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# Intentional Discrimination and Haredi Jews

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# Intentional Discrimination And Haredi Jews

Land use regulation intersects with civil rights law in a variety of ways—for example, when government uses zoning laws to exclude Blacks from a community.[1] The purpose of this article is to explain why unconstitutional intentional discrimination is especially likely to occur against haredi (or "ultra-Orthodox") Jews, and to discuss relevant 21st-century case law.[2]

## I. Background—Haredi Population

Orthodox Jews generally follow traditional Jewish law.[3] For example, Orthodox Jews generally do not work, drive, or even carry objects outside the house on the Jewish Sabbath (which goes from Friday night to Saturday night).[4] Most Orthodox Jews fall into two major groups: modern Orthodox Jews (who tend to wear modern attire and have more secular education) and haredim (also known as "ultra-Orthodox Jews").[5] The Hebrew term "haredim" means "those who tremble before God."[6] Haredim are more traditional than modern Orthodox Jews in a variety of ways: for example, they tend to have less university education,[7] and often wear distinctive attire.[8] Haredi Jews, in turn, consist of two major groupings: Hasidic and Yeshivish.[9] Hasidic groups arise from an 18th century European mystical movement that emphasized fervent prayer, and tend to be even more insular than other haredi groups.[10] Yeshivish (or "Litvish")[11] Jews are the intellectual heirs of other European rabbis who tended to be less mystical and more scholarly.[12]

The major centers of haredi life are in New York City.[13] However, many Orthodox Jews (including both haredim and modern Orthodox Jews) have moved to suburban New Jersey and upstate New York, in part to avoid New York City's rising housing costs.[14] For example, Satmar Hasidim created their own village in Orange County, New York, named Kiryas Joel.[15] The boundaries of this municipality are drawn to include 320 acres owned entirely by Satmars.[16] On January 1, 2019, the Town of Palm Tree became the first new town in New York in 38 years, created by referendum to split the Village of Kiryas Joel from the Town of Monroe by redrawing boundary lines.[17] One journalist described Palm Tree as "the first official U.S. Haredi town."[18]

The average haredi woman has six children, while non-Orthodox families typically have only one or two children.[19] The growth of haredi populations has led to a variety of land use conflicts. Some of these conflicts involve the sort of reflexive opposition to new development that is common in the United States.[20]

However, residents of suburbs and small towns may be motivated to use land use law to exclude haredim, for two reasons. First, haredi communities may have tax-exempt religious institutions than more secular communities. In heavily haredi Lakewood, New Jersey, 8% of the town's total property value is held by such institutions, as opposed to 1.5% in neighboring Toms River.[21] So Toms River residents might reasonably fear that haredi growth in their town may reduce the municipal tax base.[22] Second, Orthodox Jewish children mostly attend Jewish religious schools rather than public schools;[23] for example, in Lakewood, fewer than 20% of children attend public schools.[24] Thus, Orthodox parents might not be motivated to pay additional taxes to support public schools, and if an Orthodox-dominated electorate takes over a school board, school budgets might decline.[25] To avoid this result, local governments in areas with a growing Orthodox population might be tempted to aggressively exclude Orthodox Jews.

**II. Relevant Case Law A Warning to Local Governments Not to Discriminate**

In 2000, Congress enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA)[26] to specifically address instances of discrimination by governments across the country when it came to different religious beliefs and practices. More specifically, RLUIPA prohibits zoning and landmarking laws that substantially burden the religious exercise of churches or other religious assemblies or institutions absent the least restrictive means of furthering a compelling governmental interest. This prohibition applies in any situation where: (i) the state or local government entity imposing the substantial burden receives federal funding; (ii) the substantial burden affects, or removal of the substantial burden would affect, interstate commerce; or (iii) the substantial burden arises from the state or local government's formal or informal procedures for making individualized assessments of a property's uses. In addition, RLUIPA prohibits zoning and landmarking laws that:

(1) treat churches or other religious assemblies or institutions on less than equal terms with nonreligious assemblies or institutions;

(2) discriminate against any assemblies or institutions on the basis of religion or religious denomination;

