

No.

IN THE
Supreme Court of the United States

CONGREGATION RABBINICAL COLLEGE
OF TARTIKOV, INC., *et al.*,

Petitioners,

v.

VILLAGE OF POMONA, N.Y., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX VOLUME 1 OF 2

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**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE SECOND
CIRCUIT, DATED DECEMBER 20, 2019**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Nos. 18-0869-cv(L), 18-1062-cv(XAP)

CONGREGATION RABBINICAL COLLEGE OF
TARTIKOV, INC., RABBI MORDECHAI BABAD,
RABBI WOLF BRIEF, RABBI HERMAN KAHANA,
RABBI MEIR MARGULIS, RABBI MEILECH
MENCZER, RABBI JACOB HERSHKOWITZ,
RABBI CHAIM ROSENBERG, RABBI
DAVID A. MENCZER,

Plaintiffs-Appellees-Cross-Appellants,

RABBI GERGELY NEUMAN, RABBI KOLEL
BELZ, OF MONSEY, RABBI ARYEH ROYDE,
RABBI AKIVA POLLACK,

Plaintiffs,

-v.-

VILLAGE OF POMONA, NY, BOARD OF
TRUSTEES OF THE VILLAGE OF POMONA, NY,
NICHOLAS L. SANDERSON, AS MAYOR, IAN
BANKS, AS TRUSTEE AND IN HIS OFFICIAL
CAPACITY, ALMA SANDERS-ROMAN, AS
TRUSTEE AND IN HER OFFICIAL CAPACITY,

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RITA LOUIE, AS TRUSTEE AND IN HER
OFFICIAL CAPACITY, BRETT YAGEL, AS
TRUSTEE AND IN HIS OFFICIAL CAPACITY,

Defendants-Appellants-Cross-Appellees.

August Term 2018

April 18, 2019, Argued
December 20, 2019, Decided

Before: WESLEY AND CHIN, *Circuit Judges*; and KAPLAN,
District Judge.*

Congregation Rabbinical College of Tartikov, Inc. and future students and faculty sued the Village of Pomona and several village officials, challenging four amendments to the Village of Pomona's zoning law as violations of federal and New York law. Tartikov argued principally that Pomona adopted the challenged laws based on religious animus against Tartikov. The United States District Court for the Southern District of New York (Karas, J.) dismissed Tartikov's complaint in part and later resolved certain claims in the defendants' favor on a motion for summary judgment. The remaining claims proceeded to a bench trial, which concluded with a verdict for Tartikov on those claims. The defendants appeal from the final judgment, while Tartikov cross-appeals to challenge the earlier orders dismissing certain of its claims and granting summary judgment to the defendants on others.

* Judge Lewis A. Kaplan, of the United States District Court for the Southern District of New York, sitting by designation.

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Tartikov lacks Article III standing to pursue some of its claims. We VACATE the judgment with respect to those claims and REMAND with instructions for dismissal. As to the remaining claims that went to trial, we REVERSE the judgment to the extent the claims invoke two of the challenged laws, but we AFFIRM insofar as the claims invoke the remaining two. Finally, we AFFIRM with respect to the dismissal and summary judgment orders challenged on cross-appeal.

KAPLAN, *District Judge*:

This case poses difficult and in some respects subtle questions. Educational and religious institutions, as owners and users of real estate, are generally subject to local land use regulation. But they play unique roles in our society. Hence, our laws afford them some special treatment with respect to such regulation. Moreover, religious institutions enjoy the protection of the First and Fourteenth Amendments and federal legislation, each of which, in appropriate circumstances, trumps local land use law.

Given the importance in our free society of education, religion, and the usually legitimate desires of communities to regulate the manner in which the land within their boundaries is developed and used, conflicts arise when these interests come into tension. In resolving such conflicts, courts must differentiate among opposition to proposed land uses based on (1) legitimate development concerns like traffic volume, density, and sufficiency of municipal infrastructure, (2) bias against the religious

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faith or practices of the developer or of likely residents of new development, whether overt or hidden by legitimate-seeming pretext, and (3) mixed motives. These appeals reflect one such conflict.

In 2004, Congregation Rabbinical College of Tartikov, Inc. (“TRC”) purchased about 100 acres of land in the Village of Pomona, New York (“Pomona” or the “Village”), a small suburban village of about 3,200 people. As its name indicates, TRC hoped to use the property to build a school to educate rabbinical judges. But TRC submitted no concrete development proposals nor sought any zoning or construction approvals in the ensuing years.

In January 2007, a local group published an article purporting to reveal that TRC’s plan was to build nine large apartment buildings to house 1,000 students and their families — a total of as many as 4,500 people — as well as a school building. This provoked local opposition. Soon after, the Village board enacted two amendments to its land use laws limiting or outright prohibiting whatever development TRC ultimately might seek to build.

TRC and future students and faculty (collectively, “Tartikov”) filed this action against the Village and its board of trustees seeking to declare unconstitutional the two amendments enacted after its plans became known. In addition, it challenged two other amendments that had been passed earlier. After a bench trial, the district court found that all four zoning law amendments were tainted by religious animus, enjoined their enforcement, and entered a broad injunction sweeping away or modifying for these

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plaintiffs New York State and local laws that otherwise would apply. The Village challenges the decision below. Its central contention is that the findings of religious animus were clearly erroneous. Tartikov cross appeals from a number of pretrial rulings that limited the scope of its claims.

After careful consideration of the extensive record, we decline to overturn the district court's findings that religious animus motivated the two zoning amendments passed after the plaintiffs' wishes became known and thus affirm the injunction barring their enforcement. But we respectfully conclude that there was insufficient evidence to support such a finding as to either of the two earlier zoning amendments and therefore reverse that portion of the judgment. We conclude also that the injunctive relief went further than was appropriate and modify those aspects of the judgment as well. We affirm as to the cross-appeal.

FACTS

The governmental and legal context in which the amendments to the Pomona zoning law ordinance were enacted is important to a full understanding of this case. We therefore begin by sketching that framework.

*Appendix A***I. The Context****A. Local Government in New York**

New York State is home to over 1,600 local governments.¹ The entire state is divided among 62 counties, each of which has its own local government.² Each of the 57 counties outside New York City is divided into towns and in some instances one or more cities, each of which also has its own local government.³ There are, in addition, hundreds of villages throughout the state, some coextensive with towns but most within larger towns. As is now a familiar motif, each has its own government.⁴ Unlike counties, cities, and towns, New York’s villages “exist at the discretion of [their] residents”; they “can be created or dissolved by local initiative.”⁵ According to New York’s Department of State’s Division of Local Government Services, one reason town residents might create a village is “a difference in development philosophies of citizens and town officials.”⁶

1. *Division of Local Government Services*, N.Y. DEP’T OF STATE, <https://www.dos.ny.gov/lg/localgovs.html> .

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

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Village governments draw their authority to enact and enforce zoning regulations from numerous sources, including the Statute of Local Governments,⁷ the Municipal Home Rule Law,⁸ and the Village Law.⁹ A village exercises that authority, as well as the authority to enact other legislation, through a board of trustees,¹⁰ which typically consists of an elected mayor and four elected trustees.¹¹ The Village Law gives a board of trustees the authority to regulate various aspects of land use within its domain.¹² When a board of trustees regulates land use, it is obliged to follow a “comprehensive plan.”¹³ A comprehensive plan identifies the goals, policies, and instruments for the short and long term growth and development of the village.¹⁴

7. 1 Patricia E. Salkin, N.Y. ZONING LAW & PRAC. § 2:04 (hereinafter “Salkin”) (citing N.Y. STATUTE OF LOCAL GOVERNMENTS, § 10(6)).

8. *Id.* § 2:05 (citing N.Y. MUNICIPAL HOME RULE LAW § 10).

9. *Id.* §§ 2:05, 2:07, 2:11 (citing N.Y. VILLAGE LAW § 7-700). Under the Municipal Home Rule Law, villages may amend and supersede the Village Law as it applies to them. *Id.* (citing N.Y. MUNICIPAL HOME RULE LAW § 10e(3)).

10. N.Y. VILLAGE LAW § 4-412.

11. *Id.* § 3-301. The board of trustees has the power to modify the number of trustee seats. *Id.*

12. *Id.* § 7-722.

13. *Id.* § 7-704.

14. *Id.* § 7-722(2)(a), (1)(f)-(g).

*Appendix A***B. Local Zoning Ordinances and Other Land Use Controls**

Village and other local governments in New York exercise their land use authority through land use controls, the most common type of which is a zoning ordinance.¹⁵ Zoning typically entails dividing a municipality's entire territory into districts and imposing land use restrictions within them.¹⁶ Zoning ordinances can achieve many goals related to community planning, among the most common of which are prescribing minimum lot and maximum building sizes that control the density of development and permitting or proscribing the use of land in each zoning district for specific purposes such as agricultural, commercial, or residential.¹⁷

Numerous federal and state laws limit the exercise of land use control powers.¹⁸ One important limitation is the New York State Environmental Quality Review Act ("SEQRA").¹⁹ SEQRA requires state agencies, including municipalities, "to incorporate the consideration of environmental factors into the . . . planning, review[,] and decision-making processes."²⁰ It requires that a

15. Salkin § 1:10.

16. *Id.*

17. *Id.* §§ 6:04, 6:09, 6:11.

18. *See generally* Salkin ch. 3-5.

19. 6 N.Y. COMP. CODES R. & REGS. § 617.

20. *Id.* § 617.1(c).

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municipality considering a significant land use control ordinarily must prepare or request an environmental impact statement (“EIS”) early in the planning process.²¹ An EIS is a document that weighs the “social, economic[,] and environmental factors” of a municipality’s proposed decision or regulation, which includes considering alternative actions and mitigating factors.²² After completing an EIS, each agency involved in the planning process must issue a findings statement that provides a rationale for its decision in light of the EIS.²³

C. Municipal Regulation of Land Used for Religious and Educational Purposes

Land use regulation becomes more complicated when affected property belongs to religious or educational institutions — entities that, as noted previously, enjoy certain legal rights unavailable to ordinary landowners. As TRC is a religious educational institution, the terrain here is particularly rugged.

The New York Court of Appeals thoroughly surveyed this landscape in *Cornell University v. Bagnardi*.²⁴

21. *Id.* A municipality need not prepare a full EIS if it makes or receives a negative declaration. *See id.* §§ 617.7, 617.12. A negative declaration is “a written determination by a lead agency that the implementation of the action as proposed will not result in any significant adverse environmental impacts.” *Id.* § 617.2(z). Negative declarations often are used with respect to minor development.

22. *Id.* § 617.2(n).

23. *Id.* § 617.2(p).

24. 68 N.Y.2d 583, 503 N.E.2d 509, 510 N.Y.S.2d 861 (1986).

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Beginning with a history it deemed essential to understanding the respective positions of religious schools and municipal land use regulators, the court emphasized the “special treatment” that schools and churches often have enjoyed “with respect to residential zoning ordinances.”²⁵ This “favored status,” which has included “expan[sion] into neighborhoods where nonconforming uses would otherwise not have been allowed,” was unobjectionable in the nation’s early years.²⁶ But with growing populations and the advent of the automobile, citizens began viewing schools — particularly universities, which were the subject of the *Bagnardi* court’s discussion — as disturbances, rather than benefits to the neighborhood.²⁷ “With this change in attitude, courts were thrust into the role of protecting [religious and] educational institutions from community hostility.”²⁸

New York courts did this in several ways. On occasion, they struck down “[z]oning ordinances that imposed limitations on the construction of public schools” or that interfered with the First Amendment rights of religious schools.²⁹ On others, they “held that schools, public, parochial[,] and private, by their very nature, singularly serve the public’s welfare and morals.”³⁰ Accordingly, the

25. *Id.* at 592-93.

26. *Id.* at 593.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

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New York Court of Appeals has concluded that “the total exclusion of such institutions from a residential district serves no end that is reasonably related to the morals, health, welfare[,] and safety of the community.”³¹ “[T]otal exclusion is beyond the scope of the localities’ zoning authority.”³²

This did not mean that schools and religious institutions were exempt from zoning rules — a result that would have “render[ed] municipalities powerless in the face of a religious or educational institution’s proposed expansion, no matter how offensive, overpowering[,] or unsafe to a residential neighborhood.”³³ *Bagnardi* explained how local authorities should balance the competing interests at stake:

“The controlling consideration in reviewing the request of a school or church for permission to expand into a residential area must always be the over-all impact on the public’s welfare. Although the special treatment afforded schools and churches stems from their presumed beneficial effect on the community, there are many instances in which a particular educational or religious use may actually detract from the public’s health, safety, welfare[,] or morals.

31. *Id.* at 594 (citing *Diocese of Rochester v. Planning Bd. of Town of Brighton*, 1 N.Y.2d 508, 522, 136 N.E.2d 827, 154 N.Y.S.2d 849 (1956)).

32. *Id.*

33. *Id.*

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In those instances, the institution may be properly denied. There is simply no conclusive presumption that any religious or educational use automatically outweighs its ill effects. The presumed beneficial effect may be rebutted with evidence of a significant impact on traffic congestion, property values, municipal services[,] and the like.

“Thus, educational and religious uses which would unarguably be contrary to the public’s health, safety[,] or welfare need not be permitted at all. . . . Such uses, which are clearly not what the court had in mind when it stated that traffic and similar problems are outweighed by the benefits a church or school brings, are unquestionably within the municipality’s police power to exclude altogether. Even religious and educational institutions must accommodate to factors directly relevant to public health, safety[,] or welfare, inclusive of fire and similar emergency risks, and traffic conditions insofar as they involve public safety.

“Less extreme forms of expansion that are nonetheless obnoxious to the community’s residents, of course, require a more balanced approach than total exclusion. In *Matter of Westchester Reform Temple v. Brown*, the court recognized that considerations which may wholly justify the exclusion of commercial structures from residential areas may be

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considered for the purpose of minimizing, insofar as practicable, the impairment of surrounding areas or the danger of traffic hazards. A special permit may be required and reasonable conditions directly related to the public's health, safety[,] and welfare may be imposed to the same extent that they may be imposed on noneducational applicants. Thus, a zoning ordinance may properly provide that the granting of a special permit to churches or schools may be conditioned on the effect the use would have on traffic congestion, property values, municipal services, the general plan for development of the community, etc. The requirement of a special permit application, which entails disclosure of site plans, parking facilities, and other features of the institution's proposed use, is beneficial in that it affords zoning boards an opportunity to weigh the proposed use in relation to neighboring land uses and to cushion any adverse effects by the imposition of conditions designed to mitigate them. These conditions, if reasonably designed to counteract the deleterious effects on the public's welfare of a proposed religious or educational use should be upheld by the courts, provided they do not, by their cost, magnitude[,] or volume, operate indirectly to exclude such uses altogether."³⁴

34. *Id.* at 595-96 (citations, brackets, and quotation marks omitted).

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The foregoing, of course, was an explication principally of New York law, which is informed with respect to religious land use by constitutional principles applicable to religious institutions. But to be absolutely clear, the Supremacy Clause of the Constitution demands, as it always has done, that state law yield to the imperatives of more demanding federal law including the First and Fourteenth Amendments.

II. Facts**A. Pomona and Its Zoning Ordinance**

The Village of Pomona was incorporated in Rockland County, New York in 1967.³⁵ It is governed by a board of trustees, which consists of the mayor, deputy mayor, and three trustees.³⁶ At the times relevant here, the entire Village was designated as an R-40 residential zoning district.³⁷ Thus, the entire Village was zoned to permit only single-family residential development on lots of at least 40,000 square feet.³⁸

35. Joint Pretrial Order Stipulations of Fact ¶¶ 3, 8 [A-732-33].

36. *Id.* ¶ 7 [A-733].

37. Joint Pretrial Order Stipulations of Fact ¶ 5 [A-732].

38. Ulman Affidavit [DX 2000] ¶ 5.

*Appendix A***B. The Subject Property and Pomona's Zoning Ordinance****1. Camp Dora and Yeshiva Spring Valley**

The 100 acres at issue here are on the southwestern side of Pomona. For years it had been the site of a summer camp known as Camp Dora.³⁹ At some point prior to December 1999 — the record does not indicate when — an entity named Yeshiva Spring Valley (“YSV”) acquired the parcel.⁴⁰ Initially, YSV continued operating a summer camp on the site, but its goal was to build a yeshiva⁴¹ on the property.⁴²

a. December 1999 Informal Planning Board Meeting

On December 15, 1999, a representative of YSV, Rabbi Fromowitz, met with the Village planning board, the members of which then were Mel Cool, Alan Lamer, Alma

39. Joint Pretrial Order Stipulations of Fact ¶¶ 3, 17 [A-732-33].

40. Village of Pomona Planning Board Meeting Minutes, Dec. 15, 1999 at 34-35 [TE-585-86].

41. A yeshiva is a Jewish educational institution that educates students at the elementary, middle, and high school levels. Some, though not all, are Orthodox institutions. Orthodox Judaism is a branch of Judaism that teaches strict adherence to rabbinical interpretations of holy scripture.

42. Village of Pomona Planning Board Meeting Minutes, Dec. 15, 1999 at 35-36 [TE-586-87].

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Roman, Joy Shulman, and Nik Winter.⁴³ Also present was Mark Healey, a representative of Frederick P. Clark Associates, Inc. (“FPC”), then the Village’s planning consultant.⁴⁴

YSV did not present the planning board with any specific building plans or application. Rather, it made an informal presentation regarding the yeshiva it hoped to apply to build in the future.⁴⁵ Rabbi Fromowitz explained that YSV wished to build a primary school for children in kindergarten through the eighth grade and a preschool for younger children.⁴⁶ The primary school would be approximately 100,000 square feet⁴⁷ and would accommodate roughly 800 students.⁴⁸ The preschool building would be approximately 30,000 square feet⁴⁹ and include a large synagogue.⁵⁰

During the meeting, Roman asked if YSV planned to build dormitories at the schools. Rabbi Fromowitz

43. *Id.* at 1 [TE-583].

44. *See id.*; Tr. Ulman Trial Testimony, 753:4-10 [A-1281].

45. This mode of proceeding apparently is frequent in at least some areas in New York State.

46. Village of Pomona Planning Board Meeting Minutes, Dec. 15, 1999 at 33, 38 [TE-584, 589].

47. *Id.* at 38 [TE-589].

48. *Id.*

49. *Id.*

50. *Id.* at 40 [TE-591].

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answered that it did not. Roman repeated the question twice more, mentioning a rumor “floating around” that YSV did intend to build dormitories.⁵¹ Rabbi Fromowitz repeated that YSV had no such intention. He explained that the development would be a primary school and that “[p]rimary school children should be living at home.”⁵²

Planning board member Lamer asked the Rabbi if YSV had done traffic studies.⁵³ Rabbi Fromowitz replied that it had.⁵⁴ Roman then asked if there would be any other structures built on the property.⁵⁵ Rabbi Fromowitz replied that “we have no plans for further development. There’s nothing on the table that we are planning at this moment. If there would be a future plan we would come before the Planning Board once again for additional, you know, development. But I can’t tell you right now of any other development because there is nothing, that we’re planning at this point.”⁵⁶

Mark Healey, the FPC representative, then interjected the following:

“Mr. Chairman, if I could offer some comments to the Board. I took a look at the zoning for

51. *Id.* at 37 [TE-588].

52. *Id.*

53. *Id.* at 40 [TE-591].

54. *Id.*

55. *Id.* at 41 [TE-592].

56. *Id.*

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schools in the Village and they really stink, to put it straight. The[] only requirement is that they have to have five acres of land and the setbacks have to be twice what is ordinarily required.⁵⁷ So that leaves an open question of issues that several members of the Board brought up. What can happen in the future? It looks okay now, but look at the property, it's 100 acres and there's a lot of potential out there. So, I would recommend that perhaps the applicant going back and doing more detailed plans, and doing a traffic study and everything else for the Village to seriously consider looking at it[s] requirements for schools and address such issues as perhaps, more detailed or more tailored lot area requirements. It's common to have lot area based on the number of students. So you can have say 5 acres, and say you have to have another .1 acre per student. So you wouldn't restrict them from doing what they want to do but it would assure the Village that they're not going to go down the road and develop a lot more in the future. Especially considering the constrained nature of the site and also the constrained nature of the surrounding road ways, in terms of traffic.”⁵⁸

57. A “setback” is “[t]he minimum amount of space required between a lot line and a building line.” *Setback*, Bryan A. Garner, Black’s Law Dictionary (11th ed. 2019).

58. Village of Pomona Planning Board Meeting Minutes, Dec. 15, 1999 at 41 [TE-592].

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In response to Healey's comments, the board chairman, Mel Cook, asked whether YSV would have the ability to build an additional school in the future or if the Village could "limit that."⁵⁹ Healey replied that the Village could not prohibit building schools but could "put reasonable standards on their development and operations."⁶⁰ He added that he thought the Village should consider changes to the Village code for schools "from a planning perspective, in terms of property constraints, traffic and what would be appropriate" for the Camp Dora property and others in the Village.⁶¹

Following the meeting with Rabbi Fromowitz, FPC prepared several memoranda for Mayor Herbert Marshall and the Village board of trustees addressing the YSV proposal and recommending amendments to the Village zoning law.⁶² FPC noted in a January 24, 2000 memorandum that "it quickly became apparent" from a review of "the existing standards for schools in the Village's Zoning Law" that "the current standards for schools . . . are rather scant and would not adequately control the total/future development of a school property."⁶³ The memorandum continued:

59. *Id.* at 42 [TE-593].

60. *Id.*

61. *Id.*

62. Frederick P. Clark Associates, Inc., Memorandum re Proposed Primary School and Pre-School (YSV-Pomona) and the Village's Zoning Regulations Regarding Schools, Jan. 24, 2000 [TE-283-85].

63. *Id.* at 1 [TE-283].

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“For example, based on the 10 percent maximum permitted building coverage requirement the subject property[, *i.e.*, YSV property, formerly Camp Dora,] could theoretically be developed with over 800,000 square feet of floor space. While this amount of development is highly unlikely due to the development constraints presented by the steep slopes and wetlands on the property, it does point out the inadequacy of the current standards.”⁶⁴

FPC recommended, among other things, making schools subject to special permit approval by the board of trustees,⁶⁵ revising lot area requirements, implementing limits aimed at controlling development intensity, and changing the definition of “school” to include preschools.⁶⁶

64. *Id.*

65. A “special permit,” or “special-use permit,” “is permission to use property in a manner expressly permitted by a zoning ordinance although other zoning ordinances in effect would otherwise prohibit the use.” Salkin § 29:2. It is in effect an exception to the ordinance identified within the ordinance itself. It differs from a variance, which is an approved development that does not comply with an ordinance. *Id.*

66. Frederick P. Clark Associates, Inc., Memorandum re Proposed Primary School and Pre-School (YSV-Pomona) and the Village’s Zoning Regulations Regarding Schools, Jan. 24, 2000 at 1-2 [TE-283-84].

*Appendix A***b. December 2000 Board of Trustees Meeting**

Eleven months later, Pomona trustees Ian Banks and Nick Sanderson, Deputy Mayor Al Appel, and Mayor Herbert Marshall addressed these matters.⁶⁷ On December 18, 2000, they considered whether the definition of “school” in any new law should include both public and private schools, rather than private schools alone, in light of their understanding that state law already regulated public schools.⁶⁸ They discussed also the recommendation to change schools from “permitted uses” “to uses subject to special permit approval.”⁶⁹ The group indicated that adopting school-related changes to the Village code was a priority that it hoped to accomplish within two months. Mayor Marshall stated also that the draft changes then before them were “a starting point” that they “want[ed] to work on” because “[t]his thing’s going to come in. They’re going to come in and we’re going to be caught with our pants down if we don’t move. That’s why I want to make sure that we’re moving ahead.”⁷⁰ At the time of this meeting, and when the changes discussed were enacted

67. One reasonably might infer that there had been discussion involving FPC, the Village board, and perhaps the planning board about possible amendments to the zoning ordinance in light of FPC’s recommendations to the planning board. The record, however, is silent on this.

68. Village of Pomona Board of Trustees Meeting Minutes, Dec. 18, 2000 at 67-69 [TE-296-98].

69. *Id.* at 68 [TE-297].

70. *Id.* at 69 [TE-298].

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into law, there were no schools in the Village.⁷¹ The only prospective school use was the YSV plan.

c. Local Law No. 1 of 2001

On January 22, 2001, the board of trustees adopted Local Law No. 1 of 2001 (the “2001 Law”).⁷² It defined “educational institutions” as kindergartens, primary, and secondary schools that were operated and licensed under New York law.⁷³ It required also that schools obtain special permits from the board of trustees. In addition, it changed the minimum lot size from 10 gross acres to 10 net acres plus an additional .05 net acres per student.⁷⁴

71. Joint Pretrial Order Stipulations of Fact ¶ 11 [A-733].

72. *Id.* ¶ 10 [A-733]. At the time, the members of the board were Mayor Herbert Marshall, Deputy Mayor Al Appel, and trustees Nick Sanderson, Ian Banks, and Alma Roman. *See* Village of Pomona Board of Trustees Meeting Minutes, Oct. 22, 2001 at 1 [TE-273].

73. Local Law No. 1 of 2001, Jan. 22, 2001 [TE-1481-87].

74. *Id.* “Net lot area” refers to total acreage exclusive of certain types of land. The concept is a product of overlay zoning, a practice by which a municipality “overlays” its zoning map with a separate map designed to protect an environmental area. *See* Robert J. Blackwell, *Overlay Zoning, Performance Standards, and Environmental Protection After Nollan*, 16 B.C. Env'tl. Aff. L. Rev. 615, 615 (1989). As defined in Pomona’s 2001 law, net lot area is calculated as acreage less submerged land, most land within utility or drainage easements, and certain land with unexcavated slopes. Local Law No. 1 of 2001, Jan. 22, 2001 [TE-1481-87].

*Appendix A***d. June 2001 Planning Board Meeting**

In June 2001, YSV returned to the planning board with another informal presentation. This time, YSV described an additional proposed structure — an educational center for adults.⁷⁵ The Village attorney questioned whether the educational center would qualify as an “educational institution” under the new 2001 Law.⁷⁶ The planning board and the YSV representative discussed also issues related to wetlands, slopes, and road access.⁷⁷ The YSV representative stated that YSV would address these issues with the Village before submitting a formal application.⁷⁸

e. The YSV Subdivision

Under Pomona’s subdivision regulations, subdivision of a parcel into two or more lots requires the planning board’s approval before the applicant seeks approval for a specific development plan on a subdivided lot.⁷⁹ While its informal approach concerning its yeshiva project was underway, YSV made a separate presentation during an

75. Village of Pomona Planning Board Meeting Transcript, June 20, 2001 at 51-52 [TE-1609-10]. This aspect of the plan was subsequently removed. Village of Pomona Planning Board Meeting Transcript, Aug. 15, 2001 at 43 [TE-1350].

76. Village of Pomona Planning Board Meeting Transcript, June 20, 2001 at 52-53 [TE-1610-11].

77. *Id.* at 54-59 [TE-1612-17].

78. *Id.* at 57-58 [TE-1615-16].

79. Pomona Code § 118-2 [TE-714].

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August 2001 hearing concerning a proposed subdivision of the 100 acre property into 26 lots — 25 for single-family homes, and one large lot, not a topic of the August 2001 hearing, for the yeshiva.⁸⁰

A number of Pomona residents attended the planning board hearing and commented on the YSV proposal. Two expressed anxiety over the Village's ability to control the large lot. One asked whether that lot later could be annexed "to any of the other religious areas in the county" and thus prevent the Village from exercising regulatory control over the property.⁸¹ The other asked whether Pomona had laws stricter than those of the Town of Ramapo that would allow the Village to determine whether and how the Camp Dora property could be developed, or whether there were no such laws and that the school essentially was "a done deal."⁸²

2. TRC Buys the Property and the Village Adopts Local Law No. 5 of 2004

On August 31, 2004, YSV sold the property to TRC for approximately \$13 million.⁸³ The parties stipulated

80. Village of Pomona Planning Board Meeting Transcript, Aug. 15, 2001 at 29-30 [TE-1336-37].

81. *Id.* at 41 [TE-1348].

82. *Id.* at 46 [TE-1353].

83. DX 1057, Deed of Sale, Rockland County, Aug. 31, 2004 [TE-1618]. YSV had paid approximately \$1.65 million for the property, though there is no indication in the record of the year in which that occurred. Tr., Deposition of Nathan Fromowitz, 23:11-19 [A-449].

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below that the Village government did not become aware of this transaction until November 2004.⁸⁴ In the interim, however, the board of trustees considered another amendment to the zoning ordinance.

On September 7, 2004, Village Attorney Doris Ulman made the following recommendations to the board of trustees: (1) changing the definition of “educational institution” to allow dormitories as a permitted accessory use, (2) eliminating the requirement of a specific acreage per student, (3) removing restrictions related to the location of schools on certain roads, and (4) limiting dormitories to one such building per lot.⁸⁵ The first recommendation would have brought Pomona into compliance with state law — specifically, *Bagnardi* — requiring that municipal zoning codes allow dormitories as an educational use of property.⁸⁶

On September 27, 2004, the board adopted these recommendations by enactment of Local Law No. 5 of 2004 (the “2004 Law”).⁸⁷ Bound as we are by the parties’

84. Joint Pretrial Order Stipulations of Fact ¶ 15 [A-733].

85. Doris F. Ulman, Memorandum re Proposed Amendment to Zoning Law in Relation to Schools, Sept. 7, 2004 [TE-1513-14]. The board consisted of Mayor Herbert Marshall, Deputy Mayor Nick Sanderson, and trustees Ian Banks, Alan Lamer, and Alma Roman. Village of Pomona Board of Trustees Meeting Minutes, Sept. 7, 2004 at 1 [TE-361].

86. See *Bagnardi*, 68 N.Y.2d 583, 503 N.E.2d 509, 510 N.Y.S.2d 861.

87. Joint Pretrial Order Stipulations of Fact ¶ 24 [A-734];

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stipulation, we, like the court below, necessarily accept that it did so in ignorance of TRC's purchase of the property.

The 2004 Law liberalized certain provisions of Village law related to educational institutions — including provisions of the 2001 Law. It expanded the definition of “educational institution” to include college, graduate, and postgraduate schools in addition to kindergarten, primary, and secondary schools.⁸⁸ It recognized also accreditation of schools “by the New York State Education Department or [a] similar recognized accrediting agency.”⁸⁹ Additionally, the 2004 Law defined a “dormitory” as:

“A building that is operated by a school located on the same lot and which contains private or semi-private rooms which open to a common hallway, which rooms are sleeping quarters for administrative staff, faculty[,] or students. Communal dining, cooking, laundry, lounge[,] and recreation facilities may be provided. Dormitory rooms shall not contain separate cooking, dining[,] or housekeeping facilities except that one dwelling unit with complete housekeeping facilities may be provided for use of a Superintendent or supervisory staff for every fifty dormitory rooms. Not more than

Village of Pomona Board of Trustees Meeting Minutes, Sept. 27, 2004 [TE-374].

88. Local Law No. 5 of 2004, Sept. 27, 2004 [TE-1488-91].

89. *Id.* at 1 [TE-1488].

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one communal dining room shall be provided in any building used for dormitory purposes. Single family, two-family[,] and/or multi-family dwelling units other than as described above shall not be considered to be dormitories or part of dormitories.”⁹⁰

According to Ulman, who drafted the law, this definition was based on laws in Chestnut Ridge and Ramapo.⁹¹

Significantly, none of the changes effected by the 2004 Law would have had any effect on the plans of YSV which, as far as the Board of Trustees knew, still owned the property.

3. The Village’s Opposition to the Town of Ramapo’s Zoning Changes

Until now, we have focused on events relating to the old Camp Dora that culminated with TRC’s acquisition of the property and the Village’s amendments to its zoning law. But there were related events going on during part of the same time period that involved the Town of Ramapo’s zoning ordinance. As these events bore also on the district court’s findings, we turn to them now.

Between 2002 and 2004, the Town of Ramapo, which governs areas adjacent to Pomona, considered and passed a number of laws regulating or relevant to land use.

90. *Id.*

91. Affidavit of Doris F. Ulman [07-cv-6304, DI 296] ¶ 47 [TE-1892].

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In September 2002, Ramapo came out with a draft comprehensive plan for development. The draft plan proposed, among other things, to “down zone” a 200-acre property called the Patrick Farm Property from 2-acre residential zoning, or RR-80, to R-40 that would allow for “Planned Residential Development.”⁹² The Patrick Farm Property is located on the southwest corner of Routes 202 and 306 — across the road from the TRC property.

Rumors circulated that 1,500 to 2,000 units of multi-family housing would be built on the Patrick Farm Property. To calm the rumors, the town supervisor,⁹³ Christopher St. Lawrence, issued a statement to clarify that the draft plan would allow only 220 residential units to be built there.⁹⁴ But some of the neighboring villages, including Pomona, were not reassured and sought to create a new village where the Patrick Farm Property was located in order to remove it from Ramapo’s jurisdiction

92. Office of the Mayor, Letter, Dec. 12, 2002 at 1 [TE-235]. A “planned residential development” is a provision of a zoning ordinance that permits a municipality to exempt certain types of development — frequently large-scale projects — from specified zoning requirements. *See* Eli Goldston & James H. Scheuer, *Zoning of Planned Residential Developments*, 73 HARV. L. REV. 241, 252-53 (1959). In some instances, their use may permit higher density as well as building types that otherwise would not be permitted.

93. A town supervisor is an elected officer who functions as the town treasurer and presides over town board meetings. *See* N.Y. TOWN LAW §§ 20, 29, 63.

94. Office of the Mayor, Letter, Dec. 12, 2002 at 1 [TE-235].

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and thus prevent the proposed down zoning.⁹⁵ Mayor Marshall was a proponent of this idea and vocal opponent of the draft comprehensive plan.⁹⁶ He emphasized that “[z]ero population growth should be a major [objective of Ramapo’s comprehensive plan].”⁹⁷ Notwithstanding such opposition, the comprehensive plan was adopted on January 28, 2004.⁹⁸ The new village supported by Marshall did not come to pass.

In May 2004, the Village of Pomona and five other villages sued Ramapo to set aside its comprehensive plan.⁹⁹ Their petition stated that:

“Beginning in the 1990[s], the Town has attracted a burgeoning Hassidic community, which has for the most part settled around the central hub in Monsey and areas to the east of Monsey.

“This has caused development and political pressures in the Town to increase its housing stock and infrastructure.

95. *Id.* at 2 [TE-236]. The Town of Ramapo “has no direct jurisdiction over village zoning.” DX 1008, Town of Ramapo Draft Comprehensive Plan (R-2040), Dec. 22, 2003 at 2 [TE-1474].

96. *See* Office of the Mayor, Letter, Dec. 12, 2002 [TE-235-36].

97. Office of the Mayor, Ramapo Comprehensive Plan DGEIS, Apr. 29, 2003 Comments at 2 [TE-379].

98. *In re Application of Village of Airmont*, Verified Petition at 1, May 27, 2004 [TE-848].

99. *Id.*

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“The essence of the Comprehensive Plan and zoning proposals is to significantly increase the housing densities and infrastructure along the bordering areas of the Town to accommodate the existing and future population increases in this area.

“It is not a rational development plan, and certainly did not take into consideration the impacts such development would have on the infrastructure and character of the Town’s bordering Villages.”¹⁰⁰

The action sought to set aside the plan on the ground that it had been adopted in violation of SEQRA.

