IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

EAGLE COVE CAMP & CONFERENCE CENTER, INC., a Wisconsin non-stock corporation,	)	
ARTHUR G. JAROS, JR., individually, and as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust, and as Trustee of the Dawn L. Jaros Declaration of Trust,	)	
WESLEY A. JAROS, as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust,	)	
RANDALL S. JAROS, individually, and as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust,	)	No. 10-CV-118
CRESCENT LAKE BIBLE FELLOWSHIP, a Wisconsin non-stock corporation,	)	
and	)	
KIM WILLIAMSON,	)	
Plaintiffs	)	
vs.	)	
TOWN OF WOODBORO, Wisconsin, a body corporate and politic,	)	
and	)	
COUNTY OF ONEIDA, Wisconsin, a body corporate	)	
and	)	
ONEIDA COUNTY BOARD OF ADJUSTMENT,	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR F.R.Civ.P. 60(b)(6) AND/OR 54(b) MOTION FOR RELIEF FROM GRANT TO DEFENDANTS OF SUMMARY JUDGMENT ON COUNT III OF PLAINTIFFS' AMENDED COMPLAINT

Now come the Plaintiffs by their attorney of record Arthur G. Jaros, Jr. submitting this memorandum of law in support of their F.R.Civ.P. 60(b)(6) and/or 54(b) Motion for Relief from this Honorable Court's grant to the Defendants of summary judgment on Count III of Plaintiffs' Amended Complaint.

1) Part III at pp. 49 of the Court's summary judgment Opinion contained the ruling pertaining to said Counts III (RLUIPA Substantial Burden) and VII (First Amendment Free Exercise Claim). Over the objection of the Plaintiffs, both this Court and the Seventh Circuit U.S. Court of Appeals on appeal by the Plaintiffs adopted the "effectively impracticable" standard of the *C.L.U.B.* decision of that Seventh Circuit U.S. Court of Appeals handed down during 2003. (*see*, summary judgment ruling excerpt attached)

2) Application of the C.L.U.B. standard to Count III of this very civil action has now been expressly overruled by the same Seventh Circuit in *Schlemm v. Wall*, (2015 U.S.App. LEXIS 6592 April 21, 2015) based upon intervening United States Supreme Court decisions in *Holt v. Hobbs*, 135 S.Ct. 853 (2015) and *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751 (2014).

3) Attached is the *Shepard*'s case citator that expressly declares the outcome in *Eagle Cove* to have been "overruled in part."

4) The Plaintiffs herein have been diligent to exhaust their judicial remedies in seeking to prevent the application of the *C.L.U.B.* standard to their substantial burden ground. Specifically, they timely perfected an appeal to the Seventh Circuit U.S. Court of Appeals, they petitioned that court for rehearing--both panel and *en banc*--to no avail, and timely filed a Petition for Certiorari with the U.S. Supreme Court which was likewise denied without comment during May, 2014 (134 S.Ct. 2160).

5) In addition, pursuant to this Court's decision to not exercise federal supplemental jurisdiction over Count XI of the Amended Complaint herein, Plaintiffs timely filed in November 2013 and continue to prosecute a civil action in the Wisconsin state court system seeking certiorari review and raising state law issues including those not presented to this court and one presented in this proceeding but not expressly addressed by either this Court or the U.S. Court of Appeals (The Wisconsin Constitution's "No Preference" clause ground of relief).