(3) totally exclude religious assemblies from a jurisdiction; or

(4) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.[28]

In recounting the historical underpinnings of the RLUIPA statute, the U.S. Department of Justice explained in their report on the 20th Anniversary of RLUIPA,[29] "Congress found that religious groups often encountered overt and subtle forms of discrimination when seeking zoning approval for places of worship—most often impacting minority faiths and newer, smaller, or unfamiliar denominations.[30] Moreover, Congress found that "[r]eligious discrimination is sometimes coupled with racial and ethnic discrimination."[31]

While there have been many lawsuits involving RLUIPA brought by the Haredi and other segments of the Jewish community,[32] cases involving intentional discrimination have often relied on other constitutional and zoning law grounds.

There are several recent cases upholding allegations of intentional discrimination against haredim.

**1. *Bloomingburg Jewish Education Center v Village of Bloomingburg, New York***

In *Bloomingburg Jewish Education Center v. Village of Bloomingburg*,[33] plaintiffs claimed that Hasidic Jews who sought to move to Bloomingburg (a rural village in upstate New York)[34] had met with "determined and concerted resistance by the local government,"[35] One of the plaintiffs, a real estate developer, sought to develop a subdivision that was noncontroversial until rumors spread that its houses were being marketed to Hasidim.[36] After opponents of the subdivision won a local election, the village enacted a moratorium on building permits.[37] In support of the moratorium, city officials claimed that they were responding to complaints about violations of various regulations—but according to plaintiffs' complaint, "the Village relied almost entirely on complaints submitted after the Moratorium was enacted, none of which concerned new construction."[38] The village also refused to allow a building permit for a mikvah[39] (a bath used by many Jews for ritual immersion).[40]

Plaintiffs further alleged that village residents and officeholders engaged in anti-Semitic rhetoric. For example, one officeholder allegedly stated that he was elected to "stop the Jewish infiltration… [and] keep Jews out of the area."[41] The village allegedly fired a village engineer for refusing to condemn Jewish-owned buildings, and fired building inspectors and code enforcement officers for refusing to block Jewish-owned development.[42]

. The court denied defendants' motion to dismiss as to numerous claims, most notably:

*A First Amendment claim arising out of government obstruction of the mikvah. The court noted that there was ample evidence that the village's conduct stemmed from discriminatory motives, including the above-mentioned comments by officeholders,[43] an officeholder's "appointment of opponents of the Hasidic community to town boards"[44] and the lack of a rational basis for obstructing the mikvah.[45] The court held that plaintiffs were entitled to the inference that such

obstruction was "designed to coercively prevent [Hasidim] … from exercising their religion and associating with others to do the same."[46] Thus, some of the plaintiffs stated valid First Amendment claims that the defendants violated both their right to freely associate and their right to the free exercise of religion.[47]

*An equal protection claim based on the obstruction of the mikvah. The Equal Protection Clause is violated whenever government policy has an adverse effect upon the plaintiffs and is motivated by discriminatory intent.[48] The court found that the village's refusal to allow the mikvah was motivated by an intent to discriminate against Hasidim, based on plaintiffs' allegations that a local officeholder had publicly opposed Hasidic migration into the town, and that the village had provided no rational basis for its opposition to the mikvah.[49]

*A second equal protection claim based on government obstruction of the subdivision, based on evidence of discriminatory intent such as officeholders' campaigning for office on anti-Hasidic platforms, and one local officeholder's derogatory comments about Hasidic women.[50]

*A due process claim based on the development moratorium. Under the doctrine of substantive due process, arbitrary denials of property rights violate due process.[51] The court found that the alleged purpose of the moratorium was to investigate community complaints, but that this justification "had no basis in fact, as demonstrated by the Village's reliance on post-construction complaints when pressed in subsequent litigation."[52]

In addition to the constitutional claims discussed above, the court upheld a claim under 42 U.S.C.A. sec. 1985, which prohibits conspiracies to violate civil rights.[53] Based on the evidence above, the court found that the defendants had "engaged in a pervasive and wide-ranging scheme to keep Hasidic Jews out of [the village]."[54] The court also found that the defendants' discriminatory animus violated the Fair Housing Act, which prohibits "discrimination in the housing market based on religion."[55]

