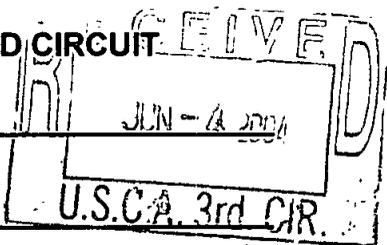


UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT



NO. 04-1434

SECOND BAPTIST CHURCH OF LEECHBURG,
Appellant,

v.

GILPIN TOWNSHIP, PENNSYLVANIA AND
GILPIN TOWNSHIP SEWER AUTHORITY,
Third Party Plaintiff,

v.

UNITED STATES OF AMERICA, DEPARTMENT OF
AGRICULTURE, RURAL UTILITY SERVICE,
Third Party Defendant.

APPEAL FROM ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA, NO. 03-1454

APPELLEE'S BRIEF

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Gilpin Township*

United States Court of Appeals for the Third Circuit

**Corporate Disclosure Statement and
Statement of Financial Interest**

No. 04-1434

SECOND BAPTIST CHURCH OF LEECHBURG

v.

**GILPIN TOWNSHIP, PENNSYLVANIA AND GILPIN TOWNSHIP
SEWER AUTHORITY, ET AL.**

Instructions

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure any nongovernmental corporate party to a proceeding before this Court must file a statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

Third Circuit LAR 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.

In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate shall provide a list identifying: 1) the debtor if not named in the caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or the bankruptcy estate is not a party to the proceedings before this Court, the appellant must file this list. LAR 26.1(c).

The purpose of collecting the information in the Corporate Disclosure and Financial Interest Statements is to provide the judges with information about any conflicts of interest which would prevent them from hearing the case.

The completed Corporate Disclosure Statement and Statement of Financial Interest Form must, if required, must be filed upon the filing of a motion, response, petition or answer in this Court, or upon the filing of the party's principal brief, whichever occurs first. An original and three copies must be filed. A copy of the statement must also be included in the party's principal brief before the table of contents regardless of whether the statement has previously been filed. Rule 26.1(b) and (c), Federal Rules of Appellate Procedure.

If additional space is needed, please attach a new page.

(Page 1 of 2)

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, GILPIN TOWNSHIP
makes the following disclosure: (Name of Party)

1) For non-governmental corporate parties please list all parent corporations: **NONE**

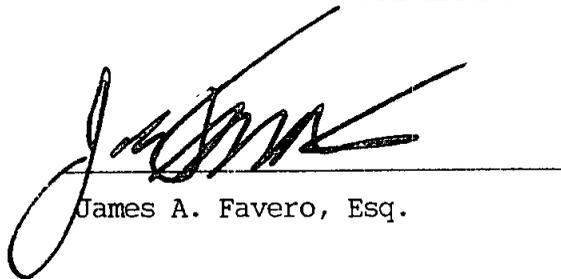
2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock: **NONE**

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

NOT APPLICABLE

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.

NOT APPLICABLE


James A. Favero, Esq.

Dated: June 8, 2009

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JURISDICTIONAL STATEMENT

The District Court has subject matter jurisdiction to hear all claims that arise under the Constitution of the Laws of the United States pursuant to 28 U.S.C. § 1331. The Appellant, Second Baptist Church of Leechburg (hereinafter "Second Baptist"), instituted the underlying claim against the Appellees, Gilpin Township and Gilpin Township Sewer Authority, alleging that the Appellees violated the Religious Land Use and Institutionalized Person's Act of 2000 ("RLUIPA") which forbids religious discrimination in the form of land use regulations. 42 U.S.C. § 2000 cc, et seq.

The Court of Appeals has jurisdiction pursuant to 28 U.S.C. § 1291 which permits an appeal from a final judgment of the District Court. By Order dated January 20, 2004 the United States District Court for the Western District of Pennsylvania granted Appellees' Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b) (6). By the same Order, the court declined to exercise supplemental jurisdiction over the remaining counts in Second Baptist's Complaint. Such an Order constitutes a final order pursuant to 28 U.S.C. § 1291. Such an Order is final and appealable pursuant to 28 U.S.C. § 1291.

Second Baptist filed a Notice of Appeal in the United States District Court for the Western District of Pennsylvania on February 18, 2004.