Shortly after the petition was filed, Ramapo adopted Local Law No. 9-2004, which “permits married adult student multi-family high density housing in most single-family residential zones throughout the unincorporated portion of the Town of Ramapo” if that housing is an accessory use to a postsecondary educational institution.¹⁰¹ Pomona and other villages again sued Ramapo on the grounds, among others, that the law violated SEQRA and the Establishment Clause of the First Amendment.¹⁰² And Mayor Marshall separately criticized the Ramapo town

100. *Id.* ¶¶ 31-34 [TE-853-54].

101. *Village of Chestnut Ridge v. Town of Ramapo*, Verified Petition and Complaint ¶ 7, Oct. 12, 2004 [TE-889].

102. *Id.* [TE-887-926].

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board for “pandering to the special interest groups able to deliver the critically important block vote [that] has become so essential to those seeking office in Ramapo.”¹⁰³

4. TRC’s Plans to Build a Rabbinical College

TRC was formed in August 2004 as a religious corporation.¹⁰⁴ Its stated purpose was, among other things, to “establish, maintain[,] and conduct a school for the [study] of the holy Torah and to maintain classes for the teachings of the customs, traditions[,] and mode of worship of the Jewish Orthodox faith.”¹⁰⁵ It intended to build and operate a rabbinical college in Rockland County to train a new generation of rabbinical judges¹⁰⁶ on the property it purchased from YSV in August 2004.¹⁰⁷

According to Tartikov, TRC would be organized as a Torah community,¹⁰⁸ a community designed to isolate

103. Newsletter of the Village of Pomona, *THE VILLAGE GREEN* (Jul. 2004) [TE-275].

104. TRC Certificate of Incorporation, Rockland County, New York, Aug. 5, 2004 (hereinafter “TRC Certificate of Incorporation”) [TE-1-2].

105. *Id.* at 1 [TE-2].

106. Trial Declaration of Michael Tauber [07-cv-6304, DI 283] ¶ 11 [TE-1668].

107. TRC Certificate of Incorporation at 3 [TE-4].

108. A Torah community, or Bais Din community, is one in which students training to become rabbinical judges live with their families and study with other students, free from distractions

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students from distractions and surround them only with others engaged in the same study.¹⁰⁹ Students would follow its planned program of study for approximately fifteen years before becoming rabbinical judges.¹¹⁰ They would study from 6 a.m. until 10 p.m.¹¹¹ and live on campus with their spouses and children.¹¹² On-campus housing would allow them to meet their religious obligations to their families.¹¹³ Due to the nature of its program, TRC could not be accredited by the New York State Education Department or the Association for Advanced Rabbinical and Talmudic Schools, the only accrediting agencies relevant to TRC's program of study.¹¹⁴

There is evidence that Pomona's board of trustees learned a bit about TRC's plans as early as November 2004, when it became aware that TRC had purchased the property. Most obviously, TRC's name, which includes the phrase "Rabbinical College," is not subtle about the purpose of TRC. Further, from November 2004 until

presented by the outside world. *See* Tr., Tauber Trial Testimony, 69:9-70:8 [A-894-95].

109. Trial Declaration of Michael Tauber [07-cv-6304, DI 283] ¶ 56 [TE-1672].

110. *Id.* ¶ 26 [TE-1669].

111. *Id.* ¶ 69 [TE-1673].

112. *Id.* ¶ 54 [TE-1672].

113. *Id.*

114. *Id.* ¶¶ 71-75 [TE-1673-74]; Joint Pretrial Order Stipulations of Fact ¶ 2 [A-732].

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January 2007, the Village approved TRC's tax-exempt status twice,¹¹⁵ and the board of trustees discussed or planned to discuss TRC in nonpublic meetings on ten separate occasions.¹¹⁶ There is evidence also that there were "unsubstantiated rumors"¹¹⁷ that TRC planned to build a rabbinical college on the property.¹¹⁸

These facts notwithstanding, there is no evidence that the board knew any details about the planned rabbinical college before January 2007. In particular, nothing in the record suggests that the board knew about the nature, length, or size of the contemplated rabbinical college program, its anticipated on campus housing, the number of people who would reside on the site, or the duration of the planned course of study.

5. Ulman Drafts the 2007 Laws

It was in this context that Ulman in late 2006 drafted what would become Local Law No. 1 of 2007 (the "2007

115. Joint Pretrial Order Stipulations of Fact ¶ 16 [A-733].

116. *Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*, 280 F. Supp. 3d 426, 441 (S.D.N.Y. 2017).

Executive sessions, which are nonpublic, may be held to discuss matters of litigation. *See* Village of Pomona Board of Trustees Meeting Minutes, Feb. 12, 2007 at 6 [TE-247]; Tr., Ulman Trial Testimony, 850:22-851:3 [A-1349-50].

117. Defendants' Amended Responses to Certain of Plaintiffs' Second Set of Interrogatories ¶ 20 Response [TE-693].

118. Tr., Sanderson Trial Testimony, 463:12-20 [A-1104].

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Dormitory Law”) and Local Law No. 5 of 2007 (the “2007 Wetlands Law”) — the third and fourth challenged laws.¹¹⁹

The draft 2007 Dormitory Law would have (1) changed the acreage requirement for educational institutions to a net of 10 acres without the prior requirement of .05 additional net acres per student, (2) removed certain slopes from the net lot area calculation, (3) prohibited dormitories from occupying more than 20 percent of the total square footage of all the buildings on a lot, and (4) set the maximum height of a dormitory at 25 feet.¹²⁰

Among other things, the draft 2007 Wetlands Law would have prohibited “[e]recting any building or structure of any kind,” including roads and driveways, within 100 feet of the boundary of any wetland without a permit issued by the board of trustees or planning board.¹²¹ A person could apply for a permit only if the prohibitions in the law resulted in the “deprivation of [all] the reasonable use of a property so as to constitute a de facto taking of such property.”¹²² The 100-foot buffer, however, would not apply to “lots that are improved with single family residences.”¹²³ The permit and permit-approval procedures prescribed

119. *See, e.g.*, December 11, 2006 Memorandum from Doris Ulman to Mayor and Board of Trustees 1 [TE-341] (sending the board a draft of the Wetlands Law).

120. Local Law No. 1 of 2007 [TE-1492-93].

121. Local Law No. 5 of 2007 at 3 [TE-1496].

122. *Id.* at 5 (emphasis omitted, alteration in original) [TE-1498].

123. *Id.* at 3 [TE-1496].

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by the 2007 Wetlands Law are different from the special permit requirement and permit process for educational uses under the 2001 Law.

6. December 18, 2006 Public Hearing re 2007 Laws

The board of trustees held a public hearing on what became the 2007 Dormitory Law on December 18, 2006. Paul Savad, the attorney for TRC, asked if the proposed law was being considered due to his client's intended use of its property and what the law would accomplish for the Village.¹²⁴ Marshall responded that the intent was to "refine the existing law."¹²⁵ To give interested parties more time to review the proposed law, the board continued the hearing to the next board meeting on January 22, 2007.¹²⁶ It set the extension hearing on the draft 2007 Wetlands Law for the same date.¹²⁷ Before concluding matters on December 18, however, the board held a closed executive session to discuss "matters of litigation."¹²⁸ There is no record of the board's discussion during that session, though the agenda for the meeting indicates that the board planned to discuss the TRC property.¹²⁹

124. Village of Pomona Board of Trustees Meeting Minutes, Dec. 18, 2006 at 4 [TE-261].

125. *Id.*

126. *Id.* at 4-5 [TE-261-62].

127. *Id.* at 9 [TE-266].

128. *Id.* at 12 [TE-269].

129. Village of Pomona Board of Trustees Meeting Agenda, Mayor's Edition, Dec. 18, 2006 [TE-318]. Prior to TRC and YSV, the

*Appendix A***7. Details of TRC’s Plans Emerge**

On January 9, 2007, a political action group called Preserve Ramapo published an article detailing plans for the TRC construction.¹³⁰ Michael Castellucio circulated the article to a Preserve Ramapo email list along with the following message:

“This is not our usual update letter. We have posted an important story that you will not find in other media including the Journal or Channel 12. Plans are under way to build a ‘religious college’ in Pomona at the end of Route 306 where it meets Route 202. On the 100 acres on the right side of the road a developer plans to put up an apartment complex of 4 to 6-story buildings that will house 4,500 adult students and their families. This campus will have 9 large apartment buildings and a single, much smaller 3-story building that is the sole school building. The formula used is the 90% apartments 10% school of [Town of Ramapo Supervisor Christopher] St. Lawrence’s Adult Student Housing Law. . . .

“Please forward this email, or send a link to the story to your neighbors and friends. Residents

property was owned by Camp Dora. Joint Pretrial Order Stipulations of Fact ¶ 17 [A-733]. Village meeting agenda refer to the property by that name on at least several occasions. *See, e.g.*, Board of Trustees Meeting Agenda, Tentative Working Edition, Oct. 16, 2006 [TE-226].

130. PX 65, Email and Attachment, Jan. 9, 2007 [TE-163-65].

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need to know that the Adult Student Housing complex on the old Nike site (Grandview Ave) was just the beginning of a massive urbanization effort whose path was cleared by Supervisor St. Lawrence and his Board.”¹³¹

The article itself stated that TRC planned to build housing for 1,000 students — together with their families totaling 4,500 residents.¹³² The plan involved parking for 34 vehicles at the school building and 1,036 vehicles at the residence buildings.¹³³ The article provided also the following background on the adult-student-housing law:

“in [the Town of] Ramapo[, the Religious Land Use and Institutionalized Persons Act (RLUIPA)] . . . was used by our town board as the legal justification for its new Adult Student Housing Law (ASH). Michael Klein, our town attorney, informed the town board that under RLUIPA it could not prevent religious institutions from creating ‘Adult Student Housing’ connected to schools providing ‘post-secondary education.’

“Rather than test the fairness and constitutionality of the RLUIPA law in court, Supervisor St. Lawrence and his Board created

131. *Id.* at 1 [TE-163].

132. *Id.* at 2 [TE-164].

133. *Id.*

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a number of ASH zones in Ramapo including the project on Grandview Ave. on the old Nike site and numerous others. . . .

“By doing so, St. Lawrence and the Board have opened the floodgates to urbanization with high-density, multi-story apartment complexes masquerading as school campuses.

“The only way out of this march over the cliff is for voters to clean house this fall in the Ramapo elections, just as they did last fall in the state and national elections.”¹³⁴

On January 12, 2007, *The Journal News*, a local newspaper, published an article entitled “Pomona to get rabbinical college plan.”¹³⁵ It included an overview of the scale of the project similar to the Preserve Ramapo article. In addition, it quoted Savad as saying that the project was not a “dormitory city” but a rabbinical college “for Orthodox Jews who desperately needed and are mandated by Jewish law to go to the Jewish courts.”¹³⁶

8. January 22, 2007 Public Hearing on the 2007 Dormitory Law

On January 22, 2007, the board continued the public hearing on the draft 2007 Dormitory Law. Villagers voiced

134. *Id.* at 2-3 [TE-164-65].

135. James Walsh, *Pomona to Get Rabbinical College Plan*, THE JOURNAL NEWS (Jan. 12, 2007) [TE-1129-30].

136. *Id.*

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their opposition to the size and scale of the rabbinical college as had been reported by Preserve Ramapo and *The Journal News* despite repeated statements from Marshall that the exclusive purpose of the hearing was to discuss changes to the law generally rather than to discuss any specific property or project.¹³⁷ Nevertheless, some villagers noted that an additional 4,500 people added to the Village's population of 3,200 residents would "entirely change the character" and "the politics of the [V]illage."¹³⁸ A volunteer firefighter noted that there was no equipment to "handle six story buildings."¹³⁹ One individual mentioned the pressure that the college would put on town infrastructure.¹⁴⁰ A number stressed that the rural character of the community was a feature of Pomona they wished to preserve.¹⁴¹ And another described the adult student housing in Ramapo on Grandview Avenue as a "monstrosity."¹⁴²

Some villagers voiced their opposition to the people who potentially would reside on the property. One said that "there is a group who wants to take over this village" and that he did not want to be

137. *See, e.g.*, Tr., Village of Pomona Public Hearings on Local Law Amendment: Dormitories (continued), Local Law Amendment: Wetlands, Jan. 22, 2007, 30:18-25, 54:16-55:11 [TE-409, 433-34].

138. *Id.* 10:3-11 [TE-389].

139. *Id.* 11:21-12:2 [TE-390-91].

140. *Id.* 14:24-15:12 [TE-393-94].

141. *See, e.g., id.* 17:8-22 [TE-396].

142. *Id.* 21:3-6 [TE-400].

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“responsible for paying the expenses of somebody else’s lifestyle, whether you cloak it in religion, you cloak it in anything you want to say, it just seems unfair that the burden should be placed on the people who have lived in the village by other people who want to come in and change the whole nature of the village.”¹⁴³

Another stated that “it’s really funny how we’re talking about law, when you have a group that breaks every law there is.”¹⁴⁴

Two potential changes to the draft 2007 Dormitory Law — permission to construct dormitories with two communal dining rooms and a height limit of 35 rather than 25 feet on dormitories — were discussed also. The change from 25 to 35 feet would have brought the height limit in line with the limit on all other buildings in the Village. One villager noted, however, that many single-family homes and other buildings in the Village had pitched, rather than flat roofs, as one would expect a dormitory to have.¹⁴⁵ Applying a different height limit to dormitories therefore would produce little or no inconsistency in the law.¹⁴⁶ Another suggested that the 35-foot limit should be measured from the existing rather than the proposed grade of a property.¹⁴⁷

143. *Id.* at 18:9-19:14 [TE-397-98].

144. *Id.* 47:2-5 [TE-426].

145. *Id.* 66:1-11 [TE-445].

146. *Id.*

147. *Id.* 68:14-69:10 [TE-447-48].

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At a certain point in the meeting, an individual stated that “it would be nice to hear [the board] saying, hey, I know how you all feel.”¹⁴⁸ He continued to state that “in America, we have the sense of community. That’s our face. We’re going to be another Kiryas Joel.”¹⁴⁹ That’s why we are emotional.”¹⁵⁰ The next three individuals to speak all commented on the emotion and frustration that villagers felt as a result of the reports detailing TRC’s plans. Specifically, one individual said:

“The frustration that we have is that you knew of the press that had come out, whether it be true or not. You knew that it was out there, and you know we were very, very upset. I think what would have helped us is if at the beginning of this meeting, you had said, this is what is going on, we know that you’ve read this, we are here to protect your interests, and the amendments to this law, this project, this alleged project, with the alleged attorney who is allegedly sitting here, produces it, that these amendments will

148. *Id.* 56:11-12 [TE-435].

149. Kiryas Joel is a village located within the Town of Monroe in Orange County, New York. It was incorporated in 1977 to serve as an enclave for followers of the Satmar Hasidic sect of Judaism and is populated almost exclusively by followers of that sect. *See, e.g.*, Fernanda Santos, *Reverberations of a Baby Boom*, N.Y. TIMES (Aug. 27, 2006), <https://www.nytimes.com/2006/08/27/nyregion/27orange.html>.

150. Tr., Village of Pomona Public Hearings on Local Law Amendment: Dormitories (continued), Local Law Amendment: Wetlands, Jan. 22, 2007, 56:18-20 [TE-435].

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defend us. If you had said that in the beginning, I don't think as many people would be as upset as they are, because we don't know where you stand."¹⁵¹

Mayor Marshall replied:

"We sitting at this table have limitations that are placed on us as to what we can say, and what we can't say, because our attorney tells us what we can say and what we can't say. I can't say what I feel — I can't — if I agree with you, I don't agree with you, I don't have that luxury of being able to say that here. All that I can say is that every member of this board works very, very hard to do what is best for this community. You have your issues. Don't assume because no one has gotten up and said, wow, I agree with you, oh boy; don't assume that because we didn't do that that we don't agree. We may or we may not, but please give us the benefit of the doubt. We have all been doing this — we work very hard at what we do. We try and do what is best for the community, but it's our home.

"There are limitations under the law that restrict what we can say and when we can say it."¹⁵²

151. *Id.* 58:4-18 [TE-437].

152. *Id.* 58:20-59:13 [TE-437-38].

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Following the public hearing, the board briefly discussed the proposed changes to the draft law. Trustee Lamer agreed with the point that dormitories were more likely to have flat roofs and a 25-foot limit expressed the view therefore would be appropriate.¹⁵³ Trustee Banks said he thought that the limit should be consistent with the limit on accessory uses, which was then 20 feet.¹⁵⁴ Deputy Mayor Sanderson concluded that the limit should be kept at 25 feet as in the draft law proposed on December 18, 2006.¹⁵⁵ He stated also that the board should keep the provision in the December 18 draft that provided for one, not two, dining rooms.¹⁵⁶ The board then adopted the 2007 Dormitory Law in the form originally prepared by Ulman in 2006.¹⁵⁷

9. January 22, 2007 Public Hearing on the Wetlands Law

Following a discussion of two items not subject to public hearing nor transcribed, the board held a public hearing on the proposed 2007 Wetlands Law on January 22.¹⁵⁸ Savad objected to the law generally and on grounds specific to the TRC property. He stated that the proposition

153. *Id.* 76:12-18 [TE-455].

154. *Id.* 76:23-77:6 [TE-455-56].

155. *Id.* 77:8-19 [TE-456].

156. *Id.*

157. *Id.* 78:18-80:20 [TE-457-59].

158. *Id.* 80:23-82:12 [TE-459-61].

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that the proposed wetlands law was designed to “fill a void created by federal law is incorrect and false . . . because the vast majority of wetlands are under the present, current jurisdiction of the Army Corps of Engineers and the [New York State Department of Environmental Conservation, or] DEC.”¹⁵⁹ Savad argued that the proposed law generally would be “arbitrary and capricious,” “subjective,”¹⁶⁰ “insidious,” and “not constitutional,” at least insofar as it would add an additional 10 acres of the property to the 37 acres already subject to DEC and federal wetlands jurisdiction, thus targeting and preventing certain uses.¹⁶¹

A villager who spoke immediately afterward argued that the draft 2007 Wetlands Law indeed was needed to fill gaps in federal and state wetlands regulations and provided an example of a developer who had damaged wetlands on a property adjacent to Pomona. The developer had gone unpunished and the damage unmitigated due to the limited jurisdiction, failings, and resource constraints of the federal and state authorities.¹⁶² Another villager expressed concern that his property would be affected negatively by the proposed law, which he believed was “made specifically for, let’s just say, certain types of institutions which I think is the reason for most of this.”¹⁶³

159. *Id.* 84:24-85:7 [TE-463-64].

160. *Id.* 85:20-23 [TE-464].

161. *Id.* 86:12-87:7 [TE-465-66].

162. *Id.* 87:16-88:14 [TE-466-67].

163. *Id.* at 93:1-3 [TE-472].

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He suggested that large parcels should be treated differently than single-family homes.¹⁶⁴

10. February 12, 2007 Workshop Meeting

The public hearing on the draft 2007 Wetlands Law was continued to February 26, 2007.¹⁶⁵ On February 12, 2007, however, the board held a workshop to discuss possible changes to the draft law. Each member of the board (with the possible exception of Roman) had known for at least six years that there were wetlands on the TRC property.¹⁶⁶

At the workshop, Ulman ran through a list of recommendations from the county.¹⁶⁷ Subsequently, the board discussed the issue of what would happen under the proposed law if a property owner wanted to extend an existing deck that was within the buffer zone. Ulman noted that the building inspector in that event would need to go to the property to determine if there were any wetlands that would trigger the permit procedure in

164. *Id.* 93:4-6 [TE-472].

165. *Id.* 97:1-8 [TE-476].

166. Village of Pomona Board of Trustees Meeting Minutes, Oct. 22, 2001 [TE-273-74].

167. Tr., Village of Pomona Planning Board Workshop Meeting, Feb. 12, 2007, 4:8-6:3 [TE-492-94]. New York's General Municipal Law mandates a county-level review for certain municipal land use actions, particularly those that may impact other municipalities or the county more generally. *See* N.Y. GENERAL MUNICIPAL LAW §§ 239-l, 239-m, and 239-n.

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the law. Sanderson explained to Ulman that the process would not work that way:

“[The building inspector] doesn’t have the time or the money, budget wise, to go out and look at the site for somebody that wants to rebuild their deck with three extra square feet in it. . . .

“He has to get a building permit to do it and the guy will look at the site plan or the existing — the existing file and he’ll say, have you got a proper — does the deck meet all of our codes? Yes. You got a building permit.”¹⁶⁸

Banks explained that the issue was a “problem of identifying and mapping the existing wetlands or small wetlands all over the village.”¹⁶⁹

Marshall noted that the law accomplished such mapping only for new developments.¹⁷⁰ After further back and forth, the board decided that it would address at the next public hearing the issue of whether to apply the law to “new additions and structures on existing developed property.”¹⁷¹

168. *Id.* 19:22-20:10 [TE-507-08].

169. *Id.* 20:19-22 [TE-508].

170. *Id.* 20:23-21:3 [TE-508-09].

171. *Id.* 21:7-22, 27:4-15 [TE-509, 515].

*Appendix A***11. Village Elections**

The public hearing scheduled for February 26, 2007 was adjourned until March 26, 2007.¹⁷² But on March 20, the Village held elections for the board of trustees. Nick Sanderson, Brett Yagel, and Rita Louie ran as a slate.¹⁷³ They campaigned on a promise to stand up to the threat posed by TRC's "huge development that will include housing for thousands of adult students and their families" that would "have real environmental and safety problems."¹⁷⁴ They promised to fight TRC's anticipated use of RLUIPA. They called RLUIPA "fundamentally unfair" and its deployment "a hammer against our village."¹⁷⁵ And they won: Sanderson became mayor, and Yagel and Louie each became a trustee.¹⁷⁶ At the time they took up consideration of the draft 2007 Wetlands Law, at least Sanderson¹⁷⁷ and Yagel¹⁷⁸ were aware of the presence of some wetlands on the TRC property.

172. Village of Pomona Board of Trustees Meeting Minutes, Feb. 26, 2007 at 3 [TE-1361].

173. PX 41, Sanderson, Louie, Yagel Campaign Flyer [TE-25]. Sanderson at the time was deputy mayor. *Id.* Louie and Yagel had no previous experience serving on the board of trustees. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*; Joint Pretrial Order Stipulations of Fact ¶ 22 [A-734].

177. Village of Pomona Board of Trustees Meeting Minutes, Oct. 22, 2001 [TE-273-74].

178. PX 69, Email, Jan. 11, 2007 at 1 [TE-168].

*Appendix A***12. The Village Adopts the 2007 Wetlands Law**

The Village adopted the 2007 Wetlands Law on April 23, 2007.¹⁷⁹ It exempted existing single-family homes.¹⁸⁰

III. Procedural History

TRC never applied for a permit to build a rabbinical college on its property. But Tartikov filed this action on July 10, 2007¹⁸¹ challenging the four Pomona laws described above. It argued that the laws, facially and as applied, violated (1) the First and Fourteenth Amendments and their New York constitutional counterparts, (2) the substantial burden, nondiscrimination, equal terms, and exclusions and limits provisions of RLUIPA, (3) the Fair Housing Act (“FHA”), and (4) New York statutory and common law.¹⁸²

Pomona moved to dismiss on the grounds that Tartikov lacked standing, its claims were not ripe, and it failed to state a claim for relief.¹⁸³ The district court granted the motion with respect to the as-applied challenges, concluding that they were not ripe because

179. Joint Pretrial Order Stipulations of Fact ¶ 26 [A-734].

180. Local Law No. 5 of 2007 at 3 [TE-1496]. The exemption had no practical effect on existing homes, but may or may not have had implications for additions or modifications.

181. Complaint [07-cv-6304, DI 1].

182. Second Amended Complaint [07-cv-6304, DI 27].

183. Def. Mem. Motion to Dismiss [07-cv-6304, DI 37].

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TRC had not presented formally its actual plans for the proposed rabbinical college nor made any application for a special use permit, use variance, zoning amendment, or zone change.¹⁸⁴ The court concluded also that Tartikov's claims under New York Civil Rights Law Section 40 were unripe.¹⁸⁵ It denied the motion in all other respects relevant here.¹⁸⁶

Tartikov moved, and Pomona cross-moved, for summary judgment. The district court granted summary judgment in favor of Pomona dismissing the free speech claims.¹⁸⁷ It otherwise denied the motions in all relevant respects.

After a ten-day bench trial, the district court ruled in favor of Tartikov on the majority of its claims.¹⁸⁸ Beginning with the Fourteenth Amendment claims, the court found that the Village enacted each of the four challenged laws with a discriminatory purpose against Tartikov based on its religious character and a desire to prevent the growth of a Hasidic community in Pomona.¹⁸⁹

184. *Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*, 915 F. Supp. 2d 574, 596-607 (S.D.N.Y. 2013).

185. *Id.* at 638.

186. *Id.*

187. *Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*, 138 F. Supp. 3d 352 (S.D.N.Y. 2015).

188. *Tartikov*, 280 F. Supp. 3d 426.

189. *Id.* at 449-50.

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Among other evidence, the court focused on the timing of the laws, the Village's litigation opposing the Town of Ramapo's comprehensive plan, the comments of villagers and board members during the 2007 hearings, and several statements from Village officials it regarded as indicating their prejudice against Tartikov.¹⁹⁰ The court found also that the zoning law amendments had a discriminatory effect because they prevented Tartikov from constructing the proposed rabbinical college.¹⁹¹ Thus determining that the laws were subject to strict scrutiny, the court held that the Village lacked a compelling state interest in enacting them and, in any case, the laws were not narrowly tailored to serve any such interests.¹⁹² Based on these findings, the court held also that the Village enacted the laws to discriminate against Tartikov's sincerely held religious beliefs and its associational rights.¹⁹³

Treating the RLUIPA nondiscrimination claims as overlapping with the equal protection claims, the court found for Tartikov on these claims, as well.¹⁹⁴ It found for Tartikov also on the claims under RLUIPA that the zoning law amendments substantially burdened Tartikov's religious exercise. The court held that Tartikov demonstrated that its desire to build college facilities

190. *Id.* at 449-53.

191. *Id.* at 455.

192. *Id.* at 455, 465.

193. *Id.* at 484-86.

194. *Id.* at 488.

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and multi-family housing was motivated by its religious character, and that the zoning law amendments would burden its planned construction substantially.¹⁹⁵ However, the court found for Pomona on the RLUIPA exclusions and limits and equal terms claims. For the former, it found that while the amendments would exclude Tartikov's proposed religious use of its land, they would not, as an exclusions and limits claim requires, totally exclude or unreasonably limit *all* religious assemblies, institutions, or structures within the Village.¹⁹⁶ As to the equal terms claims, the court found that the zoning law amendments did not, as they must for the claim to succeed, treat religious institutions differently than nonreligious institutions.¹⁹⁷

The court held further that Pomona violated the FHA's prohibition against discriminatory housing policies and New York's constitutional right to freedom of worship largely in the same respects that it violated the U.S. Constitution and RLUIPA.¹⁹⁸ The court found for Pomona, however, on the New York common law claims that the Village improperly had excluded multifamily housing.¹⁹⁹

The district court entered judgment and a mandatory injunction on March 1, 2018. Among other things, the

195. *Id.* at 468-82.

196. *Id.* at 486-88.

197. *Id.* at 488-91.

198. *Id.* at 491-93.

199. *Id.* at 493-94.

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court: (1) declared the four laws facially invalid under the First and Fourteenth Amendments, (2) enjoined Pomona from applying any of the provisions in those laws to the TRC property, (3) ordered Pomona to “process any and all applications” filed by Tartikov without reference to the provisions in the four laws and without “undue delay or religious discrimination,” (4) directed Pomona to consider any proposed Tartikov nonaccredited rabbinical college as a permitted use rather than one subject to any special permit requirement, and any proposed Tartikov rabbinical college with student-family-housing as a permitted use in the R-40 zoning district (one acre, single-family residential), and (5) prohibited Pomona from enacting in the future any provisions similar to those in the four challenged laws.²⁰⁰

Pomona appealed. Tartikov cross-appealed, asserting that the district court erred in dismissing the as-applied challenges and in ruling for Pomona on the RLUIPA equal terms and exclusions claims.

DISCUSSION**I. Standing**

A federal court’s authority to adjudicate depends on whether the plaintiff has standing to pursue its claims.²⁰¹

200. Judgment and Mandatory Injunction [07-cv-6304, DI 356].

201. *MacDonald v. Safir*, 206 F.3d 183, 188 (2d Cir. 2000); *see also Melito v. Experian Marketing Solutions, Inc.*, 923 F.3d 85, 92 (2d Cir. 2019) (“It is fundamental that we have an independent

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The Supreme Court has construed Article III to mean that a plaintiff must “have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.”²⁰² An injury in fact sufficient to confer standing is “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.”²⁰³ “[A] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought.”²⁰⁴ Where an action involves multiple plaintiffs, Article III is satisfied so long as at least one plaintiff — and not necessarily the same one — has standing with respect to each claim.²⁰⁵

Tartikov’s claims fall into two distinct groups, each of which asserts a different alleged injury.

Tartikov’s equal protection claims under the federal and New York constitutions and its nondiscrimination and equal terms claims under RLUIPA all are based on the

obligation to satisfy ourselves of the jurisdiction of this court and the court below.”) (quotation marks and citation omitted).

202. *Melito*, 923 F.3d at 92 (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016)).

203. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (quotation marks and citations omitted).

204. *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650, 198 L. Ed. 2d 64 (2017).

205. *Id.* at 1650-51. We therefore continue to treat TRC and its future students as a single entity for the purpose of our analysis.

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alleged invasion of Tartikov’s right to be free from state discrimination or unequal treatment under the law on the basis of religion. Its First Amendment free exercise, free speech, and free association claims under the federal and New York constitutions, RLUIPA substantial burden and exclusion and limits claims, FHA claims, and common law claims related to the *Berenson* doctrine²⁰⁶ all rest on alleged infringement of the free exercise of its religion by regulation of the use of its property. Whether Tartikov has standing to pursue each group of claims turns on whether the alleged injury is an injury in fact for Article III purposes.²⁰⁷

The first group of claims is that the Village adopted the four challenged laws at least in part for the purpose of discriminating against Tartikov on the basis of religion and that those laws stigmatized the plaintiffs. “[S]igmatizing members of [a] disfavored group as innately inferior and therefore as less worthy participants in the political community” — *i.e.*, discrimination — is an actual and concrete injury sufficient to confer standing.²⁰⁸

206. This doctrine requires that “a zoning ordinance . . . [1] provide a properly balanced and well-ordered plan for the community, and . . . [2] adequately consider regional needs and requirements.” *Cont’l Bldg. Co. v. Town of N. Salem*, 211 A.D.2d 88, 625 N.Y.S.2d 700, 703 (1995) (citing *Berenson v. Town of New Castle*, 38 N.Y.2d 102, 110, 341 N.E.2d 236, 378 N.Y.S.2d 672 (1975)).

207. Tartikov pled also claims under New York Civil Rights Law Sections 40-c(1) and (2). The district court dismissed these claims as unripe prior to trial. *See* Tartikov, 915 F. Supp. 2d at 607. We therefore do not consider them here.

208. *Heckler v. Mathews*, 465 U.S. 728, 739-40, 104 S. Ct. 1387, 79 L. Ed. 2d 646 (1984) (quotation marks omitted).

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The “right invoked is that of equal treatment,’ [and] the appropriate remedy is a mandate of *equal* treatment.”²⁰⁹ Tartikov thus has standing to pursue equal protection claims under the Fourteenth Amendment of the federal and New York constitutions as well as nondiscrimination and equal terms claims under RLUIPA.

But Tartikov’s second group of claims is different. It alleges that the four challenged laws prevent it from building and operating a rabbinical college on the property and thus interfere with its religious freedom. Tartikov, however, never submitted a formal proposal for the building project, applied for a permit, or engaged in any other conduct that would implicate or invoke the operation of the challenged zoning laws. Whatever harm may arise from the application of the zoning laws to TRC’s property is merely conjectural at this time. “[C]onjectural” injuries do not suffice under Article III.²¹⁰ We therefore lack jurisdiction over Tartikov’s free exercise, free speech, and free association claims under the federal and New York constitutions, RLUIPA substantial burden and exclusion and limits claims, FHA claims, and common law claims related to the *Berenson* doctrine. We vacate the judgment with respect to these claims and remand with instructions for the district court to dismiss them.

We now turn to the remaining claims.

209. *Id.* at 740 (emphasis in original) (quoting *Iowa-Des Moines Nat’l Bank v. Bennett*, 284 U.S. 239, 247, 52 S. Ct. 133, 76 L. Ed. 265 (1931)).

210. *Lujan*, 504 U.S. at 560.

*Appendix A***II. Equal Protection Claims²¹¹**

“This Court has generally recognized three types of equal protection violations: (1) a facially discriminatory law; (2) a facially neutral statute that was adopted with a discriminatory intent and applied with a discriminatory effect . . . ; and (3) a facially neutral law that is enforced in a discriminatory manner.”²¹² With respect to each of the challenged laws, Tartikov focused, and the district court based its holding, on the second theory.²¹³

Discriminatory purpose “implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.”²¹⁴

211. The equal protection guarantees under the New York Constitution are coextensive with those under the U.S. Constitution. *See, e.g., People v. Kern*, 75 N.Y.2d 638, 649, 554 N.E.2d 1235, 555 N.Y.S.2d 647 (1990). Consequently, the analysis that follows applies to Tartikov’s equal protection claims under the New York Constitution.

We need not address separately Tartikov’s RLUIPA nondiscrimination claim. RLUIPA’s nondiscrimination provision codifies the equal protection guarantees of the Fourteenth Amendment. *Chabad Lubavitch of Litchfield County, Inc. v. Litchfield Historic Dist. Comm’n*, 768 F.3d 183, 198 (2d Cir. 2014). Thus, our holdings with respect to the equal protection claims apply also to those claims.

212. *Chabad Lubavitch*, 768 F.3d at 199.

213. *Tartikov*, 280 F. Supp. 3d 426.

214. *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979); *see also, e.g., Hayden v. Paterson*, 594 F.3d 150, 162 (2d Cir. 2010) (same).

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“Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.”²¹⁵ This evidence may include “the series of events leading up to a land use decision, the context in which the decision was made, whether the decision or decisionmaking process departed from established norms, statements made by the decisionmaking body and community members, reports issued by the decisionmaking body, whether a discriminatory impact was foreseeable, and whether less discriminatory avenues were available.”²¹⁶

“In reviewing a district court’s decision in a bench trial, we review [its] findings of fact for clear error[,] . . . its conclusions of law *de novo*,” and mixed questions of law and fact *de novo*.²¹⁷ Of particular relevance here, “[w]e review a district court’s finding of discrimination after a bench trial for clear error.”²¹⁸ “[T]here is a strong presumption in favor of a trial court’s findings of fact if supported by substantial evidence,” and “[w]e will not upset a factual finding unless we are left with the definite

215. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977).

216. *Chabad Lubavitch*, 768 F.3d at 199.

217. *White v. White Rose Food, a Div. of DiGiorgio Corp.*, 237 F.3d 174, 178 (2d Cir. 2001).

218. *Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 606 (2d Cir. 2016).

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and firm conviction that a mistake has been committed.”²¹⁹ That said, “we have not hesitated to find clear error ‘where the court has failed to synthesize the evidence in a manner that accounts for conflicting evidence or the gaps in a party’s evidentiary presentation.’”²²⁰

We consider the challenged laws in turn.