Bloomingburg stands for the proposition that if a municipal defendant will be liable for a variety of statutory and constitutional violations if it a) shows discriminatory animus through a history of discriminatory statements and b) does not seem to have a rational basis for obstructing development.[56]

**2. *Congregation Rabbinical College of Tartikov v Village of Pomona, New York***

Religious educational institutions have also been involved in land use litigation against municipalities. In *Congregation Rabbinical College of Tartikov v. Village of Pomona, New York*,[57] a rabbinical college purchased land in a small suburb in the Town of Ramapo in order to build a religious school to educate rabbinical judges.[58] After news reports claimed that the school would serve thousands of students,[59] the Village amended its zoning code in two significant ways. First, the Village prohibited dormitories from being over 25 feet tall or occupying over 20% of building square

footage.[60] Because of these restrictions, the college would be able to accommodate only 30 students in their dormitories.[61] Without adequate dormitories, the college could not attract a significant number of students, because the suburb did not have enough housing to accommodate hundreds or thousands of students.[62] Second, the Village prohibited construction of almost any structure within 100 feet of a wetland.[63] This law prevented the plaintiff from building on its property, because the only suitable location for a driveway was within 100 feet of wetlands.[64]

The court found that both amendments were motivated by anti-Hasidic animus, and thus violated equal protection. The court found that the dormitory amendments violated equal protection because community members made anti-Hasidic comments in hearings on the proposal,[65] and a deputy mayor stated that his support of the amendments was "based on the input from the public."[66] The court admitted that because the dormitories would have doubled the suburb's population, the college's proposal would have been controversial even in the absence of discriminatory motive.[67] Nevertheless, because such discriminatory motives existed, the suburb's decision was impermissibly tainted by "religious animus and hostility."[68]

As to the wetlands law, the court found discriminatory intent not just because of the discriminatory comments discussed above, but also because of the "absence of any studies conducted to determine the need for or most appropriate means of enacting wetlands protection."[69] Thus, the court seems to have used the lack of technical support for the city's rules as a reason to find discriminatory intent.

**3. *Central UTA of Monsey v Village of Airmont, New York***

A closer question was presented in *Central UTA of Monsey v. Village of Airmont, New York*.[70] In *Central UTA*, a Hasidic religious school (referred to by the court as "CUTA")[71] sought to expand its operations, and the village refused to allow expansion.[72] The school, some of its parents, and a variety of other plaintiffs sued the village as a result, and also challenged a local school district's refusal to provide the school's students with transportation.[73] Before the school purchased its land, the land was used by a non-Hasidic Jewish camp, and by a non-Hasidic Jewish school that enrolled 400 students even though a site plan approved by the village only allowed 167 students.[74] After CUTA purchased the land, it sought amendment of the site plan so it could build two new schools, one for boys and one for girls.[75] The village responded with a moratorium on new development.[76] The village also issued a notice of violation (NOV), because the school was operating with 200-300 students, more than was authorized by the site plan.[77] The NOV forced the school to reduce the size of its student body, allegedly threatening the school's financial stability.[78]

Before the school was taken over by Hasidim, the local public school district provided transportation and other services to the non-Hasidic school that had occupied the

school's land; after Hasidim moved in, the district refused to provide such services, based on typographical errors in the school's certificate of occupancy.[79]

The plaintiffs responded with a lawsuit asserting a wide variety of constitutional claims. and the defendants moved to dismiss, asserting that the plaintiffs had failed to state a claim.[80] The court denied the motion to dismiss; as to most issues, the court merely recited the plaintiffs' factual assertions rather than engaging in independent analysis. For example, as to the village's growth moratorium, the court recited the plaintiffs' assertions, including a claim that local officials "campaigned on anti-Hasidic platforms"[81] and that a zoning board member "specifically mentioned houses of worship as a reason the Village should impose a moratorium, and the only houses of worship in contemplation of construction or renovation in the Village were Hasidic Jewish synagogues."[82] The court treated these alleged statements as evidence of "discriminatory animus."[83] In this case, as in the Bloomingburg and Tartikov cases, the court relied on bigoted statements to support a discriminatory intent claim.

