id.* at 370-71.

While the Sixth Circuit did not address a *facial* equal terms claim in *Tree of Life*, the Ninth Circuit did so in *Centro Familiar*, a case on which the Court relied in *Tree of Life*. 905 F.3d at 368-69. In *Centro Familiar*, a city's zoning law allowed secular assembly uses—such as membership organizations, auditoriums, performing art centers, museums, physical fitness centers, and art galleries—as of right in its Old Town District, but required religious assemblies to acquire a conditional use permit to hold services in that district. 651 F.3d at 1166-67. The court held that a city violates the equal terms provision "when a church is treated on a less than equal basis with a secular comparator, similarly situated with respect to an accepted zoning criteria." *Id.* at 1173. The court further held that to establish a prima facie case of a facial violation of the equal terms provision, "[t]he burden is not on the church to show a similarly situated secular assembly," but rather on the city to show that the treatment is not unequal "where it appears to be . . . on the face of the ordinance." *Id.*

B. Application to this case

Hope sufficiently alleges facts that, if established as true, would prove that the City's zoning ordinance on its face violates RLUIPA's equal terms provision. The ordinance does not allow religious assembly as of right in the GBD, but allows secular assembly uses as of right, including municipal buildings (such as a town hall), assembly halls, and theaters. Compl. ¶¶ 27-28; City Ord., Sec. 38-252(1). Because the ordinance facially treats religious assemblies less favorably than their secular counterparts, a prima facie violation of RLUIPA is established and

shifts the burden to the City, see 42 U.S.C. 2000cc-2(b), to show that the religious assembly uses are not similarly situated to the secular assembly uses with respect to the City's legitimate zoning criteria in the GBD. See *Tree of Life*, 905 F.3d at 370-71; *River of Life*, 611 F.3d at 371; *Centro Familiar*, 651 F.3d at 1173; *Lighthouse*, 510 F.3d at 266.

Here, the City argues that its "legitimate zoning criteria" for the GBD are (1) tax revenue maximization and (2) maintaining the character of the GBD by prioritizing the availability of liquor licensing. Def.'s Resp. Mot. Permanent. Inj. at pp. 10-11. Assuming Plaintiff's facts are true, neither rationale justifies the differential treatment of religious and nonreligious assemblies in the GBD.

1. *Revenue Generation*

While the Sixth Circuit recognized that "revenue maximization" could be a legitimate zoning criterion justifying differential treatment, *Tree of Life*, 905 F.3d at 371-73, the City cannot rely on tax revenue maximization on this Motion to Dismiss because the GBD neither mentions tax or revenue maximization as a goal nor excludes other non-commercial, secular uses, such as municipal buildings, that also do not generate revenue. Compl. ¶¶ 25-29; see City Ord., Sec. 38-251. In *Tree of Life*, the Sixth Circuit agreed, based on the District Court's findings of fact and conclusions of law, that revenue maximization was a legitimate zoning criterion because the city's "Master Plan specifically identified the generation of personal income-tax revenue as a zoning goal . . ." 905 F.3d at 373. Several other Circuits have adopted similar tests, requiring that a zoning code or plan identify tax revenue maximization or treat tax-exempt uses similarly.

In *River of Life*, which the Sixth Circuit cited in support of the conclusion that revenue maximization could be a legitimate zoning criterion, see *id.* at 371, the Seventh Circuit held that

the city did not violate the equal terms provision of RLUIPA when it excluded churches from its commercial district, but also excluded "community centers, meeting halls, and libraries because these secular assemblies, like churches, do not generate significant taxable revenue . . ." 611 F.3d at 371. Importantly, the Seventh Circuit stated 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." *Id.* at 373.

Similarly, the Third Circuit in *Lighthouse* examined an equal terms claim by a church challenging exclusion from a commercial district under a city's redevelopment plan and zoning ordinance. 510 F.3d 253. The court reached different conclusions with regard to the redevelopment plan and the zoning ordinance at issue. The redevelopment plan "strictly limited" uses in its "Broadway Corridor," where the church was located, to attract retail and service enterprises and create a "vital" and "vibrant" downtown area. 510 F.3d at 258. The court found that these goals were "well documented" in the city's plan and that the plaintiff church failed to show how other assembly uses allowed in the corridor, such as theaters, cinemas, performance art venues, restaurants, bars and clubs, were treated more favorably by being allowed to operate there. *Id.* However, the city's zoning ordinance allowed secular assembly uses such as municipal buildings, assembly halls, and theaters. 510 F.3d at 272. The court held that because the municipality's aims for the ordinance were not "well documented" in the zoning ordinance, it was "not apparent . . . why a church would cause greater harm to regulatory objectives than an 'assembly hall' that could be used for unspecified meetings." *Id.*

In addition, the Ninth Circuit in *Centro Familiar* held that generation of tax revenue could not be an accepted zoning criterion in a city district that allowed other tax-exempt uses,

such as the United States Postal Service, museums, and zoos, to operate as of right while churches were required to obtain a conditional use permit. 651 F.3d at 1173.

