No. 06-2082

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BETH-EL ALL NATIONS CHURCH and
BISHOP EDGAR JACKSON,

Plaintiffs-Appellees,

v.

THE CITY OF CHICAGO,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division
No. 06 C 1111
The Honorable SAMUEL DER-YEGHIAYAN, Judge Presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT CITY OF CHICAGO

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STATEMENT CONCERNING ORAL ARGUMENT

The district court entered a preliminary injunction barring the City from taking possession of property currently occupied by Beth-el All Nations Church ("Beth-el"), even though the City has owned that property since 1998 pursuant to an Illinois state court's order granting the City a tax deed. The event that precipitated Beth-el's federal suit was a state-court order requiring Beth-el to vacate the property, after its efforts to challenge the City's title in the Illinois courts had failed at every level. The district court's grant of injunctive relief under such circumstances raises critical questions about the jurisdiction of the district court to interfere with the enforcement of state-court judgments. In addition, while the district court purported to consider the merits of Beth-el's claims, the court failed to undertake any analysis of the elements of those claims before concluding that Beth-el had a likelihood of success on the merits in this case. The district court's decision to enter a preliminary injunction here is utterly unsupported by the law or the record. Accordingly, oral argument is amply warranted in this case to consider both issues of federal jurisdiction and judicial discretion in the context of granting injunctive relief.

JURISDICTIONAL STATEMENT

On February 28, 2006, Beth-el and Bishop Edgar Jackson filed a pro se complaint against the City of Chicago and several City and Cook County officials, alleging that, in July 1998, the City obtained a tax deed to Beth-el's property without providing proper notice. R. 1.[1] Beth-el also filed an emergency motion for a temporary restraining order ("TRO"), R. 20 Ex. B, which the district court granted on March 1, 2006, Appendix at A1 [hereafter "App."]. On March 9, 2006, Beth-el moved for a preliminary injunction. R. 19.

After obtaining counsel, Beth-el filed its first amended complaint on March 16, 2006, against the City, Cook County Sheriff Michael Sheahan, and 25 unnamed defendants. R. 25. Counts I, II, III, and IV, which alleged violations of Beth-el's rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution, sought relief pursuant to 28 U.S.C. § 1983 (2000). Id. ¶¶ 1-57. Count V alleged a violation of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000 et seq. (2000) ("RLUIPA"). Id. ¶¶ 58-63. Count VI advanced a claim under the Illinois Religious Freedom Restoration Act, 775 ILCS 35/15 (2004) ("IRFRA"). Id. ¶¶ 64-69.

Ordinarily, a district court would have jurisdiction over federal claims like Beth-el's pursuant to 28 U.S.C. §§ 1331 & 1343 (2000), and supplemental jurisdiction over state-law claims pursuant to 28 U.S.C. § 1367 (2000). Here, as we

[1] We use "Beth-el" to refer collectively to Bishop Jackson and the Church. We use "Bishop Jackson" when describing his role in the proceedings or where factual allegations pertain specifically to him.

explain in Part I below, the district court lacked jurisdiction over Beth-el's complaint. The complaint challenges the validity of the City's title, which was obtained pursuant to a state-court judgment issuing a tax deed. The Tax Injunction Act, 28 U.S.C. § 1341 (2000), removes jurisdiction from the federal courts to restrain the collection of state taxes. Additionally, under the Rooker-Feldman doctrine, lower federal courts lack jurisdiction over claims alleging injuries caused by state-court judgments. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923).

On March 17, 2006, the district court entered a preliminary injunction. App. A24. The City filed a timely notice of appeal on April 14, 2006. R. 38. This court has jurisdiction over this appeal from a preliminary injunction under 28 U.S.C. § 1292(a)(1) (2000).

ISSUES PRESENTED FOR REVIEW

1. Whether the district court had jurisdiction over Beth-el's claims, which challenge the City's title to property acquired through state-court tax sale and tax deed proceedings.

2. Whether Beth-el demonstrated any likelihood of success on its due process claim, filed more than seven years after issuance of the tax deed.

3. Whether Beth-el demonstrated any likelihood of success on the merits of its First Amendment and RLUIPA claims.

4. Whether Beth-el demonstrated any likelihood of success on the merits of its IRFRA claim.

STATEMENT OF THE CASE

This case concerns the City's 1998 acquisition of a tax deed to property previously owned, and still occupied, by Beth-el. After the City sought possession of the property in 2003, Beth-el challenged the tax deed in state court. R. 18 Ex. B. Beth-el's petition to vacate the tax deed and its subsequent appeal were unsuccessful. Id. Exs. D, F, I. After the state-court proceedings concluded, on January 27, 2006, the Circuit Court of Cook County granted the City possession and ordered Beth-el to vacate the property by February 28, 2006. Id. Ex. J.

On February 28, 2006, Beth-el filed this suit, R. 1, and alleged in its amended complaint that the City did not properly notify Beth-el of the tax deed proceedings, and that the City's taking of title and possession burdened Beth-el's religious and expressive rights under the First Amendment and federal and state law, R. 25. The district court entered a TRO, App. A1, and, after a hearing, granted Beth-el's request for a preliminary injunction, prohibiting the defendants from exercising ownership rights over the property or attempting to evict Beth-el, App. A24.

STATEMENT OF FACTS

The Tax Sale

Beth-el has occupied the property at 1534 W. 63rd Street in the City of Chicago since 1984. R. 25 ¶ 9; R. 64-1 at 51-52. From 1986 to 1995, real estate taxes in the amount of $109,302.16 were assessed against the property, R. 77 (Ex. A to Def. Ex. 7), but Beth-el never paid any taxes, R. 64-1 at 53. Because of this delinquency, the property became subject to the "scavenger sale" provisions of the Illinois Property Tax Code ("Tax Code"), which authorize the County Collector to offer for sale properties that have been tax delinquent for more than two years, where annual or forfeiture sales have not satisfied the delinquency. See 35 ILCS 200/21-145, 200/21-260 (2004).

The primary purpose of scavenger sales is to return chronically tax delinquent property to the tax rolls by taking title from delinquent owners through the issuance of tax deeds. See, e.g., People v. Meyers, 630 N.E.2d 811, 819 (Ill. 1994). Unlike at annual or forfeiture sales, where a buyer pays the entire delinquency, at a scavenger sale, the highest bid over a specified minimum is accepted, even if that bid is for less than the full delinquency. See 35 ILCS 200/21-260(a). Additionally, properties included in a scavenger sale may be purchased by the county in which the property is located, by what is commonly referred to as a "no-cash" bid. See, e.g., Swilley v. County of Cook, 810 N.E.2d 167, 172 (Ill. App. Ct. 2004). In such circumstances, the county acts "as trustee for all taxing districts having an interest in the property's taxes"; its bid is automatically defined as the

full amount of unpaid taxes; and "[n]o cash need be paid." 35 ILCS 200/21-260(g). Thus, if no private purchaser bids the full amount of unpaid taxes, the county may obtain the certificate of purchase for no consideration. Pursuant to these procedures, Cook County acquired a certificate of purchase to Beth-el's property on August 7, 1997, which was confirmed by the circuit court on September 26, 1997. R. 77 (Ex. A to Def. Ex. 7); R.18-2 Ex. A.

The City's Tax Deed

A certificate of purchase does not itself transfer title. After the tax sale, the owner may still redeem the property by paying the full amount of taxes and penalties due. See 35 ILCS 200/21-260(f); Meyers, 630 N.E.2d at 819. For the purchaser to obtain a tax deed, which transfers title, he must take additional steps, including providing notice to the delinquent owner. See 35 ILCS 200/22-5 to 200/22-30. A certificate of purchase by the county is subject to these same provisions. See 35 ILCS 200/21-260(e). In addition, "the county may sell or assign" the certificate of purchase "to any party, including taxing districts," 35 ILCS 200/21-90, in which case the certificate's recipient pursues a tax deed. Here, the county assigned its certificate of purchase to the City on November 13, 1997 pursuant to the City's Tax Reactivation Program ("TRP"), which allows the City to return chronically tax-delinquent property to tax-productive use. R. 1 Ex. A ¶¶ 3-4, Ex. D.

On January 6, 1998, the City filed a petition in the circuit court for a tax deed, see R. 18 Ex. F, and on June 1, 1998, after the period for Beth-el to redeem

had expired, the City filed an "Application for an Order Directing the County Clerk to Issue a Tax Deed." R. 77 (Def. Ex. 7). The application stated that the required notices to parties with an interest in the property had been "duly served and published as appears from the notices, affidavits, and certificates attached." Id.

The attached notices included one served pursuant to section 22-5 of the Tax Code, which requires the purchaser, within four months and 15 days following a tax sale, to deliver to the county clerk a notice of the tax sale addressed to the party in whose name taxes were last assessed. See 35 ILCS 200/22-5. This notice, which was filed with the county clerk on December 18, 1997, advised that the property had been sold for delinquent taxes; that the redemption period would expire on February 7, 1998; that redemption could be made by applying to the county clerk; and that a petition for a tax deed would be filed. R. 77 (Ex. D to Def. Ex. 7). The notice directed the county clerk to mail it to the "Taxpayer of or Current Owner" at "1534 W 63rd Street," id., and the county clerk was required to mail that notice by December 28, 1997, ten days after it was filed, see 35 ILCS 200/22-5.