**4. *WR Property v Township of Jackson, New Jersey***

More recently, in *WR Property v. Township of Jackson*,[84] plaintiffs challenged ordinances that were allegedly enacted to prevent the creation of haredi institutions in a New Jersey township. The township bordered heavily haredi Lakewood, New Jersey,[85] and because of a housing shortage in Lakewood, haredim were interested in moving to that township.[86] One of the challenged ordinances effectively prohibited schools in the township's residential zones.[87] Plaintiffs also challenged an ordinance that prohibited eruvim,[88] which are artificial boundaries that allow Orthodox Jews to carry on the Sabbath.[89]

The court granted plaintiffs' motion for a preliminary injunction to prevent these ordinances from being enforced.[90] The court found that because there was ample evidence of discriminatory intent, the ordinances violated both the Free Exercise Clause[91] and the Equal Protection Clause.[92] As in the Bloomingburg and Tartikov cases, the court relied on anti-Jewish statements by township residents. For example, one township councilman testified that the mayor and other council members had discussed "ways of stopping the Orthodox Jewish community from moving into [the township]."[93]

The court also relied upon evidence that other conduct by defendants "targeted the Orthodox Jewish community."[94] For example, the township adopted a "no-knock ordinance"[95] that prohibited individuals from knocking on doors unless they were registered with the township, allegedly in order to prevent Orthodox Jews from contacting homeowners to purchase their homes.[96] Even though the court did not directly address the constitutionality of this ordinance, it wrote that the no-knock-ordinance and other activities targeting the haredi population supported "an inference that the Township adopted the ordinances as part of a scheme to

discourage members of the Orthodox Jewish community from moving into the Township."[97]

In support of its conclusion, the court also emphasized that the town had allowed other land uses similar to schools. For example, the township sought to exclude schools, but allowed sports facilities with dormitories.[98] Similarly, the township sought to prohibit eruvin, but allowed other objects that (like eruv wires) intrude in the public right-of-way, such as flags and signs.[99] According to the court, these facts also supported the court's inference of discriminatory intent.[100]

**III. Guidance for Local Governments**

What can local officials learn from these cases? The obvious answer is: don't discriminate. But more precisely, certain forms of conduct are "red flags" that are likely to support allegations of intentional discrimination. For example:

*In the Tartikov case, the court relied upon anti-Hasidic statements by citizens at hearings, and municipal officials' reliance on bigoted citizen testimony.[101] It therefore appears that local governments should not only avoid reliance on such bigoted statements, but should repudiate them on the record in order to prevent courts from perceiving that local decisionmakers were swayed by those statements. The Bloomingburg and WR Property courts relied on similar statements by local officeholders;[102] obviously, local officeholders should be especially careful to avoid such statements.

*In the Tartikov case, the court examined the municipality's justification for a regulation, inferring discriminatory intent from the absence of studies supporting a wetlands-related rule.[103] Thus, discrimination claims are intertwined with the law of substantive due process. Just as the absence of rational justification for a municipal decision might support a substantive due process claim,[104] such an absence might also support an intentional discrimination claim. It logically follows that just as substantive due process liability should motivate local officials to back up their conclusions with evidence, the possibility of discrimination claims should justify similar due care.

*In WR Property, the court relied upon a municipal pattern of prohibiting land uses that seemed especially attractive to haredi Jews (such as school dormitories) while allowing other land uses that were less likely to involve haredim.[105] So even facially neutral rules might support a finding of discriminatory intent if a court can be persuaded that laws seem too obviously targeted towards haredim.

Training for local board members involved in the land use decision making process is also an excellent preventive law strategy. In fact, when the U.S. Department of Justice enters into settlement agreements with local governments regarding religious discrimination claims brought under RLUIPA, often DOJ requires training for municipal officials.