A. Local Law No. 1 of 2001

The district court found that the 2001 Law was motivated at least in part by discriminatory animus based on: (1) the timing of the law in relation to YSV’s informal proposal to build a yeshiva on the property and the fact that there were no schools in the Village at that time, (2) a comment made by FPC in a memorandum (that specifically referenced YSV) stating that the zoning laws regarding schools were “scant” and FPC’s comment at a planning board meeting that those laws “really stink,” (3) a comment by Mayor Marshall during the same meeting that the Village would be “caught with [its] pants down,” and (4) the Village’s supposed reaction to earlier proposed projects — specifically, its opposition to the expansion of an Orthodox Hasidic yeshiva, Bais Yaakov, in Ramapo in 1996 and its support for an assisted-living facility.

219. *White*, 237 F.3d at 178 (quoting *Travellers Int’l, A.G. v. Trans World Airlines, Inc.*, 41 F.3d 1570, 1574 (2d Cir. 1994)); see also *Anderson v. City of Bessemer*, 470 U.S. 564, 573, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985) (same).

220. *Locurto v. Giuliani*, 447 F.3d 159, 181 (2d Cir. 2006) (quoting *Doe v. Menefee*, 391 F.3d 147, 164 (2d Cir. 2004)).

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Reviewing as we must for clear error, these facts — whether individually or taken together — are insufficient to support an inference that the 2001 Law was enacted to discriminate against YSV in particular or Hasidic Jews in general.

We agree with the district court that the timing of the 2001 Law was “in direct response to YSV’s desire to build an Orthodox yeshiva on the Subject Property.”²²¹ But the Village’s choice to act in response to YSV’s informal proposal says nothing of whether that choice was motivated by a positive, negative, or neutral reaction to YSV, its religious character, or its project.

YSV first approached the Village in 1999, through the informal presentation described above, about building a yeshiva on the property. During the meeting, its representative noted, in response to questions from Village representatives, that YSV had conducted a traffic study, did not plan to build any dormitories, and had no further development plans in mind. Mark Healey, the FPC representative present at the meeting, then made the following comment:

“I took a look at the zoning for schools in the Village and they really stink, to put it straight. The[] only requirement is that they have to have five acres of land and the setbacks have to be twice what is ordinarily required. So that leaves an open question of issues that several

221. *Tartikov*, 280 F. Supp. 3d at 449.

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members of the Board brought up. What can happen in the future?”²²²

He went on to recommend that the Village “seriously consider looking at it[s] requirements for schools and address such issues as perhaps, more detailed or more tailored lot area requirements.”²²³ He stated also that the Village could craft requirements that “*wouldn’t restrict [YSV] from doing what they want to do* but . . . would assure the Village that they’re not going to go down the road and develop a lot more in the future.”²²⁴

The district court relied on the two comments from Healey in finding discriminatory animus. But these comments demonstrate an *acceptance* of YSV and its proposal rather than any religious animus. The only negative implication, if there was any, concerned the possibility of more intensive development in the future, regardless of its nature or the identity of any future developer.

Of course, it theoretically is possible that Healey made these comments to cover up discriminatory intent and that the board so understood them. If that were so, the board’s receptiveness and responsiveness to Healey’s statements would render the 2001 Law a violation of the Fourteenth

222. Village of Pomona Planning Board Meeting Minutes, Dec. 15, 1999 [TE-592].

223. *Id.*

224. *Id.* (emphasis added).

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Amendment. Moreover, if discriminatory intent lurks within the background of a facially neutral decision, courts are obliged to smoke it out.²²⁵ But there is no evidence on this record that Healey harbored any relevant animus or intended the recommendations to serve as cover for discriminatory goals. Nor is there evidence that the board understood his comments to promote a forbidden end. Without evidence of discriminatory intent, we must look to the effects of the changes that FPC recommended to the Village to determine how, if at all, they would have affected a formal YSV proposal, which was the impetus for the board's actions in this time period.

In its January 24, 2000 memorandum addressed to the Village board of trustees, FPC recommended: (1) adding preschools to the list of authorized uses, (2) subjecting schools to special permit approval, and (3) revising minimum lot size requirements. The Village declined to adopt the first recommendation, as is evident from the definition of “school” and “educational institution” in the 2001 Law. It incorporated the second and third.

The record is devoid of evidence that could support an inference of discriminatory intent in the Village's decision not to move forward with the first recommendation. Nothing in record suggests the Village had an invidious purpose behind continuing to exclude preschools from the list of authorized uses.²²⁶ Nor would the recommendation

225. *Arlington Heights*, 429 U.S. at 267.

226. See Village of Pomona Board of Trustees Meeting Minutes, Dec. 18, 2000 [TE-290-98].

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have had a discriminatory effect given that its definition of “educational institution” applied to all schools equally. While YSV was the only school at the time that owned property and intended to build in Pomona, the 2001 Law would not have prevented YSV from applying for a special permit, nor would it have excluded YSV from the Village. In fact, YSV itself indicated that its proposed preschool was a smaller, subsidiary aspect of the project rather than its focus.²²⁷

The second and third recommendations require more analysis. To begin, neither recommendation facially evidences discriminatory intent. In *Bagnardi*, the New York Court of Appeals described the requirement of a special permit application as “beneficial in that it affords zoning boards an opportunity to weigh the proposed use in relation to neighboring land uses and to cushion any adverse effects by the imposition of conditions designed to mitigate them.”²²⁸ An apt example is a minimum lot size requirement, which can control “the effect the use would have on . . . the general plan for development of the community.”²²⁹ The two amendments under discussion thus were addressed to legitimate planning concerns. And that is exactly what the evidence suggests the Village sought to do here. Indeed, the FPC memorandum noted at the outset that “the current standards for schools [in the Village

227. Village of Pomona Planning Board Meeting Minutes, Dec. 15, 1999 at 33, 38 [TE-584, 589].

228. *Bagnardi*, 68 N.Y.2d at 596.

229. *Id.*

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code] are rather scant and would not adequately control the total/future development of a school property.”²³⁰

We must address also the statement Mayor Marshall made during the December 18, 2000 board meeting. During that meeting, the Village attorney noted that the draft 2001 Law under discussion was just that — a draft. Mayor Marshall responded:

“Well, it’s a starting point, we want to work on it. This thing’s going to come in. They’re going to come in and we’re going to be caught with our pants down if we don’t move. That’s why I want to make sure that we’re moving ahead. If you miss a meeting, no problem, you’re going to be involved in the discussion any way, so. Okay, next item”²³¹

From this statement and, in particular, the reference to the Village being caught with its pants down, the district court attributed animus at least to Marshall. But as so often is the case, context is everything. The starting point is Healey’s recommendations and the reasons for them. He pointed out — and no one disputes — that the Village had virtually no land use standards of any kind

230. Frederick P. Clark Associates, Inc., Memorandum re Proposed Primary School and Pre-School (YSV-Pomona) and the Village’s Zoning Regulations Regarding Schools, Jan. 24, 2000 [TE-283].

231. *Id.* at 69 [TE-298].

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applicable to schools.²³² It had merely a minimum lot size of 5 acres and required setbacks of only twice those required for a single family house. But it was confronted with a likelihood of near term development of a small part of a 100 acre parcel perhaps followed in the future by efforts to develop the remainder of the property in possibly more intensive ways. So the planning consultant recommended preparing more detailed plans, doing a traffic study, and “seriously . . . looking at . . . requirements for schools and address[ing] such issues as perhaps, more detailed or more tailored lot area requirements.”²³³ He followed up with recommendations that “wouldn’t restrict them [i.e., YSV] from doing what they want to do” but would take appropriate account of possible later development especially in light of “the constrained nature of the site and also the constrained nature of the surrounding road ways, in terms of traffic.”²³⁴

Against that background, Marshall’s comment that “[t]his thing’s [YSV’s proposal] is going to come in. They’re going to come in and we’re going to be caught with our pants down if we don’t move” is not reasonably construed as betraying religious animus. In light of the fact that the recommended legislation before the board at that point, as Healey had pointed out, “wouldn’t restrict” YSV “from doing what they want to do,” it reflected agreement that action was appropriate to protect against being “caught

232. Village of Pomona Planning Board Meeting Minutes, Dec. 15, 1999 at 41 [TE-592].

233. *Id.*

234. *Id.*

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with our pants down” as respects future development of the portion of the 100 acres that would not be developed under the informal YSV proposal. It did not manifest religious animus toward YSV in particular or Hasidic or others of the Jewish faith.

The district court relied also on the Village’s prior opposition to the expansion of the Bais Yaakov yeshiva in 1996. But this evidence does not support its finding either.

According to the minutes of a May 20, 1996 board of trustees meeting discussing the yeshiva expansion:

“Mayor Klingher[] wrote the Town stating that too much of the property was being utilized, the building was 50’ instead of 35’. The approved Negative Declaration was rescinded. They plan to cover 55% of the land instead of 25%. Parking requested was for fifty (50) spaces, 150 are needed. The Plan needs to be revised and changed again.”²³⁵

Later in the meeting, a member of the public “asked what she can do” about the Bais Yaakov expansion plan.²³⁶ The mayor at the time responded “to get as many people as she can to come out to the meetings. Also, they should retain an [a]ttorney to represent them as a group.”²³⁷

235. Village of Pomona Board of Trustees Meeting Minutes, May 20, 1996 at 7 [TE-348].

236. *Id.* at 8 [TE-349].

237. *Id.*

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This evidence does not support a finding of discriminatory animus. Unlike TRC, the Bais Yaakov yeshiva already existed. Nothing in the record suggests that the Village opposed its initial construction. As to the expansion proposal, the evidence of record, according full appropriate deference to the district court's fact finding, does not support a conclusion that the Village was against expanding the yeshiva, either entirely or in part, on religious grounds. The evidence suggests only that the building was larger than the Village thought it should have been,²³⁸ that the proposed land coverage would have been excessive, and that the proposed parking was insufficient. These all are permissible factors for municipal regulators to consider. Likewise, the townsperson's comment coupled with the mayor's response is too vague to permit an inference of animus.

The district court premised its animus holding also on the Village's lack of opposition in 1999 to an assisted-living facility to be built on the "Anna Mann" Property. However, the record contains no evidence as to the size, resident population, or scope of the proposed facility. Without such evidence, there is no basis for comparing the yeshiva proposal with the assisted living facility.²³⁹

238. It is unclear exactly what the reference to 50 feet rather than 35 feet actually meant. One possibility is that at some previous step in the process, Bais Yaakov had sought or obtained approval for a 35-foot building but that the yeshiva had switched to 50 feet. Of course, it is subject to a different interpretation as well — namely, that the building was simply too large of an expansion. As the latter is the view most favorable to plaintiffs, we accept it as fact for purposes of analysis. But it is insufficient evidence of prohibited animus.

239. On cross-examination, Ulman testified that the yeshiva would have included "housing and a huge amount of development."

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Having concluded that the evidence does not permit a finding of discriminatory intent in the adoption of Local No. 1 of 2001, we must ask whether the zoning law changes brought about by the 2001 Law have discriminatory effect. The record does not support such a conclusion. The special permit requirement and related conditions apply with equal force to any educational institution, religious or secular, that might seek to build in Pomona. The fact that YSV was the only school that hoped to build when the 2001 Law was passed does not render the recommendations discriminatory because nothing in the record contradicts the appropriateness of special permit and minimum lot size requirements to protect against “traffic congestion,” overburdening “municipal services,” or damaging the “general plan for development of the community.”²⁴⁰ Nor is there any evidence that the recommendations, if adopted, would have prevented YSV from applying for a special permit, caused the denial of such an application for any reason other than unwillingness to comply with appropriate and reasonable conditions, or otherwise thwart or exclude YSV from the Village.

We give great deference to the district court’s findings of fact. And we are mindful that municipalities of Rockland County have faced significant development pressure from

Tr., Ulman Trial Testimony, 809:25-810:3 [A-1320-21]. This statement is in apparent contradiction to Rabbi Fromowitz’s assertions that the yeshiva would not include dormitories. Village of Pomona Planning Board Meeting Minutes, Dec. 15, 1999 at 37 [TE-588]. Whatever the case may be, these scant details provide no basis for comparing the projects.

240. *Bagnardi*, 68 N.Y.2d at 596.

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Hasidic people in recent years. It is easy to see how bias could play a role in influencing a municipality's decision whether to allow a religious institution to undertake a large construction project. But we must be cognizant also that municipalities may resist development pressures for legitimate reasons unrelated to discriminatory animus. Without direct evidence of intent, as is the case here, divining a legislature's motive is a difficult task — and one made more difficult by the fact that bias may be implicit and decisions are supported often by multiple rationales.

B. Local Law No. 5 of 2004

The district court relied on the following facts in finding that the 2004 Law was motivated by discriminatory animus: (1) the board of trustees passed a resolution in January 2004 opposing any public officials who “abdicate their responsibility of office by placing the politics of special interest groups and individual developers ahead of the best interest of the people,” (2) the Village joined others in a lawsuit against the Town of Ramapo in May 2004, which sought to strike down Ramapo's new comprehensive plan for failing to comply with SEQRA, (3) following Ramapo's adoption of an adult-student-housing law in June 2004, the Village joined others in a separate action against Ramapo to strike down that new law, (4) in opposing the Ramapo law, Mayor Marshall stated that Ramapo officials were “pandering to the special interest groups able to deliver the critically important block vote,” (5) YSV's tax exempt status was denied for the first time in 2004, and (6) the Village did not oppose an earlier Barr Laboratories project to construct an office building.

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As detailed above, the 2004 Law, which was based on Ulman’s recommendations, in fact liberalized several features of the then existing zoning law.²⁴¹ It allowed dormitories, which had not been permitted under the 2001 Law. It loosened accreditation requirements and added college, graduate, and postgraduate schools to the definition of “educational institution[s]” — a change that could have been made as an accommodation or response to YSV’s request in June 2001 to build an adult-education center on the property. And it eased some restrictions related to acreage and road access. The 2004 Law added no new restrictions and did nothing to tighten existing restrictions or requirements.

In other words, the 2004 Law would not have prevented YSV from developing the Subject Property.

Nothing in the content or effect of the 2004 Law permits the inference that it was motivated by animus. The district court found discriminatory animus in the events leading up to the passage of the 2004 Law to support the inference that it was motivated by bias against the Hasidim. It found that the 2004 Law was intended to shore up the 2001 Law — possibly in danger of invalidation under *Bagnardi* due to its exclusion of dormitories — in order to “prevent the spread of [the Hasidim] into the Village.”²⁴²

241. Local Law No. 5 of 2004, Sept. 27, 2004 [TE-1488-91].

242. *Tartikov*, 280 F. Supp. 3d at 450.

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As detailed above, in January 2004, the Town of Ramapo — which contains part of the Village of Pomona — adopted a new comprehensive plan. The Ramapo plan proposed a zoning change that would permit certain residential development on the Patrick Farm Property, which is located across the street from the YSV property. These changes had been under consideration since September 2002. In the interim, rumors had circulated that the Patrick Farm property would be developed with hundreds if not thousands of units. Pomona and several other villages petitioned a court to set aside the comprehensive plan as unlawful under SEQRA. The villages’ arguments were based generally on the idea that the plan failed adequately to consider the environmental and other impacts of the vastly increased density of development projects it would authorize. The petition mentioned the Hasidim only as an explanation of a source of the development pressure: “[b]eginning in the 1990[s], the Town has attracted a burgeoning Hassidic community . . . [that] has caused development and political pressures in the Town to increase its housing stock and infrastructure.”²⁴³

In June of the same year, Ramapo enacted Local Law No. 9-2004, which, subject to issuance of a special permit, authorized adult-married-student housing at postsecondary educational institutions. In October, before becoming aware that TRC purchased the Subject Property, Pomona, three other villages, and a number

243. *In re Application of Village of Airmont*, Verified Petition ¶¶ 31-32, May 27, 2004 [TE-853].

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of individuals sued Ramapo and others to invalidate the law as a violation of SEQRA and municipal law.²⁴⁴ They argued also that the law violated the Establishment Clauses of the federal and New York constitutions based on certain events prior to the enactment of the law.²⁴⁵ Specifically, Ramapo received a comment from Yeshiva Chofetz Chaim of Radin that asked it to provide adult-student housing for married students and their families while the married students continued their postsecondary education. This allegedly was the only comment on this topic.²⁴⁶ Ramapo eventually asserted that it would comply with the request.²⁴⁷ In addition, Ramapo provided in the final legislation a carve-out from a 500-foot buffer requirement for adult-student-housing developments, a carve-out that was uniquely applicable to one parcel in the Town of Ramapo — a parcel owned by Yeshiva Chofetz Chaim.²⁴⁸ Consequently, in making their Establishment Clause claims, Pomona and its co-plaintiffs stated that the adult-student-housing law was passed “to secure for one religious community [the Orthodox Jewish community] a unique and significant zoning benefit.”²⁴⁹

244. *Village of Chestnut Ridge v. Town of Ramapo*, Verified Petition and Complaint, Oct. 12, 2004 [TE-887-926].

245. *Id.* at 36 [TE-922].

246. *Id.* ¶ 57 [TE-897].

247. *Id.* ¶ 60 [TE-898].

248. *Id.* ¶¶ 114-16 [TE-907-08]; Affidavit of Jay B. Rosenstein ¶ 39 [TE-953-54].

249. *Village of Chestnut Ridge v. Town of Ramapo*, Verified Petition and Complaint ¶ 215, Oct. 12, 2004 [TE-922].

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We note at the outset that, in order to state an Establishment Clause claim, the Village and its co-plaintiffs had no choice but to reference the religion of the group that stood to benefit from the challenged law. This and other references to the Hasidim thus contain no suggestion of animus on their face.

The issue then is whether the district court clearly erred by inferring religious-based animus toward the Hasidim from the Village's opposition to the proposed Ramapo law that would have benefitted members of the Hasidic community. Such opposition is related to legitimate land use concerns, free of any religion-based hostility. Specifically, Tartikov was obliged to show that Pomona's opposition to the Ramapo legislation rested in significant part on religious animus rather than permissible development concerns. The mere facts that (1) the development was proposed by a Hasidic group and (2) Pomona opposed the development are insufficient to support an inference of discriminatory intent.

The same is true for the district court's finding with respect to the January 2004 board resolution. The resolution expressed opposition toward politicians who favored certain groups or developers. That those groups or developers might have shared a common religious orientation does not, by itself, suggest that religious animus was a "significant factor" in Pomona's position. It was clearly erroneous for the district court to conclude otherwise.

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Mayor Marshall's comment is subject to similar reasoning. The district court clearly erred in relying on the "block vote" in finding animus because this single instance of rhetoric made by one member of the board, completely divorced from any discussion or proceeding related to the challenged 2004 Law, is insufficient to support a finding that animus was a significant factor that motivated the board's decision to pass the 2004 Law. We again find insufficient evidence to support the district court's contrary conclusion.

That YSV was denied tax exempt status for the first time in 2004 is similarly unconvincing. There is no indication that YSV lost its tax exempt status because the Village harbored any *religion-based* animus. Furthermore, after TRC purchased the Subject Property, the Village approved its tax exemption applications in 2005 and 2006. The district court's finding of discriminatory animus on this fact was therefore clearly erroneous.

We turn finally to the evidence that Barr Laboratories, in proposing a purportedly similar building project, received more favorable treatment than YSV. In the years prior to the enactment of the 2004 law, Barr became interested in buying a parcel in Pomona on which to build an office building and parking lot. The record does not reveal the size of either. The Village board discussed the matter in May 2002. The minutes show that none of the trustees was "opposed . . . in concept" to the proposal except Sanderson.²⁵⁰ But, as with the Anna Mann

250. Village of Pomona Board of Trustees Meeting Minutes, May 6, 2002 at 3 [TE-329].

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property, the record lacks sufficient information about Barr's proposal for us to compare it to YSV's proposed yeshiva. Thus, the district court had no record basis for inferring disparate treatment based on religion.

* * *

This Court is entirely mindful of the broader context of this case.

On the one hand, we know that residents of suburban, exurban, and urban communities often resist development pressure for a long list of considerations. Some do not want change, population increases, more traffic, new buildings, elimination of open green space, tall buildings blocking light, and a host of other alterations of the patterns and circumstances of their lives. And citizens have a perfect right to those views, to express them before boards and legislatures, and to seek through the democratic and judicial processes results that accord with their preferences as long as they do so honestly and without using the mechanisms of government for the purpose of disadvantaging others for religious reasons.

The courts' task is to view the evidence and come to a conclusion whether religious bias played a significant role in the adoption of these laws.

The district court, which tried the case, has the predominant role in that process. We have no doubt that it reached its conclusions after a careful and conscientious review of the record. Insofar as the 2001 and 2004 Local

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Laws are concerned, however, we have come to the “definite and firm conviction that a mistake has been committed.”²⁵¹ The record in this case reflects a simple story. YSV explored with Pomona its plan to build a school on the Camp Dora property. There was virtually no opposition to YSV’s plan. But its emergence, coupled with the advice of the Village’s planning consultant, led to the realization that the Village’s zoning laws did not adequately address permissible development for educational purposes. Thus, the Village, after due consideration and before it knew that TRC had purchased the Subject Property, passed the 2001 and 2004 local laws to address that need. Those measures would not have impeded YSV’s planned project. They looked to the future, to other as yet unknown educational developments, whether on the unused portion of YSV’s property or elsewhere in the Village.

There simply is not enough evidence to permit a finding by a preponderance of the evidence that the Village acted with discriminatory intent in adopting the 2001 and 2004 local laws. Instead, the evidence suggests that legitimate land use concerns precipitated the passage of these laws. We therefore find that the district court clearly erred with respect to the 2001 Law and the 2004 Law. As will appear, we reach a different conclusion with respect to the other laws at issue here.²⁵²

251. *Anderson*, 470 U.S. at 573.

252. Our conclusion that the district court erroneously found discriminatory intent suffices for reversal. *See Arlington Heights*, 429 U.S. at 265 (“Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.”). We

*Appendix A***C. Local Laws Nos. 1 and 5 of 2007**

By 2007, the situation had changed drastically. There was public outcry over the TRC proposal following news reports in January 2007 noting that the rabbinical college would serve 1,000 students and the construction would include multiple apartment buildings up to six stories high to house 4,500 residents. After board elections in March 2007, Sanderson rose from deputy mayor to mayor and Louie and Yagel, who had not previously served on the board, became trustees. All three ran on a platform opposing the TRC project.

It is on this record, with these and still other significant facts not present in 2001 and 2004, that the district court held that the board of trustees enacted the 2007 Dormitory and Wetlands Laws with discriminatory purpose.

1. Discriminatory Purpose

The district court held that the 2007 Dormitory and Wetlands Laws were motivated by discriminatory animus based on the following evidence: (1) villager comments made at a January 22, 2007 public hearing on the draft 2007 Dormitory Law, (2) the absence of studies indicating the necessity or utility of the 2007 Wetlands Law combined with the Village's knowledge that there were wetlands on the property and the timing of the law's adoption, (3) the

therefore need not, and do not, address the court's finding that the law had a discriminatory effect on Tartikov.

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exception for single-family homes in the 2007 Wetlands Law, (4) the campaign promise of Sanderson and Yagel and Louie to stop the threat of the TRC development, (5) statements made by Sanderson, Louie, and Yagel “indicative of [Pomona’s] prejudice against Tartikov and Orthodox/Hasidic Jews,”²⁵³ (6) statements made by members of the community “express[ing] animus against Orthodox/Hasidic Jews,”²⁵⁴ (7) the board’s rejection of proposals to increase the maximum height of dormitories and number of dining facilities allowed in the 2007 Dormitory Law, and (8) the Village’s “behavior with respect to other proposed projects.”²⁵⁵

As these facts make plain, the 2007 Dormitory and Wetlands Laws were enacted in a significantly different context than were the 2001 and 2004 Laws. These differences are highly significant.

We begin with the laws themselves. The 2007 Dormitory Law and the 2007 Wetlands Law differ from the 2004 Law in that both 2007 Laws tightened, rather than loosened, restrictions on building schools in the Village. For example, it prohibited dormitories from occupying more than 20 percent of the total square footage of all buildings on a lot. And it set a maximum height of 25 feet for any dormitory building. The Wetlands Law prohibited building any structure within 100 feet

253. *Tartikov*, 280 F. Supp. 3d at 452.

254. *Id.* at 453.

255. *Id.* at 454.

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of the boundary of any wetland without a permit. And it restricted the persons who could apply for a permit to those who were deprived of *all* reasonable use of their property, a sharp restriction of the trustees' previous special permit authority.

It is clear also that the board knew what TRC intended to do with the property when it enacted the 2007 laws. True, there is scant evidence that the public or the board knew any significant details about TRC's plans or what its rabbinical college might look like when the draft versions of the Dormitory and Wetlands Laws were discussed at a public hearing on December 18, 2006. But that ignorance dissolved on January 9, 2007 when Preserve Ramapo published an article describing TRC's plans for a rabbinical college that included housing for 4,500 adult students and their families in buildings up to six stories high.

This context is crucial to understanding the board members' thinking when they enacted the laws. Having learned about the TRC project, many villagers attended the extension of the December 18 hearing that took place on January 22, 2007. The purpose of this hearing, as Mayor Marshall repeatedly reminded attendees, was to discuss the two proposed amendments to the Village zoning law, and not whether the Village should or should not allow TRC to build the rabbinical college that had not yet been proposed.²⁵⁶ But villager after villager spoke out against

256. *See, e.g.*, Tr., Village of Pomona Public Hearings on Local Law Amendment: Dormitories (continued), Local Law Amendment: Wetlands, Jan. 22, 2007, 13:10-14:2 [TE-392].

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the TRC project, and the hearing was characterized by “outbursts,” “shouts,” and frequent interruptions.²⁵⁷ One villager complained that “there is no denying . . . what is going on here tonight is that there is a group who wants to take over this [V]illage,” and that the rabbinical college would “totally change[] the entire concept of the [V]illage,” forcing current villagers to “pay[] the expenses of somebody else’s lifestyle.”²⁵⁸ Another found it “really funny how we’re talking about law, when you have a group [the Hasidic community] that breaks every law there is.”²⁵⁹ Another proclaimed that “[t]his is a disgrace. It is an absolute[] disgrace. You are in the wrong town, and the wrong [V]illage. . . . If you allow this school to be brought to this [V]illage, you’re going to destroy everything that everybody here worked for all their life and I will never, ever, let that happen.”²⁶⁰ And yet another explained that “in America, we have the sense of community. That’s our face. We’re going to be another Kiryas Joel. That’s why we are emotional.”²⁶¹

The villagers are not the only individuals who understood the connection between TRC and the 2007 Dormitory and Wetlands Laws. The evidence demonstrates that one board member hinted strongly

257. *See, e.g., id.* 20:12-20 [TE-399]; *id.* 21:9-22 [TE-400].

258. *Id.* 18:4-19:14 [TE-397-98].

259. *Id.* 47:2-5 [TE-426].

260. *Id.* 14:10-15:13 [TE-393-94].

261. *Id.* 56:18-20 [TE-435].

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to frustrated villagers that the laws under consideration would prevent the TRC project or at least burden it significantly. One villager asked Ulman bluntly whether she “feel[s] the new law would make it more difficult for a project like this [*i.e.*, TRC] anywhere in the area to go through, or [whether she] feel[s] it would be less difficult for the project to go through with the new laws.”²⁶² The villager then asserted: “I think what everybody is trying to say is we would like to make it tougher for these project[s] to go on, rather than easier so if you can tell us how we can vote for that.”²⁶³ Ulman deflected the question, but Trustee Lamer interjected: “You may have heard at the very beginning [of the hearing] that Mr. Savad [TRC’s counsel] was complaining that these amendments unfairly restrict some theoretical project that doesn’t exist, as far as the [V]illage is concerned.”²⁶⁴ Lamer then reasserted: “Mr. Savad may believe that these amendments unfairly restrict some theoretical project” before explaining that the proposed amendments were “necessary to promote the public health, safety, and welfare of the [V]illage . . . [a]nd that’s the reason why this proposal is before us today.”²⁶⁵ It is reasonable to conclude that Trustee Lamer’s reminder that TRC opposed the amendments permitted an inference, supported by the other evidence we have cited, that the board was using facially neutral laws to discriminate against the one entity it knew was hoping to build a school in Pomona

262. *Id.* 35:10-14 [TE-414].

263. *Id.* 35:18-21 [TE-414].

264. *Id.* 36:18-22 [TE-415].

265. *Id.* 37:5-14 [TE-416].

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The board members were present for the hearing and heard the villagers' comments. And their private discussion following the conclusion of the hearing demonstrates that those comments were on their minds. When discussing the 2007 Dormitory Law, Trustee Lamer reasoned that the height restriction should not be increased due to the differences between buildings with flat roofs such as dormitories and buildings with pitched roofs such as single-family homes. He stated also that one communal dining room "would be sufficient."²⁶⁶ Trustee Banks suggested reducing the maximum height to 20 feet to "be consistent with our law, accessory use height is twenty feet."²⁶⁷ Deputy Mayor Sanderson then said:

"Well, I think that based on the input from the public this evening, I think it's very clear that there is a great deal of concern about the additional changes from the amendments that were first proposed on December 18th. It's my opinion that we should go back to the December 18th amendments. We should cut out the two dining rooms and go back to one. We should go back from 35 feet to 25 feet, which is clearly more acceptable, and if we're going to do that, we should probably go back to 20 percent coverage instead of 25 percent, and keep it the way it was at the first public hearing."²⁶⁸

266. *Id.* 76:18-22 [TE-455].

267. *Id.* 76:23-77:6 [TE-455-56].

268. *Id.* 77:8-19 [TE-456].

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The board then voted to reject the proposed changes and adopted the 2007 Dormitory Law as it had been proposed at the December 18, 2006 meeting.

It is impossible for us to glean precisely how the board weighed the villagers' comments. But that is not our task on appeal. It is clear from Sanderson's statement that the comments influenced at least his decisionmaking process. Some of those comments were susceptible to an inference of religious animus and hostility toward the group that would be affected negatively by the 2007 Dormitory Law. Viewing the record as a whole, including "the series of events" leading up to the adoption of the 2007 Dormitory Law, the "context in which the decision[s]" regarding the law were made, and "statements made by the decisionmaking body and community members,"²⁶⁹ we cannot say that the district court clearly erred in finding that religious animus was a "significant factor in the position taken by . . . those to whom the decisionmakers were knowingly responsive."²⁷⁰ And this is so notwithstanding that a proposal to add 4,500 new residents and multiple apartment buildings to a small village of single family houses with a population of 3,200 almost certainly would have provoked opposition regardless of any religious element.

We reach the same conclusion with respect to the 2007 Wetlands Law. In finding discriminatory purpose,

269. *Chabad Lubavitch*, 768 F.3d at 199.

270. *Tartikov*, 280 F. Supp. 3d at 453 (quoting *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 425 (2d Cir. 1995)).

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the district court relied on facts related to the board's decisionmaking process. These facts included the absence of any studies conducted to determine the need for or most appropriate means of enacting wetlands protection. The court relied also on comments made by villagers at the January 22, 2007 hearing. We have concluded already that the board members, who were present for that hearing and discussed the comments afterwards, were responsive to those comments and the animus they embodied.

To be sure, there is little or no direct evidence of any personal religious bias on the part of the trustees who passed these laws. But viewing the evidence in the holistic manner counseled by our precedent,²⁷¹ we see no clear error in the district court's findings with respect to the 2007 Dormitory and Wetlands Laws.

2. Discriminatory Effect

The next and final question with regard to the 2007 Dormitory and Wetlands laws is whether the district court clearly erred in holding that the laws had a discriminatory effect on Tartikov.

For the 2007 Dormitory Law, the court based its discriminatory effect finding on a finding that three provisions of the law would burden TRC's planned construction of dormitories unlawfully. The first two provisions were the exclusion of multifamily dwelling units from the definition of "dormitory" and the prohibition

271. See *Chabad Lubavitch*, 768 F.3d at 199.

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on separate cooking and dining areas. The court found that both restrictions prohibited the types of residences TRC intended to build, which included “kitchens in each residence so that students can diligently study . . . while also meeting their religious obligations to their families.”²⁷² The other offending provision was the 20 percent floor space restriction, which would limit dormitories to just 20,000 square feet based on TRC’s planned 100,000 square feet of construction.²⁷³ Dormitories of that size, the court calculated, could accommodate roughly 30 students and their families — a number far short of what TRC had planned.²⁷⁴

Pomona appears to concede that Tartikov would face these burdens because it advances no argument challenging the district court’s findings.²⁷⁵ It does, however, fleetingly argue that the court erred by finding the 2007 Dormitory Law would have had an effect sufficient for Tartikov to prevail on its RLUIPA “substantial burden” claim.²⁷⁶ In that portion of its brief, it argues that the

272. *Tartikov*, 280 F. Supp. 3d at 456.

273. *Id.*

274. *Id.*

275. Pomona Br. 52 n.18.

276. *Id.* (“As [Tartikov] failed to [show discriminatory purpose], evidence on . . . discriminatory effect[] does not matter. Further, [Tartikov] failed to prove a substantial effect.”). We decline to draw any lines here for how much discriminatory effect suffices for an equal protection claim because that question is not close with respect to the 2007 Dormitory and Wetlands Laws.

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burdens identified by the district court are insubstantial because students could live off campus, TRC could buy more land, and living on campus was not essential to TRC's proposed Torah community.

Even if we were to credit these arguments, they would not persuade us that the finding of discriminatory effect was clearly erroneous. There is sufficient basis in the record to conclude, as the district court did, that on campus housing of the nature Tartikov sought was important to the exercise of Tartikov's faith because it would allow students to be near their families while maintaining a diligent study schedule. Further, Pomona has presented no evidence suggesting that the Village and surrounding community had sufficient housing for 1,000 students and 3,500 additional family members to live within walking or even driving distance of the TRC site without additional construction.

With regard to the 2007 Wetlands Law, the district court found that two provisions working in tandem prevented construction of a TRC-like project anywhere in Pomona. The 10 net acre minimum lot size for educational institutions ensured that TRC's lot was the only site in Pomona large enough for the proposed college.²⁷⁷ And the required 100-foot buffer between constructed features and wetlands guaranteed TRC could not build on the property, because the only suitable location for a driveway fell within 100 feet of wetlands.²⁷⁸ While the 2007 Wetlands Law

277. *Id.* at 456-57.

278. *Id.* at 457.

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allowed landowners who were deprived of all reasonable use of their property to apply for a permit, the parties' stipulated to the district court that TRC did not qualify for a permit because its property could be put to reasonable use — though not the use it desired.²⁷⁹

We find no error in the district court's reasoning. Again in the context of challenging the RLUIPA substantial burden finding, Pomona faults the district court for not determining whether TRC could have regraded the property to comply with the wetlands law without facing a substantial burden. Pomona points to no facts suggesting that TRC could have constructed a driveway consistent with the 2007 Wetlands Law with or without regrading. Nor does it point to any evidence that TRC could have constructed its proposed rabbinical college elsewhere in the Village. Moreover, forcing TRC to regrade the property or buy new land — even if doing so could have brought it into compliance with the 2007 Wetlands Law — would have been a discriminatory effect of the law.

While the burden of showing discriminatory effect was on Tartikov below, the burden of showing clear error here is on Pomona. It has not met this burden. We find no error in the district court's conclusion that the 2007 Dormitory and Wetlands Laws had a discriminatory effect on Tartikov.

279. *Id.*

*Appendix A***D. Remedy**

The district court enjoined the Village from enforcing the offending provisions of the four challenged laws against Tartikov. But its injunction went much further than this. The court below prescribed how the Village must process and review a possible application from TRC concerning its proposed rabbinical college.²⁸⁰ Among other things, the injunction required the Village to exempt TRC from any special permit or variance requirements, process its application expeditiously, and perform “segmented review”²⁸¹ of the application because “such a review will be more protective of the environment.”²⁸² The court also prohibited the Village from enacting laws similar to the four challenged laws and retained jurisdiction over “any and all additional remedies sought by [Tartikov] consistent with” the judgment and injunctions.²⁸³ This relief goes too far.