6) Relief under F.R.Civ.P. 60(b)(6) is appropriate where a supervening Supreme Court decision in an unrelated civil action demonstrates that the legal standard applied by the judiciary in another earlier case, like *Eagle Cove*, was erroneous. (*EEOC v. Baltimore & Ohio Railroad, et al.*, 557 F. Supp. 1112 at 1115-1117; 1122-1123 (D. Md. 1983), final judgment pertaining to 1972 Force Reduction/Age Reduction (including ensuing 1980 appeal to Fourth Circuit (632 F.2d 1107) and denial of cert. by the Supreme Court in 1981 (454 U.S. 825)) in favor of plaintiff vacated under defendant's F.R.Civ.P. 60 motion in light of supervening U.S. Supreme Court decision in *Pullman-Standard v. Swint*, 456 U.S. 273 (1982); *see also*, *AARP v. EEOC*, 390 F. Supp.2d 437 (E.D. Pa. 2005, aff'd. 489 F.3d 558 (3rd Cir. 2007), injunction entered against EEOC on March 30, 2005 and from which appeal was instituted on May 31, 2015, vacated by District Court's grant of defendant's Rule 60(b) motion during pendency of appeal on account of intervening U.S. Supreme Court decision in *National Cable and Telecommunications Association v. Brand X Internet Services*, 125 S. Ct. 2688 (2005); *cf. Madrid v. Bd. of Education Gilroy Unified School District,* 429 F. Supp. 816 (N.D. Cal. 1977), district court grants summary judgment in favor of defendant over plaintiffs' combined objection and request for stay of proceeding based upon pendency in the U.S. Supreme Court of *Richman Unified School District v. Berg*, 429 U.S. 1071 (1977) presenting similar issue, but where district court advises that if the outcome in *Berg* supports the plaintiffs, plaintiffs' motion under Rule 60(b) would be "invited.")

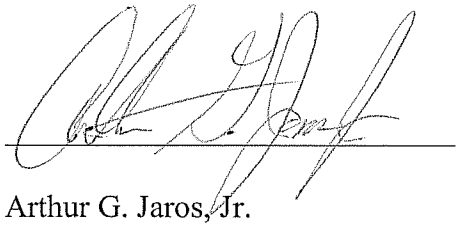
7) Granting such relief is consistent with the Supreme Court's repeated declarations that, except where a litigant has failed to exhaust appellate remedies, "*res judicata* is no defense where between the time of the first judgment and the second there has been an intervening decision or a change in the law creating an altered situation." (*Christian v. Jemison*, 303 F.2d 52 at 55 (5th Cir. 1962), citing to *State Farm Mutual Auto Ins. Co. v. Duel*, 324 U.S. 154 at 162 (1945), *Blair v. Commissioner*, 300 U.S. 5 (1937), and *Commissioner v. Sunnen*, 333 U.S. 591 (1948)).

8) Trial of the state court proceeding described in the second preceding paragraph has not yet taken place. If this Honorable Court: (i) had decided to exercise supplemental jurisdiction over Count XI rather than dismissing it without prejudice; (ii) had permitted the actual appeal herein heretofore taken to the U.S. Court of Appeals to have been taken on an expressly interlocutory basis; and (iii) were now itself conducting the proceeding (which, instead, is presently taking place in state court) on the state law certiorari count, then the Seventh Circuit's overruling of the aforenoted overruled portion of the decision heretofore entered in Eagle Cove would have been subject to revision by this Court--even apart from the operation of F.R.Civ. 60(b)(6)--by virtue of F.R.Civ.P. 54(b), last sentence.

9) Moreover, in a case presenting procedural facts similar to those present here, a California reviewing court has held (albeit in a non-precedential decision) that where a federal court fully adjudicates federal theories but declines to exercise federal supplemental jurisdiction over state grounds raised in the federal pleadings and where there is an ensuing, continued prosecution of those state grounds in state court, the federal and state court proceedings are nevertheless "still part of the ***same action***." (*Peacock v. County of Orange*, 2009 Cal.App.Unpub. LEXIS 7999 at *13 (4th District 2009), *emph. added*). As such, relief under F.R.Civ.P. 54(b) may be considered to be available, entirely independent of Rule 60.