A second notice attached to the application was required under section 22-10. See 35 ILCS 200/22-10. This notice advised that a petition for a tax deed had been filed; that the matter was set for a hearing; and that redemption could be made on or before May 18, 1998, the date to which the original redemption period had been extended. R. 77 (Exs. B, E to Def. Ex. 7). Unlike the section 22-5 notice, the section 22-10 notice was mis-addressed to 1534 *East* 63rd Street instead of 1534 *West* 63rd Street. Id. Because of this error, the sheriff's attempt to personally serve the

notice, see 35 ILCS 200/22-15, was unsuccessful, as were attempts by the sheriff and the circuit court clerk to serve the notice by mail, id. 200/22-25. See R. 18 Ex. F.

The City also published notice of the tax sale and of expiration of the redemption period, see 35 ILCS 200/22-15, in the Chicago Daily Law Bulletin on February 11, 12, and 13, 1998. R. 77 (Ex. F to Def. Ex. 7). The publication notice identified "Beythel Outcast Church" -- a name by which Beth-el was also known, R. 18 Ex. E; R. 64-1 at 73 -- as having an interest in the property, and identified the property by its address of "1534 W. 63rd Street." R. 77 (Ex. F to Def. Ex. 7). The notice also described the steps for redeeming the property, and the date, time, and location of the tax deed hearing. Id.

On June 15, 1998, the circuit court held a hearing on the City's petition. R. 18. At the hearing, although the section 22-10 notice had not been successfully delivered, the City's counsel stated that all required notices had been served. Id. Ex. F. The notices themselves, including the returned certified letter containing the section 22-10 notice, were before the court. Id.

On July 7, 1998, the circuit court ordered the county clerk to issue a tax deed. R. 18 Ex. A. The court determined that the tax sale notice "was served in the manner and within the time required" by the Tax Code, "upon the persons entitled to such notice," and that "[a]ll persons entitled to notice have had due notice of the filing and the time of hearing upon this Petition." Id. That day, the county clerk issued the City a tax deed, which was recorded on March 30, 1999. R. 18.

The City's Correspondence With Beth-el After Acquiring the Tax Deed

On September 20, 1999, Marguerite Quinn ("Quinn"), an attorney representing the City, wrote to Bishop Jackson, explaining that the City had taken title to the property in a tax deed proceeding. R. 77 (Def. Ex. 4). The letter stated that it had come to the City's attention that there may be church activities on the property, and encouraged Bishop Jackson to consult an attorney and contact the City as soon as possible. Id. On December 1, 1999, after receiving no response, Quinn sent a certified letter to Bishop Jackson at 1534 W. 63rd Street, again encouraging him to obtain legal representation and contact the City as soon as possible, and advising that if the City received no response it may be forced to evict Beth-el. R. 77 (Def. Ex. 3).

Quinn subsequently received a letter dated February 3, 2000 from Bishop James Baker, Presiding Regional Bishop of the Church of God in Christ United, attaching an exemption certificate from the Illinois Department of Revenue ("IDR"), dated July 1, 1999. R. 77 (Def. Ex. 2). The certificate had been issued pursuant to an application for exemption filed on March 26, 1998. R. 1 Ex. C.[2] That application, assigned number 88303, stated that Beth-el's property was used for religious activities, including worship and family consulting, and was signed by "Bishop Edgar Jackson." Id. The IDR certificate attached to Bishop Baker's letter, also numbered 88303, stated that the property was exempt for the 1997 tax assessment year "except for the resale shop on the first [floor], the meeting rooms

[2] The exhibit itself, at page 66 of record document 1, is not marked but is between Exhibits "B" and "D."

on the second [floor]," and "a proportionate amount" of the land. R. 77 (Def. Ex. 2). The certificate also stated that if Beth-el disagreed with the decision, it could send a written request for a hearing, setting forth any error or new evidence, within 20 days. Id. Bishop Baker's letter to Quinn referenced a previous phone conversation and stated that the partial exemption was erroneous because all operations on the property related to church activities. Id. Bishop Baker also stated that Bishop Jackson had informed him that Beth-el would retain an attorney to apply for an exemption retroactive to Beth-el's inception. Id.

On March 23, 2000, Quinn wrote to Bishop Jackson, stating that the City had been "unaware that the property's use was such as would give rise to a claim of tax-exempt status," and that "[a]t an appropriate time[,] the City will petition the court for an order setting aside the tax sale as a sale in error." R. 77 (Def. Ex. 8). Quinn's letter cautioned "that the City's action in seeking a sale in error does not obviate the need for the church to obtain an exemption for this property by appropriate legal proceedings. We understand you have retained counsel for that very purpose. Please ensure that your counsel does pursue this." Id.

Over the next two years, the City heard nothing from Beth-el. R. 77 (Def. Ex. 9). On May 20, 2002, Mark Davis ("Davis"), another attorney at Quinn's firm, sent Bishops Jackson and Baker a letter, stating that the City had been expecting, since Bishop Baker's February 2000 letter, to be contacted by lawyers pursuing Beth-el's claim to an exemption. Id. Davis explained that the situation was "of grave concern to the City . . . as it should be to the church," because the City held legal

title, but had neither possession nor control of the property, and was unable to ensure that its condition and operation was safe and complied with relevant laws. Id. Davis repeated that while the City would not oppose Beth-el's claim to an exemption, the City had no standing to advance an exemption claim for Beth-el. Id. Davis stated that Beth-el should contact the City

> immediately to advise what if any action the church wishes to take in this matter. If the church retains counsel and takes appropriate action to pursue its exemption claim, immediately, the City will cooperate as best it can, just as it offered to do two years ago.
>
> However, should the church decide that it is unable or unwilling to pursue the exemption claim then please be advised that in the very near future the City will be compelled to seek an order of court granting it possession of the property and removing the church from the premises.
>
> It should go without saying that the City does not wish to pursue such an action. But if the church does not act promptly to seek a determination of the exemption issues . . . the City will be left with no other choice.

Id.

Quinn then wrote Bishops Jackson and Baker nearly a year later, on April 7, 2003, recounting discussions with Beth-el since the City's May 2002 correspondence, but stating "[o]nce again the church has failed to take any legal action to address these serious issues," and "[a]s a result the City remains the lawful owner of the property." R. 77 (Def. Ex. 10). Quinn advised that it was essential that Beth-el contact the City immediately. Id. On April 30, 2003, City representatives, including Davis and Quinn, met with Beth-el representatives, including Bishop Jackson and Bishop Baker, to discuss the matter. R. 64-3 at 272-

73. At that meeting, Beth-el's representatives said that they intended to retain another attorney to pursue exemption. Id. at 273-74. City representatives told Beth-el that it must do so immediately, because the City could no longer tolerate Beth-el remaining in possession while the City held title. Id. at 276.

After this meeting, City attorneys learned that the law firm Beth-el intended to retain would not represent Beth-el, and there was no indication that Beth-el was taking steps to pursue further tax exemptions. R. 64-3 at 278. On June 10, 2003, the City filed an application in the circuit court seeking possession of the property. See R. 18 Ex. F.

Beth-el's State-Court Challenge to the Tax Deed

Nine days later, Beth-el, through counsel, filed a petition pursuant to section 2-1401 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1401 (2004), to vacate the tax deed, alleging insufficient notice and fraud. See R. 18 Ex. F. On October 14, 2003, Beth-el filed an amended petition, adding that Bishop Jackson was deprived of his property without notice in violation of the United States and Illinois Constitutions, and that Beth-el's constitutional rights to freedom of religion "may be violated as well." Id. Ex. B.

The City moved to dismiss Beth-el's petition, and the circuit court held a hearing on January 29, 2004. R. 18 Ex. C. The City argued that the petition was filed outside section 2-1401's two-year limitations period, and that Beth-el "failed to show diligence in filing or even an excuse for failing to file within the statutory period." Id. at 6. When the City's counsel referenced Baker's February 3, 2000

letter as evidence that Beth-el was aware of the tax deed by that date, at the latest, Beth-el's counsel objected on the basis of relevance. Id. at 7. The court overruled the objection, stating that if Beth-el believed the letter was "a phony document or this document was never sent or received," it would consider that objection, but that there had been "ample time to challenge the authenticity of the letter," and no challenge was raised. Id. at 8-10.

During argument on the motion, Beth-el's attorney stated that he would like to "reserve, if possible" an argument that no tax should have been assessed because Beth-el was exempt, which counsel described as a "jurisdictional argument" that could be raised "at any time because it would void any proceedings." R. 18 Ex. C at 2-3. But Beth-el did not pursue that argument, and argued only that the City's representation that all notices had been served was fraudulent because the section 22-10 notice was misdirected. Id. at 27-28. Beth-el argued that the tax deed was therefore void, making the two-year filing period inapplicable. Id. at 47. Beth-el's counsel conceded that he had "no argument" concerning service of the section 22-5 notice. Id. at 27.

The court dismissed Beth-el's petition as untimely. R. 18 Ex. C at 46-51, Ex. D. The court noted that if the ground for relief is fraudulently concealed, the time in which to bring a petition under section 2-1401 to vacate a judgment will not run, but found that

> the ground for relief has not been . . . fraudulently concealed at all. . . . If someone wished to come in here within this period of time to challenge, to file, to do anything within the 1401 period to take a look and say, 'Yes, this is what we would like to do during that period of

time, file this motion.'

> As a matter of fact, if anything, the City has, according to the letters presented . . . made an attempt to make contact with the church and have the church contact them or anybody else regarding the possibility of them permanently losing their premises.