Parts of the injunction conflict with state law. The requirement that the agency tasked with reviewing any TRC application engage in segmented review takes

280. Special App. at 2-5.

281. “Segmentation means the division of the environmental review of an action such that various activities or stages are addressed under [state regulatory law] as though they were independent, unrelated activities, needing individual determinations of significance.” 6 N.Y. COMP. CODES R. & REGS. § 617.2(ah).

282. Special App. at 4.

283. *Id.* at 5-6.

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away authority that New York delegates to the reviewing agency.²⁸⁴ In addition, the court's requirement that the Village hold a public hearing within 62 days of receiving an application conflicts with the statutory time limit that, the parties agree and we assume to be true, initiates the 62-day clock once an application is complete.²⁸⁵

Moreover, much of the injunctive relief is speculative. TRC has not submitted an application for its rabbinical college, and the Village has not taken any action suggesting it would fail to follow the law in processing its application.²⁸⁶ The injunction goes much further than is needed to remedy the injuries that Tartikov actually suffered and that are the subject of this lawsuit.

We affirm insofar as the district court enjoined Tartikov from enforcing the 2007 Wetlands and Dormitory

284. *See* 6 N.Y. COMP. CODES R. & REGS. § 617.6(b); *see also* Arthur Ientilucci, *Segra: Downthe Garden Path or Detour for Development*, 6 ALB. L. ENVTL. OUTLOOK J. 102, 119-20 (2002) (noting an agency charged with reviewing an application determines whether segmented review is appropriate).

285. *See* Pomona Br. 52-53.

286. *Cf., e.g., Sterling Drug, Inc. v. Bayer AG*, 14 F.3d 733, 750 (2d Cir. 1994) (finding it unnecessary to “fence in” a defendant with “a broad injunction” in light of its past activities when there was “no reason to believe” the defendant would fail to follow its legal obligations going forward); *Galella v. Onassis*, 487 F.2d 986, 993, 998 (2d Cir. 1973) (modifying, among other things, a portion of an injunction prohibiting the plaintiff from coming within 50 yards of the defendant by reducing the distance to 25 feet, because the original injunction was “broader than is required to protect the defendant”).

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Laws,²⁸⁷ but we vacate the majority of the additional relief.²⁸⁸

III. Tartikov's Cross-Appeal

Tartikov challenges on cross-appeal the district court's order dismissing the as-applied challenges as unripe for consideration and the summary judgment order in favor of Pomona on the RLUIPA equal terms and total exclusion provisions. We address each in turn.

A. As-Applied Challenges

Having ruled on the scope of Tartikov's standing to sue and affirmed the judgment of the district court with respect to the 2007 Dormitory and Wetlands Laws, the only question that remains is whether the court erred in holding that Tartikov could not assert as-applied challenges to the 2001 and 2004 Laws under the Equal Protection Clause or RLUIPA's nondiscrimination or equal terms provisions. To prove any as-applied claims under the Equal Protection Clause or RLUIPA's nondiscrimination and equal terms provisions, Tartikov would need to rely on the same evidence of animus that purportedly supports its facial challenges. This evidence, we have held, is insufficient with respect to the 2001 and

287. The district court's injunction focused on two specific provisions of the 2007 Dormitory Law. *See* Special App. 3. Our holding enjoins the Village from enforcing the entire law.

288. Specifically, we vacate decretal paragraphs 3-6, 7A-7I, 8-16, and 18-20. Special App. 1-6.

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2004 Laws. The as-applied claims therefore fail here for the same reason as the facial challenges.²⁸⁹

B. RLUIPA Equal Terms and Exclusion Claims

To prevail on an equal terms claim, a plaintiff must show that the challenged law — by its terms or operation — actually differentiates between religious and secular groups, not merely that it was enacted with the intent to adversely affect the religious group.²⁹⁰ Here, the challenged laws are facially neutral and treat religious and secular institutions equally. Tartikov has failed to make the necessary showing.

The exclusion provision of RLUIPA forbids the *total* exclusion of religious assemblies from a jurisdiction.²⁹¹ The challenged laws do not totally exclude all religious assemblies from Pomona. The district court correctly dismissed these claims.

289. One additional issue is lurking in the background. TRC purchased the property years after the 2001 Law was enacted. And while its purchase predates the 2004 Law, that law is effectively a more permissive version of the 2001 Law. Under these circumstances, buying into an injury in fact does not suffice for Article III standing. As we rest our holding on evidentiary grounds, however, we need not and do not rest our holding on this ground.

290. *Chabad Lubavitch*, 768 F.3d at 196-97.

291. 42 U.S.C. § 2000cc(b)(3)(A); *see also Vision Church v. Village of Long Grove*, 468 F.3d 975, 989-90 (7th Cir. 2006).

*Appendix A***CONCLUSION**

We **AFFIRM** the judgment insofar as it enjoins the Village from enforcing the unconstitutional 2007 Dormitory and Wetlands Laws, but we **REVERSE** with respect to 2001 and 2004 Laws and **VACATE** the relief that goes beyond enjoining enforcement of the two unconstitutional laws.²⁹² In addition, we **VACATE** the portions of the judgment premised on claims for which Tartikov lacks standing and **REMAND** for the district court to dismiss those claims.²⁹³ Lastly, we **AFFIRM** the portions of the judgment challenged on cross-appeal.²⁹⁴

292. *See* note 288, *supra*.

293. Specifically, we refer here to the First Amendment free exercise, free speech, and free association claims under the federal and New York constitutions, RLUIPA substantial burden and exclusion and limits claims, FHA claims, and common law claims related to the *Berenson* doctrine.

294. Specifically, we refer here to the as-applied challenges dismissed at the pleading stage and the RLUIPA equal terms and total exclusion claims resolved in the summary judgment order.

**APPENDIX B — OPINION & ORDER OF THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK,
FILED DECEMBER 7, 2017**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 07-CV-6304 (KMK)

CONGREGATION RABBINICAL COLLEGE
OF TARTIKOV, INC., RABBI MORDECHAI
BABAD, RABBI WOLF BRIEF, RABBI
HERMEN KAHANA, RABBI MEIR MARGULIS,
RABBI MEILECH MENCZER, RABBI JACOB
HERSHKOWITZ, RABBI CHAIM ROSENBERG,
and RABBI DAVID A. MENCZER,

Plaintiffs,

-v-

VILLAGE OF POMONA, NY, BOARD OF
TRUSTEES OF THE VILLAGE OF POMONA,
NY, NICHOLAS SANDERSON, as Mayor,
IAN BANKS, ALMA SANDERS-ROMAN, RITA
LOUIE, and BRETT YAGEL, as Trustees
and in their official capacities,

Defendants.

December 7, 2017, Decided;
December 7, 2017, Filed

*Appendix B***OPINION & ORDER**

KENNETH M. KARAS, District Judge:

Plaintiff Rabbinical College of Tartikov, Inc. (“Tartikov”) is the owner of an approximately 100-acre parcel of land (the “Subject Property”) located within the Village of Pomona (the “Village”), upon which it seeks to build a rabbinical college that, in addition to providing all of the facilities necessary to train rabbinical judges, will include housing for its students and their families. Plaintiffs, which include Tartikov and its future students and faculty, challenge certain zoning and environmental ordinances enacted by the Village, alleging that they are unlawful under the First and Fourteenth Amendments of the United States Constitution, the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc et seq., the Fair Housing Act (“FHA”), 42 U.S.C. § 3601 et seq., §§ 3, 9, and 11 of the New York State Constitution, and New York common law. Specifically, Plaintiffs seek to enjoin the enforcement of portions of the Village of Pomona, New York Code (“Village Code”) §§ 130-4 (defining educational institutions and dormitories) (the “Accreditation Law”), § 130-10(F)(12) (limiting the size of dormitories) (together with the definition of “dormitory” in § 130-4, the “Dormitory Law”), and § 126 (establishing wetlands protections) (the “Wetlands Law,” and together, the “Challenged Laws”).¹ Beginning in May and ending in

1. Full versions of the Challenged Laws can be found online. See Village of Pomona, NY, *Chapter 126: Wetlands Protection*, <http://www.ecode360.com/12718511> (last visited Nov. 20, 2017) (Wetlands Law); Village of Pomona, NY, *Chapter 130: Zoning*, <http://www>.

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June 2017, the Court conducted a 10-day bench trial. On September 7, 2017, the Court heard closing statements. (See Dkt. (entry for September 7, 2017).) What follows are the Court’s findings of fact and conclusions of law.

I. BACKGROUND**A. Factual Background**

The facts leading up to the passage of the Challenged Laws are largely undisputed. The dispute lies in whether the reasons given for their adoption are lawful.

1. The Parties

Plaintiffs are a corporation and individuals affiliated with the Orthodox Jewish community, including various sects of the Hasidic community, all of whom allege an interest in the construction of a rabbinical college on the Subject Property. Plaintiffs Rabbi Mordechai Babad, Rabbi Wolf Brief, Rabbi Hermen Kahana, Rabbi Meir Margulis, Rabbi Meilech Menczer, Rabbi Jacob Hershkowitz, Rabbi Chaim Rosenberg, and Rabbi David A. Menczer (with Chaim Rosenberg, Jacob Hershkowitz, and Meilech Menczer defined as the “Students”) are rabbis who seek to live, teach, and/or study at Tartikov’s proposed rabbinical college.²

ecode360.com/12718574 (last visited Nov. 20, 2017) (Accreditation Law and Dormitory Law).

2. Rabbi Gergely Neuman, Rabbi Aryeh Royde, and Kolel Belz of Monsey are no longer parties to this Action.

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Tartikov was formed in 2004. (*See* Pl.’s Ex. 1, at RC_00002809.) At the time of incorporation, Tartikov’s trustees included Chaim Babad, who indirectly financed Tartikov, Michael Tauber (“Tauber”), and four other individuals. (*See id.* at RC_00002810.) The corporation was formed, among other reasons, “[t]o promote the religious, intellectual, moral, and social welfare among its members and their families,” “[t]o establish, maintain and conduct a school for the [study] of the holy Torah and to maintain classes for the teachings of the customs, traditions and mode of worship of the Jewish Orthodox faith,” and “[t]o aid and assist worthy indigent members of the corporation with loans and housing.” (*Id.* at RC_00002807-08.) Tauber explained that Tartikov was formed to “establish[] a rabbinical college in Rockland County, New York in order to provide a religious learning and living community to train [a] new generation of students to become full-time rabbinical judges.” (Pl.’s Ex. 1500 (“Tauber Decl.”) ¶ 11; *see also* Pl.’s Ex. 1506 ¶ 10.) In August 2004, Tartikov purchased the Subject Property for approximately \$13 million dollars. (*See* Trial Tr. 364, 896.) The Subject Property is the only parcel of land owned by Tartikov, (*see* Tauber Decl. ¶ 40), but a related entity owns an additional 30 acres of property within the Village, all of which abut the Subject Property, (*see* Trial Tr. 128.)

Defendants consist of the Village, its Board of Trustees (or “Board”), its current Mayor Brett Yagel (“Yagel”), (*see* Trial Tr. 707), its former mayor and Trustee Nicholas Sanderson (“Sanderson”), and other current and former members of its Board of Trustees—Ian Banks (“Banks”), Alma Sanders Roman (“Roman”), and Rita

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Louie (“Louie”)—each sued in his or her official capacity.³ Each of the individual Defendants voted to amend or adopt one or more of the Challenged Laws.

2. Individual Plaintiffs’ Religious Beliefs & Tartikov’s Proposed College

According to Orthodox Jewish belief, Orthodox Jews are not permitted to resolve conflicts in the secular court system, but rather must have their conflicts adjudicated in rabbinical courts (bais din) before rabbinical judges (dayanim or dayan) applying Jewish law. (*See* Pls.’ Post-Trial Proposed Findings of Fact (“Pls.’ FOF”) ¶¶ 31, 33, 34 (Dkt. No. 326).) Presently, however, Plaintiffs have observed that the rabbinical courts in the United States are overburdened because there are not enough qualified rabbinical judges, forcing Orthodox/Hasidic Jews to go to secular courts to resolve their disputes. (*See id.* ¶¶ 38, 40.) To help alleviate this backlog, the Students are seeking to become full-time rabbinical judges trained in all four books of the Shulchan Aruch, a compilation of Jewish laws of the Orthodox Hasidic tradition, also known as the Code of Jewish Law. (*See id.* ¶¶ 20, 42.) They currently are enrolled at Kollel Belz in Monsey, New York, (*see id.* ¶¶ 21-23), but Kollel Belz does not offer a “complete”

3. Sanderson served as a member of the Board of Trustees from 1998-2007, and was mayor from 2007-2011. (*See* Trial Tr. 460.) Banks has served on the Board since 1997 and remains a member to this day. (*See id.* at 562.) Roman served on the Board for approximately 16 years, some period of which is relevant to this Action. (*See id.* at 569.) Louie served on the Board from approximately 2007-2012. (*See id.* at 676-77.)

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program on the Shulchan Aruch, (Pl.’s Ex. 1503 (“Jacob Hershkowitz Decl.”) ¶ 38), leading to their desire to enroll at Tartikov’s rabbinical college.

Tartikov’s rabbinical program will focus specifically on all four books of the Shulchan Aruch, (*see* Pls.’ FOF ¶ 41), which means that Tartikov will be considered a “specialized kollel,” (*id.* ¶ 44 (internal quotation marks omitted)). Compared to a regular kollel, where students spend their time studying anything related to Jewish law, students at Tartikov will specialize in a “directed and intense study” of the Shulchan Aruch. (Pls.’ Ex. 1502 (“Mordechai Babad Decl.”) ¶ 49.) Tartikov estimates that its proposed program will take approximately 13 to 15 years to complete because its students must master thousands of religious texts and commentaries, and certain aspects of secular law. (*See* Pls.’ FOF ¶¶ 48, 53, 57.) During this period of study, the students will be required to “spend their days from about 6 a.m. until about 10 p.m. . . . in study, in observation of judges, [and] in collegial examination of the issues that are presented by their studies.” (Tauber Decl. ¶ 69.) Students will break from their studies only “as is required to fulfill the other religious obligations in daily life for an Orthodox Jew.” (*See id.*) No other rabbinical college in the United States offers this type of program, (*see* Pls.’ FOF ¶ 51), but one institution in Israel offers one similar to it, (*see id.* ¶ 52).

Admission to the program will be based on interviews conducted by Tartikov’s future dean, Mordechai Babad, who will review the applicants’ backgrounds and assess their knowledge of Jewish law. (*See id.* ¶ 94; Tauber Decl.

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¶ 60.) Admission will also be conditioned on completing a high school level program in the Talmud. (*See* Tauber Decl. ¶ 60.) The Students and David Menczer have satisfied these conditions and will be admitted into the college when it opens. (*See* Mordechai Babad Decl. ¶ 50.)

Student progress will be measured by regular testing. (*See* Tauber Decl. ¶ 51.) Some students also may undergo an oral examination to determine whether they are qualified to serve as rabbinical judges. (*See id.*) If a student passed that examination, the rabbi conducting it will give the student a smicha, which signifies that the student has accomplished proficiency in an area of Jewish law. (*See* Pls.’ FOF ¶¶ 88, 91.) The smicha is not a degree recognized by the New York State Board of Regents (the “Board of Regents”), (*see id.* ¶ 90), and Tartikov does not plan on offering any degree recognized by that body, (*see* Pls.’ Ex. 1507 (“Kinser Decl.”) ¶ 29).

As part of the program, Tartikov plans to construct and foster the development of a Torah community, i.e., on-campus housing where its students and their families can live, so that the students can study from 6 a.m. until 10 p.m., (*see* Tauber Decl. ¶ 69), and also meet their religious obligations to their families. (*See id.* ¶ 19; Pls.’ Ex. 1501 (“Chaim Rosenberg Decl.”) ¶ 52; Pls.’ FOF ¶ 62.) Jewish law requires that Tartikov’s students live with their families, (*see* Chaim Rosenberg Decl. ¶ 55; Jacob Hershkowitz Decl. ¶ 86(n); Pls.’ Ex. 1504 (“Meilech Menczer Decl.”) ¶ 38(n)), and teach their children the Torah, (*see* Trial Tr. 197). Jewish law also requires men to marry at a young age and have large families, and imposes

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conjugal duties upon a husband and wife while forbidding them from engaging in any family planning or using birth control. (*See* Pls.’ FOF ¶¶ 24, 25.)

The purpose of a Torah community is to isolate the students from the distractions of the outside world, permitting them to devote themselves to the study of Jewish law. (*See* Pls.’ FOF ¶ 69.) The Students have professed that they are motivated by their religious beliefs to live in such a community. (*See* Chaim Rosenberg Decl. ¶ 54 (“My religious beliefs motivate me to be part of such a Torah community.”); Jacob Hershkowitz Decl. ¶ 49 (“To become a rabbinical judge, I must participate in a program that teaches Shulchan Aruch, and do so in a community of like-minded students and teachers, what we refer to as a Torah community.”); Meilech Menczer Decl. ¶ 46 (“My religious beliefs motivate me to become part of this Torah Community’s living, learning, and worshipping environment as proposed by the Congregation Rabbinical College of Tartikov.”).) Their belief is grounded in religious texts that, for example, direct Jews to “[e]xile yourself to a place of Torah.” (Pls.’ Ex. 1508 (“Resnicoff Decl.”) ¶ 70 (internal quotation marks omitted).) Without on-campus housing, Tartikov believes that its program will fail, (*see* Pls.’ FOF ¶ 66), in part because two other kollels in the area that do not have on-campus housing or a Torah community—Kollel Belz and Mechon L’Hoyora—have been unsuccessful in producing rabbinical judges trained in all four books of the Shulchan Aruch, (*see id.* ¶ 70).

In addition to housing, Tartikov’s facilities will include classrooms, study halls, courtrooms, a library, one or more shuls, and a facility to house a mikvah. (*See* Tauber Decl.

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¶ 61.) The library will hold the “[t]housands of studies and commentaries” that discuss and explain the Shulchan Aruch. (*Id.* ¶ 65.) The mikvahs, or ritual baths, will be provided out of religious necessity. (*See* Pls.’ FOF ¶ 85.) One or more shuls will be constructed so that everyone on campus can pray together. (*See* Tauber Decl. ¶ 22.)

As proposed, Tartikov’s rabbinical college cannot be accredited by the Board of Regents or any other accrediting body. It cannot be accredited by the Board of Regents because it will not offer a degree recognized by that body and educational institutions cannot be accredited by the Board of Regents until they are fully operational. (*See* Kinser Decl. ¶¶ 29, 41; Trial Tr. 446.) The college cannot be accredited by the Association of Advanced Rabbinical and Talmudic Schools, the accrediting agency for Jewish educational institutions, because it plans to admit students without an admissions test, will not offer a broad enough curriculum, and must be in existence for at least two years before it can be accredited. (*See* Pls.’ Ex. 2; Trial Tr. 447-49.)

Little else is known about the structures, curriculum, or features of Tartikov’s rabbinical college because it has not provided a formal plan for, or submitted an application to the Village seeking to construct, their proposed rabbinical college.

3. Chronology of the Challenged Laws

The Village, incorporated in 1967, adopted a Master Plan in 1974 which it updated in 1997. (*See* Joint Pretrial

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Order Stipulations of Fact ¶ 8 (Dkt. No. 257).) It first adopted zoning laws in 1968, (*see* Defs.’ Ex. 2000 (“Ulman Aff.”) ¶ 6), which were designed to preserve and enhance the rural residential character of the Village, (*see id.*). Since its inception, the Village has been designated as an R-40 residential zoning district. (*See id.* ¶ 5; Defs.’ Proposed Post-Trial Findings of Fact (“Defs.’ FOF”) ¶ 1 (Dkt. No. 324).) The R-40 designation requires that there be a minimum of 40,000 square feet per lot. (*See* Ulman Aff. ¶ 5.) One-family residences, public utilities rights-of-way, libraries and museums, public parks and playground, and agricultural pursuits are permitted land uses as of right. (*See* Joint Pretrial Order Stipulations of Fact ¶ 6.)⁴

On December 15, 1999, Yeshiva Spring Valley (“YSV”) made an informal appearance before the Village’s Planning Board regarding its desire to build a yeshiva on the Subject Property. (*See* Pls.’ FOF ¶ 127.) During the meeting, a representative from Frederick P. Clark Associates Inc. (“FPC”), the Village’s planner, noted that the Village’s zoning laws for schools “really stink” and recommended that the laws be updated. (*See id.* ¶ 128; Trial Tr. 799.) One month later, FPC circulated memoranda entitled “YSV-Pomona (Primary School and Pre-School),” and “Proposed Primary School and Pre-School (YSV Pomona) and the Village’s Zoning Regulations regarding schools,” both of which noted the existence of only “scant” regulations

4. The Parties originally stipulated that “houses of worship” are also permitted as of right within the Village, (*see* Joint Pretrial Order Stipulations of Fact ¶ 6), but agreed at oral argument that this stipulation was incorrect. House of worship are special permit uses. *See* Village Code § 130-10(G).

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for schools and recommended that the Village amend the pertinent laws. (Pls.' Exs. 111, 130; *see also* Pls.' FOF ¶ 129.)⁵ These recommendations spurred the creation of Local Law No. 1 of 2001, a law designed to regulate educational institutions. While discussing a rough draft of the law, the Mayor of the Village at the time, Herbert Marshall ("Marshall"), stated: "This thing's going to come in. They're going to come in and we're going to be caught with our pants down if we don't move. That's why I want to make sure that we're moving ahead." (Pls.' Ex. 114, at 69.)⁶

On January 22, 2001, following a public hearing, the Board of Trustees adopted Local Law No. 1 of 2001. (*See* Pls.' FOF ¶ 130; Defs.' FOF ¶ 114.) As relevant here, the law defined "educational institution," for the first time, as "[a]ny school or other organization or institution conducting a regularly scheduled comprehensive curriculum of academic and/or alternative vocational instruction similar to that furnished by kindergartens, primary[,] or secondary schools and operating under the Education Law of New York State, and duly licensed by the State of New York," and subjected such institutions to certain restrictions under the special permit approval process, including minimum net lot area, maximum development intensity, frontage, access, set back, parking, and noise guidelines. (*See* Defs.' Ex. 1010 ("Local Law No. 1 of 2001"), as codified at Village Code §§ 130-4, 130-10.)

5. There were no schools in the Village in 2001. (*See* Joint Pretrial Order Stipulations of Fact ¶ 11.)

6. Marshall served as mayor from 1998 until 2007. (*See* Trial Tr. 586.)

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For example, the law imposed a minimum net lot area of 10 acres, “plus an additional 0.05 acres for each pupil enrolled.” (*Id.* § 4(F)(1)(a).) The Board of Trustees passed the law because it sought to have educational institutions as special permit uses rather than uses as of right and to set standards by which such uses would be regulated. (*See* Ulman Aff. ¶ 25.) Following the passage of Local Law No. 1 of 2001, YSV determined that it was impossible for it to build the yeshiva it wanted on the Subject Property, (*see* Nathan Fromowitz Dep. 60), and eventually built the yeshiva outside of the Village, (*see id.* at 14-15).

In December 2002, Marshall spoke on behalf of the Village at a community meeting to support the formation of the Village of Ladentown. (*See generally* Pls.’ Ex. 94.) The Village of Ladentown was proposed in opposition to the Town of Ramapo’s (“Ramapo”) September 2002 Draft Comprehensive Plan, which sought to re-zone a 200-acre parcel of land known as the Patrick Farm Property. (*See id.* at 1.) The plan specifically contemplated the development of multi-family housing for adult students on the property. (*See id.*; Trial Tr. 729.) Marshall stated that Ramapo’s plan reflected its decision to “support the special agenda of a small but vocal group of citizens who would prefer replacing our trees with apartment buildings, our wetlands with asphalt, and our wildlife with traffic.” (Pls.’ Ex. 94, at 1.)

In May 2004, the Village filed a lawsuit against Ramapo seeking to set aside Ramapo’s Comprehensive Plan for failing to comply with the New York State Environmental Quality Review Act (“SEQRA”). (*See*

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generally Pls.’ Ex. 155.) The petition noted that Ramapo “attracted a burgeoning Hassidic community,” which “caused development and political pressures in the Town to increase its housing stock and infrastructure.” (*Id.* ¶¶ 31-32.)

On June 15, 2004, Ramapo adopted the Adult Student Housing Law (“ASHL”) which permitted married adult student multi-family housing for Orthodox/Hasidic Jews in residential zones throughout the unincorporated portion of Ramapo. (*See* Pls.’ Ex. 156 ¶¶ 7, 133.)⁷ On June 28, 2004, the Board of Trustees voted to challenge the ASHL. (*See id.* ¶ 27.) The petition, which was filed in October 2004, noted that the law was passed “to secure for one religious community a unique and significant zoning benefit.” (*Id.* ¶ 215.) Marshall strongly opposed the ASHL, stating that Ramapo officials “were pandering to the special interest groups able to deliver the critically important block vote.” (Pls.’ Ex. 109, at POM0013281.) The “block vote” Marshall was referring to was the Orthodox Jewish vote out of New Square, New York. (*See* Trial Tr. 619.)

During the summer of 2004, the Board of Trustees discussed amending the laws relating to educational institutions. (*See* Ulman Aff. ¶ 42.)⁸ On September 7, 2004,

7. The ASHL “permits married, adult, student, multi-family, high-density housing in single-family residential zones . . . in the unincorporated portion of Ramapo.” *Village of Chestnut Ridge v. Town of Ramapo*, No. 07-CV-9278, 2008 U.S. Dist. LEXIS 76881, 2008 WL 4525753, at *1 (S.D.N.Y. Sept. 30, 2008).

8. There were no schools or institutions of higher education located in the Village in 2004. (*See* Joint Pretrial Order Stipulations of Fact ¶ 14.)

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Village Attorney Doris Ulman (“Ulman”) provided formal recommendations to the Board regarding which provisions should be amended. (*See id.*; Defs.’ Ex. 1016.) Ulman recommended removing the .05 acre-per-student lot area requirement, adding a provision allowing dormitories, clarifying the definition of educational institution, and removing the requirement that educational institutions be on a state or county road. (*See* Defs.’ Ex. 1016.) These recommendations served as the bases for Local Law No. 5 of 2004. As relevant here, Local Law No. 5 of 2004 re-defined “educational institution” as “[a]ny private or religious elementary, junior high or high school, college, graduate[,], or post-graduate school conducting a full-time curriculum of instruction . . . *accredited by the New York State Education Department or similar recognized accrediting agency,*” and amended the minimum lot area, frontage, access, setback, and screening guidelines. (Defs.’ Ex. 1011 (“Local Law No. 5 of 2004”) §§ 1, 4-5, as codified at Village Code §§ 130-4, 130-10 (emphasis added).) The minimum lot area was changed to 10 acres—omitting the “net lot” requirement—and the .05 acre-per-student requirement was eliminated. (*See id.* § 4.) The law also included a provision permitting the development of dormitories:

A building that is operated by a school located on the same lot and which contains private or semi-private rooms which open to a common hallway, which rooms are sleeping quarters for administrative staff, faculty or students. Communal dining, cooking, laundry, lounge and recreation facilities may be provided.

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Dormitory rooms shall not contain separate cooking, dining or housekeeping facilities except that one dwelling unit with complete housekeeping facilities may be provided for use of a Superintendent or supervisory staff for every fifty dormitory rooms. Not more than one communal dining room shall be provided in any building used for dormitory purposes. Single family, two-family and/or multi-family dwelling units other than as described above shall not be considered to be dormitories or part of dormitories.

(*Id.* § 2.) Ulman based this definition on the laws in Chestnut Ridge and Ramapo, (*see* Ulman Aff. ¶ 46), both of which provide that dormitories “shall not contain separate cooking” facilities, (Defs.’ Ex. 1017, at 2; Defs.’ Ex. 1018, at XVIII-12.)⁹ The Board of Trustees adopted Local Law No. 5 of 2004 on September 27, 2004. (*See* Joint Pretrial Order Stipulations of Fact ¶ 24.)

Prior to the adoption of Local Law No. 5 of 2004, dormitories were not permitted in the Village. (*See* Ulman

9. There also is some confusion as to who drafted Chestnut Ridge’s definition for “dormitory.” The definition dates back to 1987, (*see* Ulman Aff. ¶ 47), but Ulman testified at trial that that she “probably” wrote “Local Law 6 of 2001 in Chestnut Ridge limiting student housing to define dormitories,” (Trial Tr. 871). It is unclear what this means. In any event, even if Chestnut Ridge’s “dormitory” definition dates back to 1987, Ulman served as a consultant to Chestnut Ridge when it was drafted. (*See* Trial Tr. 827.)

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Aff. ¶ 38.)¹⁰ Ulman said she drafted the law to authorize schools to build dormitories to house their students on campus, (*see id.* ¶ 39), to comply with “recent case law developments in New York State,” (*id.* ¶ 48), and to fix “inconsistencies and vagueness” in the existing laws, (*see id.* ¶ 52). For example, the code provided different accreditation requirements for “schools” and “educational institutions.” (*See id.*) Schools had to be approved by the Board of Regents or the New York State Department of Education. (*See id.*) Educational institutions were required to be licensed by the State of New York. (*See id.*) The Village Code was amended to remove the definition for “school” and clarify that educational institutions could be approved by the New York State Education Department or similar accrediting body. (*See id.*) The accreditation requirement was not completely eliminated from the Village Code because Ulman wanted to prevent certain institutions that might call themselves schools from building in the Village. (*See id.* ¶ 51.) Ulman believed that these changes would make it easier for applicants and Village officials to understand the laws applicable to educational institutions. (*See id.* ¶ 52.)

The Village learned that Tartikov had purchased the Subject Property at least as early as November 2004. (*See* Joint Pretrial Order Stipulations of Fact ¶ 15.) In 2005 and 2006, the Village approved Tartikov’s tax exemption applications. (*See id.* ¶ 16.) Ten board meeting agendas from July 2006 through December 2006 reflect that the

10. However, Ulman admitted that it is unconstitutional to prohibit educational institutions from building dormitories. (*See* Trial Tr. 836.)

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Board planned to discuss Tartikov in executive session. (See Pls.' Exs. 80, 83, 85, 87, 89-92, 119-20.)¹¹ The agendas do not provide the basis upon which the Board determined that executive session was necessary, but minutes from the September 25 and December 18, 2016 Board meetings reveal that the Board closed the meeting to the public to discuss "matters of litigation." (See Pls.' Ex. 105, at 12; *see also* Pls.' Ex. 121, at 6.) During some of these same Board meetings, certain of the Challenged Laws were discussed. (See Pls.' Ex. 115, at 5 (Board of Trustees minutes from November 27, 2006, noting that Ulman distributed proposed laws relating to dormitory buildings and houses of worship); Pls.' Ex. 121, at 5 (Board of Trustees minutes from September 25, 2006, noting that Ulman was working on a "local law revision for wetlands").)

As Village Counsel, Ulman regularly reviewed the Village Code and made recommendations to the Board of Trustees regarding additions and amendments. (See Defs.' FOF ¶¶ 132, 134.) In 2006, Ulman determined that the code provisions relating to dormitories needed to be amended, so she drafted Local Law No. 1 of 2007. (*Id.*) As relevant here, the law: (1) requires an educational institution to have a net lot area of 10 acres; (2) removes certain slopes from net lot area calculations; (3) provides that "[a] dormitory building shall not occupy more than twenty (20) percent of the total square footage of all buildings on the lot"; and (4) provides that the maximum

11. The meeting agendas reflect that "Camp Dora" was to be discussed in executive session. Camp Dora was the owner of the Subject Property prior to YSV. (See Joint Pretrial Order Stipulations of Fact ¶ 17.)

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height for a dormitory building is 25 feet. (Defs.' Ex. 1012 ("Local Law No. 1 of 2007"), as codified at Village Code § 130-10(F).) Ulman testified that the law was designed to make clear that a dormitory use is an accessory use to a principal educational use, to clarify that Local Law No. 5 of 2004 imposed "net" lot area requirements rather than "lot area" requirements, and to remove references to "school" that had inadvertently been left in the code after the definition for school was deleted in 2004. (*See* Ulman Aff. ¶ 54; Local Law No. 5 of 2004.)

On December 18, 2006, the Board of Trustees held a public hearing on Local Law No. 1 of 2007. (*See* Ulman Aff. ¶ 55; Defs.' Ex. 1041, at 4.)¹² During the hearing, an attorney for Tartikov, Paul Savad ("Savad"), asked the Board of Trustees to delay voting on the law until the next Board meeting. (*See* Defs.' FOF ¶ 135.) The Board agreed to continue discussing the law at the Board meeting scheduled for January 22, 2007. (*See id.*)

Before the Board held its next meeting, on January 9, 2007, Preserve Ramapo, a political action group in the region, leaked tentative plans for Tartikov's proposed rabbinical college to the public. (*See* Pls.' Ex. 65.) The leaked information stated that Tartikov was planning to build "1,800 square feet" residences that would house 4,500 people. (*Id.* at POM0013256.) Shortly thereafter, *The Journal News* published an article referencing Preserve

12. There were no educational institutions in the Village at this time. (*See* Joint Pretrial Order Stipulations of Fact ¶ 20.) Additionally, the Village denied Tartikov's tax exemption application for 2007. (*See* Pls.' Ex. 146 ¶ 91.)

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Ramapo's disclosure and adding additional information. (See Pls.' Ex. 157.) Savad is quoted in the article as stating that the rabbinical college would house 1,000 rabbis and their families. (See *id.* at RC_1634.) Ulman learned about Tartikov's plan for the Subject Property from reading the article in *The Journal News*. (See Ulman Aff. ¶ 57.)

On January 22, 2007, the Board of Trustees held a public hearing on Local Law No. 1 of 2007, during which it passed the law. (See Pls.' FOF ¶¶ 148-49; Defs.' FOF ¶¶ 138, 148.) The turnout was overwhelming, (*see* Pls.' FOF ¶ 235), likely because of the information that was leaked by Preserve Ramapo and contained in *The Journal News* article. During the hearing, the Board considered changing the height limitation for dormitories from 25 feet to 35 feet. Ulman stated that the proposed change would make dormitories consistent with all other uses in the Village Code. (See Joint Pretrial Order Stipulations of Fact ¶ 18.) The Board also considered increasing the number of permitted dining halls from one to two. (See Pls.' Ex. 137, at 45.) After receiving input from the largely hostile audience, the Board decided to keep the height limitation at 25 feet and declined to increase the number of dining halls. (See Joint Pretrial Order Stipulations of Fact ¶ 19; Pls.' Ex. 137, at 77 (Sanderson stating that "based on the input from the public this evening, I think . . . [w]e should cut out the two dining rooms and go back to one"); Trial Tr. 633 (Marshall testifying that increasing the height limit "was rejected based on the comments from the—from the citizenry who attended"); Local Law No. 1 of 2007 § 3.)