## IV. Conclusion

Civil rights cases often involve groups other than Jews; however, the cases cited above are relevant by analogy to all forms of discrimination. For example, just as anti-Hasidic statements supported courts' findings on religious discrimination, statements that seem hostile to any racial minority can be used to support a finding of racial discrimination. Just as flimsy evidence supporting a regulation can be used to support a finding of religious discrimination, such evidence might be used to support a finding of racial discrimination. And just as facially neutral prohibitions on activities that Orthodox Jews favor (such as school dormitories) can be treated as evidence of discriminatory intent, other facially neutral rules might receive similar treatment if the surrounding circumstances suggest that they are designed to disfavor a racial, ethnic and/or religious group.



### Footnotes

[*]

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[1]

See, e.g. Mhany Management, Inc. v. County of Nassau, 819 F.3d 581, 612 (2d Cir. 2016) (finding prima facie case of discriminatory intent where city "knowingly acquiesced to race-based citizen opposition" to multifamily housing)

[2]

I note that federal civil rights legislation does not always require a finding of discriminatory intent; however, such legislation is beyond the scope of this article. *See, e.g.,* 42 U.S.C.A. sec. 2000cc(a)(1) (section of Religious Land Use and Institutionalized Persons Act prohibiting land use regulations that impose a "substantial burden upon the religious exercise of a person" unless that burden is the "least restrictive means of furthering [a] "compelling governmental interest.")

[3]

*See* Lydia M. Belzer, *Toward True Shalom Bayit: Acknowledging Domestic Abuse in the Jewish Community and What To Do About It*, 11 Cardozo Women's L.J. 241, 243 (2005) (describing Orthodoxy in more detail).

[4]

*See* Jewish Virtual Library, *Shabbat: What Is Shabbat*?, at https://www.jewishvirtuallibrary.org/what-is-shabbat-jewish-sabbath (noting that Jewish Sabbath begins Friday at sunset, and ends Saturday at nightfall, and explaining logic behind Sabbath restrictions) (describing carrying restrictions); Mikvah Association v. Township of Teaneck Block 1905, Lot 11.01, 2018 WL 3849070, at *2 (N.J. Tax Ct.

2018) (Orthodox Jews do not drive or make phone calls on Sabbath); Aron v. Quest Diagnostics Inc., 174 Fed. Appx. 82 (3d Cir. 2006) (Orthodox Jews do not work on Sabbath).

5

Raysh Weiss, Haredim (Charedim) or Ultra-Orthodox Jews, at https://www.myjewishlearning.com/article/haredim-charedim/ (treating terms as synonymous).

6

Ayala Fader, Mitzvah Girls: Bringing Up the Next Generation of Hasidic Jews in Brooklyn 13 (2009)

7

*See* Stephen H. Resnicoff, *Jewish Law and the Tragedy of Sexual Abuse of Children—The Dilemma Within the Orthodox Jewish Community*, 13 Rutgers J. L. & Religion 281, 284 (2012).

8

*See* The Hasidic World, *Hasidic vs. Orthodox: What's the Difference?,* Nov. 11, 2016, at https://hasidicworld.wordpress.com/2016/11/11/hasidic-vs-orthodox/ ("World"); Weiss, supra note 4.

9

*Id.*

10

*Id.*

11

*See* Fader, *supra* note 6, at 8 (term "Litvish" used because movement originated in Lithuania).

12

*See* World*, supra* note 8.

13

*Id.*

14

*Cf.* Kevin Gilmore, *Ding-Dong Ditched: Cultures Clash as a Town Attempts to Stop Real Estate Solicitations*, 48 Seton Hall L. Rev. 475, 478 (2018) (attributing growth of haredi population in one New Jersey town to "Brooklyn Orthodox Jews relocating to a quieter, more affordable area"); Abigail Klein Lechman, Jews in the Suburbs, Jewish Standard, August 31, 2012 (describing growth of modern Orthodox population in Teaneck, New Jersey).

15

*See* Board of Educ. of Kiryas Joel Village School Dist. v. Grumet, 512 U.S. 687, 690-91, 114 S. Ct. 2481, 129 L. Ed. 2d 546, 91 Ed. Law Rep. 810 (1994).

16

*Id.* at 691.