Id. Ex. C at 47. The court concluded that there was no basis to extend the time for Beth-el to file its petition. Id. at 50. The court also observed that, while there was "no question that an error was made" in the section 22-10 notice, the section 22-5 notice "was properly served and . . . listed everything correct in that motion, including the address," and that this, too, undermined Beth-el's theory of fraud. Id. at 48. Finally, the court stated that it had seen "no evidence of diligence by anyone, the church or anybody else during this period of time since the procurement of this deed by the City or the City preventing . . . the church [from] trying to get into court or rectify" the situation. Id. at 50-51. The court subsequently denied Beth-el's motion to reconsider. See R. 18 Ex. F.

Beth-el appealed, arguing that the tax deed was void and could be challenged at any time. R. 18 Ex. E. The Illinois Appellate Court affirmed on March 31, 2005. Id. Ex. F. The court held, first, that under Illinois law, the failure of a tax deed petitioner to provide the statutorily required notice does not render the resulting order "void" for purposes of the time limit for filing a section 2-1401 petition to vacate. Id. Second, the court held that there was no evidence that the City intentionally misdirected the section 22-10 notice and then hid that fact from the circuit court, and that without such proof, there was no basis for Beth-el's position that the circuit court lacked jurisdiction to issue the tax deed. Id. Thus, the court

concluded, Beth-el's petition was "not in fact, attacking a void order," and because it was filed outside the two-year period, it "was untimely and the circuit court properly found it could not consider it." Id.

Beth-el petitioned for rehearing, R. 18 Ex. G, arguing that "the court failed to consider that when the City took the Church and did not give notice . . . the City violated the United States and Illinois Constitution and Due Process rights" of Beth-el and Bishop Jackson, id. The appellate court denied the petition on May 6, 2005, id. Ex. H, and on September 29, 2005, the Illinois Supreme Court denied Beth-el's petition for leave to appeal, id. Ex. I.

After the mandate issued, the City renewed its application for possession, which was pending when the Church filed its 2-1401 petition in June 2003, and the motion was heard on January 27, 2006. R. 18 Ex. J. Counsel for Beth-el was present and agreed to an order granting possession to the City on the condition that the order be stayed until February 28, 2006. Id.

Beth-el's Federal Suit

According to Bishop Jackson, although he agreed to the order requiring Beth-el to vacate the property, he never intended to comply with that order. R. 64-1 at 75. Instead, on the turnover date, Beth-el filed a pro se complaint in the district court seeking to enjoin the City from taking possession. R. 1. Beth-el alleged that it never received notice of the tax deed proceedings, and asserted a variety of constitutional claims based on this alleged defect. Id.

On March 1, 2006, the district court held a hearing on Beth-el's TRO motion.

R. 4. No one appeared for the defendants; the summons and complaint were served on the City Clerk, at 9:21 a.m. on the date of the hearing, and City attorneys did not learn of the suit in time to appear. R. 10 ¶ 1-2. Based on Bishop Jackson's representations, the district court entered a TRO enjoining the defendants from exercising ownership rights over the property including any attempt to evict Beth-el. App. A1; R. 42-1 at 8, 11.

On March 7, 2006, the City moved to dismiss the action and to vacate the TRO, arguing that the suit was barred by the Rooker-Feldman doctrine, res judicata, and the Tax Injunction Act. R. 10; R. 11-1. On March 9, 2006, by which time Beth-el had obtained counsel, the district court denied the City's motion. R. 42-2; R. 16. On that same date, Beth-el filed a motion for a preliminary injunction, R. 19, and the court scheduled a hearing for March 13, 2006, R. 16. The City filed a memorandum opposing extension of the TRO and Beth-el's motion for a preliminary injunction on March 10, raising the same arguments it raised previously. R. 18.

The Preliminary Injunction Hearing

As the preliminary injunction hearing began, Beth-el's counsel stated that Beth-el would be seeking to file an amended complaint raising claims under the First Amendment and the Due Process Clause of the United States Constitution as well as RLUIPA and Illinois RFRA, but no amended complaint had yet been filed. R. 64-1 at 5, 11.

Bishop Jackson was Beth-el's sole witness. He testified that Beth-el had never paid property taxes while it occupied the property. R. 64-1 at 52-53. When

asked if Beth-el had an exemption, Bishop Jackson replied that "We felt that we were exempted. . . . The reason we felt that way, we had never been forced in any tax proceedings." Id. at 52. To his knowledge, Beth-el had never received a tax bill, and he believed he was the person who would have received one. Id. Bishop Jackson testified that Beth-el had taken steps to obtain an exemption, although he did not "know exactly when," and that "we always considered we had tax exemption." Id. at 85. With respect to the July 1, 1999 IDR certificate granting Beth-el a partial exemption, Bishop Jackson said that he did not know who applied for the exemption, and that "we didn't know someone claimed we were partially exempt." Id. at 88. He said he was unsure whether Bishop Baker, who was in control of the "canopy" organization that Beth-el is part of, knew about the exemption. Id. at 89-91.

Bishop Jackson testified that he first learned of the City's tax deed sometime in 2002 or 2003, or, at the earliest, in 2001. R. 64-1 at 46, 51. He did not remember seeing the September 1999 letter from the City explaining that the City had taken title. Id. at 96. He also denied seeing the City's December 1999 letter, which he was shown along with a certified mail receipt. Id. at 97. He first stated that he found out about the tax deed through Bishop Baker, who had contacted an attorney and who told Bishop Jackson "that the City probably had our deed but that he had talked to [the City] and they were willing to return it to us through a negotiation." Id. at 46. Later, Bishop Jackson testified that he first learned about the tax deed when Beth-el was informed by its attorney of the City's application for possession,

id. at 111-12, which was filed on June 10, 2003, R. 18 Ex. F.

Bishop Jackson also testified that Beth-el's membership had declined from approximately 450 members in 1996 to 140 members in 2006, R. 64-1 at 66, a decline he attributed to fear and being "terrorized" by City inspectors visiting the property, id. at 62, 67. He said there was one such incident on March 1, 2006, when City representatives came to take possession of the property, although he was not there but in court seeking a TRO. Id. at 68-70.

The next day of the preliminary injunction hearing, the City moved for judgment pursuant to Fed. R. Civ. P. 52(c), again arguing that the court lacked jurisdiction and adding that Beth-el's claims were barred by the statute of limitations. R. 64-2 at 3-4, 18. Beth-el responded, and again referenced additional claims Beth-el intended to present in an amended complaint. Id. at 23-25. The district court ordered Beth-el to file any amended complaint by March 16. Id. at 53.

Beth-el filed its amended complaint on March 16, R. 25, and the preliminary injunction hearing resumed on March 17, R. 64-3. The City renewed its motion for judgment with respect to the amended complaint, id. at 173, which the district court denied, id. at 208.

The City called three witnesses. The first was Chester Mack ("Mack") of the City's Department of Planning and Development, who oversees the City's acquisitions. R. 64-3 at 208-09. Mack testified that on March 1, he went to the property to secure the building pursuant to the order of possession. Id. at 210-11. He could not gain access to the building and reached Bishop Jackson by phone, who

requested a one-day extension to hold evening church services and promised that if the City agreed to an extension, he would hand over keys the next morning. Id. at 211-13. Based on Bishop Jackson's assurance, Mack contacted Marc Gaynes ("Gaynes"), a City attorney, who agreed to the extension. Id.

Davis, who handled acquisition of the tax deed, also testified, describing the procedures for obtaining a tax deed and the proceedings leading to the City's acquisition of the tax deed. R. 64-3 at 220-48. Davis also testified about his firm's correspondence with Jackson and Baker between 1999 and 2003, and about the April 2003 meeting between City representatives and Beth-el. Id. at 248-78. Davis testified that after the tax deed issued, there were opportunities for Beth-el to pursue retroactive exemptions, and that the City repeatedly informed Beth-el that it would not oppose Beth-el's efforts to pursue such exemptions. Id. at 265-70. Davis explained that the law, as he understood it, did not permit the City to simply return the deed to Beth-el. Id. at 295. According to Davis, the City sought possession in June 2003 because Beth-el did not appear to be following through on its representations about retaining counsel to secure exemption. Id. at 278.

Finally, Gaynes, who represents the City in real estate matters, testified that he visited the property on a number of occasions and observed that it appeared to be in use for the sale of items such as rugs and office furniture. R. 64-3 at 302, 305-08. The City regularly works with outside developers and not-for-profit organizations to revive properties acquired through the TRP, and the City hoped to redevelop this property to benefit the community, such as by providing employment or safe

housing. Id. at 310-11. Gaynes stated that there were no active redevelopment plans at that time because the City did not know when it would have possession, but that the building's size and location near a major thoroughfare made it an "anchor property" that could be particularly beneficial. Id. at 311. Gaynes also testified that the City was concerned about liability, given the building's condition, and that the City could not alleviate any hazards because it did not have possession. Id. at 313. Gaynes testified that the City had filed suit against Beth-el for Building Code violations, but that the circuit court intended to dismiss that case because it believed the City was required to name itself as a defendant because it owned the property. Id. at 313-14.

Beth-el called Bishop Jackson as a rebuttal witness, who testified that after he learned of the tax deed, he spoke with Charles Bowen, who worked in the mayor's office as a liaison to churches, "about the proposition of returning the church's deed to our church." R. 64-3 at 321. Bishop Jackson believed he last spoke to Bowen in January 2006. Id. at 322. He stated that he met with Bowen "only once and he told me he would get back to me." Id. at 322. According to Bishop Jackson, he first learned "that the City was not going to consider returning the deed" in January 2006, when the City renewed its application for possession. Id. at 323.