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Many of the people who spoke during the hearing expressed opposition to Tartikov's proposal, as they understood it based on the rumors that were circulating. Many of the comments focused on the size of the project and its effect on the Village, rather than the fact that it was being proposed by Orthodox/Hasidic Jews. (*See, e.g.,* Pls.' Ex. 137, at 10-11 ("I urge you not to allow that type of housing that's being discussed in that law. I don't think the area calls for it. The village is too small, and I don't think that we should have that kind of housing anywhere in the village.")) However, comments related to the religious nature of Tartikov's proposal and its proposed student body. (*See, e.g., id.* at 47 ("You know, let me ask you one thing, it's really funny how we're talking about law, when you have a group that breaks every law there is, and we are talking about law."); *id.* at 56 ("You know in America, we have the sense of community. That's our face. We're going to be another Kiryas Joel [a Hasidic community]. That's why we are emotional. You can get into the environmental impact and all that. That's all I have to say.")) Approximately half-way through the meeting, in an attempt to calm the audience, Marshall stated:

Ladies and gentlemen, let me say something. We sitting at this table have limitations that are placed on us as to what we can say, and what we can't say, because our attorney tells us what we can say and what we can't say. I can't say what I feel—I can't—if I agree with you, I don't agree with you, I don't have that luxury of being able to say that here. All that I can say is that every member of this board works very, very hard to

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do what is best for this community. You you're your issues. Don't assume because no one has gotten up and said, wow, I agree with you, oh boy; don't assume that because we didn't do that that we don't agree. We may or we may not, but please give us the benefit of the doubt. We have all been doing this—we work very hard at what we do. We try and do what is best for the community, but it's our home.

(*Id.* at 58-59.)

Around this same time, the Board of Trustees was considering whether to adopt a wetlands protection law. The Village had considered adopting a similar law in 1998, but ultimately decided against it. (*See* Ulman Aff. ¶ 92.) In December 2006, Ulman created a first draft and circulated it to the Board. (*See* Pls.' Ex. 123.) As originally proposed, the law prohibited certain development activities from occurring on all properties in the Village within 100 feet of the boundary of any wetland, water body, or watercourse, unless a permit was issued by the Board of Trustees. (*See id.* §§ 126-3, 126-5.) Ulman claims that the law was drafted because the Board was concerned about wetlands in the Village that were not regulated by the state or federal governments. (*See* Ulman Aff. ¶ 68.) Ulman drafted the law after reviewing wetlands laws from other villages and a wetlands study prepared for Westchester County, New York. (*See id.* ¶ 71.) The idea for the 100-foot buffer zone was taken directly from the New York State Environmental Conservation Law, which requires a permit from the New York State Department of Environmental

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Conservation for any proposed disturbance within 100 feet of regulated wetlands. (*See id.* ¶ 68.) Ulman believed that the law would protect the health, safety, and welfare of Village residents. (*See id.* ¶ 69.)

Before the Board voted on the proposed wetlands law, Village residents began campaigning to become or remain members of the Board. Sanderson, Yagel, and Louie ran together on a slate in the March 2007 Village election. (*See* Pls.' FOF ¶ 275.) A major piece of their platform was opposition to Tartikov's development of the Subject Property. (*Id.* ¶ 276.) One campaign flier stated:

This year it is imperative that all village residents vote for leadership that have an unwavering long-term commitment to the Village.

We are, according to the lawyers for the Rabbinical College of Tartikoff who have purchased land on Route 306 in the village, going to be faced with a proposal for a huge development that will include housing for thousands of adult students and their families. Their lawyers have not been shy to point out that they will use every legal avenue to pursue their plans, including the federal statute RLUIPA.

From what we know of the plan as it has been leaked to the public, it will have real environmental and safety problems; compelling

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interests that will allow the village to fight this plan, if and when presented to the Village Board.

You need to vote for a team that is prepared to stand up to this threat of using the fundamentally unfair RLUIPA statute as a hammer against our village. A team that is in it for the long term, and one that has already prepared themselves with a strategy to fight for Pomona.

(Pls.’ Ex. 41.) This same flier states that “[t]he single most important issue facing the Village is clearly the Tartikoff development.” (*Id.*) Sanderson, Yagel, and Louie vowed to “vigorously defend [the Village’s] land use codes and regulations.” (*Id.*) A second flier reiterated these same concerns and made the same promises. (*See* Pls.’ Ex. 42, at 2.) In a campaign video, Sanderson stated that Tartikov “could completely change the village and the make-up of the village.” (Pls.’ Ex. 47, at 1.) Shortly before the election, Yagel and Louie drafted a submission for *The Journal News* editorial page, (*see* Pls.’ FOF ¶ 286), stating their opposition to Tartikov’s proposal and noting that “a virtual mini-city within the village[] that will house thousands of homogenous individuals” was not a “‘natural’ progression” for the Village. (Pls.’ Ex. 17.) Yagel was also quoted in the *New York Times* describing Plaintiff’s plans for the Subject Property as “disgusting.” (Pls.’ Ex. 169, at 1 (internal quotation marks omitted).)¹³ Sanderson, Yagel,

13. The full quote from the *New York Times* is as follows: “The attorney who represents the developer and owner of the property appears ready to file a lawsuit without knowing what the codes for

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and Louie won the March 2007 election. (Joint Pretrial Order Stipulations of Fact ¶ 22.)

The wetlands protection law that ultimately was adopted by the Board on April 23, 2007—Local Law No. 5 of 2007—includes an exemption for lots improved with single family homes. (*See* Defs.’ Ex. 1013 (“Local Law No. 5 of 2007”), as codified at Village Code § 126-3(D) (“The aforesaid 100 foot buffer in which regulated activities are not permitted to take place shall not apply to lots that are improved with single family residences.”).) As relevant here, the law prohibits certain activities within “100 feet of the boundary of any wetland, water body or watercourse unless a permit is issued therefor by the Board of Trustees or the Planning Board.” (Village Code § 126-3.) To obtain a permit, the landowner must show that the law “results in a deprivation of the reasonable use of a property so as to constitute a de facto taking of such property.” (*Id.* § 126-5.) Prior to its passage, the Village and members of the Board of Trustees knew that there were wetlands located on the Subject Property. (*See* Trial Tr. 670 (Marshall stating that he knew there were wetlands on the Subject Property prior to 2007); Pls.’ Ex. 69, at 1 (email from Yagel discussing the presence of wetlands on the Subject Property); Pls.’ Ex. 104, at 1 (Marshall noting, in January 2002, that there are wetlands on the Subject Property); Pls.’ Ex. 107, at 2 (October 22, 2001 Board meeting minutes noting that Marshall “stressed” that YSV needed to

the village are,’ said one resident, Brett Yagel. ‘It’s pretty disgusting. They’re trying to create this minicity in our village, and push out people who’ve put their heart and soul into the community for years.’” (Pls.’ Ex. 169, at 1.)

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protect the wetlands located on the Subject Property); Pls.' Ex. 141, at 20 (1997 Update to the Village's Master Plan noting that the Subject Property contains "part of a large State-regulated wetland").

4. The Impact of the Challenged Laws

Collectively, the Challenged Laws prevent the construction of Tartikov's rabbinical college in the Village. Because the entire Village is zoned R-40, the Village Code permits only a limited number of land uses in the normal course, namely houses, libraries, museums, public parks, and playgrounds, *see* Village Code § 130-9, and, by special use permit, some other developments, including educational institutions, *see* Village Code § 130-10(F), and houses of worship, *see* Village Code §130-10(G). The Accreditation Law bars the construction of the rabbinical college because Tartikov, as proposed, cannot be accredited by any accrediting body. (*See* Kinser Decl. ¶ 29; Trial Tr. 446-51.) The Dormitory Law also presents several challenges for Tartikov's proposed development. The prohibitions on student family housing and separate cooking, housekeeping, and dining facilities preclude the rabbinical college from being built in the Village. Limiting housing to 20% of the total square footage of other buildings on the Subject Property is also problematic because Tartikov seeks to provide housing in excess of this limitation. The Wetlands Law restricts Tartikov's use of the Subject Property because the location of the driveway onto the property falls within the 100-foot buffer mandated by that law. (*See* Trial Tr. 1018.) An access road cannot be built in any other location because

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of the presence of wetlands and steep slopes, which would require significant regrading. (*See id.* at 781, 1017-18; Pls.’ Ex. 1510 (“Beall Decl.”) ¶¶ 264-65.)

Moreover, Tartikov cannot obtain a variance to develop its rabbinical college because “State law requires an applicant who applies for a use variance to prove that there is no other economic use for the property” and this would be “impossible” for Tartikov to prove. (Ulman Aff. ¶ 80.) Another possible way for Tartikov to build its rabbinical college would be for it to apply for an amendment to the zoning laws. (*See id.* ¶ 87.)¹⁴ However, the Board of Trustees is not required to consider a petition for a text amendment, (*see* Trial Tr. 783), and any such amendment would be subject to the full SEQRA review process, (*see* Trial Tr. 877).

B. Procedural Background

Plaintiffs filed their first Complaint on July 10, 2007, (*see* Dkt. No. 1), and then filed an Amended Complaint on July 30, 2007, (*see* Dkt. No. 12). Plaintiffs filed a Second Amended Complaint on November 19, 2007. (*See* Dkt. No. 27).¹⁵ Defendants filed a Motion to Dismiss, (Dkt. No. 36), which the Court granted in part in an Opinion and Order

14. Ulman has suggested that Tartikov can apply for a “zone change,” (Ulman Aff. ¶ 87), but a zone change would require an amendment to the zoning law, (*see* Trial Tr. 786).

15. Plaintiffs appear to have filed an identical version of their Second Amendment Complaint on two occasions. (*See* Dkt. Nos. 27, 28.)

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dated January 4, 2013. *See Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, 915 F. Supp. 2d 574 (S.D.N.Y. 2013) (“*Tartikov I*”).

Following the close of discovery, Plaintiffs filed a Motion for Partial Summary Judgment, (*see* Dkt. No. 137), and Defendants filed a Motion for Summary Judgment, (*see* Dkt. No. 140), on January 22, 2015. The Court granted in part and denied in part both motions. *See Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352 (S.D.N.Y. 2015) (“*Tartikov II*”).

On May 15, 2017, the Court held the final pretrial conference and the bench trial commenced. The trial lasted 10 days and the Court heard testimony from 23 witnesses.¹⁶ Pursuant to the Court’s direction at the conclusion of the trial, the Parties submitted their post-trial memoranda and accompanying papers on August 7, 2017. (*See* Dkt. Nos. 323-29.) The Court heard closing statements on September 7, 2017.

II. DISCUSSION

The issue before the Court is whether Tartikov’s permit application to build its rabbinical college should be governed by the standards set forth in the Challenged Laws. Plaintiffs argue that the Court should enjoin Defendants from enforcing the Challenged Laws because they are discriminatory and substantially burden their religious

16. At the Court’s direction, the direct testimony of each party’s witnesses was done by way of affidavit.

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exercise. Defendants assert that the laws were passed for legitimate reasons and do not burden the creation of a run-of-the-mill rabbinical college. Any burden, Defendants claim, results from the fact that Tartikov seeks to build a “rabbinical college extraordinaire.” The primary source of Defendants’ opposition to Tartikov’s proposed use is that it will include housing for its students and their families. Indeed, it appears that they challenge little else about Tartikov’s proposal. Defendants are particularly concerned that providing housing for students and their families will overburden the Village’s infrastructure and detract from its rural character. A secondary source of Defendants’ opposition rests in their severe distrust of Plaintiffs’ motives. Defendants are adamant that Plaintiffs’ primary wish is not to build a rabbinical college, but rather a housing complex for Orthodox/Hasidic Jews and their families dressed as a college. Although the Court finds no support for Defendants’ mistrust of Plaintiffs’ motives, the Court is sympathetic to Defendants’ concerns about the size and scope of Tartikov’s proposed development. Ultimately, however, the Court concludes that Defendants enacted the Challenged Laws to prevent the spread of the Orthodox/Hasidic community into the Village, and in certain respects, to specifically target the Subject Property and Tartikov. This holding is based on the context in which the laws were adopted and the unsatisfactory and incredible reasons presented for their adoption. The Court takes no position on what Plaintiffs may build upon the Subject Property. The Court’s ruling is limited only to the fact that Tartikov’s putative permit application need not comport with the requirements imposed by the Challenged Laws.

*Appendix B***A. The Standard Applicable to Facial Challenges**

Because Tartikov has not applied for a permit to build a rabbinical college on the Subject Property, Plaintiffs are limited to challenging only the facial validity of the Challenged Laws. *See Tartikov I*, 915 F. Supp. 2d at 596-607 (dismissing the plaintiffs' as applied challenge because they failed to submit a single proposal). "Facial invalidation is, manifestly, strong medicine that has been employed by [courts] sparingly and only as a last resort," wherein a plaintiff has a "heavy burden in advancing [his or her] claim." *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 580, 118 S. Ct. 2168, 141 L. Ed. 2d 500 (1998) (internal quotation marks omitted); *see also Cranley v. Nat'l Life Ins. Co. of Vt.*, 318 F.3d 105, 110 (2d Cir. 2003) ("A plaintiff making a facial claim faces an uphill battle because it is difficult to demonstrate that the mere enactment of a piece of legislation violates the plaintiff's constitutional rights." (internal quotation marks omitted)). The oft-cited standard for facial challenges is derived from dicta in *United States v. Salerno*, 481 U.S. 739, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987), wherein then-Chief Justice Rehnquist wrote that "the challenger must establish that no set of circumstances exists under which the [challenged law] would be valid." *Id.* at 745. In *Tartikov II*, the Court determined that this standard is inapplicable to Plaintiffs' claims. *See* 138 F. Supp. 3d at 403-07. The Court provided several reasons for this holding.

First, the Court concluded that *Salerno* does not apply to First Amendment claims. *See id.* at 404; *see also Finley*, 524 U.S. at 580 ("To prevail [on a facial challenge],

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respondents must demonstrate a substantial risk that application of the provision will lead to the suppression of speech.”); *United States v. Farhane*, 634 F.3d 127, 138-39 (2d Cir. 2011) (acknowledging that the *Salerno* standard is not applicable to First Amendment claims); *Lerman v. Bd. of Elections in City of N.Y.*, 232 F.3d 135, 144 (2d Cir. 2000) (“*Salerno*, however, does not apply to this case, in which the plaintiffs assert the violation of rights protected by the First Amendment.”). Second, relying on rulings made in *Tartikov I*, the Court echoed that the *Salerno* line of cases was “distinguishable from the instant case because no case in the *Salerno* line involved allegations of discriminatory animus grounded in race or religion.” *Tartikov II*, 138 F. Supp. 3d at 404 (internal quotation marks omitted). Thus, the Court reiterated that “the *Salerno* test would be met if the Challenged Laws violate Plaintiffs’ Equal Protection or Free Exercise rights because ‘a law that violates the Equal Protection Clause or the Free Exercise Clause will be invalid when applied under any conceivable circumstance, even if it can be justified by a conceivably benign motive.’” *Id.* (quoting *Tartikov I*, 915 F. Supp. 2d at 613 n.18). Third, the Court held that, in the context of the Free Exercise Clause, *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993), offered an alternate and directly applicable standard to apply. *Tartikov II*, 138 F. Supp. 3d at 406. *Lukumi* provides that “government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief.” 508 U.S. at 543; see also *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019, 198 L. Ed. 2d 551 (2017) (“The Free Exercise Clause ‘protect[s]

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religious observers against unequal treatment’ and subjects to the strictest scrutiny laws that target the religious for ‘special disabilities’ based on their ‘religious status’” (quoting *Lukumi*, 508 U.S. at 533, 542)); *Cent. Rabbinical Congress v. N.Y.C. Dep’t of Health & Mental Hygiene*, 763 F.3d 183, 196 (2d Cir. 2014) (“[W]here some purposeful and exclusive regulation exists—where the object of the law is itself the regulation of religious conduct—the law is subject to heightened scrutiny, and not to rational basis review.”); *id.* (noting that the “burdens” of the challenged regulation fell “on only a particular religious group—and in fact *exclusively* on members of one particular subset of that religious group”); *Commack Self-Serv. Kosher Meats, Inc. v. Hooker*, 680 F.3d 194, 210 (2d Cir. 2012) (applying this standard to a facial challenge under the Free Exercise Clause).

In reliance on this body of law, the Court concluded that the “effect of the Challenged Laws on Plaintiffs is relevant to determining whether the Challenged Laws were discriminatory under the Equal Protection Clause and/or targeted at religious practice under *Lukumi* (and the Free Exercise Clause), and may be suggestive of the effect they have on other religious groups.” *Tartikov II*, 138 F. Supp. 3d at 406. The Court will adhere to this ruling because Plaintiffs’ experience serves as an important source of evidence on the question of the constitutionality of the Challenged Laws. *See Doe v. City of Albuquerque*, 667 F.3d 1111, 1123-24 (10th Cir. 2012) (rejecting application of *Salerno* and analyzing, in the context of a facial challenge, the particular circumstances of the plaintiffs, and noting that it is proper to “appl[y] the appropriate constitutional

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test to the restriction at issue,” rather than “conjur[ing] up whether or not there is a hypothetical situation in which application of the statute might be valid”); *Cty. Concrete Corp. v. Township of Roxbury*, 442 F.3d 159, 167 (3d Cir. 2006) (finding allegations that the defendant township “knew exactly how [the] appellants intended to use their land and passed [an] [o]rdinance specifically tailored to prevent that use” to constitute a ripe facial challenge to that ordinance); *Dibbs v. Hillsborough Cty.*, 67 F. Supp. 3d 1340, 1349-50 (M.D. Fla. 2014) (“A property owner makes a facial challenge by claiming that a municipality knew exactly how he intended to use his property and passed an ordinance specifically tailored to prevent that use.” (internal quotation marks omitted)); *Cornell Cos., Inc., v. Borough of New Morgan*, 512 F. Supp. 2d 238, 258 (E.D. Pa. 2007) (“The basis of an EPC facial challenge is that the mere enactment of the ordinance violates the EPC because it treats the plaintiff’s property differently than other similarly situated landowners.”).

B. Substantive Liability

Plaintiffs assert that the Challenged Laws violate the First and Fourteenth Amendments of the United States Constitution, RLUIPA, the FHA, §§ 3, 9, and 11 of the New York State Constitution, and New York common law. Although there is substantial overlap between many of Plaintiffs’ claims, the Court will address each of them in turn.

*Appendix B***1. Equal Protection—Fourteenth Amendment**

The Equal Protection Clause of the Fourteenth Amendment “is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985); *see also Harlen Assocs. v. Inc. Vill. of Mineola*, 273 F.3d 494, 499 (2d Cir. 2001) (same).¹⁷ “Plaintiffs challenging . . . facially neutral laws on equal protection grounds bear the burden of making out a prima facie case of discriminatory purpose.” *Pyke v. Cuomo*, 567 F.3d 74, 78 (2d Cir. 2009) (“*Pyke II*”) (internal quotation marks omitted); *see also Tartikov I*, 915 F. Supp. 2d at 615 (“To prove an equal protection violation, claimants must prove purposeful discrimination by a government actor, directed at a suspect class, such as a racial group, or a religion.” (citations and internal quotation marks omitted)). If Plaintiffs make such a showing, the government action at issue is “subject to strict judicial scrutiny,” such that the law may be upheld only if it “further[s] a compelling state interest and [is] narrowly tailored to accomplish [that] purpose.” *Pyke II*, 567 F.3d at 77.

17. Because the equal protection provisions of the New York Constitution are interpreted consistently with the corollary provisions in the federal Constitution, *see People v. Kern*, 75 N.Y.2d 638, 554 N.E.2d 1235, 1240, 555 N.Y.S.2d 647 (N.Y. 1990) (holding that the guarantee of equal protection under the New York Constitution is co-extensive with that of the federal Constitution); *People v. McCray*, 57 N.Y.2d 542, 443 N.E.2d 915, 919, 457 N.Y.S.2d 441 (N.Y. 1982) (“[O]ur State constitutional equal protection clause is no more broad in coverage than its Federal prototype.” (citation omitted)), the Court addresses both challenges here.

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Plaintiffs may establish an equal protection violation by identifying (1) “a law that expressly classifies on the basis of race,” (2) “a facially neutral law or policy that has been applied in an unlawfully discriminatory manner,” or (3) “a facially neutral [law or] policy that has an adverse effect and that was motivated by discriminatory animus.” *Id.* at 76 (internal quotation marks omitted); *see also Jana-Rock Constr., Inc. v. N.Y.S. Dep’t of Econ. Dev.*, 438 F.3d 195, 204 (2d Cir. 2006) (noting that the Equal Protection Clause is violated, unless justified by strict scrutiny, when government action is “motivated by discriminatory animus and its application results in discriminatory effect” (internal quotation marks omitted)). As the Court previously held, Plaintiffs rely on the third method here. *See Tartikov I*, 915 F. Supp. 2d at 615.

a. Discriminatory Purpose

“Discriminatory purpose implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.” *Hayden v. County of Nassau*, 180 F.3d 42, 50 (2d Cir. 1999) (internal quotation marks and emphasis omitted). Though the desire to discriminate need not be the sole motivating factor, *see Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977) (“Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the ‘dominant’ or ‘primary’ one.”), it must be “a significant

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reason for a public body's actions," *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 786 (2d Cir. 2007). "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights*, 429 U.S. at 266 (internal quotation marks omitted). In assessing discriminatory intent in the land use context, courts consider "the series of events leading up to a land use decision, the context in which the decision was made, whether the decision or decisionmaking process departed from established norms, statements made by the decisionmaking body and community members, reports issued by the decisionmaking body, whether a discriminatory impact was foreseeable, and whether less discriminatory avenues were available." *Chabad Lubavitch of Litchfield Cty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 199 (2d Cir. 2014); *see also LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 425 (2d Cir. 1995) ("Discriminatory intent may be inferred from the totality of the circumstances," including "historical background" and "contemporary statements by members of the decision-making body," or "by showing that animus against the protected group was a significant factor in the position taken by the municipal decision-makers themselves or by those to whom the decision-makers were knowingly responsive." (internal quotation marks omitted)); *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1221 (2d Cir. 1987) (explaining that "[i]ntent to discriminate may be established in a number of ways," and may be "inferred from the totality of the relevant facts," including "historical background . . . particularly if it reveals a series of official actions taken for

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invidious purposes; [and] the specific sequence of events leading up to the challenged decision, such as zoning changes for a given site enacted upon . . . learning of [the plaintiff's] plans for . . . construction" (alterations and internal quotation marks omitted)).

Judged against this standard, the evidence and testimony presented during trial proves that Defendants passed the Challenged Laws with a discriminatory purpose. First, the timing of each of the Challenged Laws is suspect, to say the least. The Accreditation Law, the relevant provisions of which were adopted in January 2001 (Local Law No. of 2001) and amended in September 2004 (Local Law No. 5 of 2004), was enacted in direct response to YSV's desire to build an Orthodox yeshiva on the Subject Property. During an informal presentation made by YSV to the Village's Planning Board on December 15, 1999, FPC advised the Village that its zoning laws for schools "really stink." (Pls.' FOF ¶¶ 127-28.) One month later, FPC circulated memoranda entitled "YSV-Pomona (Primary School and Pre-School)," and "Proposed Primary School and Pre-School (YSV Pomona) and the Village Zoning Regulations regarding schools," both of which noted the existence of only "scant" regulations on schools and recommended that the Village amend the pertinent laws. (Pls.' Exs. 111, 130; *see also* Pls.' FOF ¶ 129.) Both memoranda specifically mention YSV and make reference to YSV's development plans. (*See* Pls.' Ex. 111, at 1 ("As the Village Board may know, the Planning Board has recently been approached regarding a proposed 100,000 square foot, 2-story primary school and a 35,000 square foot, 1-story pre-school on the 100-acre

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Camp Dora Golding property.”); Ex. 130, at POM0004316 (“We have reviewed the *Narrative Summary* and the *Preliminary Master Plan Study* . . . in connection with the [YSV-Pomona] project.”.) The timing of these recommendations is significant because there were no other schools located in the Village in 2001. (*See* Joint Pretrial Order Stipulations of Fact ¶ 11.) At the time, Marshall noted that the Board need to move quickly because “[t]hey[],” meaning YSV, “[are] going to come in” and the Board of Trustees was “going to be caught with [its] pants down.” (Pls.’ Ex. 114, at 69.)

Then, in 2004, the year in which Local Law No. 5 of 2004 was passed, Defendants took a number of actions which are indicative of discriminatory purpose. In January 2004, the Village passed a resolution noting that the Board of Trustees “opposes in the strongest possible terms any public officials who abdicate their responsibility of office by placing the politics of special interest groups and individual developers ahead of the best interest of the people they are committed to serve.” (Pls.’ Ex. 126, at 7.) The “block vote of the Orthodox Hasidic Jews” is such a special interest group. (Trial Tr. 820.) In May 2004, the Village filed a lawsuit against Ramapo seeking to set aside Ramapo’s Comprehensive Plan for failing to comply with SEQRA. (*See generally* Pls.’ Ex. 155.) Of particular note, the petition asserted that Ramapo “attracted a burgeoning Hassidic community,” which “caused development and political pressures in the Town to increase its housing stock and infrastructure.” (*Id.* ¶¶ 31-32.) After Ramapo adopted the ASHL in June 2004, the Village voted to challenge that law. (*See* Pls.’ Ex. 156

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¶ 27.) The petition stated that the ASHL was passed “to secure for one religious community a unique and significant zoning benefit.” (*Id.* ¶ 215.) Although this petition does not specifically name this “religious community,” it is clear the petition is referring to Orthodox/Hasidic Jews. (*See id.* ¶ 38 (alleging that Yeshiva Chofetz Chaim of Radin was the owner of two of the properties on which adult student housing was proposed); *id.* ¶ 141 (noting that the ASHL “was proposed specifically in response to the request from a religious group for multi-family housing . . . to house married adult students and their families”).) Marshall strongly opposed the ASHL, stating that Ramapo officials “were pandering to the special interest groups able to deliver the critically important block vote,” (Pls.’ Ex. 109, at POM0013281), i.e., the Orthodox Jewish vote out of New Square, New York, (*see* Trial Tr. 619). Also during 2004, YSV had its tax-exempt status denied for the first time, (*see* Joint Pretrial Order Stipulations of Fact ¶ 12), and Tartikov purchased the Subject Property, (*see* Defs.’ Ex. 1057). Although there is no evidence that Defendants were aware that Tartikov purchased the Subject Property until November 2004, (*see* Joint Pretrial Order Stipulations of Fact ¶ 15), Defendants were aware of the growth of the Orthodox/Hasidic community in Ramapo and sought to prevent the spread of that community into the Village. Significantly, as noted, there were no schools within the Village in 2004. (*See id.* ¶ 14.)

With regard to the Dormitory Law, the relevant provisions of which were adopted in September 2004 (Local Law No. 5 of 2004) and January 2007 (Local Law No. 1 of 2007), the evidence of discriminatory purpose

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is even stronger. The Village opposed Ramapo's ASHL, and then, to prevent the spread of Orthodox/Hasidic adult student housing into the Village, the Board of Trustees adopted Local Law No. 5 of 2004, which prohibits "[s]ingle family, two-family and/or multi-family dwelling units," (Local Law No. 5 of 2004 § 2), housing similar to that permitted under the ASHL. Moreover, Local Law No. 1 of 2007, which amended provisions of the Dormitory Law, was passed during a contentious Board of Trustees meeting. Village residents were vehemently opposed to what they believed to be Tartikov's development, although the information they learned came from Preserve Ramapo. (See Pls.' Ex. 65.) Many of the attendees' comments focused on the nature and size of the development, but some of the attendees were opposed to the development because it was proposed by Orthodox/Hasidic Jews. One attendee noted that he or she had heard that Tartikov's proposal was for "rabbinical students and their families," and sought a way to prevent institutions from being "flooded with family members and children, *and all of that sort.*" (Pls.' Ex. 137, at 70 (emphasis added).)¹⁸ Marshall indicated, in response, that the "[a]ccessory use" provision of the Dormitory Law "addresses that to some degree." (*Id.* at 71.) Another attendee stated, in reference to Tartikov's apparent plan, that "[e]veryone should understand that this is not going to happen, and we're not going to let it happen. Let's stop it now. [Multiple shouts of 'Stop it now'] Their counsel is here to protect their interests. We're here, the people who live in this village, to protect our interests, okay." (*Id.* at 21.) Yet another attendee was fearful that the

18. The transcript does not identify the gender of the attendee.

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Village would turn into another “Kiryas Joel,” a Hasidic community located in the Town of Monroe. (*Id.* at 56.) The Village’s actions and the statements made by the attendees at the Board meeting reveal a fear that Tartikov, and its students, were going to take over the Village and change its “character” and “politics.” (*Id.* at 10.) Although the opposition from the public was not overtly discriminatory, these statements support a finding of discriminatory animus. *See Mhany Mgmt., Inc. v. County of Nassau*, 819 F.3d 581, 608-09 (2d Cir. 2016) (noting that comments about the “flavor” and “character” of a village, although “not overtly race-based” could be “code words for racial animus” (internal quotation marks omitted)).

The Wetlands Law, the relevant provisions of which were adopted in April 2007 (Local Law No. 5 of 2007), was enacted despite the fact that there is no evidence that the Village conducted any studies prior to the adoption of the law to determine where the Village’s wetlands were, what threats they faced, or how best to protect them. Village officials did, however, know there were wetlands located on the Subject Property before the law was adopted, (*see* Trial Tr. 670 (Marshall stating that he knew there were wetlands on the Subject Property prior to 2007); Pls.’ Ex. 69, at 1 (email from Yagel discussing the presence of wetlands on the Subject Property); Pls.’ Ex. 104, at 1 (Marshall noting, in January 2002, that there are wetlands on the Subject Property); Pls.’ Ex. 107, at 2 (October 22, 2001 Board meeting minutes noting that Marshall “stressed” that YSV needed to protect the wetlands located on the Subject Property); Pls.’ Ex. 141, at 20 (1997 Update to the Village’s Master Plan noting

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that the Subject Property contains “part of a large State-regulated wetland”)), indicating that this law was designed to prevent Tartikov from building its proposed rabbinical college. Further evidence that the Village passed the Wetlands Law to target Tartikov is found in the scope of the law’s provisions. The law exempts from its coverage residences improved with single family residences. *See* Village Code § 126-3(D) (“The aforesaid [100] foot buffer in which regulated activities are not permitted to take place shall not apply to lots that are improved with single-family residences.”) In the Village, there are 1,156 parcels of land, with 285 of them located within 100 feet of mapped wetlands. (*See* Beall Decl. ¶ 180.) Of those 285 parcels, 240 of them are improved with single family residences, leaving a maximum of 45 parcels subject to regulation. (*See id.* ¶¶ 180-81.) The fact that the Subject Property just so happens to be one of the 45 parcels subject to regulation is telling. Also troubling is the Village’s decision to adopt a law relating to wetlands in 2007, after it learned of Tartikov’s proposed use, despite the fact that it considered passing a similar law in the 1990s. (*See* Ulman Aff. ¶ 92.) It was not until Tartikov came along that such a law became “necessary” to prevent the unidentified risks to the Village’s unidentified wetlands.

The Court need not rely solely on this circumstantial evidence to conclude that the Wetlands Law was conceived of and passed with a discriminatory purpose. Village officials explicitly stated their intent to thwart Tartikov’s plans. Between the time the Wetlands Law was first proposed and the time that it was adopted, Sanderson, Louie, and Yagel indicated in campaign

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materials that voters needed to “stand up to the threat” that Tartikov posed, further stating “[y]ou need to vote for a team that is prepared to stand up to this threat of using the fundamentally unfair RLUIPA statute as a hammer against our village.” (Pls.’ Ex. 41.) Sanderson also specifically indicated in a campaign video that the rabbinical college “could completely change the village and the *make-up* of the village.” (Pls.’ Ex. 47, at 1 (emphasis added).) The campaign materials for all three candidates indicated that “the single most important issue facing the village [was] clearly the Tartiko[v] development.” (Pls.’ Ex. 41.) Sanderson, Louie, and Yagel won the election in March 2007, (*see* Joint Pretrial Order Stipulations of Fact ¶ 22), and, at least, Yagel and Louie voted in favor of passing the Wetlands Law, (*see* Defs.’ Post-Trial Brief (“Defs.’ Mem.”) 19 (Dkt. No. 323)). In addition to these comments, Plaintiffs have identified a number of other statements by Village officials indicative of Defendants’ prejudice against Tartikov and Orthodox/Hasidic Jews, *see Yeshiva Chofetz Chaim Radin, Inc. v. Village of New Hempstead*, 98 F. Supp. 2d 347, 355 (S.D.N.Y. 2000) (holding that “discriminatory comments by the [m]ayor . . . present grounds for allowing a jury to judge the credibility, and motivation, of the [m]ayor . . . as well as the motivation that can be attributed to the [v]illage itself in passing the disputed provisions”), including:

- In February 2007, Yagel and Louie authored a letter to *The Journal News* stating that “a virtual mini-city within the village . . . that will house thousands of homogenous individuals” was not a “natural” progression

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for the Village. (Pls.' Ex. 17 (internal quotation marks omitted).) Yagel was also quoted in the *New York Times* stating that it was “disgusting” that Tartikov was “trying to create [a] mini city in our village.” (Pls.' Ex. 169, at 1 (internal quotation marks omitted).)¹⁹

- Sanderson has publicly stated that the Village should “maintain[] its cultural and religious diversity.” (Pls.' Ex. 146 ¶ 106 (internal quotation marks omitted).) However, Sanderson is unaware whether any Hasidic Jews live in the Village. (*See* Trial Tr. 559.)
- Leslie Sanderson, who served as Village Clerk, testified that she was worried Tartikov would “usurp” the Village and Board of Trustees. (Trial Tr. 543.)
- Louie made a Facebook post which indicated discriminatory animus towards the Orthodox/Hasidic Jewish population. (*See* Pls.' Ex. 72.) *See Tartikov II*, 138 F. Supp. 3d at 392-93.

19. Defendants take solace in the fact that these statements were admitted as exhibits, but not for the truth of the matters asserted. However, these statements were offered, and admitted, not for their truth, but because they reveal Yagel's and Louie's animus toward Tartikov and Orthodox/Hasidic Jews.

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Significantly, these statements were made despite Defendants' efforts to refrain from publicly making disparaging or discriminatory comments. (*See* Pls.' Ex. 13, at 1 (email from Yagel to Louie and Sanderson noting that they "[m]ust be very careful about what we say" because they "[d]on't know who is in the audience"); Pls.' Ex. 146 ¶¶ 110-11 (admitting that Louie and Yagel told "everyone" at a Pomona Civic Association meeting that they "must be careful about their statements").)

Members of the community also expressed animus against Orthodox/Hasidic Jews. Mel Cook, a Village resident who served on the Village's Planning Board from 1998-2003, (Melvin Cook Dep. ("Cook Dep.") 17), wrote to *The Journal News* and corresponded with Village officials about his views on Tartikov and Orthodox/Hasidic Jews, (*see* Pls.' FOF ¶ 306; Pls.' Exs. 38, 54). With specific reference to Tartikov, Cook stated that "[i]f it looks like a duck, walks like a duck and quacks like a duck, it's an ultra-Orthodox housing project," (Cook Dep. 99 (internal quotation marks omitted)), that he saw the rabbinical college as "another restricted religious community similar to New Square," (*id.* at 102 (internal quotation marks omitted)), and described New Square as a "tribal ghetto," (*see id.* at 89-90). Robert Prol, another Village resident, made similarly disparaging comments about Tartikov. Prol stated that Tartikov would be a "slum," (Robert Prol Dep. ("Prol Dep.") 92 (internal quotation marks omitted)), referred to the Babad family as the "baBad" family, (Pls.' Ex. 20), and sent emails to Village officials stating that the Village should fight Tartikov's proposal, (*see* Prol Dep. 31-32; Pls.' Ex. 20). In spite of his expressed opposition to

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Tartikov's development, Sanderson appointed Prol to the Village's Planning Board in May 2008. (*See* Prol Dep. 13.) Prol's and Cook's comments are in addition to the negative sentiment expressed by village residents.²⁰ During his campaign, Sanderson met with hundreds of residents who were opposed to Tartikov's project. (*See* Trial Tr. 472.)