17

Town of Palm Tree Takes root in Orange County, Times-Herald Record (Jan. 5, 2019). See, https://www.recordonline.com/story/news/2019/01/05/town-palm-tree-takes-root/6374331007/ (site visited 3/7/2023) ("The new town is the result of a referendum of Monroe voters in 2017 and, before that, a legal deal reached by Kiryas Joel officials and leaders of the United Monroe citizens group to resolve a pitched battle over Kiryas Joel annexing land from Monroe. That deal supported the

formation of a town that would include 164 acres Kiryas Joel already had annexed and 56 additional acres.")

18

Marcy Oster, "Kiryas Joel is now Palm Tree, the first official U.S. Haredi town," Jewish Telegraphic Agency, (January 6, 2019). See, https://www.jta.org/quick-reads/town-of-palm-tree-becomes-first-official-u-s-haredi-orthodox-town (site visited 3/7/2023).

19

See Lindsey Bodner, *The Future is Haredi*, Jewish Insider, May 24, 2021, at https://ejewishphilanthropy.com/the-future-is-haredi/ ("Orthodox adults have double or nearly double the number of children (3.3) than their Conservative (1.8) and Reform (1.4) peers and triple the number of children compared to those who do not identify with a particular branch of Judaism (1.1). These numbers are likely much higher among Haredim. In the U.S., on average, a Haredi woman has 6 children")

20

*See, e.g.,* Daniel M. Warner, *Growth Management Acts' "Land-Supply Mandate," Or, Why The Growth Monster Eats The Leftover Meatloaf in the Refrigerator*, 42 Urb. Law. 395, 407 (2010) (new development may be "seen as contributing to traffic problems [or] to crowded facilities").

21

*See* Gilmore, *supra* note 14, at 482.

22

*Id*.

23

*Id*. at 483-84.

24

*Id*. at 483 (30,000 students attend private schools, most of which are Jewish religious schools; by contrast, only 5900 students attend Lakewood public schools). *Cf.* David Benkof, No, Orthodox Jews cannot just "send their children to public school," Jewish Journal, Feb. 6, 2017, at https://jewishjournal.com/commentary/opinion/david_benkof/214412/no-orthodox-jews-cannot-just-send-kids-public-school/ (explaining why public school attendance is difficult for Orthodox Jewish children; for example, sports events are usually during Jewish Sabbath, and while socializing with secular students, children constantly tempted to violate Jewish law).

25

*See* Gilmore, *supra* note 14, at 484-86 (describing examples of conflict over school spending).

26

42 U.S.C.A. §§ 2000cc, et seq.,

28

U.S. Department of Justice, Religious Land Use and Institutionalized Persons Act, See, https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act (site visited 3/7/2023).

29

U.S. Department of Justice, Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act, September 22, 2020. See, https://www.justice.gov/crt/case-document/file/1319186/download (site visited 3/7/2023).

30

See H.R. Rep. No. 106-219, 23-24 (1999); 146 Cong. Rec. 16698 (2000) (Joint Statement of Senators Hatch and Kennedy).

31

Id. at 24.

32

See, U.S. Department of Justice, Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act, September 22, 2020. See, https://www.justice.gov/crt/case-document/file/1319186/download (site visited 3/7/2023) (providing summaries of litigated and settled RLUIPA cases).

33

Bloomingburg Jewish Educ. Center v. Village of Bloomingburg, N.Y., 111 F. Supp. 3d 459 (S.D. N.Y. 2015).

34

*Id.* at 466 (describing Bloomingburg as "a small, rural village in Sullivan County" where "Hasidic Jews have been moving… in increasing numbers")

35

*Id.*

36

*Id.* at 469.

37

*Id.* at 469-70.

38

*Id.* at 470.

39

*Id.* at 472.

40

*Id.* at 467. *Cf.* Ilana S. Cristofar, *Blood, Water and the Impure Woman: Can Jewish Women Reconcile Between Ancient Law and Modern Feminism?,* 10 S. CAL. Rev. L. & Women's Studies, 451, 452-53 (2001) (traditionally, Jewish women bathe in mikvah after menstrual period); Debra Nussbaum Cohen, In New York, Women Forge a New Path to the Mikvah, Haaretz, Jan. 28, 2016, at https://www.haaretz.com/jewish/.premium-in-new-york-women-forge-a-new-path-to-the-mikveh-1.5397164 (Hasidic men often immerse in mikvah before Sabbath and holidays).