On March 17, 2006, the district court entered a preliminary injunction. App. A24. The court rejected the City's Rooker-Feldman, res judicata, and Tax Injunction Act arguments, concluding that Beth-el had no reasonable opportunity to

raise its claims in state court. App. A8-A16. The court also rejected the City's statute of limitations argument on the view that claims arising from "the January 2006 order of possession would not be barred by the statute of limitations." App. A17. Further, the court stated that "equitable tolling doctrines" may apply, because of "evidence that the Church was strung along until after the limitations period had expired by the City and by representations that the City would return title to the Church." Id.

On the merits of Beth-el's claims, the court stated that the City conceded that Beth-el never received notice of the tax deed hearing, and "has since sought to keep the allegedly unlawful title to the Church by hiding behind technical arguments concerning the passing of limitations periods and the finality of state court rulings that never addressed the substance of any of the Church's claims." App. A19. "In addition," the court "found the testimony presented by the Church witness to be extremely persuasive and credible and did not find that the testimony presented by the City was credible." Id. Thus, the court concluded "that the likelihood of success on the merits factor favors the Church." Id.

SUMMARY OF ARGUMENT

By this federal suit, Beth-el merely seeks a new forum to assert essentially the same challenge to the City's tax deed that Beth-el brought in state court in 2003. Beth-el seeks to undo a state-court order, entered more than seven years ago, transferring to the City title to property previously owned by Beth-el but sold for delinquent taxes. Because this suit has no legal merit, the district court abused its discretion in granting a preliminary injunction to Beth-el.

First, Beth-el's challenge to the City's tax deed was precluded by the Tax Injunction Act, which withdraws from federal courts jurisdiction to enjoin state and local tax collection efforts. Additionally, the Rooker-Feldman doctrine precludes federal jurisdiction over suits seeking to overturn prior state-court judgments. Although the district court rejected these jurisdictional arguments largely because it concluded that Beth-el lacked a reasonable opportunity to assert its claims in state court, available Illinois state-court procedures provided Beth-el ample opportunity to challenge the City's title if Beth-el received no notice of the tax deed.

Apart from the jurisdictional bar to Beth-el's suit, Beth-el's claims have no likelihood of success on the merits. Beth-el's section 1983 claims were barred because the complaint was filed well outside the two-year limitations period applicable to those claims. Not only did Beth-el know all it needed to bring the claims it now asserts much earlier, but Beth-el actually brought a state-court challenge to the tax deed in 2003, based on essentially the same alleged defects in notice it now asserts. Beth-el has provided absolutely no explanation for why it

could not have filed its federal suit within two years of initiating its state-court challenge to the tax deed, and there was no basis for the district court's suggestion that equitable tolling may allow Beth-el to avoid the statute of limitations. For the same reason, Beth-el's claim under IRFRA is barred under the shorter one-year statute of limitations applicable to state-law claims against the City.

Likewise, Beth-el failed to demonstrate that its claims alleging violations of its religious and other expressive rights had any substantive merit at all. In finding in favor of Beth-el on this factor, the district court failed to consider the elements Beth-el would be required to prove, and even a cursory analysis of the substantive requirements of Beth-el's claims reveals that they are baseless.

ARGUMENT

After lengthy state-court litigation over the validity of the City's tax deed was resolved against Beth-el, Beth-el filed a federal suit to undo the effects of that judgment. To obtain a preliminary injunction, it was required to demonstrate likelihood of success on the merits, no adequate remedy at law, and irreparable harm if relief were not granted. See, e.g., Promatek Industries, Ltd. v. Equitrac Corp., 300 F.3d 808, 811 (7th Cir. 2002). Failure to show likelihood of success "is reason enough to deny [a] motion for preliminary injunction without further discussion." AM General Corp. v. DaimlerChrysler Corp., 311 F.3d 796, 830 (7th Cir. 2002). This court reviews the grant of a preliminary injunction for abuse of discretion. See, e.g., Baja Contractors, Inc. v. City of Chicago, 830 F.2d 667, 674 (7th Cir. 1987). Factual determinations are reviewed under a clearly erroneous standard, while legal conclusions are reviewed de novo. See id.

In that framework, a district court "necessarily abuses its discretion when it commits an error of law," and a decision to grant or deny a preliminary injunction "that is premised on an error of law is entitled to no deference and must be reversed." United Air Lines, Inc. v. International Ass'n of Machinist & Aerospace Workers, 243 F.3d 349, 361 (7th Cir. 2001). Here, the district court lacked jurisdiction over Beth-el's claims, and those claims are either time-barred, meritless, or both. The district court's many legal errors disclose an obvious abuse of discretion, and the preliminary injunction prohibiting the City from exercising ownership rights over the property should be reversed.

I. THE DISTRICT COURT LACKED JURISDICTION.

A. The Tax Injunction Act Bars Beth-el's Claims.

The Tax Injunction Act, 28 U.S.C. § 1341 (2000) ("TIA"), "withdraws from the federal courts jurisdiction to 'enjoin, suspend or restrain the assessment, levy or collection' of state taxes (including local taxes) unless the taxpayer lacks an adequate state remedy." Wright v. Pappas, 256 F.3d 635, 636 (7th Cir. 2001) (quoting 28 U.S.C. § 1341; other citations omitted). The TIA "is a gesture of comity toward the states; recognizing the centrality of tax collection to the operation of government, the Act prevents taxpayers from running to federal court to stymie the collection of state taxes." Id. Here, Beth-el challenges the City's title and intent to take possession of property Beth-el lost in a tax sale, see R. 25 ¶¶ 34-36, 40-42, 46-48, 52-55, 59-61, and requests "an order requiring the City . . . to return title" to the property, id. ¶ 38, 44, 50, 57, 63. But the sale of property for delinquent taxes "is a mode of tax collection; and so to enjoin it, or declare it illegal, or rescind it" is action outside the federal courts' jurisdiction under the TIA. Wright, 256 F.3d at 637. Accord RTC Commercial Assets Trust v. Phoenix Bond & Indemnity Co., 169 F.3d 448, 454 (7th Cir. 1999). Accordingly, the district court lacked jurisdiction over Beth-el's claims.

"The Illinois Property Tax Code is a comprehensive statute regulating the assessment and collection of taxes, the forfeiture of property for the nonpayment of taxes, the sale of property to satisfy delinquent taxes, and the redemption of property upon payment of delinquent taxes, interest and costs associated with the

sale of the property." Forus Mortgage Corp. v. Dwyer, 824 N.E.2d 614, 619 (Ill. 2005). In this case, Beth-el's property was listed on the 1997 scavenger sale roll because Beth-el had not paid assessed taxes for ten years, and the delinquency plus statutory interest and costs totaled $212,543.47. R. 77 (Ex. D to Def. Ex. 7). Pursuant to 35 ILCS 200/21-260(g), the county transferred the lien on the property to itself, then, as part of the TRP, assigned its interest in the property to the City, R. 1 Ex. D, for the purpose of returning the property to tax-productive use. The district court's attempt to undo this result, with an eye toward returning the property to Beth-el, would directly interfere in the administration of the Tax Code. The TIA prohibits such a result.

There is no basis for the district court's view that the TIA does not apply because Beth-el was "not requesting that this court interfere with the City's tax collection efforts," but "merely asking the court to examine whether the Church's constitutional and other rights were violated and whether the Church is entitled to damages or an opportunity to have its claims heard before its property is taken by the City." App. A15. "It is well settled that allegations of deprivations of constitutional rights do not render the [TIA] inapplicable." Schneider Transport, Inc. v. Cattanach, 657 F.2d 128, 131 (7th Cir. 1981). While section 1983 provides the vehicle for redressing constitutional violations, federal courts "may not award damages or declaratory or injunctive relief in state tax cases when an adequate state remedy exists." National Private Truck Council, Inc. v. Oklahoma Tax Commission, 515 U.S. 582, 588 (1995). That is true even if, as the district court

suggested, "in this case it is not clear whether taxes were ever owed." App. A22. The court lacked authority to question this. Taxes were assessed against Beth-el and the property was sold for unpaid taxes. Because federal courts lack jurisdiction to declare state and local taxes invalid, they similarly lack jurisdiction to enter orders premised on the possibility that a tax was invalid.

Rather than seek relief from the tax deed in federal court, Beth-el was required to use available state procedures. The TIA requires state taxpayers to turn to state remedies, provided they are "plain, speedy and efficient." Hamer v. Lake County, 819 F.2d 1362, 1363 (7th Cir. 1987). The district court's view that Beth-el had no adequate state remedy, see App. A15-A16, was incorrect.

"[T]he 'plain, speedy and efficient remedy' exception to the Act's prohibition was only designed to require that the state remedy satisfy certain procedural criteria," Rosewell v. LaSalle National Bank, 450 U.S. 503, 522 (1981), and requires only that state law afford a procedure for asserting federal rights, see id. at 513-14, 522. Thus, in Rosewell, the Court held that Illinois's state-court tax refund procedure provided an adequate remedy because it allows taxpayers to raise constitutional objections to taxes, and authorizes appeal to higher Illinois courts, and ultimately, the United States Supreme Court. See id. at 514. The same is true of Illinois law regarding tax deeds.