COUNTER STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. WHETHER THE DISTRICT COURT PROPERLY GRANTED THE APPELLEES' 12(B) (6) MOTION TO DISMISS COUNTS I THROUGH IV OF THE APPELLANT'S COMPLAINT INsofar AS SAID COUNTS FAILED TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED UNDER THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSON'S ACT OF 2000 (RLUIPA).

SUGGESTED ANSWER: IN THE AFFIRMATIVE.

2. WHETHER THE DISTRICT COURT PROPERLY GRANTED THE APPELLEES' 12(B) (6) MOTION TO DISMISS THE APPELLANT'S CLAIMS FOR CONSTITUTIONAL VIOLATIONS UNDER COUNTS V, VII, IX, XI, AND XIII INsofar AS THE AFOREMENTIONED COUNTS FAILED TO STATE A CLAIM UPON FOR WHICH RELIEF COULD BE GRANTED.

SUGGESTED ANSWER: IN THE AFFIRMATIVE.

3. WHETHER THE DISTRICT COURT PROPERLY DECLINED TO EXERCISE SUPPLEMENTAL JURISDICTION OVER THE APPELLANT'S STATE LAW CLAIMS CONTAINED WITHIN COUNTS VI, VIII, X, XII, XIV, AND XV.

SUGGESTED ANSWER: IN THE AFFIRMATIVE.

COUNTER STATEMENT OF THE CASE

Second Baptist instituted the within action in the United States District Court for the Western District of Pennsylvania against the Appellees, Gilpin Township and Gilpin Township Sewer Authority, alleging that the Appellees violated the Religious Land Use and Institutionalized Person's Act of 2000 (RLUIPA). The RLUIPA forbids religious discrimination in the form of land use regulations. 42 U.S.C. § 2000 cc, et seq.

Second Baptist filed the Complaint in the United States District Court for the Western District of Pennsylvania on September 20, 2003. On or about December 31, 2003 the Appellees' filed a Motion to Dismiss pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure. By Order dated January 20, 2004 the United States District Court for the Western District of Pennsylvania (Judge Arthur Schwab) granted the Appellees' Motion to Dismiss for failure to state a claim upon which relief could be granted. Specifically, the court dismissed Counts I, II, III, IV, V, VII, IX, XI, and XIII of Second Baptist's Complaint. The court declined to exercise supplemental jurisdiction over the remaining counts of Second Baptist's Complaint (Counts VI, VIII, X, XII, XIV, and XV).

COUNTER STATEMENT OF THE FACTS

Second Baptist alleged that the Appellees, Gilpin Township and Gilpin Township Sewer Authority promulgated a sewer ordinance that imposed a land use regulation in violation of the RLUIPA.

Gilpin Township is a municipal corporation formed under the laws of the Commonwealth of Pennsylvania. The Second Class Township Code is the legislation under which Gilpin Township operates. One of the powers granted to a township under the Second Class Township Code is the formation of authorities. Gilpin Township formulated the Gilpin Township Sewer Authority and delegated all powers with regard to sewage within the township. Gilpin Township enacted Ordinance No. 53 on May 7, 1984.

Ordinance No. 53 is commonly known as a mandatory "tap in" ordinance. The ordinance directs that any principal building within 150 feet of the sewage system shall be connect if so directed. On or about August 3, 2003 the Appellees' notified Second Baptist that the township had completed construction of their 1999 sewage extension project and Second Baptist would now be required to tap in because it was located 138 feet from the aforesaid sewer line. Despite numerous attempts by the Appellees to have Second Baptist tap in to the sewer line, Second Baptist refused to do so. The sewage authority was forced to take enforcement action against Second Baptist before District Justice Michael Gerheim. Following hearing, District Justice Gerheim indicated that Second Baptist was in violation, however, in accordance with Gilpin Township's indication of their desire not to collect penalties, but merely to have Second Baptist comply with the ordinance and connect, Second Baptist was given until September of

2003 to connect. A meeting was scheduled before District Justice Gerheim on October 1, 2003, for the purpose of determining whether Second Baptist has complied, to which Second Baptist filed the instant action on September 30, 2003.

On or about February 18, 2004 Second Baptist filed a Notice of Appeal from the District Court's January 20, 2004 Court Order.