Of course, statements by Village residents can be attributed to the Board of Trustees only if the Board was aware of these sentiments and was responsive to the displayed animus. *See Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565, 580 (2d Cir. 2003) (noting that the "hostility [of neighborhood residents] motivated the [municipality] in initiating and continuing its enforcement efforts"); *LeBlanc-Sternberg*, 67 F.3d at 425 (explaining that discriminatory intent may be demonstrated "by showing that animus against the protected group was a significant factor in the position taken by . . . those to whom the decision-makers were knowingly responsive." (internal quotation marks omitted)). The evidence adduced at trial reveals that Defendants were aware of the residents' animus and acted on that animus. In one instance, based on public comments made during the January 22, 2007 meeting—the meeting during which Local Law No. 1 of 2007 was passed—the Board voted to impose a 25-foot height restriction on dormitories, even though no other building in the Village is subject to a 25-foot height

20. Plaintiffs have identified a number of anonymous comments posted on the Internet in support of their claim that the community opposed Orthodox/Hasidic developments. (*See* Pls.' FOF ¶ 300.) These comments do reveal a bias against the Orthodox/Hasidic community, but the Court places little reliance on them because they are not attributed to Village residents or officials.

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limitation. (*See* Trial Tr. 633 (Marshall testifying that increasing the height limitation “was rejected based on the comments from the—from the citizenry who attended”).) Based on comments made during that same meeting, the Board rejected a proposal to increase the number of dining halls permitted in dormitories from one to two. (*See* Pls.’ Ex. 137, at 77 (Sanderson stating that “based on the input from the public this evening, I think . . . [w]e should cut out the two dining rooms and go back to one”).) Marshall also strongly implied his agreement with the sentiment expressed during this meeting. (*See id.* at 58-59 (“We sitting at this table have limitations that are placed on us as to what we can say, and what we can’t say, because our attorney tells us what we can say and what we can’t say. I can’t say what I feel—I can’t—if I agree with you, I don’t agree with you, I don’t have that luxury of being able to say that here.”).) Aside from the January 22, 2007 meeting, the members of the Board testified that they take into consideration residents’ opinions when voting on laws, (*see* Pls.’ FOF ¶ 326), and Sanderson, Yagel, and Louie created their campaign literature and platform to be responsive to the public’s concerns, i.e., by stating that they would “fight” against Tartikov, (Pls.’ Ex. 41). They carried through on this promise by voting in favor of Local Law No. 5 of 2007. Additionally, certain Trustees aligned themselves with Preserve Ramapo, the group that opposed Tartikov’s development and leaked its plans to the public. (*See, e.g.*, Trial Tr. 499-500 (Sanderson testifying that his campaign slate had close ties to Preserve Ramapo).)

Finally, Defendants’ behavior with respect to other proposed projects is indicative of their intent to thwart

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the expansion of the Orthodox/Hasidic community. The Village has a demonstrated history of opposing various Orthodox/Hasidic Jewish land uses near the Village. As early as 1996, the Village opposed the expansion of Bais Yaakov, an Orthodox Hasidic yeshiva in Ramapo. (*See* Pls.' Ex. 125, at 7.) The Village wrote a letter in opposition to the expansion, attended a Ramapo meeting and read an opposition statement, challenged the expansion in court, and encouraged Village residents to object to the expansion. (*See id.* at 7-8; *see also* Trial Tr. 808 (Ulman affirming that the Village encouraged opposition to the expansion of Bais Yaakov).) In 1999, the Village did not object to the "Anna Mann" property becoming an assisted living facility, but then when it was later proposed that the property be used for a yeshiva, the Village did oppose the development. (*See* Trial Tr. 802.) In 2004, as noted above, the Village opposed Ramapo's Comprehensive Plan and the ASHL. (*See* Pls.' FOF ¶¶ 136-38, 141.) The Village also expressed opposition to the development of three yeshivot outside of the Village. (*See* Trial Tr. 808-11.)

The Village does not, however, have this same history of opposition when it comes to non-Orthodox/Hasidic land uses. In 2001, Marshall informed residents that they had to accept group homes within the Village because such land uses were protected under the FHA. (*See* Trial Tr. 614.)²¹ In May 2002, the Board, with the exception of one Trustee, informally approved Barr Laboratories' purchase of land within the Village to erect an office

21. The Village did not provide similar instructions with regard to RLUIPA. Instead, it passed a resolution in February 2007 asking Congress to revisit the law. (*See* Pls.' Ex. 58.)

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building, even though the land was zoned residential. (*See* Pls.’ Ex. 124, at POM0002022.) Furthermore, on the same day it adopted Local Law No. 1 of 2007, the Board voted in favor of applying for funds to create a senior citizen center within the Village. (*See* Pls.’s Ex. 75, at POM0016278.) Ulman testified that the Village has “consistently opposed high-intensity development,” (Ulman Aff. ¶ 16), as a means of showing that the Village opposes large developments regardless of who proposes them, but the fact remains that the Village has consistently opposed proposals by Orthodox/Hasidic Jews.

Not all of the evidence, however, points in favor of finding that Defendants acted with a discriminatory purpose. Some of the outrage directed toward Tartikov was premised on the size and scope of its proposed development. Based on what is currently known, which is very little because Tartikov has not revealed the full plan for the Subject Property, Tartikov’s proposal has the potential to add thousands of residents to a village that has a current population of approximately 3,000. *See* Village of Pomona, *About The Village*, <http://www.pomonavillage.com/about.html> (last visited Nov. 11, 2017). Nonetheless, given the totality of the credible evidence, the Court concludes that discriminatory purpose was “a significant reason for [Defendants’] actions,” *Cine SK8*, 507 F.3d at 786. There is no escaping the fact that the events leading up to the enactment of the Challenged Laws, the context in which they were adopted, the Village’s specific focus on opposing Orthodox/Hasidic development in and around the Village, and the public statements of Village officials and residents, to which the officials were responsive,

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all reveal that Defendants passed the Challenged Laws to thwart the spread of the Orthodox/Hasidic Jewish community into the Village.

b. Discriminatory Effect

In establishing discriminatory effect, Plaintiffs are not “obligated to show a better treated, similarly situated group of individuals.” *Pyke v. Cuomo*, 258 F.3d 107, 110 (2d Cir. 2001) (“*Pyke I*”) (holding that a plaintiff who alleges “that a facially neutral statute or policy with an adverse effect was motivated by discriminatory animus . . . is not obligated to show a better treated, similarly situated group of individuals of a different race in order to establish a claim of denial of equal protection”). Indeed, the courts “recognize[] that a government that sets out to discriminate intentionally in its enforcement of some neutral law or policy will rarely if ever fail to achieve its purpose.” *Doe v. Vill. of Mamaroneck*, 462 F. Supp. 2d 520, 546 (S.D.N.Y. 2006).

At trial, Plaintiffs demonstrated that Defendants’ animus hit its mark; the Challenged Laws prohibit Plaintiffs from constructing the type of rabbinical college they seek to obtain. First, with respect to the Accreditation Law, educational institutions are, in general, permitted in the Village, provided that those who wish to build an educational institution first obtain a special use permit. *See* Village Code § 130-10(F). Unaccredited educational institutions, however, are not permitted under any circumstances, because “educational institution” is defined by Village law as one that is “accredited by

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the New York State Education Department or similar recognized accrediting agency.” Village Code § 130-4. There is no dispute that Tartikov’s proposed rabbinical college cannot be accredited by any accrediting body. (*See* Kinser Decl. ¶ 29; Trial Tr. 446-51.) Indeed, Defendants’ expert witness on accreditation requirements, Preston Green, focused on the steps Tartikov could take to modify its plan so as to qualify for accreditation. (*See id.* 452.) The proposed modifications were painted as easy fixes, but fail to resolve the largest impediment to Plaintiffs’ proposal—the rabbinical college cannot be accredited until it is operational, (*see id.* (“So the first step it would have to do is to be in the position where it could be operational”)), but it cannot become operational under the Accreditation Law until it is accredited. At the end of the day, no matter what Tartikov does to its curriculum or admissions standards, it cannot be accredited without first being operational. Thus, the Accreditation Law blocks Tartikov from building a rabbinical college within the Village.

Second, with regard to the Dormitory Law, the Village Code explicitly provides that “[s]ingle-family, two-family[,], and/or multifamily dwelling units . . . shall not be considered to be dormitories or part of dormitories.” Village Code § 130-4 (defining “dormitory”). Dormitories likewise cannot “contain separate cooking, dining or housekeeping facilities” and cannot “occupy more than 20% of the total square footage of all buildings on the lot.” Village Code §§ 130-4, 130-10(F)(12). These provisions were designed to prevent the spread of Orthodox/Hasidic adult student housing into the Village and they

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achieve their desired effect. Tartikov seeks to erect family housing on the Subject Property with kitchens in each residence so that students can diligently study the Shulchan Aruch while also meeting their religious obligations to their families. (*See* Pls.’ FOF ¶¶ 24-25, 69.) The definition for “dormitory” prohibits these types of residences because separate cooking and dining facilities are prohibited. *See* Village Code § 130-4. The 20% floor space limitation on dormitories is similarly problematic because, to comply with the Property Maintenance Code of New York, Plaintiffs would have to construct residences that are at least 700 square feet. (*See* Pls.’ Ex. 1512 (“Weinstein Decl.”) ¶ 30.) Thus, even if Plaintiffs were to build a campus consisting of academic buildings totaling 100,000 square feet, the Dormitory Law’s 20% floor space restriction would permit a dormitory only 20,000 square feet in size—enough to accommodate roughly 30 students and their families. On its face, the Dormitory Law does not prohibit student housing within the Village—reflecting the ingenuity of Defendants’ actions—but when one digs deeper, it is evident that the law was designed to block the exact type of housing Tartikov seeks to construct.

Finally, with regard to the Wetlands Law, two provisions, working together, bar construction of the rabbinical college in the Village. First, Village law provides that “[t]he minimum lot area for an educational institution” is “a net lot area of 10 acres.” Village Code § 130-10(F)(1)(a). The only non-government-owned property available in the Village that can accommodate an educational institution is the Subject Property. (*See* Trial Tr. 310 (“Well, I knew [the] Tartikov site was the only

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100-acre site or only site large enough to build an actual campus based on the zoning. I think you need a 10-acre site, it's the only site available.”).²² Second, the Wetlands Law itself defines wetlands as “all lands and waters of the Village of Pomona . . . which have a contiguous area of at least 2,000 square feet” which contain, or are enclosed by, certain submerged vegetation, or that otherwise contain “poorly drained soils.” Village Code § 126-2. “[W]ithin 100 feet of the boundary” of such lands, or of any watercourse or “water body,” defined as a “body of standing water which is not dry more than three months of the year . . . and which, when wet, is customarily more than 500 square feet in water surface area,” it is unlawful to, in relevant part, “[e]rect[] any building or structure of any kind,” including “roads [or] driveways,” without a permit. *Id.* § 126-3(A)(3), (B). Exempted from the permit requirement, however, are properties improved by single family homes, *see id.* § 126-3(D), meaning that only approximately 45 parcels are subject to regulation. (*See* Beall Decl. ¶¶ 180-81.) And of those regulated parcels, 20 of them are vacant lots. (*See id.* ¶ 181.)

The 100-foot buffer imposed on the regulated parcels, of which the Subject Property is one, prevents the construction of the rabbinical college because the only suitable location for the driveway onto the property falls within 100 feet of regulated wetlands. (*See* Trial Tr.

22. Defendants “do not agree that the [Subject] Property is the only” property suitable in the Village for an educational institution, (Defs.’ Mem. 35), but have not cited any evidence to support this assertion. If another property exists in the Village that meets the minimum “net lot area of 10 acres,” Defendants have not identified it.

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1017-18 (Barbara Beall (“Beall”) confirming that there are wetlands located within 100 feet of the current driveway).) No other location is feasible because of the existence of other wetlands and steep slopes on the property. (*See* Trial Tr. 781 (Ulman confirming the existence of “steep slopes” on the “easterly side of the property”); Beall Decl. ¶ 250 (“The existing driveway, and any new driveway providing access to Route 306 on the west side of the [Subject] Property would be within the WPL’s 100 foot wetland buffer.”); *id.* ¶ 265 (“Any driveway access to Route 202 would require significant regrading of the slopes.”).) Of course, Plaintiffs could apply for a permit to modify the existing driveway, but Plaintiffs would need to show that the Wetlands Law “results in a deprivation of the reasonable use of [the] property so as to constitute a de facto taking.” Village Code § 126-5. Tartikov cannot meet this standard; the Parties have stipulated that “Tartikov cannot establish that the Challenged Laws have deprived it of economically reasonable use or value of the Subject Property, as it may be developed with single family residences.” (Joint Pretrial Order Stipulations of Law ¶ 18 (Dkt. No. 257); *see also* Ulman Aff. ¶ 80 (stating that it would be “impossible” for Plaintiffs to prove “that there is no other economic use for the property”).)

Accordingly, Plaintiffs have carried their burden and established by a preponderance of the evidence that the Challenged Laws “ha[ve] an adverse effect and . . . [were] motivated by discriminatory animus.” *Pyke II*, 567 F.3d at 77 (internal quotation marks omitted).

*Appendix B***c. Strict Scrutiny—Compelling Interest**

Because Plaintiffs have carried their burden of establishing a prima facie case, strict scrutiny applies to the Challenged Laws. *See United States v. Bannister*, 786 F. Supp. 2d 617, 664 (E.D.N.Y. 2011) (“In cases involving alleged racial discrimination, once a discriminatory purpose and a discriminatory effect are shown, the law is subject to strict scrutiny.”). Thus, Defendants bear the burden of proving that the Challenged Laws are “narrowly tailored measures that further compelling governmental interests.” *Johnson v. California*, 543 U.S. 499, 505, 125 S. Ct. 1141, 160 L. Ed. 2d 949 (2005) (internal quotation marks omitted). A compelling state interest involves “some substantial threat to public safety, peace[,] or order,” *Sherbert v. Verner*, 374 U.S. 398, 403, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963), and includes only “interests of the highest order,” *Westchester Day Sch. v. Village of Mamaroneck*, 504 F.3d 338, 353 (2d Cir. 2007) (“WDS II”) (internal quotation marks omitted), and the “gravest abuses,” *Sherbert*, 374 U.S. at 406.

At summary judgment, the Court concluded that the Challenged Laws do not survive strict scrutiny because the interests Defendants have offered justifying their adoption are not compelling. *See Tartikov II*, 138 F. Supp. 3d at 418 (“While the Challenged Laws may be justifiable under a rational basis test, they do not survive strict scrutiny.”); *see also id.* at 420 (“[T]he stated aesthetic and community character rationales are generally not compelling state interests, and Defendants have not demonstrated that these interests are so overwhelming

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or gravely threatened by the institutions such as the proposed rabbinical college to render them compelling.”); *id.* (“[W]ith regard to the Dormitory Law, while certain aspects of the law may be justified by a need to comply with other laws, Defendants offer no defense of the scope of the restrictions it contains”); *id.* (“[W]ith regard to the Wetlands Law, while there is some evidence to suggest a need for a wetlands law, . . . Defendants offer no evidence beyond Ulman’s testimony”). Defendants have not presented any evidence or made any argument regarding whether the Challenged Laws can survive strict scrutiny. (*See generally* Defs.’ Mem.) Their arguments focus entirely on whether Plaintiffs have established a *prima facie* case of discrimination. Defendants do, however, offer several justifications for the Challenged Laws. Although none of these justifications rises to the level of a compelling governmental interest, the Court will address each of them in turn. Before doing that, the Court notes that Defendants commissioned no studies or experts when examining the compelling need for the Challenged Laws, suggesting that any proffered interests are an “afterthought effort to bolster a flimsily supported decision,” *Westchester Day Sch. v. Village of Mamaroneck*, 417 F. Supp. 2d 477, 554 (S.D.N.Y. 2006), or “contrived for the sole purpose of rationalizing the” Village’s decisions, *Fortress Bible Church v. Feiner*, 734 F. Supp. 2d 409, 505 (S.D.N.Y. 2010) (“*Fortress Bible I*”), *aff’d*, 694 F.3d 208 (2d Cir. 2012).

*Appendix B***i. Local Law No. 1 of 2001**

Local Law No. 1 of 2001 was enacted because the Board of Trustees “wanted to have educational institutions as special permit uses rather than as of right, and to set up standards by which density and impacts on adjoining properties would be regulated.” (Ulman Aff. ¶ 25.) In support of this justification, Marshall testified that he was “very much in favor of . . . Yeshiva Spring Valley” and thought that YSV’s proposal was “the best possible use of” the Subject Property. (*See* Trial Tr. 650.) Defendants further contend that Local Law No. 1 could not have been designed to discriminate against YSV because “[h]ad YSV filed an application and had a site plan approved prior to the enactment of Local [Law No.] 1 of 2001, the previous law, not Local Law [No.] 1 of 2001, would have applied to YSV’s application.” (Ulman Aff. ¶ 31; *see also* Defs. Mem. 11 n.8 (citing *Exeter Bldg. Corp. v. Town of Newburgh*, 114 A.D.3d 774, 980 N.Y.S.2d 154 (App. Div. 2014)).)

The Court does not credit these justifications or the testimony that was offered in support of them. As a general matter, Defendants’ understanding of what law would have applied to YSV’s application is incorrect. Their argument is premised on a faulty understanding of the doctrine of vested rights, which “is implicated when a property owner seeks to . . . initiate the use of property . . . in a way that was permissible before enactment of amendment of a zoning ordinance but would not be permitted under a new zoning law.” *Exeter Bldg. Corp.*, 980 N.Y.S.2d at 158-59. “[A] vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates

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a commitment to the purpose for which the permit was granted by effecting *substantial changes and incurring substantial expenses* to further the development.” *Id.* at 159 (emphasis added) (internal quotation marks omitted). The landowner’s reliance on the existing zoning law “must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless.” *Id.* (internal quotation marks omitted). There is absolutely no evidence in the record that YSV had made substantial changes to the property or incurred substantial expenses before Local Law No. 1 was adopted. In fact, the record reveals the opposite. YSV had not even filed an application before the law was adopted. (*See* Ulman Aff. ¶ 29.) Thus, YSV’s application likely would have been subject to the amended provisions of the Village’s laws.

A second reason the Court does not credit Defendants’ justifications is that they largely ignore the context in which the law was passed. The only reason the Village made educational institutions special permit uses was because of YSV’s informal presentation to the Board in December 1999. (*See* Pls.’ FOF ¶ 127.) That presentation precipitated a series of events that culminated in the adoption of Local Law No. 1 of 2001, a law which ultimately prevented YSV from building a yeshiva in the Village. (*See* Fromowitz Dep. 59-62.)²³

23. Defendants argue that Fromowitz was unable to identify a single instance in which a Village official opposed YSV’s proposal, but Defendants overlook the obvious instance in which Village officials did just that—the passage of Local Law No. 1 of 2001. YSV proposed a school for 1,000 students. (*See* Fromowitz Dep. 59.) Local Law No. 1 imposed a minimum lot requirement of 10 acres, with an additional

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Thus, Defendants have failed to offer a credible, non-discriminatory justification for enacting this local law.

ii. Local Law No. 5 of 2004

Ulman, who became Village Attorney in July 2003, (Ulman Aff. ¶ 1), drafted Local Law No. 5 of 2004, (*see id.* ¶ 90). Ulman testified that the “purpose” of this law was to: (1) remove the .05 acre-per-student requirement for educational institutions imposed by Local Law No. 1 of 2001; (2) permit dormitories within the Village; (3) clarify the definition of “educational institution” and remove the definition for “school”; and (4) remove the requirement that educational institutions be located on state or county roads. (*See id.* ¶ 40.)²⁴ Ulman explained that prior to the enactment of this law, dormitories were prohibited in the Village, (*see id.* ¶ 38), and that she copied the definition for “dormitory” from laws passed in Ramapo and Chestnut Ridge, (*see id.* ¶ 47), which similarly do not permit kitchens in dormitories, (*see id.* ¶ 46; *see also* Defs.’ Ex. 1017, at 2 (Ramapo’s definition for “dormitory”); Defs.’ Ex. 1018, at

.05 acres per student, but subtracted from the total acreage steep slopes and certain wetlands. (*See* Local Law No. 1 of 2001 § 4.) After all of the excluded areas were subtracted from the total acreage of the Subject Property, the law made it “impossible” for YSV to build the proposed yeshiva. (*See* Fromowitz Dep. 60.)

24. Ulman described the acreage-per-student requirement as a “half-acre requirement,” but this is incorrect. (*Id.* ¶ 40.) Local Law No. 1 of 2001 mandated that educational institutions have a minimum net lot area of 10 acres and additional “0.05 acre for each pupil enrolled.” (Local Law No. 1 of 2001.)

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XVIII-12 (Chestnut Ridge’s definition for “dormitory”).²⁵ Ulman also claimed that the inclusion of provisions regarding dormitories was motivated by “recent case law developments in New York State.” (Ulman Aff. ¶ 48 (citing *Congregation Mischknois Lavier Yakov Inc. v. Board of Trustees of Village of Airmont*, No. 02-CV-5642 (S.D.N.Y. filed July 19, 2002); *Diocese of Rochester v. Planning Bd. of the Town of Brighton*, 1 N.Y.2d 508, 136 N.E.2d 827, 154 N.Y.S.2d 849 (N.Y. 1956); and *Cornell Univ. v. Bagnardi*, 68 N.Y.2d 583, 503 N.E.2d 509, 510 N.Y.S.2d 861 (N.Y. 1986)).) According to Ulman, these cases indicated that the Village could not prohibit educational institutions from constructing dormitories on campus. (*See id.*)

Local Law No. 5 of 2004 is also the law that amended the accreditation requirements such that educational institutions must be accredited by “the New York State Education Department or similar recognized accrediting agency.” (*See* Local Law No. 5 of 2004 § 1.) The purpose of this amendment purportedly was to clarify an inconsistency in the Village code, (*see* Ulman Aff. ¶ 52), which mandated that “schools” be approved by the New York State Board

25. Ulman testified that “the laws in Chestnut Ridge, Ramapo and Orangetown and many other municipalities do not permit kitchens in dormitories.” (*See* Ulman Aff. ¶ 46.) Tellingly, Ulman has identified only three other jurisdictions that do not permit kitchens in dormitories. Also significant is the fact that Defendants have admitted as exhibits only the code provisions for Chestnut Ridge and Ramapo. The Court has independently reviewed the code for Orangetown and finds no provision similar to that which the Village adopted. Orangetown does have a provision regulating dormitories, but that provision does not prohibit separate cooking or dining facilities. *See* Town of Orangetown Code § 43-8.2.

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of Regents or the New York State Education Department, while “educational institutions” had to be licensed by New York State, (*see* Local Law No. 1 of 2001 §§ 1-2). By eliminating the definition for “schools,” and broadening the universe of accrediting agencies, Ulman believed that she was making it easier for applicants to understand the Village’s zoning requirements. (Ulman Aff. ¶ 52.)

The Court finds some of Ulman’s testimony on these matters credible. For example, the Court has no reason to doubt that removing the definition for “school,” and the duplicative and inconsistent accreditation requirements imposed by that definition, made the Village Code easier to understand. In other respects, however, the Court does not credit Ulman’s stated justifications for Local Law No. 5 of 2004. First, Ulman testified that none of the stated justifications required the Village to ban multi-family housing. (*See* Trial Tr. 835.) Second, by “recent” developments in case law, Ulman refers to cases decided in 1956 and 1986 and one filed in 2002. (*See* Ulman Aff. ¶ 48.) The case filed in 2002 would have been “recent,” but Ulman’s inclusion of cases decided decades before Local Law No. 5 of 2004 was under consideration shows a willingness to stretch the truth and detracts from her overall credibility. Third, although the amendment to the accreditation provision expanded the universe of accrediting bodies, the purpose of the accreditation requirement was to regulate “commercial-type training schools, . . . such as automotive . . . [and] driving schools,” (Trial Tr. 898), which can be accredited, (*see* Kinser Decl. ¶ 10). In any event, Ulman offered no testimony, and Defendants have offered no evidence, that the

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Village was about to be besieged by such trade schools or otherwise explained the timing of the promulgation of this requirement. Finally, Ulman's reliance on the similarities between Local Law No. 5 and Ramapo's laws relating to dormitories is misplaced. Ramapo's zoning laws do prohibit individual kitchens within dormitories, (Defs.' Ex. 1017, at 2), but Ramapo's ASHL, which the Village actually opposed, contemplates the existence of adult student housing. *See Village of Chestnut Ridge v. Town of Ramapo*, No. 07-CV-9278, 2008 U.S. Dist. LEXIS 76881, 2008 WL 4525753, at *1 (S.D.N.Y. Sept. 30, 2008) (noting that the ASHL "permits married, adult, student, multi-family, high-density housing in single-family residential zones . . . in the unincorporated portion of Ramapo."). The Village does not have a similar provision permitting such housing.

Setting aside the testimony described above, Defendants point to other evidence that they argue proves that Local Law No. 5 of 2004 was passed for legitimate reasons. (*See* Defs.' Mem. 14-15.) The law was originally discussed by the Board of Trustees during the summer of 2004, (*see* Ulman Aff. ¶ 41), several months before the Village learned in November 2004 that Tartikov purchased the Subject Property, (*see* Joint Pretrial Order Stipulations of Fact ¶ 15), and years before the Village learned of Tartikov's plans for the property, (*see* Ulman Aff. ¶ 57). Furthermore, the Trustees who voted in favor of the law—Marshall, Sanderson, Roman, and Alan Lamer ("Lamer"), (*see* Pls.' Ex. 131, at POM0000432)—testified that they would not condone discriminatory behavior, (*see* Trial Tr. 521 (Sanderson stating that he has "no animus

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towards [Orthodox/Hasidic Jews] at all”); *id.* at 574 (Roman, an African American woman, stating that her community has been “fighting discrimination” since 1865 and that she would not engage in discriminatory behavior); *id.* at 668 (Marshall testifying that he is Jewish and finds “any allegation of anti-Semitism” to be “repugnant”); *id.* at 736 (Lamer stating that his decision to vote in favor of Local Law No. 1 of 2007 was not “motivated by any desire to keep Tartikov from building a school within the Village”)).

The flaw in Defendants’ reasoning is that Local Law No. 5 of 2004 was not adopted in a vacuum; other events that occurred around the time of adoption undercut Defendants’ position. For example, the same Board that voted in favor of Local Law No. 5 and disclaimed a discriminatory purpose also voted to challenge Ramapo’s ASHL because it was allegedly passed “to secure for one religious community a unique and significant zoning benefit.” (Pls.’ Ex. 156 ¶¶ 27, 215.) That religious community was Orthodox/Hasidic Jews. It is unsurprising, then, that Local Law No. 5 was designed to prohibit the exact same type of multi-family housing permitted under the Ramapo ASHL. Additionally, while Defendants have highlighted favorable testimony from the Trustees that voted in favor of Local Law No. 5, they overlook other damaging testimony indicative of discriminatory animus. For example, in June 2004, Marshall stated that officials in Ramapo were “pandering to the special interest groups able to deliver the critically important block vote,” (Pls.’ Ex. 109, at POM0013281), in reference to the Orthodox Jewish community, (*see* Trial Tr. 619). In another example,

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during his campaign for mayor in 2007, Sanderson stated that Tartikov “could completely change the village and the *make-up* of the village.” (Pls.’ Ex. 47, at 1 (emphasis added).) There is no evidence that Roman and Lamer made similar statements, but they were Trustees when the Board took concrete steps to prevent the spread of the Orthodox/Hasidic community into the Village.

Thus, while Defendants’ proffered justifications for enacting Local Law No. 5 of 2004 are not entirely incredible, the Court finds that discriminatory purpose was “a significant reason for [Defendants’] actions,” *Cine SK8*, 507 F.3d at 786.

iii. Local Law No. 1 of 2007

Ulman drafted Local Law No. 1 of 2007 “to address errors, inconsistencies and vagueness issues in relation to the previously enacted educational institution and dormitory laws.” (Ulman Aff. ¶ 53.) The law was originally presented to the Board of Trustees in December 2006. (*See id.* ¶ 55.) Ulman testified that she did not learn about Tartikov’s proposal until January 2007, (*see id.* ¶ 57), and thus Defendants contend that the law was not drafted to discriminate against Plaintiffs.

The Court credits only part of Ulman’s testimony on this matter. Ulman may not have been aware of Tartikov’s *specific* plan, but Ulman and the Board of Trustees were preparing to oppose Tartikov’s use of the Subject Property before January 2007. Between July 2006 and December 2006, the Board of Trustees was scheduled to meet ten

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times in executive session to discuss Tartikov. (*See* Pls.' Exs. 80, 83, 85, 87, 89-92, 119-20.) In New York, a public body may conduct an executive session for the following reasons:

- a. matters which will imperil public safety if disclosed;
- b. any matter which may disclose the identity of a law enforcement agent or informer;
- c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- d. discussions regarding proposed, pending or current litigation;
- e. collective negotiations pursuant to article fourteen of the civil service law;
- f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- g. the preparation, grading or administration of examinations; and

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- h. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

N.Y. Public Officers Law § 105. When pressed during oral argument about which exception is applicable here, Defendants had no answer. The only exception that seems plausible is the exception for litigation. However, Ulman submitted an affidavit earlier in this Action stating that she first sensed that the Village could have a dispute with Tartikov in January 2007, (*see* Decl. of Doris F. Ulman, Esq. ¶ 16 (Dkt. No. 203) (“At or around [January 2007], as Village Attorney, I sensed the possibility that the Village may have a dispute with Plaintiffs in the future regarding their stated intentions. I do not recall discussing this feeling, which was nothing more than a suspicion, with anyone in January 2007.”)), making that exception inapplicable. Defendants’ fallback position is that Plaintiffs have proffered only meeting *agendas*, which only prove that the Board planned to discuss Tartikov, not that it actually discussed Tartikov. Plaintiffs do not know what was actually discussed during the executive sessions because anything discussed during those portions of the Board meetings is privileged. (*See* Trial Tr. 852.) The only way for the Court to know for sure what happened is for Defendants to waive the privilege. They have not done so, as is their right. The Court can only draw one conclusion from this refusal—Defendants discussed Tartikov and the ways in which they could limit Tartikov’s use of the

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Subject Property during executive sessions from July 2006 through December 2006. Ulman's testimony that she did not know how Tartikov planned to use the Subject Property until January 2007 is therefore unpersuasive. Regardless of when Ulman learned of the specifics of Tartikov's plan, the Board was preparing to oppose Plaintiff's use of the property as early as July 2006.

Moreover, Ulman's stated justifications also do not explain why she added the provision mandating that a "dormitory building shall not occupy more than 20% of the total square footage of all buildings on the lot." Village Code § 130-10(F)(12). The addition of this provision goes well beyond fixing errors and inconsistencies, but instead imposed substantial restrictions on Tartikov's ability to build student housing sufficient to support the rabbinical college.

Defendants spend little time addressing these issues. Instead, they contend that Plaintiffs worked behind the scenes to incite an atmosphere of hostility to make it appear as though Defendants were targeting Plaintiffs. (*See* Defs.' Mem. 17.) Specifically, Defendants focus on the events leading up to the January 22, 2007 Board meeting. The Board was initially scheduled to vote on Local Law No. 1 of 2007 on December 18, 2006, but Savad asked that the hearing on the law be adjourned. (*See* Defs.' Ex. 1041, at 4.) Then, on January 12, 2007, *The Journal News* ran the article describing the size and scope of Tartikov's proposal. (*See* Pls. Ex. 157.) The article, attributing the figures to Savad, stated that the rabbinical college would house 1,000 rabbis and their families. (*See id.* at RC1634.) Defendants

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imply that Plaintiffs, with the help of Savad, leaked the plans to the public to incite opposition to Tartikov's proposal. As evidence of this scheme, Defendants point to the fact that Savad hired a stenographer and videographer to attend the January 22, 2007 meeting. (*See* Ulman Aff. ¶ 60.) Defendants construct an interesting theory, but that is all that it is. They have no evidence to back it up. In any event, none of this theorizing changes in any way the overwhelming evidence of discriminatory animus, or the fact that this law served no compelling interests.

iv. Local Law No. 5 of 2007

Ulman drafted Local Law No. 5 of 2007 because “the Board was concerned about wetlands in the Village that were not regulated by the State or federal government.” (*Id.* ¶ 68.) She copied “the 100 foot buffer requirement in th[is] . . . [l]aw from the New York State Environmental Conservation Law, which requires a permit from the NYDEC for any proposed disturbance within 100 feet of any NYDEC regulated wetlands.” (*Id.*) In addition to reviewing these regulations, Ulman “consulted a wetlands study prepared for Westchester County, NY . . . and reviewed the wetlands laws of the villages of Chestnut Ridge, New Hempstead, and South Nyack.” (*Id.* ¶ 71.) She further explained that “additional events . . . make it clear that the Village had to enact this legislation,” i.e., “Hurricanes Floyd and Irene and super storm Sandy.” (*Id.* ¶ 73.) Ulman believed that the Wetlands Law “would protect the health, safety, and welfare of Village residents.” (*Id.* ¶ 69.)

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There are several issues with Ulman's testimony that detract from her credibility, thus yielding the conclusion that none of the stated justifications holds any water. First, the Village did not adopt the Wetlands Law until 2007, even though the idea of adopting such a law dates back to 1997. (*See* Trial Tr. 1227-28.) Apparently, the Village's wetlands were not at risk until after Tartikov appeared on the scene. The Court finds this coincidence very suspicious. *See Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1225 (C.D. Cal. 2002) ("At first blush, the [defendant] [c]ity's concern about blighting rings hollow. Why had the [defendant], so complacent before [the plaintiff] purchased the [subject] [p]roperty, suddenly burst into action? . . . [T]he activity suggests that the [defendant] was simply trying to keep [the plaintiff] out of the [c]ity, or at least from the use of its own land.").

Second, there is no evidence that a regulatory void in fact existed prior to the enactment of this law. Beall, Plaintiffs' expert on wetlands science, testified that "federal and state wetland regulations covered over 99% of all aquatic resources within the Village prior to the passage of the [Wetlands Law]." (Beall Decl. ¶ 51; *id.* ¶ 58 (noting that "99% of the . . . mapped wetlands in the Village" are regulated by the Corps of Engineers under the Clean Water Act); *id.* ¶ 59 (noting that "80%" of "the total acreage of . . . mapped wetlands in the Village . . . are regulated by the NYSDEC under Article 24"). This testimony is unrebutted. Charles Voorhis, Defendants' expert on environmental planning, did not do "a full inventory of wetlands in the [V]illage," and therefore was

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unaware of any wetlands that were not protected by state or federal law. (Trial Tr. 1275.) The only possible void filled by the Wetlands Law is that it imposes a 100-foot buffer around *all* wetlands, while federal and state law do not. (*See id.* at 1290.) However, there is no evidence about whether this gap is significant because the Village did not commission a study to determine whether unprotected wetlands existed in the Village or whether the Wetlands Law was tailored to protect those areas.

Third, Ulman identified “Hurricanes Floyd and Irene” and “super storm Sandy” as events that justified the passage of the Wetlands Law, but the timing of these events further reinforce the conclusion that the law was passed to thwart Tartikov’s proposal. (Ulman Aff. ¶ 73.) Hurricane Floyd occurred in 1999. *See* Andrew C. Revkin, *The Big Storm: The Northern Suburbs*, The New York Times (Sept. 18, 1999), <http://www.nytimes.com/1999/09/18/nyregion/the-big-storm-the-northern-suburbs-lost-lives-ruined-homes-and-close-calls.html?mcubz=1>. No explanation has been proffered for why the Village waited almost a decade after that hurricane to enact legislation regulating wetlands. The obvious explanation is that the Village did not deem it necessary. Hurricane Irene occurred in 2011 and Superstorm Sandy occurred in 2012, postdating the passage of the Wetlands Law by several years. Defendants cannot rely on these events to justify a law that was passed in 2007. Even if Defendants are relying on these events merely to show that the Village’s wetlands have the potential to damage the Village and thus needed to be regulated, Defendants have not explained whether the Wetlands Law prevented or lessened the

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damage that Hurricane Irene and Superstorm Sandy would have caused without regulation.