Here, Hope has alleged that the City's zoning ordinance does not create a purely commercial district and allows other tax-exempt uses. Compl. ¶¶ 25-28, 39. If these allegations are true, the City cannot rebut Plaintiff's prima facie showing of an equal terms violation. The stated goals in the City's zoning ordinance for the GBD are that the GBD is "designed to provide for the general retail stores and service establishments of the community" and "promote convenient shopping for motorists as well as pedestrians, with off-street parking being provided by each business." *Id.* at ¶ 25; City Ord., Sec. 38-252. There is no mention of revenue maximization in the ordinance, and the ordinance allows noncommercial uses and potentially noncommercial uses, such as municipal buildings, assembly halls, and theaters. See *Id.* at ¶¶ 25-27; see also Pl.'s Resp. Mot. to Dismiss (ECF No. 30) at pp.13-14. Moreover, unlike in *Tree of Life*, the City's Master Plan makes no mention of revenue maximization as a goal for the development of its downtown area, nor as a goal for the City. St. Ignace, Mich., Master Plan § 3-6.

Further, as in *Centro Familiar*, under Michigan law, many of the secular assembly uses allowed in the GBD either can qualify as non-profit and tax exempt or are already tax exempt. The Complaint alleges that there are nonreligious assembly uses and not-for-profit uses operating as of right in the GBD. Compl. ¶ 29. Here, much like in *Lighthouse*, there is no explanation in the GBD, much less a "well documented" one, 510 F.3d at 272, for allowing some secular assembly uses but not religious assembly uses. For example, a theater or institution fostering the development of education or the arts that is available to the general public, like a museum, is permitted and can be tax exempt in the GBD. See Compl. ¶ 29; see also Pl.'s Resp. Mot. to

Dismiss at pp.13-14; Mich. Comp. Laws Ann. § 211.7n (1981). The GBD also allows municipal buildings, which by definition are tax exempt. See Compl. ¶ 27; see also Pl.'s Resp. Mot. to Dismiss at pp.13-14; Mich. Comp. Laws Ann. § 211.7m (1980). Based on Plaintiff's allegations, the City has not met this burden with regard to its revenue justification.[4]

2. *Liquor sales*

The City mistakenly relies on the State of Michigan's laws limiting the sale of liquor near churches and schools to further its argument that a church should not be allowed in the GBD. Michigan's Liquor Control Code states that a new application for a liquor license or application to transfer the location of a business with an existing liquor license shall be denied, "if the contemplated location is within 500 feet of a church or a school building." Mich. Comp. Laws Ann. § 436.1503(1) (2017). The City argues that it can exclude churches from the GBD because, due to this law, their presence will negatively affect surrounding businesses that wish to sell liquor, and therefore will negatively affect tax revenue. Def.'s Resp. Mot. Permanent Inj. at p. 11.

The Seventh Circuit, in *Digrugilliers* v. *Consolidated City of Indianapolis*, 506 F.3d 612, 616 (2017), specifically rejected this argument. In *Digrugilliers*, the lower court had ruled that an Indiana liquor law justified a city's zoning distinction between churches and secular assemblies. *Id.* However, the Seventh Circuit held that that "[g]overnment cannot, by granting churches special privileges (. . . the right of the church to be free from offensive land uses in its

[4] The City points to *Alger Bible Baptist Church* v. *Township of Moffatt*, No. 13-13637, 2014 WL 462354 (E.D. Mich. Feb. 5, 2014), arguing that Plaintiff failed to identify similarly situated comparators. Def.'s Resp. Mot. Permanent Inj. at p. 21. This case was decided before the Sixth Circuit's *Tree of Life* decision and sheds little light on the dispositive issues. In *Alger*, the court characterized the zoning law at issue as "facially neutral." 2014 WL 462354, at *10. In contrast, as noted above, this case involves an ordinance that on its face differentiates between religious assemblies and nonreligious assemblies. As such, the burden thus is on the City to show that the facial differential treatment is justifiable because the uses are not in fact similarly situated with respect a legitimate zoning criterion. *Tree of Life*, 905 F.3d at 370; *Centro Familiar*, 651 F.3d at 1173.