SUMMARY OF ARGUMENT

The Religious Land Use and Institutionalized Person's Act of 2000 (RLUIPA) is designed to guarantee its application in all cases where the free exercise of religion is substantially burdened and to provide a claim or defense to persons whose religious exercise is substantially burdened by the government. In particular, the RLUIPA is designed to prevent the government from imposing or implementing a land use regulation which unreasonably limits religious assemblies, institutions or structures within a jurisdiction. 42 U.S.C. § 2000 cc (b) (3). The first line of inquiry focuses on whether or not the governmental agency implements a land use regulation within the definition of the meaning of the RLUIPA.

Gilpin Township Ordinance No. 53, commonly known as the tap in ordinance does not qualify as a land use regulation for purposes of the jurisdictional provisions of the RLUIPA. The promulgation of Ordinance No. 53 clearly demonstrates that it is not a zoning ordinance.

Even assuming, arguendo, that Ordinance No. 53 qualifies as a land use regulation under the RLUIPA, Second Baptist has failed to plead or prove a prima facie case. To establish a prima facie case under RLUIPA Second Baptist must plead and prove that the land use regulation in question imposes a substantial burden on the religious exercise of a person, institution or assembly. Second Baptist has failed to make out such a prima facie case that the tap in ordinance will impose a substantial burden on the exercise of their religious faith.

To successfully plead and prove a claim for a violation of Second Baptist's First Amendment Rights to free exercise of religion and freedom of assembly, Second

Baptist must establish that the Appellees have placed a substantial burden on the observation of a central belief or practice. The tap in ordinance is question in neutral and generally applicable such that it cannot violate Second Baptist's free exercise of religion or freedom of assembly.

To make out a claim for a violation of Second Baptist's right to freedom of speech, Second Baptist must plead and prove that the prescribed conduct in question is sufficiently communicative to qualify for protection under the First Amendment. There is nothing contained within the tap in ordinance which could reasonably be construed as communicative in nature such that it does not qualify for First Amendment protection.

Finally, the tap in ordinance does not violate the equal protection clause of the Fourteenth Amendment. The tap in ordinance in question was promulgated to promote the health and safety of the community which is a legitimate interest sufficient to sustain an equal protection clause attack.

ARGUMENT

1. **WHETHER THE DISTRICT COURT PROPERLY GRANTED THE APPELLEES' 12(B) (6) MOTION TO DISMISS COUNTS I THROUGH IV OF THE APPELLANT'S COMPLAINT INsofar AS SAID COUNTS FAILED TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED UNDER THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSON'S ACT OF 2000 (RLUIPA).**

A. The Religious Land Use and Institutionalized Person's Act of 2000 (RLUIPA)

The Religious Land Use and Institutionalized Person's Act of 2000 (RLUIPA) was signed into law on September 22, 2000. The aforementioned Act was essentially a congressional response to the United States Supreme Court's decision in Employment Division, Department of Human Resources v. Smith, 494 U.S. 872, 110 S.Ct. 1595 (1990). In Smith, the Supreme Court held that congress lacked the power under the enforcement clause of the Fourteenth Amendment to change the meaning of the First Amendment. In response, congress promulgated the RLUIPA.

RLUIPA's stated purpose is to restore the compelling interest test and to guarantee its application in all cases where free exercise of religion is substantially burdened and to provide a claim or defense to persons whose religious exercise is substantially burdened by government. 42 U.S.C. § 2000 bb. In pertinent part the law states as follows:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling government interest. 42 U.S.C. § 2000 cc (a) (1).

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution. 42 U.S.C. § 2000 cc (b) (1).

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religious denomination. 42 U.S.C. § 2000 cc (b) (2).

No government shall impose or implement a land use regulation that totally excludes religious assemblies from a jurisdiction or unreasonably limits religious assemblies, institutions, or structures within a jurisdiction. 42 U.S.C. § 2000 cc (b) (3).

B. Land Use Regulation under RLUIPA

The RLUIPA defines a land use regulation as a landmarking or zoning law, or the application of such a law, that limits and restricts a claimant's use or development of the land (including a structure fixed to the land), if the claimant has ownership, lease hold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest. 42 U.S.C.A. § 2000 cc-5 (5). The first line of inquiry focuses on whether or not the governmental agency implements a land use regulation within the definition and meaning of the RLUIPA.