WHEREFORE, in light of the express overruling within the last few weeks by the Seventh Circuit U.S. Court of Appeals in *Schlemm v. Wall* of a portion of this Honorable Court's decision as affirmed by a different panel of the same Seventh Circuit, Plaintiffs pray that this Court grant them relief in the interest of justice including equal application to them of the substantial burden test as subsequently announced by the U.S. Supreme Court and as has now been definitively applied to this very case by the Seventh Circuit in *Schlemm v. Wall.*

LAW OFFICE OF ARTHUR G. JAROS, JR.

By: 

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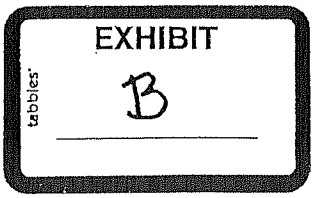
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN



EAGLE COVE CAMP & CONFERENCE CENTER INC., a Wisconsin non-stock corporation; ARTHUR G. JAROS, JR., individually and as co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as trustee of the Arthur G. Jaros, Sr. declaration of trust, and as trustee of the Dawn L. Jaros declaration of trust; WESLEY A. JAROS, as co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros charitable trust; RANDALL S. JAROS, individually and as co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros charitable trust; CRESCENT LAKE BIBLE FELLOWSHIP, a Wisconsin non-stock corporation; and KIM WILLIAMSON,

Plaintiffs,

vs.

TOWN OF WOODBORO, Wisconsin, a body corporate and politic; COUNTY OF ONEIDA, Wisconsin, a body corporate; and ONEIDA COUNTY BOARD OF ADJUSTMENT,

Defendants.

OPINION AND ORDER

10-cv-118-wmc

This action concerns the impact of zoning and land use regulations adopted by the Town of Woodboro and the County of Oneida on a group that believes they have been called to build a large, year-round Bible camp on a specific piece of land located on a northern Wisconsin lake. After unsuccessfully petitioning for permanent rezoning of the land, plaintiffs applied for a conditional use permit. When this, too, was denied, plaintiffs turned to this federal court for relief under various provisions of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"), certain provisions of the United States and Wisconsin Constitutions, the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, the Rehabilitation Act, 29 U.S.C. § 794, and a

For this reason, the Seventh Circuit has explained that a "substantial burden" under RLUIPA "is one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise -- including the use of real property for the purpose thereof within the regulated jurisdiction generally -- *effectively impracticable*." *CLUB*, 342 F.3d at 761 (emphasis added); *see also Vision Church*, 468 F.3d at 997.[18] "Scarcity of affordable land" and the "inherent political aspects" of zoning and planning decisions do not render the use of real property for religious exercise "impracticable." *CLUB*, 342 F.3d at 761. Expending "considerable time and money" also does not entitle land use applicants "to relief under RLUIPA's substantial burden provision." *Id.*

In *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005), the Seventh Circuit reversed the district court's decision granting summary judgment to the City and granted summary judgment to the plaintiff-church, finding the denial of a zoning variance constituted a substantial burden. Understandably, plaintiffs rely heavily on certain language from that case, which suggests that "delay, uncertainty and expense" constitute a substantial burden. 396 F.3d at 901 ("The Church could have searched around for other parcels of land (though a lot more effort would have been involved in such a search than, as the City would have it, calling up some real estate agents), or it could have continued filing applications with the City, but in either case there would have been delay, uncertainty, and expense.").

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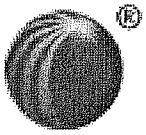
[18] The court considered but rejected the district court's analysis in *Church of Scientology of Georgia, Inc. v. City of Sandy Springs, Ga.*, 843 F. Supp. 2d 1328 (N.D. Ga. 2012), because it appears to be a substantial departure from the Seventh Circuit's requirement that a substantial burden must render religious exercise effectively impracticable.