41

*See* Bloomingburg Jewish Education Center, 111 F. Supp. 3d at 473.

42

*Id*.

43
*Id.* at 485.
44
*Id.*
45
*Id*. (zoning board rejected mikvah "without providing a reasoned basis for its conclusion").
46
*Id*.
47
*Id.* The court noted, however, that the real estate developer did not have a First Amendment claim, because housing is not part of the practice of religion. Id.
48
*Id.* at 486 (citations omitted).
49
*Id.*
50
*Id.* at 487.
51
See Soundview Associates v. Town of Riverhead, 725 F. Supp. 2d 320, 336-37 (E.D. N.Y. 2010) (citations omitted).
52
*See* Bloomingburg, 11 F. Supp. 3d at 488.
53
*Id.* at 488-89 (citations omitted).
54
*Id.* at 489.
55
*Id.* (citations omitted). In particular, the court wrote that the defendants' refusal to permit new housing constituted such discrimination. *Id.* at 490-91.
56
See Armin Rosen, Catskills Lawsuit Settlement Shows that Anti-Jewish Prejudice is Alive and Well, Tablet, Oct. 31, 2016, at https://www.tabletmag.com/sections/news/articles/catskills-lawsuit-settlement-shows-that-anti-jewish-prejudice-is-alive-and-well. Ultimately, hundreds of haredim moved to Bloomingburg, despite the fact that one of the developers of Hasidic-oriented housing later pled guilty to voter fraud in a local election. See Britta Lokding and Sam Adler-Bell, Welcome to Lammville, Jewish Currents, Fall 2020, at https://jewishcurrents.org/welcome-to-lammville
57
Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona, NY, 945 F.3d 83, 372 Ed. Law Rep. 567 (2d Cir. 2019), cert. denied, 141 S.Ct. 885 (2020).
58

*Id.* at 88.

59

*Id*. at 119 ( referring to "news reports in January 2007 noting that the rabbinical college would serve 1,000 students and the construction would include multiple apartment buildings up to six stories high to house 4,500 residents.")

60

*Id.* at 120.

61

*Id.* at 123.

62

*Id*.

63

*Id.* Landowners could apply for an exception to this law if the restriction deprived them of any reasonable use of their property. *Id.* This exception was irrelevant, because the plaintiff's property could be used for unrelated purposes. Id.

64

*Id.*

65

*Id.* at 120-21 (for example, one community member stated that dormitory involved "a group [the Hasidic community] that breaks every law there is" while another stated that dormitory would make suburb "another Kiryas Joel").

66

*Id.* at 121.

67

*Id*. ( "a proposal to add 4,500 new residents and multiple apartment buildings to a small village of single family houses with a population of 3,200 almost certainly would have provoked opposition regardless of any religious element.")

68

*Id*.

69

*Id.* By contrast, the court rejected the college's attacks on earlier zoning amendments. The court found that there was no evidence that pre-2007 zoning changes were based on discriminatory considerations. Id. at 113-16 (no evidence of discriminatory intent as to 2001 amendments, and 2004 amendments in fact liberalized regulations). The court also rejected a claim that the zoning laws at issue violated the plaintiffs' freedom of association, because plaintiffs had not yet sought a permit to build the college, and thus any harm to plaintiffs' associational interests was "merely conjectural." *Id.* at 110.

70

Central UTA of Monsey v. Village of Airmont, New York, 2020 WL 377706 (S.D. N.Y. 2020)