“Under this definition, a government agency implements a ‘land use regulation’ only when it acts pursuant to a ‘zoning or landmarking law’ that limits the manner in which a claimant may develop or use property in which the claimant has an interest.” Prater v. City of Burnside, KY, 289 F.3d 417 at 434 (6th Cir. 2002).

In the instant matter, the ordinance in question is not a land use regulation as defined within RLUIPA. The ordinance does not regulate the use of ones land. It mandates that property within 150 feet of a sewage line must connect to the sewage

system. This type of an ordinance is clearly for the protection of the health and safety of the township residents and not a land use ordinance.

From the clear language of the ordinance in question, it is not a zoning law. There is no language contained within Ordinance No. 53 that could in any way be construed as a zoning regulation. Ordinance No. 53 does not dictate how one can use the land, it merely mandates that if the property is located within 150 feet of a sewer line, the property must be connected to the sewer line. The trial court correctly held the “regulation does not fall within the RLUIPA definition of land use because it does not deal with either zoning or landmarking of property.” Appendix, p. 8.

The promulgation of Ordinance No. 53 is of particular importance when determining that it is not a zoning ordinance. The Municipal Planning Code contains a definition of what constitutes a land use ordinance. 53 P.S. § 10107 defines a land use ordinance as any ordinance or map adopted pursuant to the authority granted in Articles IV, V, VI, and VII. Article IV deals with the official zoning map and is found at 53 P.S. § 10402, et seq. Article V deals with subdivisions and land use and is found at 53 P.S. § 10501, et seq. Article VI deals with zoning and is found at 53 P.S. § 10601, et seq. Finally, Article VII deals with planned residential development and is found at 53 P.S. § 10701, et seq. None of the aforementioned provisions deals with sewage or sewage systems. All of the aforementioned provisions deal exclusively with the use of land in keeping with the purpose of the municipality’s plan and code. The stated purpose of the municipality’s planning code is found at 53 P.S. §10105 which states as follows:

It is the intent, purpose, and scope of this Act to protect and promote safety, health or morals; to accomplish coordinated development; to provide for the general welfare by guiding and protecting amenity, convenience, future governmental, economic,

practical, social and cultural facilities, development and growth, as well as the improvement of governmental processes and functions; to guide uses of land and structures, type and location of streets, public grounds and other facilities; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; to promote the preservation of this Commonwealth's natural and historic resources and prime agricultural land; to encourage municipalities to adopt municipal or joint municipal comprehensive plans generally consistent with the county comprehensive plans; to promote small business development and foster a business-friendly environment in this Commonwealth; to ensure that municipalities adopt zoning ordinances which are generally consistent with the municipality's comprehensive plan; to encourage the preservation of prime agricultural land and natural and historic resources through easements, transfer of development rights and rezoning; to ensure that municipalities enact zoning ordinances that facilitate the present and future economic viability of existing agricultural operations in this Commonwealth and do not prevent or impede the owner or operator's need to change or expand their operations in the future in order to remain viable; to encourage the revitalization of established urban centers; and to permit municipalities to minimize such problems as may presently exist or which may be foreseen and wherever the provision of this Act promote, encourage, require, or authorize governing bodies to protect, preserve, or conserve open land, consisting of natural resources, forests and woodlands, any actions taken to protect, preserve or conserve such land shall not be for the purpose of precluding access for forestry.

The authority for a second-class township to undertake a sewage project and to compel the residents of that township to connect to the sewage system is found in the Second Class Township Code. 53 P.S. § 66522 states:

The Board of Supervisors may by ordinance make regulations respecting the installation of individual or community sewage treatment facilities under the act known as the Pennsylvania Sewage Facilities Act. Additional authority for sewers and drains is found in the Second Class Township Code at 53 P.S. § 67501, et seq. 53 P.S. § 67501 states that the Board of Supervisors may establish and construct sanitary sewer systems which shall if possible be constructed along and within the lines of the right of way of public roads. 53 P.S. § 67501 states that the Board of Supervisors may by ordinance require adjoining and

adjacent property owners to connect with the use of the sanitary sewer system, whether constructed by the township or municipal authority. The same section contains the requirement that property adjoining or adjacent to or whose principal building is located within 150 feet must connect to the sanitary sewer system.