In fact, Beth-el's allegation that the property was exempt could be raised at any time to challenge the tax deed in state court. Under Illinois law, a judgment approving a tax sale for tax-exempt property is void ab initio. See, e.g., Emalfarb v.

Krater, 640 N.E.2d 325, 329-31 (Ill. App. Ct. 1994); Standard Bank & Trust Co. v. Barnard, 593 N.E.2d 538, 547 (Ill. App. Ct. 1991); Novak v. Smith, 554 N.E.2d 652, 655 (Ill. App. Ct. 1990). If proved, Beth-el's allegation that the property is used exclusively for church activities, App. A4, means that the property is not taxable, see 35 ILCS 200/15-40(a). Illinois courts also have equitable jurisdiction to establish exemptions for any year in which taxes were assessed, provided the owner obtains certification of exempt status from IDR for any previous or subsequent year on grounds comparable to those alleged in court. See id. 200/23-25(e). Accordingly, if Beth-el established its exemption for exclusively religious use in any year, it could at any time seek a declaration that no taxes were owed during other years, including the years for which its property was sold, and would have a basis to set aside the tax deed. Indeed, this is precisely what the City was encouraging Beth-el to do from 1999 to 2003. R. 77 (Def. Exs. 9, 10). Beth-el plainly understood this option when it challenged the tax deed in state court, but expressly elected to "reserve," rather than forward, any challenge based on exemption. R. 18 Ex. C at 2-3. Thus, crediting Beth-el's allegations that the property should never have been taxed, Illinois law afforded Beth-el an adequate opportunity to challenge the tax deed.

The district court's belief that Illinois courts are effectively closed to tax deed challenges where the former owner, like Beth-el, claims it received no notice of the tax deed until expiration of the two-year period for filing under section 2-1401, App. A16, was erroneous. As we explain, a petition to vacate a tax deed based on exempt

status may be filed at any time. Beyond that, a claim that a tax deed petitioner did not make a diligent effort to serve the required notices is a ground for relief from a tax deed under section 2-1401. See 35 ILCS 200/22-45. To be sure, section 2-1401 provides that such claims be brought within two years unless the judgment is "void." R. 18 Ex. F. And, absent fraud, lack of notice in a tax deed proceeding does not render the tax deed "void" such that it is open to collateral attack at any time. Id. (citing Michels v. Walsh, 381 N.E.2d 260, 263 (Ill. 1978)).[3]

But just because lack of notice is insufficient to make a tax deed "void" in this context, that does not mean Beth-el would have been precluded from challenging the tax deed based on an allegation that its due process rights were violated because it received no notice of the deed at all until more than two years had passed. Illinois courts also enforce the Constitution. Notwithstanding section 2-1401's two-year deadline, the Due Process Clause forbids enforcement of a judgment against any party who had insufficient notice and opportunity to be heard in the action producing the judgment. See, e.g., Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 84-86 (1988). The Supremacy Clause would not permit Illinois courts to disregard this requirement -- or any other federal constitutional or statutory requirement -- and apply section 2-1401 to bar a challenge to a judgment

[3] Illinois courts have explained that an order "is rendered void . . . by lack of jurisdiction by the issuing court." Vulcan Materials Co. v. Bee Construction, 449 N.E.2d 812, 814 (Ill. 1983). In a tax sale proceeding, the court exercises in rem jurisdiction, which attaches when the county collector makes an application for order of sale. See id. Thus, a determination whether required notices have been served goes to whether the court should order a tax deed to issue, but not to jurisdiction. See, e.g., Zadik v. Pioneer Bank & Trust Co., 551 N.E.2d 343, 346 (Ill. App. Ct. 1990).

entered without due process, of which the petitioner had no notice until after expiration of the limitations period. Indeed, Illinois courts can and do consider alleged due process violations as a basis to vacate tax deeds, if such claims are properly asserted. See, e.g., Apex Tax Investments, Inc. v. Lowe, 838 N.E.2d 907 (Ill. 2005) (judgment vacated and remanded for reconsideration in light of Jones v. Flowers, 126 S. Ct. 1708 (2006)). See also Zadik v. Pioneer Bank & Trust Co., 551 N.E.2d 343 (Ill. App. Ct. 1990) (affirming denial of section 2-1401 petition filed four years after tax deed was entered, finding that order was not "void," and that it was "unnecessary" to address due process argument not pled in 2-1401 motion).[4]

The problem for Beth-el is not that it lacked any opportunity, but that it did not -- for whatever reason -- assert in state court that its late filing should be excused because it did not know of the tax deed before the section 2-1401 period expired. Rather, in response to the City's argument that Beth-el could have filed its petition within two years and offered no excuse for not doing so, R. 18 Ex. C at 5-7, Beth-el argued only that the tax deed was "void" because of fraud, id. at 42. Indeed, the circuit court remarked that Beth-el could have "come [to court] within this period of time to challenge, to file, to do anything within the 1401 period to . . . file that motion," and that "something should have been filed" by July 2000, but "[i]t wasn't." Id. at 47. Yet Beth-el provided no explanation for its untimeliness.

[4] The Supreme Court's order vacating and remanding in Lowe suggests that the Court believed the analysis in Lowe differed from the Court's determination in Jones of what notice due process requires in tax deed proceedings. This does not mean that Illinois law provided inadequate procedures for Beth-el to assert its due process claim; it is, at most, a comment on how such claims should be analyzed when they are presented.

This failure is telling. While our argument that Beth-el could have challenged the tax deed under section 2-1401 would apply even to Beth-el's allegation that it did not learn of the tax deed until as late as 2003, the district court itself does not seem to have credited that allegation. The court cited the City's March 2000 letter informing Beth-el that it had lost its property for non-payment of taxes. See R. 77 (Def. Ex. 8); App. A17.[5] If Beth-el had acted upon that letter, it would have been within two years of the tax deed. Although that letter stated that the City intended to seek a sale in error, that did not detract from the notice to Beth-el. In fact, that letter made clear that the City's intent to seek a sale in error did "not obviate the need" for Beth-el to obtain a retroactive exemption through legal proceedings. R. 77 (Def. Ex. 8). Either way, because state procedures afforded Beth-el an opportunity to raise its challenges to the tax deed, the TIA bars Beth-el's challenge to the tax deed in federal court.

B. The Rooker-Feldman Doctrine Bars Beth-el's Claims.

After Beth-el's effort to vacate the tax deed was rejected at every level in state court, Beth-el filed this federal lawsuit seeking the relief it had not obtained in state court -- namely, to vacate the tax deed order and force the City to return

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[5] The district court's further statement that the City concedes Beth-el lacked prior notice of the tax deed, App. A11, is simply inaccurate. While we have not challenged that assertion by Beth-el here, we have not conceded it. As we note above, Beth-el never argued in state court that it lacked actual notice of the tax deed hearing; it instead relied on the defect in the section 22-10 notice, alleging that the City fraudulently stated that the notice had been served. R. 18 Ex C at 28. And while we acknowledge that the 22-10 notice was mis-addressed, the circuit court determined that the section 22-5 notice, "was properly served" on the correct address, id. at 48, and Beth-el's attorney conceded he had "no argument" about that, id. at 2-3.

title. This looks every bit like a case "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005). Under the Rooker-Feldman doctrine, lower federal courts lack jurisdiction over such cases; only the Supreme Court may review final state-court judgments on appeal. See, e.g., id.; Feldman, 460 U.S. at 482; Rooker, 263 U.S. at 416. Litigants may not "'circumvent the effect of Rooker-Feldman and seek a reversal of a state court judgment simply by casting the complaint in the form of a civil rights action.'" Holt v. Lake County Board of Commissioners, 408 F.3d 335, 336 (7th Cir. 2005) (quoting Long v. Shorebank Development Corp., 182 F.3d 548, 557 (7th Cir. 1999)). And while "the Rooker-Feldman doctrine would not preclude a federal court from hearing [a plaintiff's] claim if he did not have a reasonable opportunity to bring his claim in state court," id. at 336 n.1, Beth-el did have such an opportunity.

As our discussion of the TIA demonstrates, Beth-el could have presented arguments about alleged constitutional violations in a section 2-1401 petition in state court, even outside the two-year limitation, and nothing prevented Beth-el from arguing, if true, that lack of notice prevented it from filing a timely petition. But Beth-el never made that argument. If Beth-el believed that the state-court judgment violated federal law, it could have raised those issues and, if unsuccessful, sought review in the Supreme Court. The district court's view that Beth-el lacked a reasonable opportunity in state court to raise the issues in its federal complaint,

App. A14, is not correct. Thus, Beth-el's federal complaint seeking relief from the state-court judgment runs headlong into the Rooker-Feldman doctrine.

To be sure, Rooker-Feldman does not preclude jurisdiction "simply because a party attempts to litigate in federal court a matter previously litigated in state court." Exxon Mobil, 544 U.S. at 293. "If a federal plaintiff 'present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.'" Id. (quoting GASH Associates v. Village of Rosemont, 995 F.2d 726, 728 (7th Cir. 1993)). As this court explained in GASH, the difference is between whether the plaintiff is "attacking the [state-court] judgment itself," or has suffered "an injury out of court and then fail[ed] to get relief from state court." 995 F.2d at 728-29. Here, Beth-el presents no claim "independent" of its effort to undo a state-court judgment -- indeed, it directly seeks to set aside the tax deed order. "Claims that directly seek to set aside a state court judgment are de facto appeals and are barred without additional inquiry." Taylor v. Federal National Mortgage Assn., 374 F.3d 529, 532 (7th Cir. 2004).[6]

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[6] In fact, Beth-el attempts to avoid the cumulative effect of numerous state-court judgments, from the 1998 tax deed order through the final judgment on its section 2-1401 petition and the order of possession. Although Rooker-Feldman is generally inapplicable where the federal plaintiff was not a party to the underlying state-court proceeding, see Lance v. Dennis, 126 S. Ct. 1198, 1202 (2006), Beth-el cannot use its allegation that it received no notice of the tax deed proceedings at the time to avoid application of the doctrine. In Lance, the plaintiffs had not been in a position to ask the Supreme Court to review the state court's judgment. See id. Here, even if Beth-el was not aware of the tax deed judgment within thirty days so

(continued...)