71

*Id.* at *16.
72
*Id.* at *1.
73
*Id*.
74
*Id.* at *2-3.
75
*Id*.
76
*Id.* at *4.
77
*Id*.
78
*Id.* at *16.
79
*Id.* at *6.
80
*Id.* at *14. Plaintiffs also alleged violations of RLUIPA, a federal statute that prohibits municipalities from substantially burdening religious exercise or discriminating against religious activity. *Id.* at *14-15 (citations omitted). However, the court grouped these claims with plaintiffs' constitutional claims, rather than analyzing the RLUIPA claims separately. *Id*. at *14 (the Court first analyzes CUTA's RLUIPA substantial burden claim together with plaintiffs' Section 1983 free exercise claim") (citation omitted);*15 ("the Court analyzes CUTA's RLUIPA nondiscrimination and equal terms claims together with plaintiffs' Section 1983 equal protection claim"). RLUIPA also contains a "exclusions and limits" clause that prohibits unreasonable limits on religious entities; the court stated without explanation that plaintiffs "plausibly allege an RLUIPA exclusions and limits claim based on the NOV." Id. at *18.
81
*Id.*
82
*Id*.
83
*Id.* In addition, the court also upheld free exercise and equal protection claims based on assertions that the defendants treated a non-Hasidic Jewish school more favorably than the plaintiffs. *Id.* at 16 ("plaintiffs allege the Village enforced the 167-student maximum in the certificate of occupancy only after [CUTA, the plaintiff that sought to build new schools] acquired the property to build a large Hasidic school… [while] Ateres—the non-Hasidic school that operated on CUTA's property for many years before CUTA acquired the property and started operating Hasidic schools—enrolled over 400 students annually, and the Village never issued or enforced an NOV against Ateres."). However, I am

not sure that these claims should be classified as discriminatory intent claims, since they are based on objectively unequal treatment rather than the defendants' subjective intent.

84

WR Property LLC v. Township of Jackson, 2021 WL 1790642, *1 (D.N.J. 2021).

85

*Id.* at *3. *Cf. supra* notes 19-20 and accompanying text (describing Lakewood).

86

*See* WR Property LLC v. Township of Jackson, 2021 WL 1790642, at *3 (D.N.J. 2021).

87

*Id.* at *5.

88

*Id.* at *6-7.

89

*Id.* at *2-3. Generally, Orthodox Jewish law prohibits "carrying or pushing objects from the private domain, i.e., home, to the public domain on [Sabbath and ] holy days." *Id.* at *2. An eruv is an enclosure, usually created through wire boundaries, that extends the private domain into public areas, thus allowing observant Jews to carry on Sabbath and other holy days. *Id. See also* **Michael Lewyn**, *The Law of the Eruv*, 48 Real Est. L.J. 473, 474-78 (2020) (describing eruv in more detail)

90

*See* WR Property LLC v. Township of Jackson, 2021 WL 1790642, at *13 (D.N.J. 2021).

91

*Id.* at *12 (finding "sufficient evidence to support a finding that the ordinances … were passed with a discriminatory purpose," that the ordinances therefore violated the First Amendment "unless it is narrowly tailored to advance a compelling government interest," and that the defendants had made no effort to identify such an interest).

92

*Id.* at *12-13 (equal protection clause violated when law passed with discriminatory intent and created a discriminatory effect, such as the inhibition of the construction of Jewish schools and eruvin).

93

*Id.* at *10.

94

*Id.*

95

*Id.* at *10.

96

*Id.* at *4. Plaintiffs also claimed that township officials aggressively monitored Jewish-owned homes in order to ensure that they were not being used as synagogues. Id.

97

*Id.* at *10.

98
*Id.* at *11.
99
*Id.* The topic of eruvim has been discussed in more detail in this publication.
See, Victoria Stone, “Hot-Wired: Litigation Surrounding the Modern Eruv in New York & New Jersey,” 21 No. 5 New York Zoning Law and Practice Report (March/April 2021).
100
*Id*.
101
*See supra* notes 56-59 and accompanying text.
102
*See supra* notes 32, 40-41 and accompanying text. *Cf. supra* note 72 and accompanying test (referring to local official who “campaigned on anti-Hasidic platforms” and citing this fact as evidence of discriminatory intent); note 84 and accompanying test (referring to officeholder who expressly discussed exclusion of Orthodox Jews).
103
*See supra* note 60 and accompanying text.
104
*See* Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 603, 113 S. Ct. 2264, 124 L. Ed. 2d 539, 16 Employee Benefits Cas. (BNA) 2265 (1993) (law did not “deny substantive due process [because it was] clearly rational”).
105
*See supra* note 89-91 and accompanying text.