From considering the aforementioned, it is abundantly clear the Gilpin Township Ordinance No. 53 was not enacted pursuant to the municipality's land use ordinance. Consequently, the mandatory sewer tap in contained with Gilpin Township Ordinance No. 53 does not constitute a land use regulation sufficient to fall within the purview of the zoning and landmarking activities covered by the RLUIPA. The trial court correctly held that "Gilpin Township Ordinance No. 53 was not enacted pursuant to the municipality's land use ordinance." Appendix, p. 8.

C. Prima Facie Case under RLUIPA

Assuming, arguendo, that this Honorable court determines that the tap in ordinance qualifies as a land use regulation for purposes of the jurisdictional provisions of the RLUIPA, Second Baptist has failed to establish a prima facie case under the RLUIPA. To establish a prima facie case that RLUIPA has been violated, Second Baptist must plead and prove that the land use regulation in question:

1. imposes a substantial burden;
2. on the "religious exercise";
3. of a person, institution, or assembly.

42 U.S.C. § 2000 cc (a) (1); Murphy v. Zoning Comm'n of the Town of New Milford, 148 F.Supp.2d 173, 187 (D.Conn. 2001).

The substantial burden must be on a "sincerely held" religious belief. Werner v. McCotter, 49 F.3d 1476, 1479 N.1 (10th Cir. 1995) (citing Wisconsin v. Yoder, 406 U.S. 205, 215-19, 92 S.Ct. 1526 (1972)).

District court cases interpreting the RLUIPA have delineated the difference between a substantial burden on religious exercise versus an inconvenience on religious exercise. The courts have concluded that regulations must have a “chilling effect” on the exercise of religion to substantially burden religious exercise. Murphy, 148 F.Supp.2d at 188-89. A government regulation does not substantially burden religious activity when it only has an incidental effect that makes it more difficult to practice the religion. Lyng v. Northwest Indiana Cemetery Protective Ass’n, 485 U.S. 439, 450-51, 108 S.Ct. 1319 (1988).

It is abundantly clear that the tap in ordinance does not place a substantial burden on Second Baptist’s religious exercise. Consequently, Second Baptist has failed to satisfy the first element for pleading and proving a prima facie case under the RLUIPA. Consequently, the District Court appropriately granted the Appellees’ 12(b) (6) Motion to Dismiss.

2. WHETHER THE DISTRICT COURT PROPERLY GRANTED THE APPELLEES’ 12(B) (6) MOTION TO DISMISS THE APPELLANT’S CLAIMS FOR CONSTITUTIONAL VIOLATIONS UNDER COUNTS V, VII, IX, XI, AND XIII INSOFAR AS THE AFOREMENTIONED COUNTS FAILED TO STATE A CLAIM UPON FOR WHICH RELIEF COULD BE GRANTED.

The trial court correctly held that the tap in ordinance at issue is neutral and did not violate Second Baptist’s free exercise of religion, freedom of speech, freedom of assembly, equal protection of the law and its right to due process of law. Appendix, p. 10. Each constitutional right will be discussed separately.

A. Free Exercise of Religion

In Count V of the Amended Complaint, Second Baptist claims that the Appellees violated its free exercise of religion by substantially burdening their ability to freely

exercise their religious faith. The free exercise inquiry asks “whether government has placed a substantial burden on the observation of a central belief or practice,” Strout v. Albanese, 178 F.3d 57, 65 (1st Cir. 1999) (quoting Hernandez v. Commissioner, 490 U.S. 680, 699, 109 S.Ct. 2136 (1989)). Neutral laws of general applicability are constitutional even if they incidentally burden religious beliefs or practices. Employment Div., Dep’t of Human Res. of Oregon v. Smith, 494 U.S. 872, 878-79, 110 S.Ct. 1595 (1990). Religious beliefs do not excuse a group from complying with otherwise valid, generally applicable, and neutral laws. Hennessy v. City of Melrose, 194 F.3d 237, N.1 (1st Cir. 1999). The tap in ordinance in question is neutral and generally applicable such that it cannot violate Second Baptist’s free exercise of religion. It does not place a substantial burden on the observation of a central religious belief or practice.