Indeed, this case is similar to Holt, in which this court affirmed the dismissal of plaintiff's complaint under Rooker-Feldman. See 408 F.3d at 336. In that case, Holt's property was sold for unpaid taxes, and he unsuccessfully challenged the tax sale in state court. See id. at 335. Holt then filed a federal complaint, alleging that local officials and the tax purchaser deprived him of his property without due process. See id. at 335-36. Rooker-Feldman barred this claim, because it was clear that "absent the state court's judgment evicting him from his property, Mr. Holt would not have the injury he now seeks to redress." Id. at 336. Likewise, in Ritter v. Ross, 992 F.2d 750 (7th Cir. 1993), the plaintiffs' federal complaint, alleging a due process violation because they did not receive notice of a foreclosure action, was barred by Rooker-Feldman because "but for the tax lien foreclosure judgment" in state court, the plaintiffs "would have no complaint; they would still have their land and would have suffered no injury"; thus, they were in effect seeking appellate review of a state judgment in federal court. Id. at 755.

Like the plaintiffs in Holt and Ritter, Beth-el directly attempts to set aside the state-court judgment transferring title to its property. Accordingly, the district

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[6](...continued)
that it could directly appeal from that order through the Illinois courts and to the Supreme Court, it did, as we explain, have an opportunity to challenge the tax deed in state court thereafter. Similarly, although Rooker-Feldman does not require plaintiffs to exhaust state remedies before filing a federal suit, see, e.g., Loubser v. Thacker, 440 F.3d 439, 442 (7th Cir. 2006), Beth-el did avail itself of state-court procedures to challenge the tax deed, but passed up its opportunity to raise its federal claims and seek review in the Supreme Court when that challenge was unsuccessful. A plaintiff "cannot avoid Rooker-Feldman by simply not submitting his claim in state court." Manley v. City of Chicago, 236 F.3d 392, 397 (7th Cir. 2001).

court lacked jurisdiction over Beth-el's complaint.

II. BETH-EL'S DUE PROCESS CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS.

Beth-el's due process claim was brought under section 1983. Because section 1983 does not contain a statute of limitations, federal courts borrow the limitations period for personal injury claims of the state where the suit is filed; in Illinois, this is two years. See, e.g., Shropshear v. Corporation Counsel, 275 F.3d 593, 594 (7th Cir. 2001). Beth-el filed suit in February 2006, seeking to prevent the City from possessing property it had acquired by the tax deed more than seven years earlier, in July 1998. Nonetheless, the district court concluded that "the statute of limitations is not an automatic bar" to Beth-el's claims. App. A17. The court suggested that some of Beth-el's claims accrued as recently as 2006, and also that "equitable tolling doctrines" may enable Beth-el to pursue even claims that accrued outside the limitations period. Id. These conclusions are unsupportable. As we now explain, Beth-el's due process claim is absolutely time barred. Thus, Beth-el has no likelihood of success on the merits of that claim, and it was an abuse of discretion for the district court to enter the preliminary injunction.

A. Beth-el's Due Process Claim Accrued More Than Two Years Before Beth-el Filed This Case.

"Section 1983 claims 'accrue when the plaintiff knows or should know that his or her constitutional rights have been violated.'" Kelly v. City of Chicago, 4 F.3d 509, 511 (7th Cir. 1993) (quoting Wilson v. Giesen, 956 F.2d 738, 740 (7th Cir. 1992)). The court's "first task in determining the accrual date of a section 1983 case

is to identify the injury." Kelly, 4 F.3d at 511. Here, Beth-el alleges that it was injured when the City took title without providing proper notice. R. 25 ¶¶ 51-57. Thus, the alleged injury occurred when the City obtained the tax deed on July 7, 1998. The only remaining question is when Beth-el knew or should have known about this injury. By Beth-el's own account, it was actually aware of the tax deed, at the latest, when its attorney informed Bishop Jackson of the City's application for possession, R. 64-1 at 46, 51, which was filed in June 2003, and Beth-el filed its petition to vacate nine days later, R. 18 Ex. F. Thus, Beth-el had, at the very latest, until June 2005 to file suit. Beth-el's filing at the end of February 2006 was too late.

To avoid this result, Beth-el contends that "the threatened eviction represents a separate, distinct, and far greater" injury "than taking title to the property," R. 25 ¶ 55, implying that a new injury occurred when the circuit court granted the City possession. And the district court, although acknowledging that Beth-el's due process claims arising from the issuance of the tax deed in 1998 "might be barred by the statute of limitations," App. A17, seemed to agree with Beth-el that "the majority of claims involving the January 2006 order of possession would not be barred," id. But the circuit court's January 2006 order did not work any new injury. It merely required Beth-el to vacate property that, since July 1998, Beth-el has been allowed to occupy only through the City's forbearance based on Beth-el's representations of pursuing exemptions, various state-court stays, the TRO, and the preliminary injunction. Thus, the circuit court's order of possession

merely gave effect, after years of negotiation and litigation, to the 1998 order that vested the City with ownership.

Although eviction is the most drastic and obvious consequence of the fact that Beth-el no longer owns the property, a constitutional injury occurs on "the date of the alleged constitutional violation," not on "the date the consequences of that violation became painful." Kelly, 4 F.3d at 512. Accord, e.g., Chardon v. Fernandez, 454 U.S. 6, 8 (1981) (claim that plaintiffs were fired for political reasons in violation of the First Amendment accrued when plaintiffs learned of the decision, not when they left their jobs). See also Delaware State College v. Ricks, 449 U.S. 250, 259 (1980) (claim of employment discrimination accrued when plaintiff was denied tenure, not when he left his job). Accordingly, in Kelly, this court held that plaintiffs' claim that their liquor license was improperly revoked accrued on the date the revocation decision was made, and not when the City, which had refrained for more than a year from enforcing the revocation order while the plaintiffs' complaint for administrative review was pending, closed the plaintiffs' bar. See id. at 510-12. Similarly, any due process injury to Beth-el occurred when it lost title, not when it was ordered to vacate property to which it had lost title.

B. No Equitable Doctrine Precludes Application Of The Statute Of Limitations.

The district court also refused to apply the statute of limitations on the ground that it was "not clear whether the equitable tolling doctrines would be applicable." App. A17. Because the court did not elaborate on any legal principles, it is unclear whether the court meant to refer to equitable estoppel, equitable

tolling, or both. Neither doctrine applies here.

1. The City is not equitably estopped from asserting the statute of limitations.

Equitable estoppel "prevents a party from asserting the expiration of the statute of limitations as a defense when that party's improper conduct has induced the other into failing to file within the statutory period." Ashafa v. City of Chicago, 146 F.3d 459, 462 (7th Cir. 1998). "The typical example of equitable estoppel is when a defendant 'promis[es] the plaintiff not to plead the statute of limitations pending settlement talks.'" In re Copper Antitrust Litigation, 436 F.3d 782, 790 (7th Cir. 2006) (brackets in original, quoting Singletary v. Continental Illinois National Bank & Trust Co., 9 F.3d 1236, 1241 (7th Cir. 1993)). This court has repeatedly emphasized that equitable estoppel requires a showing that the defendant took "active steps to prevent the plaintiff from suing in time, as by promising not to plead the statute of limitations," Shropshear, 275 F.3d at 595, or by hiding evidence, see, e.g., Soignier v. American Board of Plastic Surgery, 92 F.3d 547, 554 (7th Cir. 1996); Ashafa, 146 F.3d at 462.