SHEPARD'S® - 734 F.3d 673 - 13 Citing References



Eagle Cove Camp & Conf. Ctr., Inc. v. Town of Woodboro, 734 F.3d 673, 2013 U.S. App. LEXIS 22151 (7th Cir. Wis. 2013)

Restrictions: *Unrestricted*
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SHEPARD'S SUMMARY

Unrestricted *Shepard's* Summary
No negative subsequent appellate history.
Citing References:

	Warning Analyses:	**Overruled (1)**
	Neutral Analyses:	Dissenting Op. (1)
	Other Sources:	Statutes (2), Treatises (4), Court Documents (3)

LexisNexis Headnotes: HN12 (1)

PRIOR HISTORY (0 citing references)

(CITATION YOU ENTERED):
Eagle Cove Camp & Conf. Ctr., Inc. v. Town of Woodboro, 734 F.3d 673, 2013 U.S. App. LEXIS 22151 (7th Cir. Wis. 2013)

SUBSEQUENT APPELLATE HISTORY (1 citing reference)

1. **Writ of certiorari denied:**
Eagle Cove Camp & Conf. Ctr., Inc. v. Town of Woodboro, 134 S. Ct. 2160, 188 L. Ed. 2d 1126, 2014 U.S. LEXIS 3146, 82 U.S.L.W. 3650 (U.S. 2014)

CITING DECISIONS (3 citing decisions)

7TH CIRCUIT - COURT OF APPEALS

2. **Cited by:**
West v. Grams, 2015 U.S. App. LEXIS 6690 (7th Cir. Wis. Apr. 22, 2015)
2015 U.S. App. LEXIS 6690

3. **Overruled in part as stated in:**
Schlemm v. Wall, 2015 U.S. App. LEXIS 6592 (7th Cir. Wis. Apr. 21, 2015)
2015 U.S. App. LEXIS 6592

4. **Cited in Dissenting Opinion at:**
Korte v. Sebelius, 735 F.3d 654, 2013 U.S. App. LEXIS 22748 (7th Cir. 2013) **LexisNexis Headnotes HN12**
735 F.3d 654 *p.709*

ANNOTATED STATUTES (2 Citing Statutes)

5. *USCS Const. Amend. 1*

6. *42 U.S.C. sec. 2000cc*

TREATISE CITATIONS (4 Citing Sources)

7. *1-3 Illinois Zoning, Eminent Domain and Land Use Manual @ 3-3*

8. *1-8 Illinois Zoning, Eminent Domain and Land Use Manual @ 8-4*

9. *1-5 Land Use Law @ 5.70*

10. *6-37 Zoning Law and Practice @ 37-3*

BRIEFS (3 Citing Briefs)

11. *EAGLE COVE CAMP & CONF. CTR. v. TOWN OF WOODBORO*, 2013 U.S. Briefs 1099, 2014 U.S. S. Ct. Briefs LEXIS 1042 (U.S. Mar. 3, 2014)

12. *University of Notre Dame, Plaintiff-Appellant v. Kathleen Sebelius, in her official capacity as Secretary, U.S. Department of Health and Human Services, et al., Defendants-Appellees v. Jane Doe 1, Jane Doe 2, and Jane Doe 3, Intervenors-Appellees*, 2014 U.S. 7th Cir. Briefs LEXIS 38 (7th Cir. Jan. 27, 2014)

13. *HARBOR MISSIONARY CHURCH COPORATION v. CITY OF SAN BUENAVENTURA*, 2014 U.S. 9th Cir. Briefs LEXIS 500 (9th Cir. Sept. 8, 2014)

Available LexisNexis (R) HEADNOTES from Eagle Cove Camp & Conf. Ctr., Inc. v. Town of Woodboro

Civil Rights Law > Civil Rights Acts > General Overview
Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Religion > Free Exercise of Religion
[HN12] The United States Court of Appeals for the Seventh Circuit has previously noted that both the Free Exercise Clause and the Religious Land Use and Institutionalized Persons Act provide that, if a facially-neutral law or land use regulation imposes a substantial burden on religion, it is subject to strict scrutiny.