B. Freedom of Speech

In Count VII Second Baptist claims that Appellees violated their right of freedom of speech by enacting vague and burdensome statutes against them. The initial step in the free speech inquiry is to assess whether the prescribed conduct is sufficiently communicative to qualify as expression protected by the First Amendment. Gun Owners’ Action League v. Swift, 284 F.3d 198, 210 (1st Cir. 2002). Conduct constitutes protected expression if “it evinces an intent to convey a particularized message . . . and the likelihood is great that the message would be understood by those [to whom it is addressed].” Id. at 211 (quoting Texas v. Johnson, 491 U.S. 397, 404, 109 S.Ct. 2533 (1989)). There is nothing contained within the tap in ordinance which could be reasonably construed as communicative in nature such that it does not qualify for protection under the First Amendment. The ordinance in question does not endorse

any particular message nor does it force Second Baptist to say anything or impose any restriction on Second Baptist's speech or conduct.

C. Freedom of Assembly

In Count IX of the Amended Complaint, Second Baptist claims that the Appellees violated its freedom of assembly by depriving it of the right to free assembly for purposes of worship. The Supreme Court has recognized that an individual's freedom to worship could not be vigorously protected from interference by the state unless a correlative right of freedom to engage in-group effort towards those ends were not also guaranteed. Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley, 454 U.S. 290, 294, 102 S.Ct. 434 (1981). The Supreme Court has long understood that the First Amendment includes a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. NAACP v. Claiborne Hardware Co., 458 U.S. 886, 907-909, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982). The Supreme Court has afforded constitutional protection to freedom of association in two distinct senses:

First, the court has held that the constitution protects against unjustified interference with an individual's choice to enter into and maintain certain intimate and private relationships. Second, the court has upheld freedom of individuals to associate for the purpose of engaging in protected speech or religious activities. Board of Dirs. of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537, 544, 107 S.Ct. 1940 (1987).

A "municipality's right to use its zoning power in the public interest is perhaps the paradigm of such a [content-neutral] restriction." Gascoe, Ltd. v. Newton Township, 699 F.Supp. 1092, 1095 (E.D.Pa. 1988). Under the intermediary scrutiny standard of review, a content-neutral regulation will be upheld if it advances important governmental

interests unrelated to the suppression of the right for freedom of association and/or speech and if it does not burden substantially the right for freedom of association. See Turner v. F.C.C., 520 U.S. 180, 189, 117 S.Ct. 1174 (1997).

In the instant matter it is abundantly clear that the tap in ordinance is content-neutral and promotes important governmental interests which are completely unrelated to the suppression of any right to freedom of association.

D. Equal Protection

In Count XI of the Amended Complaint, Second Baptist contends that the Appellees violated its right to equal protection by discriminating against Second Baptist in the application of the laws of the Commonwealth of Pennsylvania and the ordinance of Gilpin Township. The equal protection clause of the Fourteenth Amendment commands that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Constitutional Amendment XIV. This is “essentially a direction that all persons similarly situated should be treated alike.” City of Cleburne v. Cleburne Living Center, 473 U.S. 432 at 439, 105 S.Ct. 3249 (citing Plyler v. Doe, 457 U.S. 202, 216, 102 S.Ct. 2382 (1982)). It is equally important to note that the courts are reluctant to overturn governmental action on the ground that it denies equal protection of the laws. Vance v. Bradley, 440 U.S. 93, 97, 99 S.Ct. 939 (1979).

Like other economic and social legislature, land use ordinances that do not classify by race, alienage, or national origin, will survive an attack based on the equal protection clause if the law is “reasonable, not arbitrary, and bears a rational relationship to a (permissible) state objective.” Village of Belle Terre v. Boraas, 416 U.S. 1, 8, 94 S.Ct. 1536 (1974). Gilpin Township Ordinance No. 53 was promulgated to

promote the health and safety which is a legitimate interest sufficient to withstand an equal protection clause attack. See Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 395, 47 S.Ct. 114 (1926).