Finally, the Wetlands Law states that the “protection of all wetlands is vital to the health, safety and welfare of all persons,” Village Code § 126-1, yet exempts from its coverage “lots that are improved with single-family residences,” *id.* § 126-3(D), effectively rendering the law toothless. Out of over 1,000 parcels of land in the Village, only 285 of them are located within 100 feet of protected wetlands. (*See* Beall Decl. ¶ 180.) Of those 285 regulated parcels, 240 of them are improved with single family residences. (*See id.* ¶ 181.) Thus, at most, 45 parcels are subject to the law’s restrictions. By its own terms, the exception swallows the rule.

Despite Defendants’ failure to credibly explain why the Wetlands Law was adopted, they have proffered other evidence that indicates, on its face, that the Board of Trustees adopted the Wetlands Law for legitimate, non-discriminatory reasons. Defendants contend that the law was not enacted to prevent Tartikov from developing a college because Ulman had “no knowledge of what, if any, wetlands were on the [Subject] Property” at the time the law was drafted. (Defs.’ Mem. 19; *see also* Ulman Aff. ¶ 70 (“While the [Subject] Property is legally subject to this, the Law was not prepared or enacted with the [Subject] Property in mind. I can say this because, as I have stated, I drafted the law and when I drafted it, I had no knowledge of what, if any, wetlands were on the property.”).) Even if Ulman did not know whether there were wetlands on the Subject Property (which is dubious, at best), other

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Village officials did know that there were wetlands on the property. Marshall made reference to wetlands on the Subject Property as early as 2001, (*see* Pls.’ Ex. 107, at 2 (October 22, 2001 meeting minutes noting that Marshall “stressed” that Yeshiva Spring Valley needed to protect the wetlands located on the Subject Property)), and acknowledged during trial that he knew prior to 2007 that there were wetlands on the property, (*see* Trial Tr. 670). Although Marshall was voted out of office before the Board of Trustees voted on the Wetlands Law, he was the mayor during the drafting process. (*See id.* at 670-71; Ulman Aff. ¶ 74.) Yagel, who was elected to the Board in March 2007, discussed the presence of wetlands on the property in January 2007. (*See* Pls.’ Ex. 69, at 1, 3.) And, the 1997 Village Master Plan Update contains a large diagram showing that there are wetlands on the property. (*See* Pls.’ Ex. 141, at Fig. 1.)

Defendants also cite to the testimony of Sanderson, Yagel, and Louie to argue that the Wetlands Law was not meant to discriminate against Tartikov. (*See* Defs.’ Mem. 19.) Sanderson testified that the law was not passed with the intention of keeping Tartikov out of the Village. (*See* Trial Tr. 521.) The Court does not credit this testimony because Sanderson ran for mayor on a platform that included a promise to fight to keep Tartikov from developing the Subject Property and expressed concerns about the “make-up” of the Village changing if Tartikov were to build on the property. (*See* Pls.’ Ex. 41; Pls.’ Ex. 47, at 1.) Yagel similarly testified that the Wetlands Law was not adopted to prevent Tartikov from building a rabbinical college, (*see* Trial Tr. 728), and also

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that he was unaware of the existence of wetlands on the property, (*see id.* at 727). The Court does not credit this testimony, and in one respect, it is false. The Court does not credit Yagel's testimony that the law was not adopted to discriminate against Tartikov because Yagel made discriminatory comments leading up to the adoption of the law. For example, in early 2007, Yagel co-authored a letter to *The Journal News* stating that "a virtual minicity within the village . . . that will house thousands of homogenous individuals" was not a "natural" progression for the Village, (Pls.' Ex. 17 (internal quotation marks omitted)), and was quoted in the *New York Times* saying that it was "disgusting" that Tartikov was "trying to create this minicity in our village," (*see* Pls. Ex. 169, at 1 (internal quotation marks omitted)). The Court does not credit the remainder of Yagel's testimony because it is demonstrably false. As indicated in the preceding paragraph, Yagel discussed the existence of wetlands on the Subject Property in January 2007. (*See* Pls.' Ex. 69, at 1, 3.) Finally, Louie testified that the Wetlands Law was "absolutely not" enacted to prevent Tartikov from developing the property. (*See* Trial Tr. 703.) For similar reasons as those provided for Yagel, the Court does not credit this testimony. For example, Louie was a co-author of the letter to *The Journal News*. (*See* Pls.' Ex. 17.)

In light of Defendants' failure to provide any credible justification for the passage of the Wetlands Law, or even explain what purpose it serves, the Court is left to conclude that the law was enacted to thwart Tartikov's proposed rabbinical college.

*Appendix B***d. Strict Scrutiny—Narrowly Tailored**

Even if Defendants had proffered evidence proving that the Challenged Laws were justified by compelling interests, the Challenged Laws would still fail to pass strict scrutiny because they are not narrowly tailored to serve those interests. *See Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 664, 114 S. Ct. 2445, 129 L. Ed. 2d 497 (1994) (noting that a municipality must show “that the regulation will in fact alleviate [claimed] harms in a direct and material way”). When “[t]he proffered objectives are not pursued with respect to analogous non-religious conduct, and those interests could be achieved by narrower ordinances that burdened religion to a far lesser degree[,] [then] [t]he absence of narrow tailoring suffices to establish the invalidity of the [actions].” *Lukumi*, 508 U.S. at 546; *Jana-Rock Constr.*, 438 F.3d at 210 (“Strict scrutiny is applied in order to determine whether the harm stemming from a particular decision . . . is justified.”).

The Challenged Laws are not narrowly tailored because the Village Code already provides several layers of regulation through which Defendants could limit the development of the Subject Property. Before an educational institution can be built in the Village, the developer must obtain a special permit from the Board of Trustees, *see* Village Code § 130-10(F), obtain site plan approval from the Village Planning Board, *see id.*, and go through the Village’s architectural review process, *see id.* § 3-4(a) (“The [Board of Architectural Review] shall review all applications for building permits for nonresidential construction”). All special permit uses are subject to

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two standards: (1) those generally applicable to all special permit uses, and (2) those specifically required for the special permit use at issue. Village Code § 130-28(E).

All special permit uses are subject to the conditions set forth in Village Code § 130-28(E)(6). This provision permits the Board of Trustees to “attach all such additional conditions and safeguards to any special permit as are, in its opinion, necessary to ensure initial and continual conformance to all applicable standards and requirements,” including:

- a) The location and size of the special permit use, nature and intensity of the operations involved in it or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the area in which it is located.
- b) The location, nature and height of buildings, walls and fences and the nature and extent of existing or proposed plantings on the site are such that the special permit use will not hinder or discourage the appropriate development and use of adjacent land and buildings.
- c) Operations in connection with any special permit use will not be more objectionable to

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nearby properties by reason of noise, traffic, fumes, vibration or other characteristics than would be the operations of permitted uses not requiring a special permit.

Id. § 130-28(E)(6)(a)-(c). The special permit provisions applicable to educational institutions allow the Board of Trustees to impose additional conditions on the issuance of a special permit, including:

- (9) The Board of Trustees may impose such restrictions and regulations which would avoid or minimize traffic hazards, impairment of the use, enjoyment or value of property in the surrounding area, or generally protect the health, safety and welfare of the neighborhood and to otherwise implement the purpose and intent of this chapter.
- (10) The location and size of the use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith shall not be hazardous.
- (11) The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of

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landscaping on the site shall be such that the use will not hinder or discourage the development and use of adjacent land and buildings.

Id. § 130-10(F)(9)-(11). Defendants have not offered a credible explanation as to why these provisions are incapable of restricting the development of the Subject Property in the way they seek.²⁶

Moreover, during the site plan review process, the Planning Board has the “authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan.” *Id.* § 119-3(B)(1). No site plan can be approved unless the Planning Board finds that “the proposed activity and manner in which it is to be accomplished are in accordance with the purpose and findings set forth in this chapter,” and that “the proposed activity and the manner in which it is to be accomplished will not adversely affect the preservation and protection of existing wetlands, water bodies, watercourses and floodplains.” *Id.* § 119-3(A)(1), (3). The Planning Board must also “take into consideration the public health, safety and general welfare and shall

26. Ulman testified that the Village “does not have the ability to control the size of an educational institution through the special permit application process unless the zoning law has a limitation (as the Village Local Laws do).” (Ulman Aff. ¶ 77.) This testimony is vague and conclusory and belied by the code provisions discussed above. *See* Village Code § 130-28(E)(6)(a) (authorizing the Board of Trustees to place restrictions on the “location and size” of special permit uses).

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set appropriate conditions and safeguards which are in harmony with the general purpose and intent of this chapter.” *Id.* § 119-5(D).

These Village Code provisions are not the only restriction on Plaintiffs’ development of the Subject Property. An application to establish an educational institution in the Village also would likely be subject to SEQRA, (*see* Trial Tr. 1242), which is “an overall environmental review process,” (Defs.’ Ex. 2002 ¶ 97). SEQRA review can address environmental impacts on wetlands and water pollution, plant life and wildlife, floodplains, stormwater, air quality, noise, population concentration, distribution and growth, existing community character, and human health impacts. (*See* Trial Tr. 1243-44; Beall Decl. ¶¶ 134, 140; Pls. Ex. 200.) Furthermore, as alluded to above, the New York State Environmental Conservation Law requires permitting from the New York State Department of Environmental Conservation for activity within 100 feet of designated wetlands, (*see* Ulman Aff. ¶ 68), and wetlands that qualify as “Waters of the United States” are federally protected by the Clean Water Act, (Beall Decl. ¶ 89).

Plaintiffs do not dispute that they are subject to all of these regulations. During oral argument, they went so far as to suggest one condition that Defendants may wish to consider: conditioning the issuance of a special permit on a requirement that only students and their families live on Tartikov’s campus. This suggestion is significant because it directly addresses Defendants’ concern that Plaintiffs are secretly planning to build a housing project for Orthodox/Hasidic Jews. Defendants

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have not explained why this type of condition would not resolve their concerns. Additionally, Defendants have not explained why only accredited schools and traditional student-only dormitories are preferable to unaccredited schools and nontraditional dormitories, or how they pose greater threats to the Village. Without this information, the Challenged Laws do not survive strict scrutiny review.

2. RLUIPA's Substantial Burden Provision**a. Jurisdiction**

Plaintiffs assert that Defendants must be enjoined from enforcing the Challenged Laws because the laws substantially burden their religious exercise in violation of RLUIPA. Defendants contend that the Court is without jurisdiction to address this claim because Plaintiffs have not established the applicability any of the jurisdictional prerequisites necessary to litigate a substantial burden challenge. (*See* Defs.' Mem. 27-29.) The substantial burden provision of RLUIPA provides:

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—

(A) is in furtherance of a compelling governmental interest; and

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(B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1). This provision

prohibits a governmental entity from applying a land use regulation “in a manner that imposes a substantial burden on the religious exercise of a person . . . or institution, unless the government demonstrates that imposition of the burden . . . is in furtherance of a compelling governmental interest; and . . . [the burden imposed] is the least restrictive means of furthering that compelling governmental interest.”

Westchester Day Sch. v. Village of Mamaroneck, 386 F.3d 183, 186 (2d Cir. 2004) (“WDS I”) (alterations in original) (quoting 42 U.S.C. § 2000cc(a)(1)); *see also Fortress Bible Church v. Feiner*, 694 F.3d 208, 218-19 (2d Cir. 2012) (“*Fortress Bible II*”). It serves to “backstop[] the explicit prohibition of religious discrimination in [a] later section of [RLUIPA], much as the disparate-impact theory of employment discrimination backstops the prohibition of intentional discrimination.” *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 900 (7th Cir. 2005).

The protections afforded by the substantial burden provision are triggered only if one of three conditions are met:

(A) the substantial burden is imposed in a program or activity that receives Federal

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financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

42 U.S.C. § 2000cc(a)(2). “To establish a claim, a plaintiff bears the burden of demonstrating that at least one of these predicates applies” *Chabad Lubavitch*, 768 F.3d at 192.

Defendants argue that Plaintiffs have not satisfied any of these jurisdictional prerequisites, devoting most of their attention to subsection (a)(2)(C). (*See* Defs.’ Mem. 28.) That subsection requires that the substantial burden be “imposed *in the* implementation of a land use regulation.” 42 U.S.C. § 2000cc(a)(2)(C) (emphasis added). “[T]his predicate is satisfied when the ‘government may take into account the particular details of an applicant’s proposed use of land when deciding to permit or deny that

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use.” *Chabad Lubavitch*, 768 F.3d at 193 (quoting *Guru Nanak Sikh Soc’y of Yuba City v. County of Sutter*, 456 F.3d 978, 986 (9th Cir. 2006)). In *Guru Nanak*, the Ninth Circuit explained:

By its own terms, it appears that RLUIPA does not apply directly to land use regulations, such as the [z]oning [c]ode here, which typically are written in general and neutral terms. However, when the [z]oning [c]ode *is applied to grant or deny a certain use to a particular parcel of land, that application is an ‘implementation’* under 42 U.S.C. § 2000cc[(a)](2)(C).

456 F.3d at 987 (emphasis added). Under this reading of subsection (a)(2)(C), Plaintiffs cannot sustain a substantial burden challenge because the zoning laws have not been “applied to grant or deny” Tartikov’s proposed use of the Subject Property. *Id.*

Plaintiffs mount no opposition to this interpretation of subsection (a)(2)(C). They instead rely on subsection (a)(2)(B) to argue that the Court has jurisdiction to hear their substantial burden claim. (*See* Pls.’ Post-Trial Mem. of Law (“Pls.’ Mem.”) 8 n.6 (Dkt. No. 329).) That provision applies where “the substantial burden affects, or removal of that substantial burden would affect, commerce . . . among the several states . . .” 42 U.S.C. 2000cc(a)(2)(B). Defendants argue that this provision is inapplicable here because “the effect, if any, of [Tartikov’s] hypothetical proposal on commerce is speculative and incalculable.” (Defs.’ Mem. 28.)

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The basis for Plaintiffs’ argument is that “commercial building construction is activity affecting interstate commerce.” *WDS II*, 504 F.3d at 354. In *Chabad Lubavitch*, the Second Circuit noted that the construction of a “17,000-square-foot addition” to a property “almost certainly renders RLUIPA applicable under the interstate commerce predicate.” 768 F.3d at 192 n.6. Plaintiffs have not proffered any evidence about the square footage of the buildings necessary for their proposed college, but Tartikov seeks to build “classrooms, study halls, courtrooms, a library, residences, . . . one or more shuls, and a facility to house a mikvah.” (Tauber Decl. ¶ 61.) The square footage of these facilities is likely to total in the thousands. To build these facilities, Tartikov intends to hire contractors and purchase all of the supplies necessary for their construction. (*See id.* ¶ 84.) The Court has no reason to doubt that the construction of these buildings constitutes “commercial building construction.” *WDS II*, 504 F.3d at 354. Accordingly, the Court has jurisdiction to hear Plaintiffs’ substantial burden claim.

Although not challenged by Defendants at this stage, as the Court has previously ruled on this issue, *see Tartikov II*, 138 F. Supp. 3d at 385, the Court notes that while the Challenged Laws have not been “imposed in the implementation” of a land use regulation, as that phrase is used in subsection (a)(2)(C), the laws were “impose[d]” on Plaintiffs for purposes of subsection (a)(1). The difference being that subsection (a)(1) does not require that the burden be imposed *in the* implementation of a land use regulation; it requires that the burden be “impose[d] *or* implement[ed].” *See Elijah Grp., Inc. v.*

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City of Leon Valley, 643 F.3d 419, 422 (5th Cir. 2011) (“When we focus on the text of the Clause, we read it as prohibiting the government from ‘imposing,’ i.e., enacting, a facially discriminatory ordinance or ‘implementing,’ i.e., enforcing a facially neutral ordinance in a discriminatory manner.”); *Roman Catholic Diocese of Rockville Centre v. Incorporated Village of Old Westbury*, No. 09-CV-5195, 2012 U.S. Dist. LEXIS 56694, 2012 WL 1392365, at *8 (E.D.N.Y. Apr. 23, 2012) (upholding facial challenge to zoning law because the plaintiff had adequately alleged that “the conditions imposed by the [law] would significantly restrict the [plaintiff’s] use of their [p]roperty for religious burial purposes”).

b. Substantial Burden on Religious Exercise

To establish a substantial burden claim, Plaintiffs “bear[] the burden of demonstrating,” *Chabad Lubavitch*, 768 F.3d at 192, that the “government . . . impose[d] . . . a land use regulation” on the Subject Property “in a manner that imposes a substantial burden” on their “religious exercise.” 42 U.S.C. § 2000cc(a)(1); *see also id.* § 2000cc-2(b) (“[T]he plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff’s exercise of religion.”). “The burden then shifts to the defendant to demonstrate that it acted in furtherance of a compelling governmental interest and that its action is the least restrictive means of furthering that interest.” *Chabad Lubavitch*, 768 F.3d at 192 (internal quotation marks omitted). The Parties have stipulated that the Village and the mayor and trustees of the Village are

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a “government,” and that the Challenged Law are “land use regulations.” (See Joint Pretrial Order Stipulations of Law ¶¶ 1-8.) The Court’s focus, then, is on whether Plaintiffs’ “religious exercise” has been “substantial[ly] burden[ed].” 42 U.S.C. § 2000cc(a)(1).

i. Plaintiffs’ Religious Exercise & its Sincerity

RLUIPA “defines ‘religious exercise’ to include ‘any exercise of religion, whether or not compelled by, or central to, a system of religious belief,’ and provides further that ‘[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered . . . religious exercise.’” *WDS I*, 386 F.3d at 186 (alterations in original) (quoting 42 U.S.C. § 2000cc-5(7)(A), (B)); see also *Sts. Constantine & Helen*, 396 F.3d at 900 (same). “Religious exercise” under RLUIPA is defined broadly “to the maximum extent permitted by the terms of this chapter and the Constitution.” *WDS II*, 504 F.3d at 347 (quoting 42 U.S.C. § 2000cc-3(g)); see also *Bikur Cholim, Inc. v. Village of Suffern*, 664 F. Supp. 2d 267, 275, 288 (S.D.N.Y. 2009) (same). It is not for the Court to say that Plaintiffs’ “religious beliefs are mistaken or insubstantial. Instead, [the Court’s] narrow function in this context is to determine whether the line drawn reflects an honest conviction.” *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2779, 189 L. Ed. 2d 675 (2014) (alteration and internal quotation marks omitted); see also *Patrick v. LeFevre*, 745 F.2d 153, 157 (2d Cir. 1984) (“Sincerity analysis seeks to determine an adherent’s good faith in the expression of religious belief . . . [and] provides a rational means of

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differentiating between those beliefs that are held as a matter of conscience and those that are animated by motives of deception and fraud.”).

Upon the Subject Property, Tartikov intends to construct “classrooms, study halls, courtrooms, a library, residences, . . . one or more shuls, and a facility to house a mikvah.” (Tauber Decl. ¶ 61.) Tartikov does not seek to provide just any type of residences; rather, it seeks to provide multi-family housing to accommodate the rabbinical students *and* their families. Neither Defendants nor the Court question the sincerity of Plaintiffs’ beliefs as they relate to the necessity for classrooms, study halls, courtrooms, a library, shuls, and a mikvah on the Subject Property. Defendants do, however, challenge the sincerity of Plaintiffs’ desire to build multi-family housing. (*See* Defs.’ Mem. 30 (“The evidence demonstrates that the requirement of multifamily housing on the campus of a rabbinical college is not a sincerely held religious belief.”).)

The Students are each motivated by their religious beliefs to become full-time rabbinical judges qualified in all four books of the Shulchan Aruch. (Pls.’ FOF ¶ 20 (citing Chaim Rosenberg Decl. ¶¶ 14-18, 21; Meilech Menczer Decl. ¶¶ 18-19, 35, 51-52; Jacob Hershkowitz Decl. ¶¶ 48, 49, 57, 92, 100).) They further believe that the Torah commands them to study the Torah day and night. (*See* Pls.’ FOF ¶ 27; Chaim Rosenberg Decl. ¶ 14; M. Babad Decl. ¶¶ 14-17; Jacob Hershkowitz Decl. ¶¶ 18-20; Meilech Menczer Decl. ¶¶ 14-15; Resnicoff Decl. ¶ 30-31, 33-38.) Any unjustified detraction from Torah study is a sin, known as bitul Torah. (Meilech Menczer Decl. ¶ 15.)

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To avoid bitul Torah, Tartikov wants to build a Torah community—a community that exists nowhere else in the United States, (*see* Pls.’ FOF ¶ 51), the purpose of which is to isolate the students from the distractions of the outside world, permitting them to devote themselves to the study of Jewish law, (*see* Pls.’ FOF ¶ 69; Resnicoff Decl. ¶¶ 68-70). Living in such a community facilitates the learning experience because the students live among their fellow students and teachers. (*See* Tauber Decl. ¶ 25.) The desire to create this type of community is grounded in religious texts that, for example, direct Jews to “[e]xile yourself to a place of Torah.” (Resnicoff Decl. ¶ 70 (internal quotation marks omitted).) A second motivation for Plaintiffs’ desire for on-campus housing is that they believe the rabbinical college would otherwise be unsuccessful in training judges versed in the four books of the Shulchan Aruch. (*See* Tauber Decl. ¶ 56 (“[O]ur prior experiences have confirmed that the effort that we plan to undertake cannot succeed if students are not living together with like-minded students and their families.”).) Tauber explained that over the past 30 years students at two other kollels in the area have not been successful in finishing all four books. (*See* Trial Tr. 69.) Tartikov believes that the only way to fix this problem is to create a Torah community. (*See id.* at 69-70.)

By themselves, these religious beliefs would justify the existence of *student* housing on the Subject Property. The necessity for *family* housing is explained by other of Plaintiffs’ beliefs. Jewish law requires men to live with their families. (*See* Chaim Rosenberg Decl. ¶ 55 (“According to my religious beliefs, I must live with my

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family.”); Jacob Hershkowitz Decl. ¶ 86(n) (“Jews are obligated to live with [their] family.”); Meilech Menczer Decl. ¶ 38(n) (same.) Jewish men are also required to marry at a young age, have large families, and teach their children the Torah. (*See* Trial Tr. 197; Pls.’ FOF ¶¶ 24-25.) Thus:

Only by [students] being able to live in a Torah Community, a Bais Din community where they live together with their families on-site where the entire community who lives there together are immersed 24/7 into the Torah studies all of them together with their rabbis, with their mentors, where they are always there together studying, all of them learning the same Shulchan Aruch, all together, full-time, they’re fully supported by their families, by their wives, their children, being all together they’re not distracted, they’re not in any way falling, dropping out because the circumstances of the family does not allow it, therefore, by them—in addition to the religious beliefs, where it’s so many times mentioned in our text in the Torah, the importance of living in the Torah Community, in addition to that, those who don’t live in a Torah Community cannot immerse themselves 24/7 into the Torah studies and they’re losing out time because of that which those who don’t live there and don’t live that kind of a lifestyle do not fulfill their full religious beliefs, they cannot, they don’t have the ability sometimes. If they can’t, they can’t.

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Our goal is, and we strongly believe that this is the only way, not only for them to be able to fulfill their religious beliefs, but this is the only way it's going to get them to accomplish what we're looking for them to accomplish. To be able to stay on for 15, 16 [years], sometimes more as needed to complete everything and to be able to become certified judges.

(Trial Tr. 69-70.) As a matter of religious faith, the Students are motivated to live in this type of community. (See Chaim Rosenberg Decl. ¶ 54 (“My religious beliefs motivate me to be part of such a Torah community.”); Jacob Hershkowitz Decl. ¶ 49 (“To become a rabbinical judge, I must participate in a program that teaches Shulchan Aruch, and do so in a community of like-minded students and teachers, what we refer to as a Torah community.”); Meilech Menczer Decl. ¶ 46 (“My religious beliefs motivate me to become part of this Torah Community’s living, learning, and worshipping environment as proposed by the Congregation Rabbinical College of Tartikov.”).)

Defendants argue that having family housing on a rabbinical college campus is not a religious belief, citing testimony offered by the Students and Tauber. (See Defs.’ Mem. 30-32.) For example, Jacob Hershkowitz and Chaim Rosenberg testified that traveling from off-campus housing to campus is not bitul Torah. (See Trial Tr. 167 (Chaim Rosenberg affirming that “the time [he] spend[s] going back and forth to the kollel is justifiable time”); *id.* at 235-36 (Jacob Hershkowitz affirming that he is “not committing a sin when [he] travel[s] to and

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from the kollel”).) Chaim Rosenberg also testified that someone building a kollel without on-campus housing would get “rewarded” for building the kollel because “[n]ot everybody has the means.” (*Id.* at 168.) Furthermore, Tauber testified that he does not believe that “Tartikov students are religiously obligated to live in multifamily housing,” (*id.* at 128), and Meilech Menczer stated that his religion does not require him to live in multi-family housing because “there’s no requirement how housing should be,” (*id.* at 278).

The Court sees two problems with Defendants’ argument. First, it is based on a misstatement of Tartikov’s proposal. Defendants are fixated on the provision of student family housing, but completely ignore the other aspects of Tartikov’s plan. It is not simply to build multi-family housing within the Village for Orthodox/Hasidic Jews, it is to build on-campus housing for rabbinical students and their families in a manner consistent with Jewish law and the Students’ beliefs. The purpose of the housing is to facilitate religious exercise, bringing it within RLUIPA’s protections. *See* 42 U.S.C. § 2000cc-5(7)(B) (“The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.”); *see also Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570, 574-75 (2d Cir. 2002) (finding provision of a location for homeless to sleep to be religious exercise); *Candlehouse, Inc. v. Town of Vestal*, No. 11-CV-93, 2013 U.S. Dist. LEXIS 63353, 2013 WL 1867114, at *18 (N.D.N.Y. May 3, 2013) (noting that there was sufficient evidence at the

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summary judgment phase to create a dispute of fact as to whether the residential component of a religious ministry for substance abuse was part of the plaintiff's religious exercise); *Bikur Cholim*, 664 F. Supp. 2d at 276 (holding that operation of "a facility to enable observant individuals to visit the sick on the Sabbath and holidays as well as the other individual plaintiff's [sic] obligations to observe the Sabbath while being able to visit their family members at [a nearby hospital] implicate[s] their religious exercise"); *Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp. 2d 309, 319 (D. Mass. 2006) (holding that a church's proposed development of a "parish center" that would "house an office for religious education[,] and . . . serve as a meeting place for the parish council . . . [and as] the locus of small gatherings related to church services" constituted "religious exercise" under RLUIPA).

Second, the testimony upon which Defendants rely is of little value. Focusing on whether it is bitul Torah to travel from off-campus housing to campus ignores all of the other aspects of Tartikov's proposed Torah community. Tartikov is not seeking to create on-campus housing to cut down on travel time, but rather to create a particular type of living and learning community—one that is free from the distractions of the outside world and permits students to focus on studying to Torah day and night, while surrounded by like-minded individuals. (See Pls.' FOF ¶¶ 27, 69; Tauber Decl. ¶ 25.) Tauber's and Meilech Menczer's testimony that Tartikov's students are not religiously required to live in "multifamily housing" is similarly of little value. (See Trial Tr. 128, 278.) Defendants place too much reliance on it because the

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Court understands this testimony to mean exactly what the witnesses stated—there is no religious *obligation* to live in “multifamily housing.” Plaintiffs, however, have professed a sincere religious belief based on religious doctrine to live on campus with their families, whether that housing be “multifamily” or otherwise. Meilech Menczer summed it up best: “there’s no requirement how housing should be.” (*Id.* at 278.)²⁷

Defendants also cite the actions of Students to cast doubt upon the sincerity of their beliefs. (*See* Defs.’ Mem. 32.) The Students are all currently enrolled at Kollel Belz, which does not provide on-campus housing. (*See* Trial Tr. 165, 167, 228, 234, 266.) The implication of this testimony is that the Students do not sincerely believe that on-campus housing is necessary because they do not currently live on-campus or in a Torah community. The Court does not see it this way. The Students are studying the Torah at Kollel Belz because they have no other option. They cannot study in a Torah community because no such community exists within the United States. (*See* Pls.’ FOF ¶ 51.) Defendants also focus on the fact that three of Tartikov’s trustees were able to study all four books of the Shulchan Aruch without living in on-campus family housing, (*see* Trial Tr. 98), and that Tauber admitted that “if someone wishes to or he has the will and he can pull through the

27. The Court notes that this interpretation of the Students’ and Tauber’s testimony is supported by the fact that during trial it was evident that English is not their first language. When these witnesses said that multi-family housing was not required, they were not saying that they are not required to live with their families on campus.

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whole program, he can get the studies done,” (*id.* at 93; *see also id.* at 273 (Meilech Menczer stating that “in order to become a rabbinical judge, there’s no requirement the way you have to study”).) This testimony reveals that there may be other ways to become conversant in the Shulchan Aruch, but does not discredit the Students’ beliefs that they “have to live in a Torah community in order to study, to succeed in the studies to become a rabbinical judge.” (Trial Tr. 273.) The effectiveness of these alternative avenues also is in serious doubt because over the past 30 years, students studying at the kollel at which the three Tartikov trustees studied have not successfully completed all four books of the Shulchan Aruch. (Trial Tr. 69; *see also id.* 439 (“[T]he[] other programs in America are not designed . . . to create people who really know Jewish law.”).) Plaintiffs blame that failure on the absence of a Torah community, the purpose of which is to facilitate the learning environment. (*See id.* at 439 (“[T]he reason why the[] [students] have to live together with them, the other students, and with the teachers, is because they learn from the other students and they really learn from the teachers.”).)

Accordingly, the Court concludes that Plaintiffs’ religious beliefs regarding the Torah community are sincere.

ii. The Burden Imposed by the Challenged Laws

RLUIPA does not itself define the phrase “substantial burden,” but the Second Circuit has held that a land use

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regulation constitutes a “substantial burden” within the meaning of RLUIPA if it “directly *coerces* the religious institution to change its behavior.” *WDS II*, 504 F.3d at 348-49. “The burden must have more than a minimal impact on religious exercise, and there must be a close nexus between the two.” *Fortress Bible II*, 694 F.3d at 219. Among the types of burdens the courts have found to be minimal, and hence not protected by RLUIPA, are facially neutral permit and variance requirements. Thus, courts have regularly found that zoning ordinances that merely require religious institutions to go through a routine permit or variance application process do not run afoul of RLUIPA. *See, e.g., id.* (“A denial of a religious institution’s building application is likely not a substantial burden if it leaves open the possibility of modification and resubmission.”); *Konikov v. Orange County*, 410 F.3d 1317, 1323 (11th Cir. 2005) (“[R]equiring applications for variances, special permits, or other relief provisions [does] not offend RLUIPA’s goals.”); *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1035 (9th Cir. 2004) (holding that a city’s requirement that the plaintiff refile a “complete “ permit application did not constitute a substantial burden (emphasis omitted)); *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761-62 (7th Cir. 2003) (“*CLUB*”) (finding that “the scarcity of affordable land available for development in R zones, along with the costs, procedural requirements, and inherent political aspects of the Special Use, Map Amendment, and Planned Development approval processes” did not impose substantial burden on religious institutions); *Hale O Kaula Church v. Maui Planning Comm’n*, 229 F. Supp. 2d 1056, 1071 (D. Haw. 2002) (holding that laws requiring

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special use permits did not impose a substantial burden on religious institution). Indeed, to exempt religious institutions from the normal permit/variance process would result in favoring these institutions, something which neither RLUIPA nor the Free Exercise Clause more generally require (and which the Establishment Clause might prohibit). *See CLUB*, 342 F.3d at 762 (“Otherwise, compliance with RLUIPA would require municipal governments not merely to treat religious land uses on an equal footing with nonreligious land uses, but rather to favor them in the form of an outright exemption from land-use regulations. . . . [N]o such free pass for religious land uses masquerades among the legitimate protections RLUIPA affords to religious exercise.”); *WDS I*, 386 F.3d at 189 (“As a legislative accommodation of religion, RLUIPA occupies a treacherous narrow zone between the Free Exercise Clause, which seeks to assure that government does not interfere with the exercise of religion, and the Establishment Clause, which prohibits the government from becoming entwined with religion in a manner that would express preference for one religion over another, or religion over irreligion.”).

While RLUIPA does not exempt religious institutions from complying with facially neutral permit and variance applications procedures, it does not wholly exempt zoning laws from scrutiny. Rather, RLUIPA protects religious institutions from land use regulations that substantially affect their ability to use their property in the sincere exercise of their religion. *See Fortress Bible II*, 694 F.3d at 218 (“[T]o hold that RLUIPA is inapplicable to what amounts to zoning actions taken in the context of a

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statutorily mandated environmental quality review would allow towns to insulate zoning decisions from RLUIPA review. . . . [The court] decline[s] to endorse a process that would allow a town to evade RLUIPA by what essentially amounts to a re-characterization of its zoning decisions.”). For example, courts have held zoning ordinances, or zoning decisions, that significantly lessen the prospect of a religious institution’s being able to use the property to further its religious mission can contravene RLUIPA. *See, e.g., Guru Nanak*, 456 F.3d at 992 (holding that the defendant county’s two denials of variance permits, under the circumstances, had “to a significantly great extent lessened the prospect of [the religious institution] being able to construct a temple in the future,” thus imposing a “substantial burden” on the religious institution’s “religious exercise”); *Roman Catholic Diocese of Rockville Centre*, 2012 U.S. Dist. LEXIS 56694, 2012 WL 1392365, at *8 (upholding plaintiff’s facial challenge to zoning law because plaintiff had adequately alleged that the “conditions imposed by the [law] would significantly restrict the [plaintiff’s] use of their [p]roperty for religious burial purposes”). Zoning schemes that impose conditions on the use of the property, such as limitations on the size of the facilities that can permissibly be used by the religious institution, also may impose a substantial burden. *See Cathedral Church of the Intercessor v. Inc. Village of Malverne*, No. 02-CV-2989, 2006 U.S. Dist. LEXIS 12842, 2006 WL 572855, at *8 (E.D.N.Y. Mar. 6, 2006) (finding that the plaintiff adequately alleged a substantial burden, where space limits imposed by the defendants “constrained” the ability of the church’s parishioners to “observe or participate” in religious services).