vicinity), furnish the premise for excluding churches from otherwise suitable districts." *Id.* RLUIPA bars a city from "treat[ing] a religious assembly on less than equal terms with a nonreligious assembly or institution," and "the meaning of 'religious assembly or institution in [RLUIPA] is a question of federal rather than state law." *Id.* at 615. RLUIPA by its terms prohibits treating religious assemblies and institutions on less than equal terms with nonreligious assemblies and institutions, and a government cannot bypass this by claiming to treat religious assemblies and institutions better than nonreligious assemblies in certain ways and on less than equal terms in others. *Id.* at 615-17. This is true regardless of the government unit engaging in the discrimination. *Id.* at 617. As the Seventh Circuit held, "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." *Id.*

In the instant case, Hope is plainly being treated worse than other assemblies and institutions in the GBD by being excluded from a site it wishes to occupy while other similar assemblies and institutions are allowed to locate there. It is irrelevant, as in *Digrugilliers*, that the City considers Hope to be a "church" subject to the 500-foot rule imposed by the Michigan Liquor Control Code. Hope qualifies as a "religious assembly or institution" under RLUIPA, a federal civil rights law. Under RLUIPA and the Supremacy Clause of the Constitution, U.S. Const. art. VI, cl. 2, Hope must, as a "religious assembly or institution," not be treated on less than equal terms than nonreligious assemblies and institutions. This remains true notwithstanding a state law that seeks to treat it as a "church" with better treatment than nonreligious assemblies and institutions in some respects (the liquor protection it does not desire,

see Pl.'s Resp. Mot. to Dismiss at pp. 13, 17)[5] and worse than nonreligious assemblies and institutions in another (being barred from a district in which it seeks to locate). Whatever definition of "church" state law may use, see Mich. Comp. Laws Ann. § 436.1107(7), and whatever requirements imposed on churches by the liquor law, RLUIPA's requirement of equal treatment of "religious assemblies institutions" with "nonreligious assemblies and institutions" takes precedence.[6]

Furthermore, Michigan's Liquor Control Code allows the commission approving liquor licenses to waive the rule restricting the sale of liquor within 500 feet of a church, even if the church files an objection. Mich. Comp. Laws Ann. § 436.1503(4) (2017). It follows that the equal terms provision would not prohibit the City from requiring that Hope, as a condition of operating in the downtown GBD, agree not to object to a new or transferred liquor license. If Hope does not object to a liquor license being issued or transferred to a location within 500 feet of its property, see Pl.'s Resp. Mot. to Dismiss at pp. 13, 17, it will in no way impede new liquor licenses, the transfer of location of an existing liquor license, or the development of the restaurant and entertainment industry in the GBD of the City.

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[5] The City and state government believe that they are giving Hope a benefit by Michigan's Liquor Code rules banning liquor near churches; however, this is not a benefit that Plaintiff asked for. A paternalistic desire to protect someone does not transform unlawful discrimination into permissible discrimination. Cf. *Dothard* v. *Rawlinson*, 433 U.S. 321, 335 (1977) (desire to protect women from risks, by itself, cannot justify sex discrimination because "[i]n the usual case, the argument that a particular job is too dangerous for women may appropriately be met by the rejoinder that it is the purpose of Title VII to allow the individual woman to make that choice for herself"); *International Union, UAW* v. *Johnson Controls, Inc.*, 499 U.S. 187, 199 (1991) ("the absence of a malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect"). Plaintiff is simply asking for equal treatment guaranteed to them by federal law.

[6] The Third Circuit in *Lighthouse*, discussed *supra* at Section B.1, noted that it declined to follow the Seventh Circuit's approach to liquor spacing requirements for churches in *Digrugilliers*. 510 F.3d at 271 n.15. The United States respectfully submits, for the reasons set forth above, that the Seventh Circuit approach is compelled by the text of RLUIPA and the Supremacy Clause.

CONCLUSION

For the foregoing reasons, Plaintiff has set forth a prima facie claim under the equal terms provision of RLUIPA that the City's zoning ordinance is facially discriminatory, which the City's arguments regarding tax revenue maximization and liquor licensing fail to rebut. Defendant's Motion to Dismiss thus should be denied.

Dated: March 19, 2019

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

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