E. Due Process of Law

In Count XIII of the Amended Complaint, Second Baptist alleges that the Appellees deprived it of due process of law by requiring Second Baptist to connect to its sewer system without providing any basis of fact or law and/or based on an irrational and discriminatory motive. The Tenth Circuit has explained the proper analysis for measuring the constitutionality of a zoning ordinance under the due process clause:

Before a zoning ordinance can be declared unconstitutional on due process grounds, the provision must be clearly arbitrary and unreasonable, having no substantial relation to public health, safety, morals, or general welfare . . . [I]f the validity of the land classification is fairly debatable the legislative judgment must control. Messiah Baptist Church v. County of Jefferson, 859 F.2d 820, 822 (10th Cir. 1988) (citing Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 388, 395, 47 S.Ct. 114 (1926)).

As argued above, Gilpin Township Ordinance No. 53 does not violate Second Baptist's right to free exercise of religion. Consequently, the ordinance only effects property interests and therefore need only bear a substantial relation to the general welfare. As previously argued, there can be little doubt that Gilpin Township Ordinance No. 53 bears a substantial relation to the general welfare of the residents of Gilpin Township. There is nothing arbitrary or unreasonable about requiring Second Baptist and all buildings located within 150 feet of the sewer pipe to tap into the sewer line. In fact, such an ordinance would serve to promote the health, safety and general welfare of the residents of Gilpin Township.

3. WHETHER THE DISTRICT COURT PROPERLY DECLINED TO EXERCISE SUPPLEMENTAL JURISDICTION OVER THE APPELLANT'S STATE LAW CLAIMS CONTAINED WITHIN COUNTS VI, VIII, X, XII, XIV, AND XV.

28 U.S.C.A. § 1367(c) (3) provides as follows:

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if - -

(3) The district court has dismissed all claims over which it has original jurisdiction.

It is well recognized that the district court has discretion in determining whether to decline exercise of supplemental jurisdiction over state claims when the federal basis for the action is dismissed. Shanaghan v. Cahill, 58 F.3d 106 (1995).

Insofar as the court properly dismissed all of the claims over which it had original jurisdiction, it properly exercised discretion to dismiss the remaining Pennsylvania constitutional claims. Once the claims under RLUIPA and the federal constitution were dismissed the trial court was free to exercise its discretion to decline exercising supplemental jurisdiction over the remaining state law claims.

CONCLUSION

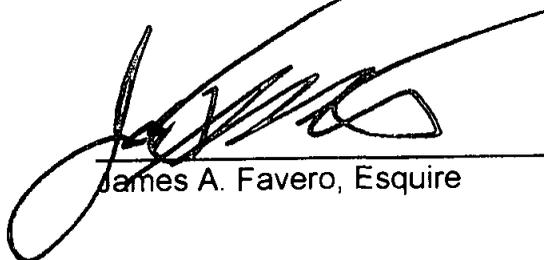
The District Court's Opinion and Order of January 20, 2004 dismissing Second Baptist's claims under RLUIPA and the Federal Constitution should be affirmed.

****NOTE:**

THIS BRIEF WAS INITIALLY PREPARED BY ROBERT J. GRIMM ON BEHALF OF THE APPELLEE, GILPIN TOWNSHIP SEWAGE AUTHORITY. WITH HIS PERMISSION, APPELLEE GILPIN TOWNSHIP HAS JOINED IN HIS BRIEF AND SUBMITS THE SAME AS ITS BRIEF.

CERTIFICATE OF BAR MEMBERSHIP

I, James A. Favero, do hereby certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.



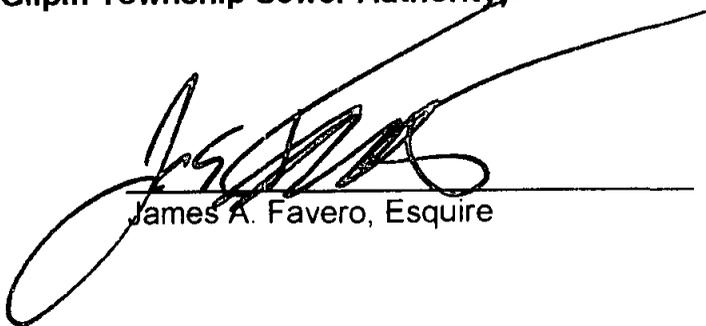
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2004, a true and correct copy of the Appellee's Brief was served upon all counsel of record by depositing the same in the United States Mail, first class, postage prepaid, and addressed as follows:

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