To invoke equitable estoppel, the plaintiff must also show that it reasonably relied on the defendant's representations. See, e.g., Ashafa, 146 F.3d at 463; Hamilton v. Komatsu Dresser Industries, Inc., 964 F.2d 600, 605 (7th Cir. 1992). Because the plaintiff's reliance must be reasonable, equitable estoppel is available only when the untimely suit is the result "'either of deliberate design by the [defendant] or of actions that the [defendant] should unmistakably have understood would cause the [plaintiff] to delay filing his charge.'" Hamilton, 964 F.2d at 605

(quoting Mull v. ARCO Durethene Plastics, Inc., 784 F.2d 284, 292 (7th Cir. 1986)).[7]

Here, it was "not clear" to the district court whether any equitable doctrines would apply "to the claims relating to the improper notice of the tax deed hearing . . . ." App. A17. According to the court, there was evidence that Beth-el "was strung along" by representations "that the City would return the title." Id. In support of this statement, the court referred to Quinn's March 23, 2000 letter stating that the City had decided "not to seek a tax deed," id., and "Bowen's repeated representations" that the City "was going to return the title," id. Assuming this discussion recounts factual findings and crediting such findings here, equitable estoppel could not apply as a matter of law. At least by 2003, when the City began actively seeking possession, it would have been unreasonable for Beth-el to rely on representations about returning the title. Indeed, Beth-el understood that it was in a fight for its property when it filed its section 2-1401 petition in June 2003, alleging defects in the notice given to it. R. 18 Ex. B. The City opposed that petition, and then successfully defended the appeal. If the City was stringing Beth-el along with promises to return the property, at the same time it was vigorously

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[7] In this circuit, in a case where the federal court borrows a state statute of limitations, it is unsettled whether the state or federal doctrine of equitable estoppel controls. See Teamsters & Employers Welfare Trust v. Gorman Brothers Ready Mix, 283 F.3d 877, 881 (7th Cir. 2002); Shropshear, 275 F.3d at 598. Illinois law demands that the plaintiff exercise due diligence to timely file suit, see, e.g., Shropshear, 275 F.3d at 598; McIntosh v. Cueto, 752 N.E.2d 640, 645 (Ill. App. Ct. 2001), while under federal law, "the plaintiff has the full statutory period in which to sue after the estoppel has ceased to impede him, even if he did not attempt diligently to pursue his rights," Wolin v. Smith Barney, Inc., 83 F.3d 847, 852-53 (7th Cir. 1996). Here, if the requirement of due diligence under Illinois law applies, Beth-el cannot meet it, because it was not reasonably diligent in bringing suit.

defending its right to the property, reliance on such representations would be unreasonable as a matter of law. Moreover, once Beth-el and the City became adversaries in state-court litigation, any discussions they might have had about returning the property were merely settlement negotiations, which do not suspend the running of a limitations period. See, e.g., Doe v. Blue Cross & Blue Shield United, 112 F.3d 869, 875 (7th Cir. 1997); Stockman v. LaCroix, 790 F.2d 584, 588 (7th Cir. 1986). Even the district court made no determination that any reliance by Beth-el was reasonable after June 2003. Thus, the statute of limitations began running at that time, at the very latest. Because Beth-el waited until February 2006 to bring this suit, its claim is barred.

In the alternative, the notion that equitable estoppel might apply should be rejected because the district court's statements about the evidence, if they were intended to be findings of fact, are clearly erroneous. A reviewing court will conclude that a factual finding is clearly erroneous when, "based on the whole record," it is "left with a firm conviction that the district court has made a mistake." Barbecue Marx, Inc. v. 551 Ogden, Inc., 235 F.3d 1041, 1044 (7th Cir. 2000). At the outset, the court's insinuation that Beth-el was misled to delay filing suit, at least after June 2003, is wholly irreconcilable with the fact that Beth-el took measures to protect its rights by filing a section 2-1401 petition alleging defects in the tax deed analogous to those alleged in this suit and that the City opposed that petition all the way through appeal. Beyond that, the two pieces of evidence the court cited in support of its statement that the City strung Beth-el along until after the

limitations period expired by saying it would return the title do not support the court's purported finding.

The first piece of evidence was Quinn's letter stating that the City had "decided not to seek a tax deed transferring title to the City pursuant to the pending tax sale." App. A17.[8] Even if this letter somehow suggested that the City intended to return the property without further action by Beth-el, it contained no promise not to plead the statute of limitations if Beth-el later decided to challenge the tax deed in court. More important, this letter was written in March 2000. Any sense of security somehow created by this letter would surely have disappeared by June 2003 at the latest, at which point the City sought possession, and extensive state-court litigation ensued. Thus, the March 2000 letter cannot possibly explain why Beth-el did not file suit until 2006 or support a finding that the City strung Beth-el along until after the limitations period expired.

Second, the district court referenced "testimony concerning Bowen's repeated representations to the Church that indicated that the City was going to return the title to the Church." App. A17. This assessment of the evidence lacks support in the record. Bishop Jackson was the only witness to mention Bowen, and he never testified that Bowen indicated that the City "was going to return the title." Beth-el's attorney began his line of questioning about Bowen with the general inquiry whether Bishop Jackson had "occasion to discuss with Mr. Bowen that the City

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[8] Quinn plainly misspoke -- the tax deed itself had already issued. She clarified this by the further statement concerning a petition to seek a sale in error that would set aside the tax deed.

would return the deed to the church," to which Bishop Jackson answered "yes." R. 64-3 at 321. But when counsel explored this answer with specific foundational (and leading) questions, it became very clear that the most Bishop Jackson was willing to say was that he talked to Bowen -- perhaps no more than once, see id. at 321-22 -- about the "prospect," the "proposition," or the "possibility" of returning the property to Beth-el, id. Thus, the district court's notion of "repeated representations" by Bowen that the City would return title is wholly unsupportable.

In the end, the district court's statement about Bowen's representations reflects not the factual record, but only the allegation in Beth-el's unverified amended complaint that in April 2003, Bowen "admitted to Jackson that what occurred in the tax deed was wrong, and represented that he would seek to have the city correct the wrong and return title to the property to Beth-el Church." R. 25 ¶ 23. Beth-el further alleged that from "April 2003 through September 2005 Bowen and other representatives of the city encouraged Bishop Jackson and others at the church that title to their property would be returned, but that it would take some time to effectuate the return of title." Id. ¶ 24. But an unverified complaint is not evidence; indeed, a district court's reliance solely on the allegations of a plaintiff's unverified complaint "does not meet the requirements for a preliminary injunction and is an abuse of discretion." Atari Games Corp. v. Nintendo of America, Inc., 897 F.2d 1572, 1578 (Fed. Cir. 1990). See also, e.g., Gaylor v. Reagan, 553 F. Supp. 356, 358 (W.D. Wis. 1982). As the preliminary injunction hearing record shows, Beth-el was unable to support these allegations with testimony.

2. Beth-el is not entitled to equitable tolling of the statute of limitations.

Equitable tolling does not save Beth-el's due process claim from the statute of limitations, either. Because the statute of limitations for section 1983 claims is borrowed from state law, "the state, rather than the federal, doctrine of equitable tolling governs." Shropshear, 275 F.3d at 596. This court has "expressed uncertainty that the doctrine of equitable tolling even exists in Illinois," id., because the state law doctrine is "not well formulated and appears to blend elements of equitable tolling and equitable estoppel," Smith v. City of Chicago Heights, 951 F.2d 834, 839 n.5 (7th Cir. 1992). Accord, e.g., Clark v. City of Braidwood, 318 F.3d 764, 767 (7th Cir. 2003).

Illinois courts have explained that equitable tolling may be appropriate where (1) the defendant has actively misled the plaintiff, (2) the plaintiff "in some extraordinary way" has been prevented from asserting his rights, or (3) the plaintiff has timely asserted his rights mistakenly in the wrong forum. E.g., Clay v. Kuhl, 727 N.E.2d 217, 223 (Ill. 2000). Equitable tolling has most often been applied in circumstances where the defendant has affirmatively acted in a way that prevents the plaintiff from timely filing suit. See, e.g., id. (rejecting plaintiff's equitable tolling argument because defendant did not mislead plaintiff or otherwise attempt to delay her suit); Hess v. I.R.E. Real Estate Income Fund, Ltd., 629 N.E.2d 520, 531 (Ill. App. Ct. 1993) (equitable tolling "is generally applicable where the plaintiff has been induced or tricked by the defendant's conduct into allowing the filing deadline to pass").

To the extent that equitable tolling includes the elements of equitable estoppel, it is inapplicable for the same reasons equitable estoppel does not apply. But even if equitable tolling requires no showing of misconduct by the defendant, Beth-el has no basis to assert it. There is no indication that anything prevented Beth-el from timely asserting its rights, let alone any "extraordinary" circumstances. And there is no claim that Beth-el mistakenly asserted its rights in the wrong forum but in a timely fashion. The problem here was that Beth-el was not reasonably diligent in pursuing its claims. And, as this court has recognized, a plaintiff is required "to exercise due diligence in bringing his claim" to enjoy the benefits of equitable tolling. Ashafa, 146 F.3d at 464. Accord Shropshear, 275 F.3d at 595; Fischer v. Senior Living Properties, L.L.C., 771 N.E.2d 505, 511 (Ill. App. Ct. 2002).

Although the district court criticized the City for "hiding behind technical arguments concerning the passing of limitations periods," App. A19, "[l]imitations periods are intended to put defendants on notice of adverse claims and to prevent plaintiffs from sleeping on their rights." Crown Cork & Seal Co. v. Parker, 462 U.S. 345, 352 (1983). In particular, "'the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.'" Delaware State College, 449 U.S. at 259-60 (quoting Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 463-64 (1975)). Far from being a mere technicality, the right of repose serves important purposes, and the

district court was not free to disregard it.

III. BETH-EL DEMONSTRATED NO LIKELIHOOD OF SUCCESS ON THE MERITS OF ITS FIRST AMENDMENT OR RLUIPA CLAIMS.

A. Beth-el's First Amendment Claims Are Meritless.

Beth-el also alleges that the City's actions in taking title and seeking to evict it substantially burden its First Amendment rights to free exercise of religion, free speech, and assembly. See R. 25 ¶¶ 34-35, 40-41, 46-47. Beth-el's complaint does not specify the nature of this alleged burden. But the record suggests that Beth-el theorizes a burden on its First Amendment rights because it uses the property for religious and expressive activities. See, e.g., R. 64-1 at 54-59. The district court, while suggesting these claims had some merit, see App. A21, did not discuss their nature or find that they had any chance of success. Whatever the district court's view, these claims, too, have no likelihood of success.

First, because Beth-el's First Amendment claims are brought under section 1983, they are barred by the two-year statute of limitations for the all same reasons as Beth-el's due process claim. As we explain above, Beth-el had no right to the property after it lost title, so the alleged infringement of its rights to engage in any activity on that property occurred when the City acquired the tax deed in 1998 and thus had the right to seek possession. But Beth-el did not sue until 2006.

Second, even if Beth-el's First Amendment claims are not time barred, they hold no chance of success. The First Amendment forbids laws "prohibiting the free exercise" of religion, "or abridging the freedom of speech" or the "right of the people peaceably to assemble." U.S. Const. Amend. I. It does not prevent the application

of neutral, generally applicable laws, "even if the law has the incidental effect of burdening a particular religious practice," Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 531 (1993), or "incidentally burdens speech," United States v. Albertini, 472 U.S. 675, 687 (1985).[9] In the context of the Free Exercise Clause, a law is neutral and generally applicable if it has a secular purpose and applies to secular and sectarian individuals and institutions alike. See, e.g., Employment Division, Department of Human Resources v. Smith, 494 U.S. 872 (1990); Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 763 (7th Cir. 2003) ("CLUB"). Similarly, in cases where a law is alleged to burden speech, the law is content neutral if it is "justified without reference to the content of the regulated speech." City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 48 (1986) (emphasis omitted). Accord, e.g., City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425, 434 (2002).

Beth-el lost title by enforcement of the Tax Code, which aims not to restrict religious practices or speech, but to collect revenue for the operation of government. See, e.g., Dwyer, 824 N.E.2d at 619. Indeed, far from singularly burdening religion, the Tax Code specifically exempts property used exclusively for religious purposes. See 35 ILCS 200/15-40(a). See also CLUB, 342 F.3d at 765 (zoning ordinance "is

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[9] The Supreme Court has often "'remark[ed] upon the close nexus between the freedoms of speech and assembly,'" New York State Club Association v. City of New York, 487 U.S. 1, 13 (1988) (quoting NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460 (1958)), and in cases like this one where plaintiffs generally allege that the same action burdens both their freedoms of speech and assembly, the same analysis applies to both, see, e.g., Vineyard Christian Fellowship v. City of Evanston, 250 F. Supp. 2d 961, 979 n.12 (N.D. Ill. 2003).

neutral and generally applicable and places churches on a footing equal with, if not superior to, that of nonreligious assembly uses"). For property owners against whom taxes are assessed, the Tax Code's enforcement provisions apply equally to all who are tax-delinquent. Beth-el makes no claim that these provisions were applied to it on account of its religious views or activities. Rather, its complaint implies that it has a right to occupy property it no longer owns simply because it has used that property as a church. But because the Tax Code is neutral and generally applicable, the First Amendment does not insulate Beth-el from its enforcement.

B. RLUIPA Is Inapplicable To Beth-el's Claims.

Beth-el's RLUIPA claim has no likelihood of success for the fundamental reason that RLUIPA does not apply here. Other than RLUIPA's application to "institutionalized persons," the statute, by its terms, applies only to "land use regulation," defined as

> a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land.

42 U.S.C. § 2000cc-5(5) (2000). "Under this definition, a government agency implements a 'land use regulation' only when it acts pursuant to a 'zoning or landmarking law' . . . ." Prater v. City of Burnside, 289 F.3d 417, 434 (6th Cir. 2002). RLUIPA's plain statutory language, therefore, demonstrates that it has no application to this case, which involves no zoning or landmarking law, but only the Tax Code's provisions governing enforcement through tax sales.

IV. BETH-EL DEMONSTRATED NO LIKELIHOOD OF SUCCESS ON THE MERITS OF ITS IRFRA CLAIM.

As we explain above, none of Beth-el's federal claims has any likelihood of success. A district court ordinarily declines to exercise supplemental jurisdiction over a state-law claim when it has dismissed all claims over which it has original jurisdiction, see 28 U.S.C. § 1367(c)(3) (2000); Groce v. Eli Lilly & Co., 193 F.3d 496, 501 (7th Cir. 1999), and a state-law claim alone does not warrant the entry of a preliminary injunction, see Burgess v. Ryan, 996 F.2d 180, 184-85 (7th Cir. 1993). Surely, then, even if there were any merit to Beth-el's claim that the loss of its property and threatened eviction have substantially burdened its free exercise of religion in violation of IRFRA, R. 25 ¶¶ 64-69, there would be no basis to enter a preliminary injunction on the basis of this lone state-law claim.

In any event, Beth-el's IRFRA claim has no merit. First, it is untimely. A federal court applies state limitations periods to state-law claims, and under Illinois law, the limitations period for civil suits against a local public entity is one year. See Evans v. City of Chicago, 434 F.3d 916, 934 (7th Cir. 2006); 745 ILCS 10/8-101 (2004). Thus, if Beth-el's section 1983 claims are time barred, its IRFRA claim is barred under the shorter state limitations period.

Beth-el's IRFRA claim has no likelihood of success for the additional reason that it alleges no substantial burden on its religious exercise. IRFRA provides that

> Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i)

> is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.

775 ILCS 35/15 (2004). Illinois courts have explained that "the hallmark of a substantial burden on one's free exercise of religion is the presentation of a coercive choice of either abandoning one's religious convictions or complying with the governmental regulation." Diggs v. Snyder, 775 N.E.2d 40, 45 (Ill. App. Ct. 2002) (citing Wisconsin v. Yoder, 406 U.S. 205 (1972)).[10] And the Supreme Court has similarly limited the Free Exercise Clause's prohibition to government action with a "tendency to inhibit constitutionally protected activity," Sherbert v. Verner, 374 U.S. 398, 404-06 & n.6 (1963), or a "coercive impact" that puts "substantial pressure on an adherent to modify his behavior and to violate his beliefs," Thomas v. Review Board, 450 U.S. 707, 717 (1981).

There is no substantial burden here. The burden on Beth-el is that it can no longer occupy property it does not own, not that it will be coerced to violate its beliefs or modify its religious practices. We do not question whether having to vacate this property poses a hardship for Beth-el. But trespass and similar laws do not substantially burden religious exercise. Moreover, claims that the government

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[10] Because IRFRA was enacted in 1998, few cases have interpreted it, as the court noted in Diggs. See 775 N.E.2d at 44. Thus, courts analyzing IRFRA claims have referred to cases concerning the federal Religious Freedom Restoration Act, 42 U.S.C. § 2000bb (2000) ("RFRA"), and cases discussing a "substantial burden" under the First Amendment. See Diggs, 775 N.E.2d at 44-45; Vineyard, 250 F. Supp. 2d at 993. RLUIPA cases are also instructive, because Congress intended the term "substantial burden" in RLUIPA to be "interpreted with reference to RFRA and First Amendment jurisprudence" and given the same meaning. CLUB, 342 F.3d at 761. See also Vineyard, 250 F. Supp. 2d at 993.

cannot use its own land for its purposes are regularly held not to be a substantial burden on the rights of others who wish to use the property for religious purposes. See, e.g., Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439, 451 (1988); Wilson v. Block, 708 F.2d 735, 744 (D.C. Cir. 1983). At a minimum, "plaintiffs seeking to restrict government land use in the name of religious freedom must . . . demonstrate that the government's proposed land use would impair a religious practice that could not be performed at any other site." Wilson, 708 F.2d at 744.

Here, Beth-el's activities that Bishop Jackson described, such as prayer services, bible studies, and counseling, R. 64-1 at 56-59, are activities Beth-el may carry out elsewhere. Even if Beth-el might encounter difficulties locating or affording another suitable property, these are "the ordinary difficulties associated with location (by any person or entity, religious or nonreligious) in a large city." CLUB, 342 F.3d at 761. In short, because Beth-el remains able to adhere to its beliefs and may practice its religion in another location, there is as a matter of law no substantial burden on Beth-el's or its members' religious practices.

CONCLUSION

For the foregoing reasons, the March 17, 2006 order entering a preliminary injunction should be vacated. If this court determines that there is no federal jurisdiction over this case, we respectfully request that the case be remanded to the district court with instructions to dismiss Beth-el's complaint.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 32(a)(7)(C), I certify that the foregoing brief complies with the type volume limitation provided by Fed. R. App. P. 32(a)(7)(B). The brief contains 13,988 words as recorded by the word count function of the WordPerfect 12 word-processing system used to prepare the brief, beginning with the words "JURISDICTIONAL STATEMENT," through the words "Beth-el's complaint" in the CONCLUSION section of the brief.

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SARA K. HORNSTRA, Attorney

CIRCUIT RULE 31(e)(1) CERTIFICATE

In accordance with Circuit Rule 31(e)(1), I certify that a digital version of the foregoing Brief of Defendants-Appellants has been furnished to the court.

_____
SARA K. HORNSTRA, Attorney

CIRCUIT RULE 31(d) STATEMENT

In accordance with Circuit Rule 31(d), I certify all materials required under Circuit Rules 30(a) and 30(b) are included in the appendix to this brief.

_____

SARA K. HORNSTRA, Attorney

CERTIFICATE OF SERVICE

I certify that I served the Brief and Appendix of Defendant-Appellant City of Chicago by placing two copies of the brief and a computer disk containing the text of the brief into an envelope with sufficient postage affixed and directed to the person named below, at the address indicated, and depositing that envelope in the United States mailbox located at 30 North LaSalle Street, Chicago, Illinois, before 5:00 p.m. on October 10, 2006.

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