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Courts likewise have found a substantial burden where municipal zoning schemes impose significant “delay, uncertainty, and expense.” *Sts. Constantine & Helen*, 396 F.3d at 901; *see also WDS II*, 504 F.3d at 349 (noting that “a complete denial” of a religious institution’s zoning application which results in substantial “delay, uncertainty, and expense” can be a substantial burden (internal quotation marks omitted)); *Grace Church of N. Cty. v. City of San Diego*, 555 F. Supp. 2d 1126, 1137-39 (S.D. Cal. 2008) (finding that the plaintiff had established a substantial burden based on the uncertainty and expense resulting from the municipality’s zoning regulations and from municipal officials’ consistent hostility toward plaintiff in their review of the plaintiff’s land use applications). In one recent case, the Second Circuit held that when a municipality’s “willingness to consider [a] proposal is disingenuous, a conditional denial may rise to the level of a substantial burden,” *Fortress Bible II*, 694 F.3d at 219, and “when [a] town’s actions are arbitrary, capricious, unlawful, or taken in bad faith, a substantial burden may be imposed because it appears that the [religious institution] may have been discriminated against on the basis of its status as a religious institution,” *id.* In sum, “a complete denial” of a religious institution’s intended or applied-for use of its property “is not necessary for the Court to find that the government regulation . . . impose[s] a substantial burden on religious exercise.” *Cathedral Church*, 2006 U.S. Dist. LEXIS 12842, 2006 WL 572855, at *8; *see also Sts. Constantine & Helen*, 396 F.3d at 899-901 (finding that to establish substantial burden, a religious group need not “show that there was no other parcel of land on which it could build its church”);

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Westchester Day Sch. v. Village of Mamaroneck, 379 F. Supp. 2d 550, 556-57 (S.D.N.Y. 2005) (same).

The Second Circuit has not provided an exhaustive list of factors to be considered in determining whether a substantial burden has been imposed. Relevant considerations, however, include “whether the law is neutral and generally applicable,” the arbitrary and unlawful nature of defendant’s conduct, “whether feasible alternatives exist[] for [the plaintiff] to exercise its faith,” and whether the plaintiff “reasonably believed” it would be able to undertake its proposal “when it purchased the property.” *See Chabad Lubavitch*, 768 F.3d at 195-96; *see also Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 96-97 (1st Cir. 2013) (listing factors courts have considered relevant when determining whether a land use restriction imposes a substantial burden).

Taken together, the Challenged Laws substantially burden Plaintiffs’ religious exercise in several ways. The Accreditation Law prevents Tartikov from building a rabbinical college within the Village because only accredited educational institutions are eligible for special use permits, *see* Village Code § 130-4, and Tartikov cannot be accredited by any accrediting body, (*see* Trial Tr. 446-51; Kinser Decl. ¶¶ 29, 41; Pls.’ Ex. 2.) Defendants argue that this issue is easily fixable and therefore does not present a substantial burden. (*See* Defs.’ Mem. 39-42.) In some respects, this argument is appealing. Tartikov could make some changes that put it on the road to accreditation. (*See* Trial Tr. 453-57.) For example,

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Tartikov was informed that it cannot be accredited by the Association of Advanced Rabbinical and Talmudic Schools because its proposed curriculum is not broad enough and it would need to offer an admissions test. (*See* Pls.’ Ex. 2.) Likewise, Tartikov cannot be accredited by the Board of Regents because it does not plan to award a degree recognized by that body. (*See* Kinser Decl. ¶ 29.) Plaintiffs have not explained why Tartikov cannot offer an admissions test or what burden Tartikov would suffer if it had to change its curriculum to offer a wider array of programs. Indeed, Plaintiffs have taken the questionable position that they do not have to make any changes to their rabbinical program, no matter how insubstantial the burden. (*See* Trial Tr. 116 (“There was no discussion about changing the curriculum, our curriculum is what it is, and we are not going to change the purpose of our curriculum of certifying the judges for the four volumes of the Shulchan Aruch to be accredited . . .”).) This cannot be the case, as RLUIPA requires that Plaintiffs demonstrate a *substantial* burden; Tartikov cannot hide behind RLUIPA to avoid making insubstantial changes. At the very least, offering an admissions test appears to represent an insubstantial change, as Plaintiffs have not provided a religious basis for Tartikov’s decision to admit students without any such examination.

Defendants’ argument, however, suffers from a fatal flaw. Tartikov must be operational before it can be accredited, but Tartikov cannot become operational until it obtains a special use permit, which requires accreditation. (*See* Trial Tr. 452.) Therefore, even if Tartikov changed its curriculum and instituted an admissions test, it cannot

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be accredited. Defendants contend that Plaintiffs could seek provisional accreditation to overcome this problem, explaining that the American Bar Association regularly grants provisional accreditation to law schools, (Defs.' Mem. 41 & n.41), but there is no evidence that Plaintiffs can pursue that avenue here. Indeed, Defendants offer no proof that Plaintiffs could seek provisional accreditation from the Board of Regents, the Association of Advanced Rabbinical and Talmudic Schools, or any other body that accredits rabbinical colleges. Accordingly, the Court concludes that the Accreditation Law imposes a substantial burden of Plaintiffs' religious exercise. This holding is significant because it does not require the Court to examine any of the peculiarities of Tartikov's proposal, i.e., the creation of a Torah community. Indeed, Defendants argue repeatedly that the issue in this case "is whether Plaintiffs have demonstrated that the [Challenged] Laws impose a substantial burden on their wish to build a *rabbinical college* in Pomona." (Defs.' Mem. 44.) Thus, even under Defendants' understanding of the issues presented in the case, Plaintiffs have demonstrated a substantial burden because they cannot build a rabbinical college on *any* parcel of land within the Village.

The Dormitory Law similarly presents a substantial burden on Plaintiffs' use of the Subject Property, because the law prohibits dormitories from occupying more than 20% of the total square footage of all of the educational institution's buildings and prohibits the development of "multi-family dwelling units" with separate "cooking, dining or housekeeping facilities." Village Code §§ 130-4, 130-10(F)(12). Defendants contend that the 20% square

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footage limitation on dormitories does not represent a substantial burden because Plaintiffs need only increase the size of the academic buildings on the campus to increase the capacity of the dormitory building. (*See* Defs.' Mem. 36-37.) Plaintiffs concede that the 20% restriction does not represent a total prohibition of their proposed use, as Plaintiffs could construct a dormitory building, but argue that the limitation renders their use effectively impracticable. (Pls.' Mem. 16.) The Court agrees with Plaintiffs; this size limitation places a substantial burden on Plaintiffs' religious exercise because it prevents them from building a Torah community. *See Cathedral Church*, 2006 U.S. Dist. LEXIS 12842, 2006 WL 572855, at *8 ("[A] complete denial . . . is not necessary for the Court to find that the government regulation . . . impose[s] a substantial burden on religious exercise."). As discussed above in the context of Plaintiffs' equal protection claim, Plaintiffs would have to build academic buildings totaling 100,000 square feet to house roughly 30 students.²⁸ However, Plaintiffs do not seek to build 100,000 square feet of academic buildings because academic buildings for small colleges typically cover no more than 30,000 to 45,000 square feet. (Pls.' Ex. 1505 (¶ 45.)) Thus, the Dormitory Law needlessly requires Tartikov to construct academic

28. In their Post-Trial Proposed Findings of Fact, Plaintiffs state that the Challenged Laws restrict the number of students that could be housed at Tartikov's rabbinical college to approximately 6 to 8 students. (*See* Pls.' FOF ¶ 396.) This assertion finds no support in the record. The 20% housing space restriction is tied to the size of the other buildings on the property. No evidence was offered about the size of the other buildings that are going to be built upon the Subject Property.

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buildings far in excess of its need to achieve its intended purpose.

Defendants argue that the prohibition on multi-family housing does not place a substantial burden on Plaintiffs' religious exercise because Plaintiffs have "feasible alternatives" available to them. (Defs.'s Mem. 38 (quoting *Chabad Lubavitch*, 768 F.3d at 196).) During trial, Tauber testified that a "subagent" of Tartikov, Pomona 306 LLC, was formed to purchase other property in the Village, including 30 acres of property abutting the Subject Property upon which 14 single family homes are built. (*See* Trial Tr. 128.) Tauber also testified that Tartikov currently has 10 prospective students. (*See id.* at 79.) Defendants argue that these 10 students could live in the single family residences owned by Pomona 306 LLC and thus Tartikov has all of the housing it presently needs. (*See* Defs.' Mem. 38.)²⁹ The Court does not consider this arrangement to be feasible. Although Tartikov presently has 10 students, it is burdensome to limit Tartikov's student body to 14.³⁰

29. Defendants also argue that Tartikov could subdivide the Subject Property and build single family residences to house the students. (*See* Defs.' Mem. 38.) The problem with this argument is that it would not result in the quantity of homes that Defendants imply because even though the Subject Property is approximately 100 acres, Tartikov needs at least 10 acres to comply with the minimum lot area requirements for educational institutions, *see* Village Code § 130-10(F)(1)(a), and would additionally have to subtract the area for wetlands, steep slopes, and utility easements, *see id.* § 118-25(C).

30. The Court assumes that Defendants' response to this argument would be that Plaintiffs could continue buying property in the Village as needed. The Court concludes that this arrangement is

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Defendants' argument is also premised on its belief that the Dormitory Law is otherwise valid. As discussed above, and as will be discussed in further detail below, the Dormitory Law represents a substantial burden because of its discriminatory purpose. *See Chabad Lubavitch*, 768 F.3d at 195 (noting that the Second Circuit considers many factors in determining whether a challenged action imposes a substantial burden, including "the 'arbitrary and unlawful nature' of [the] defendant's conduct" (quoting *WDS II*, 504 F.3d at 352)).

Along these same lines, Defendants argue that the prohibition on multi-family housing does not impose a burden of Tartikov's proposed rabbinical college because Plaintiffs' do not need a Torah community on campus to have a successful rabbinical college. (*See* Defs.' Mem. 42-43.) In *WDS II*, the Second Circuit "expressed doubt as to whether RLUIPA immunize[s] all conceivable improvements by religious schools." 504 F.3d at 347. To receive protection from RLUIPA "religious schools need to demonstrate more than that the proposed improvement would enhance the overall experience of its students." *Id.* The Second Circuit cited gymnasiums used "exclusively for sporting activities" and a headmaster's residence as examples of improvements that may fall outside of RLUIPA's protections. *Id.* Thus, Tartikov must show

not a feasible alternative. Tartikov owns sufficient land upon which it can build the on-campus housing it seeks. Defendants' passage of laws designed to target multi-family housing for Orthodox/Hasidic Jews imposes a substantial burden on Plaintiffs religious exercise. But for this burden, Plaintiffs could apply for a permit to build what they seek without the need to buy yet more property.

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that on-campus housing will be “used at least in part for religious education and practice.” *Id.* at 348.

Defendants argue that Plaintiffs cannot meet this standard, citing the aforementioned testimony of certain witnesses explaining and highlighting the differences between Tartikov’s rabbinical college and a Torah community. Also, Chaim Rosenberg testified that “[t]here’s no requirement to—in order to become a rabbinical judge, there’s no requirement the way you have to study.” (Trial Tr. 273.) Mordechai Babad, Tartikov’s proposed dean, described a Torah community as the “ideal” learning environment, but he was able to become a qualified rabbinical judge without living in such a community. (*Id.* at 213-14.) Tauber testified that living in a Torah community “has nothing to do with . . . Tartikov about the judges.” (*See id.* at 95.) The Students also testified that they cannot study the Torah at home by themselves. (*See id.* at 184 (Chaim Rosenberg affirming that he cannot “study to become a rabbinical judge at home”); *id.* at 244 (Jacob Hershkowitz stating that he cannot study at home “without . . . students and teachers”); *id.* at 285 (Meilech Menczer explaining that the study of Torah “usually takes place with a study partner”).) Defendants take this testimony to mean that Tartikov can build a rabbinical college without a Torah community.

While rabbinical colleges can and do exist without on-campus housing, Defendants’ argument ignores the sincere religious purpose that the Torah community will serve here. Tartikov’s students will not study at home by themselves because that is not how Orthodox/Hasidic

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Jews study the Torah. Meilech Menczer explained that the study of the Torah is usually done in study groups where “everybody has a partner.” (*Id.* at 286.) The study of the Torah also “depends heavily on immersing oneself in a community of Torah scholars.” (Resnicoff Decl. ¶ 75.) The provision of on-campus housing is a means to serve these ends. And while Tartikov’s students are not required to study the Torah in any particular way, they sincerely believe that they have to live in a Torah community to “succeed in the study to become a rabbinical judge.” (Trial Tr. 274.) Accordingly, Plaintiffs have made the connection between their religious exercise and the provision of on-campus housing and have demonstrated that the Dormitory Law substantially burdens that religious exercise by banning student family housing outright.

With respect to the Wetlands Law, the 100-foot buffer prohibits Tartikov from building a driveway onto the campus because the location in which the driveway must be located falls within 100 feet of regulated wetlands. (*See* Trial Tr. 1018; Beall Decl. ¶ 250.) This law would not be problematic if Tartikov’s rabbinical college could be built elsewhere in the Village, but the Subject Property is the only vacant, non-government owned parcel large enough to satisfy the minimum net lot requirement of 10 acres for educational institutions. (*See* Trial Tr. 310.) Defendants, ignoring the problem with the driveway, argue that Plaintiffs can build a rabbinical college on the Subject Property without running afoul of the Wetlands Law. (*See* Defs.’ Mem. 37.) This argument is beside the point, as it is undisputed that a rabbinical college could be built upon the Subject Property but for the need for a

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new driveway. (*See* Trial Tr. 1012 (Beall testifying that the rabbinical college “would have no impacts on the wetlands but for the access drive”)).

Defendants’ second argument is stronger. They contend that any burden on Plaintiffs’ religious exercise existed before the passage of the Wetlands Law because the wetlands on the Subject Property were already regulated by federal and state law. (*See* Defs.’ Mem. 37; *see also* Trial Tr. 981 (Beall testifying that 99% of the Village’s wetlands are regulated by state and local law).) The problem, however, is that the standard for receiving a permit under the Wetlands Law is much more stringent than under federal and state law. A permit applicant under the Wetlands Law must show that the law “results in a deprivation of the reasonable use of a property so as to constitute a de facto taking.” Village Code § 126-5. The “taking” requirement does not exist under federal or state law. *See* 40 C.F.R. § 230.10 (setting forth the standard for the issuance of a permit under § 404 of the Clean Water Act as precluding permit “if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic discharge, so long as the alternative does not have other significant adverse environmental consequences”); N.Y. Comp. Codes R. & Regs. tit. 6, § 665.7 (2017) (setting standards for permit issuance, including “weighing of need against benefits”). (*See also* Beall Decl. ¶¶ 60 (describing NYSDEC regulations covering wetland areas in the Village), 123 (“The Village’s standard is unlike any other standard I have reviewed in other wetlands regulation in New York State.”).) It is undisputed that Tartikov cannot establish

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that “the Challenged Laws have deprived it of economically reasonable use or value of the Subject Property, as it may be developed with single family residences.” (Joint Pretrial Order Stipulations of Law ¶ 18.) Accordingly, the Court concludes that the Wetlands Law imposes a substantial burden on Plaintiffs’ religious exercise.

Defendants offer one other alternative means of alleviating these burdens, arguing that Plaintiffs could seek a text amendment or a zone change, but have done neither. (*See* Defs.’ Mem. 41.) Before addressing the merits of this argument, one clarification is necessary. Text amendments and zone changes are the same thing. A zone change requires an amendment to the zoning law. (*See* Trial Tr. 786.) Therefore, no matter what Defendants want to call the process, Defendants contend that Plaintiffs cannot succeed on a substantial burden claim until they request an amendment to the Village Code.

Turning to the merits, the Board of Trustees is the body responsible for determining whether to amend the zoning laws and the Board is not required to consider a petition for a text amendment. (*See* Trial Tr. 783.) The amendment process thus leaves Plaintiffs at the mercy of the same body that has a now-proven history of discriminating against them. This history demonstrates that a zoning amendment does not represent a feasible solution. *See Grace Church*, 555 F. Supp. 2d at 1138 (granting summary judgment to the plaintiff based on evidence that the plaintiff had “no reasonable expectation that any application for an extension” to use its property would be granted).

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The discriminatory nature of the Challenged Laws bolsters Plaintiffs' substantial burden claim. *See Fortress Bible II*, 694 F.3d at 219 (“[W]hen the town’s actions are arbitrary, capricious, unlawful, or taken in bad faith, a substantial burden may be imposed because it appears that the applicant may have been discriminated against on the basis of its status as a religious institution.”); *WDS II*, 504 F.3d at 350 (“The arbitrary application of laws to religious organizations may reflect bias or discrimination against religion.”); *id.* at 351 (“Where the arbitrary, capricious, or unlawful nature of a defendant’s challenged action suggests that a religious institution received less than even-handed treatment, the application of RLUIPA’s substantial burden provision usefully backstops the explicit prohibition of religious discrimination in the later section of the Act.” (internal quotation marks omitted)); *see also Sts. Constantine & Helen*, 396 F.3d at 900 (“If a land-use decision . . . imposes a substantial burden on religious exercise . . . and the decision maker cannot justify it, the inference arises that hostility to religion, or more likely a particular sect, influenced the decision.”). As discussed above, Defendants have failed to offer a credible justification for the Challenged Laws, suggesting that their only purpose was to single out Tartikov and other Orthodox/Hasidic land uses.

There is one consideration, however, that weighs against finding that all of the Challenged Laws impose a substantial burden. The Second Circuit has instructed district courts to consider whether a plaintiff “reasonably believed it would be permitted to undertake its proposed modifications when it purchased the [relevant] property.”

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Chabad Lubavitch, 768 F.3d at 196. Plaintiffs proffer an interesting interpretation of what restrictions were in place prior to Tartikov’s purchase of the Subject Property. (*See* Pls.’ Mem. 17-18.) They argue that only certain building coverage and floor area restrictions were in place, but that otherwise, Tartikov’s proposed use would have been permitted prior to the adoption of Local Law No. 5 of 2004, which is the first law that placed restrictions on dormitories. (*See id.*; Local Law No. 5 of 2004.) Plaintiffs’ understanding of the restrictions in place prior to its purchase of the Subject Property in August 2004 is incorrect. Educational institutions have been subject to an accreditation requirement since at least 2001. Local Law No. 1 of 2001 mandated that all educational institutions be “duly licensed by the State of New York.” (Local Law No. 1 of 2001 § 2.)³¹ The accreditation requirement was amended after Tartikov purchased the property, but the amendment broadened the number of accrediting bodies from which Tartikov could seek accreditation, arguably lessening the burden imposed by the original requirement. *See* Local Law No. 5 of 2004 § 1 (requiring that educational institutions be “accredited by the New York State Education Department or similar recognized accrediting agency”). During trial, Tauber admitted that he was not aware “that educational institutions had to be duly licensed by New York State” until after he purchased the property and that he has never spoken to a New York State official about accreditation. (Trial Tr.

31. The Court reiterates that Local Law No. 1 of 2001 was adopted *after* town officials learned about YSV’s plans to build a school. (*See* Pls.’ Exs. 111, 130 (FPC memoranda regarding updates to the Village Code in light of YSV’s proposal).)

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112-13.) Moreover, even if the accreditation requirement was imposed in 2004 shortly after Tartikov purchased the property, there is no evidence that Tartikov, or anyone associated with Tartikov, examined the accreditation requirements until January 2007, when Tauber met with a representative from the Association of Advanced Rabbinical and Talmudic Schools. (*See* Pls.’ Ex. 2.) Therefore, Tartikov’s supposed belief in 2004 that it could build an unaccredited rabbinical college within the Village should not have been free of doubt. Even setting aside the accreditation requirement, there is no evidence about what Tauber and Tartikov reasonably believed could be built on the Subject Property because no one examined the zoning restrictions placed on the Subject Property until after Tartikov purchased the land. (*See* Trial Tr. 104-08.)

In the absence of other evidence, this deficiency may have been fatal. *See Petra Presbyterian Church v. Village of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007) (“Having decided to go ahead and purchase the property outright after it knew that the permit would be denied, [the plaintiff] assumed the risk of having to sell the property and find an alternative site for its church should the denial be upheld . . . just like any other religious organization that wanted to build in the industrial zone.”). However, all of the Challenged Laws were passed for a discriminatory purpose and they bar completely Tartikov’s rabbinical college from the Village. *See id.* (“Any such organization would have to show that a paucity of other land available for churches made the exclusion from the industrial zone a substantial burden to it.”); *Bethel World Outreach Ministries v. Montgomery Cty. Council*, 706 F.3d 548, 558

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(4th Cir. 2013) (“[W]e find it significant that the County has completely prevented [the plaintiff] from building any church on its property, rather than simply imposing limitations on a new building.”). Therefore, the Court concludes that Plaintiffs have carried their burden of showing that the Challenged Laws substantially burden their religious exercise.

iii. Compelling Governmental Interest & Least Restrictive Means

Plaintiffs having carried their burden, Defendants must demonstrate that the Challenged Laws were adopted “in furtherance of a compelling governmental interest” and that they were “the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc(a)(1)(A)-(B); *see also Chabad Lubavitch*, 768 F.3d at 192 (same). For the same reasons discussed above in the context of Plaintiffs’ equal protection claim, Defendants have failed to carry their burden. Defendants have proffered no compelling governmental interest justifying the Challenged Laws. Even more fundamentally, Defendants have not proffered a credible justification for their passage. Had Defendants shown a compelling governmental interest, their defense nonetheless would have failed because the Challenged Laws are not the least restrictive means of achieving their desired goals. Defendants are able to limit the size and scope of Plaintiffs’ use through other provisions in the Village Code. Before Plaintiffs can build any rabbinical college, they must obtain a special permit from the Board of Trustees, *see* Village Code § 130-10(F), obtain site plan

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approval from the Village Planning Board, *see id.*, and go through the Village's architectural review process, *see id.* § 3-4(a). Defendants have not credibly explained why these processes are inadequate to protect any interests that they seek to protect.

Accordingly, the Court concludes that Plaintiffs have proven a violation of RLUIPA's substantial burden provision.

3. Free Exercise

Plaintiffs contend that the Challenged Laws burden the free exercise of their religion. The First Amendment, which is applicable to the states by operation of the Fourteenth Amendment, "prohibits the enactment of any law prohibiting the free exercise of religion." *Bronx Household of Faith v. Cmty. Sch. Distr. No. 10*, 127 F.3d 207, 216 (2d Cir. 1997) (internal quotation marks omitted); *see also Hosanna-Tabor Evangelical Lutheran Church and Sch. v. E.E.O.C.*, 565 U.S. 171, 181, 132 S. Ct. 694, 181 L. Ed. 2d 650 (2012) ("The First Amendment provides, in part, that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." (internal quotation marks omitted)). "Because the free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires, courts are not permitted to inquire into the centrality of a professed belief to the adherent's religion or to question its validity in determining whether a religious practice exists." *Fifth Ave. Presbyterian Church*, 293 F.3d at 574 (alteration and internal quotation marks omitted).

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“An individual claiming violation of free exercise rights need only demonstrate that the beliefs professed are sincerely held and in the individual’s own scheme of things, religious.” *Id.* (internal quotation marks omitted).

“At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.” *Lukumi*, 508 U.S. at 532; *see also Trinity Lutheran Church*, 137 S. Ct. at 2019 (“The Free Exercise Clause protects religious observers against unequal treatment and subjects to the strictest scrutiny laws that target the religious for special disabilities based on their religious status.” (alteration and internal quotation marks omitted)). It is not a violation of the Free Exercise Clause, however, to enforce a generally applicable rule, policy, or statute that incidentally burdens a religious practice, as long as the government can “demonstrate a rational basis for [the] enforcement” of the rule, policy, or statute, and the burden is only an incidental effect, rather than the object, of the law. *Fifth Ave. Presbyterian Church*, 293 F.3d at 574; *see also Emp’t. Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 878-79, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990) (explaining that enforcement of a neutral law of general applicability does not offend the Free Exercise Clause), *superseded by statute*, 42 U.S.C. § 2000bb et seq., *as recognized by Holt v. Hobbs*, 135 S. Ct. 853, 859, 190 L. Ed. 2d 747 (2015). Thus, to state a free exercise claim under the aforementioned *Lukumi* standard, a plaintiff must establish that “the object of [the challenged] law is to infringe upon or restrict practices

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because of their religious motivation,” or that the law’s “purpose . . . is the suppression of religion or religious conduct.” *Lukumi*, 508 U.S. at 533. Such a law is subject to strict scrutiny review, and it “will survive strict scrutiny only in rare cases.” *Id.* at 546. A plaintiff alleging such a “religious gerrymandering” claim, “must be able to show the absence of a neutral, secular basis for the lines [the] government has drawn.” *Commack Self-Serv.*, 680 F.3d at 211 (emphasis and internal quotation marks omitted).

“To determine the object of a law, [the Court] must begin with its text, for the minimum requirement of neutrality is that a law not discriminate on its face.” *Lukumi*, 508 U.S. at 533. But, even if neutral on its face, a law may still run afoul of the Free Exercise Clause if it “targets religious conduct for distinctive treatment.” *Id.* at 534 (“Facial neutrality is not determinative.”). As the Supreme Court has cautioned, the Free Exercise Clause “forbids subtle departures from neutrality,” *id.* (internal quotation marks omitted), and “covert suppression of particular religious beliefs,” *Bowen v. Roy*, 476 U.S. 693, 703, 106 S. Ct. 2147, 90 L. Ed. 2d 735 (1986); *see also Lukumi*, 508 U.S. at 534 (“Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked, as well as overt.”). In this regard, courts may find “guidance” in equal protection jurisprudence, which, among other things, requires consideration of “both direct and circumstantial evidence” regarding the goals of those who enacted the law in question. *Lukumi*, 508 U.S. at 540. Indeed, “[r]elevant

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evidence [of the basis for a law] includes . . . the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body.” *Id.* Another measure of a law’s object is the temporal proximity between the perceived land use and the adoption of the regulation of that use. *See Vision Church v. Village of Long Grove*, 468 F.3d 975, 999 (7th Cir. 2006) (suggesting that the “temporal proximity between [the plaintiff’s] dispute with the [defendant] [v]illage over a special use permit and the enactment of the [o]rdinance” at issue was evidence of the purpose of the ordinance). Based on these factors, “if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral.” *Lukumi*, 508 U.S. at 533.

As the Court has previously held, each of the Challenged Laws is facially neutral. *Tartikov I*, 915 F. Supp. 2d at 621; *see also id.* at 615 (“[T]he challenged ordinances are facially neutral with respect to religion (and race).”). Therefore, absent evidence of discriminatory intent, only intermediate scrutiny would apply. *See Turner Broad.*, 512 U.S. at 662 (noting that “the intermediate level of scrutiny [is] applicable to content-neutral restrictions that impose an incidental burden on speech”); *Mastrovincenzo v. City of New York*, 435 F.3d 78, 98 (2d Cir. 2006) (“Regulations that . . . are . . . content-neutral . . . trigger intermediate, rather than strict, scrutiny.”); *Hobbs v. County of Westchester*, 397 F.3d 133, 149 (2d Cir. 2005) (“[A] less stringent test—applying

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‘intermediate scrutiny’—is applicable to regulations of expressive activity that are not based on content.”). Also, the Parties agree that to succeed on this claim Plaintiffs must show that their religious beliefs are sincerely held, that the Challenged Laws burden Plaintiffs’ religious practice, and that the Challenged Laws were enacted to infringe upon or restrict religious practices because of their religious motivation. (*See* Pls.’ Mem. 23; Defs.’ Mem. 45.)³²

Plaintiffs have satisfied each of the elements necessary to mandate strict scrutiny review. First, the Court has already explained the underpinnings of Plaintiffs’ religious beliefs and concluded that those beliefs are sincerely held. Second, as the Court discussed in relation to Plaintiffs’ RLUIPA substantial burden claim, the burden imposed by the Challenged Laws is substantial. Finally, drawing “guidance” from the discussion regarding Plaintiffs’ equal protection claim, *Lukumi*, 508 U.S. at 540, the Court holds that the laws were enacted to infringe upon religious practices because of their religious motivation.

The Court will briefly reiterate certain of its findings in response to specific arguments raised by Defendants.

32. The Parties disagree on the extent to which the Challenged Laws must burden Plaintiffs’ religious exercise. Defendants argue that the burden must be “substantial.” (Defs.’ Mem. 45.) Plaintiffs, on the other hand, argue that any burden is sufficient. (*See* Pls.’ Proposed Conclusions of Law (“Pls.’ COL”) ¶ 16 (Dkt. No. 328).) The Court need not resolve this dispute because, as discussed above, the Challenged Laws impose a substantial burden of Plaintiffs’ religious exercise.

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Defendants argue that “laws regarding educational institutions first were enacted because the pre[-]2001 laws were lacking—they were ‘scant’—[and] did not address the upsurge in development that was occurring in Pomona as noted in the [Village’s] Master Plan.” (Defs.’ Mem. 46.) The Court does not credit this argument because it overlooks the context in which Local Law No. 1 of 2001 was passed. Defendants have not cited to any evidence indicating that the Board of Trustees was concerned with an “upsurge” in development. Rather, the only evidence proffered on this issue shows that Local Law No. 1 of 2001 was passed in response to YSV’s informal presentation regarding its desire to build a yeshiva on the Subject Property. (*See* Pls.’ Exs. 111, 130 (FPC memoranda regarding updates to the Village Code in light of YSV’s proposal).) There was certainly no “upsurge” regarding the development of schools within the Village because none exist, (*see* Joint Pretrial Order Stipulations of Fact ¶ 27 (“No Educational Institutions existed within the Village in 2001, in 2004, in 2007, or presently.”)), and the only institution seeking to build a school within the Village at the time Local Law No. 1 of 2001 was passed was YSV, (*see* Trial Tr. 594). Therefore, the purported increase in development does little to rebut the inference of discrimination that arises from the context in which the laws regarding educational institutions were first passed.

Defendants next argue that the other local laws were adopted to “address[] inconsistencies and case law requirements,” (Defs.’ Mem. 46), relying on Ulman’s testimony, (*see* Ulman Aff. ¶¶ 48-55). As explained above, the Court credits very little of Ulman’s testimony on these

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matters. None of Ulman's proffered justifications detracts from the strength of Plaintiffs' case.

Finally, Defendants argue that the Wetlands Law was adopted "to protect wetlands not subject to Federal or State wetland regulations" and "had been under consideration by the Village for many years." (Defs.' Mem. 46.) The last piece of this argument is particularly harmful to Defendants' position. The fact that the Wetlands Law was under consideration dating back to the 1990s, but was not adopted until after Defendants were aware of Tartikov's desired use for the Subject Property, is proof that the law was designed to single out Plaintiffs' religious practices. Moreover, Beall's testimony that there was no meaningful regulatory gap between federal and state regulations went un rebutted at trial. (*See* Beall Decl. ¶ 60.) Accordingly, the reasons behind the Wetlands Law do not support a finding that it serves a neutral, secular purpose.

As Plaintiffs have carried their burden of showing that the Challenged Laws were passed to infringe on religious practices because of their religious motivation, the burden shifts to Defendants to show that the laws are "narrowly tailored" to "further a compelling state interest." *Pyke II*, 567 F.3d at 77. Defendants have not done so, as discussed at length earlier. Accordingly, Plaintiffs have proven a violation of the Free Exercise Clause.

4. Free Association

In addition to the freedom of exercise, the First Amendment protects the freedom of association. *See Baird*

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v. State Bar of Ariz., 401 U.S. 1, 6, 91 S. Ct. 702, 27 L. Ed. 2d 639 (1971).³³ The Supreme Court has “identified two types of ‘freedom of association’ that merit constitutional protection: (i) ‘choices to enter into and maintain certain intimate human relationships’ and (ii) association ‘for the purpose of engaging in those activities protected by the First Amendment.’” *URI Student Senate v. Town of Narragansett*, 631 F.3d 1, 12-13 (1st Cir. 2011) (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617-18, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984)); *see also Sanitation & Recycling Indus., Inc. v. City of New York*, 107 F.3d 985, 995-96 (2d Cir. 1997) (same); *AK Tournament Play, Inc. v. Town of Wallkill*, No. 09-CV-10579, 2011 U.S. Dist. LEXIS 4873, 2011 WL 197216, at *2 (S.D.N.Y. Jan. 19, 2011) (same).

In evaluating Plaintiffs’ free association claim, “[t]he first question . . . is whether and to what extent [D]efendants’ actions burdened” Plaintiffs’ right to associate for the purpose of engaging in those activities protected by the First Amendment, *Tabbaa v. Chertoff*, 509 F.3d 89, 101 (2d Cir. 2007), “such as speech, assembly, redress of grievances, and the exercise of religion,” *see NYC C.L.A.S.H., Inc. v. City of New York*, 315 F. Supp. 2d 461, 472 (S.D.N.Y. 2004). “To be cognizable, the interference

33. Because the Parties agree that the corollary provision to the First Amendment’s Free Association clause in the New York Constitution is interpreted consistently with the federal Constitution, the Court addresses both Plaintiffs’ state and federal free association claims here. (See Pls.’ COL ¶ 18; Defs.’ Proposed Conclusions of Law (“Defs.’ COL”) 16 ¶ 5 (Dkt. No. 279).) *See also Tartikov I*, 915 F. Supp. 2d at 622 n.21.

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with associational rights must be direct and substantial or significant,” rather than simply “make it more difficult” for Plaintiffs “to exercise their freedom of association.” *Fighting Finest, Inc. v. Bratton*, 95 F.3d 224, 228 (2d Cir. 1996) (internal quotation marks omitted). Plaintiffs meet this burden here, as the Challenged Laws directly and substantially interfere with Plaintiffs’ associational rights because the laws bar completely Tartikov’s rabbinical college from the Village. Defendants disagree with this conclusion, arguing that any interference posed by the Challenged Laws is insignificant because “[t]he laws do not prohibit Tartikov from building classrooms and study halls for . . . students to associate with teachers and each other.” (Defs.’ Mem. 52.) However, Defendants’ argument is factually incorrect because the Village Code requires that Tartikov be accredited before it may obtain a special use permit, which cannot happen under the challenged laws. Defendants offer no rebuttal to the challenge posed by the accreditation requirement. Setting aside this issue, even if Tartikov could be accredited, the prohibition on student family housing likewise represents a substantial burden for all of the reasons discussed above—Plaintiffs sincerely believe that a Torah community serves as a necessary part of their rabbinical college and religious exercise. The Challenged Laws present insurmountable obstacles to Plaintiffs achieving their desired community.

“Having found a cognizable burden,” the second question is “the appropriate level of scrutiny to employ in evaluating [D]efendants’ actions.” *Tabbaa*, 509 F.3d at 102. “[A]n infringement on associational rights is not unconstitutional so long as it serves compelling state

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interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.” *Id.* (alteration and internal quotation marks omitted). As already discussed at length, Defendants have not proffered a compelling state interest to justify the adoption of the Challenged Laws. Accordingly, Plaintiffs’ have established a Free Association claim.

5. RLUIPA Exclusions and Limits

The Exclusions and Limits provision of RLUIPA provides that “[n]o government shall impose or implement a land use regulation that . . . (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.” 42 U.S.C. § 2000cc(b)(3). Plaintiffs assert claims under both the total exclusion and the unreasonable limitations prongs.

The Parties disagree on the appropriate frame of reference for the Court to utilize in determining whether the Challenged Laws totally exclude religious assemblies from the Village. Defendants argue that Plaintiffs must “prove that the [Challenged] Laws totally exclude religious assemblies from the entire Village.” (Defs.’ Mem. 49.) Plaintiffs, on the other hand, argue that the appropriate frame of reference is *Plaintiffs’* total exclusion from the Village. (See “Pls.’ COL” ¶ 100 (“To prove a violation of RLUIPA’s [t]otal [e]xclusion provision, the Plaintiffs must produce prima facie evidence demonstrating that the Challenged Laws completely exclude the Plaintiffs

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from the Village.”.) Plaintiffs’ interpretation of the total exclusion provision finds no support in the law.³⁴ To succeed on a total exclusion claim, Plaintiffs must demonstrate that the Village has totally excluded *all* religious assemblies from the Village. *See Vision Church*, 468 F.3d at 989-90 (holding that the total exclusion provision applies “only to the complete and total exclusion of activity or expression” and that the defendant did not “completely or totally exclude[] religious assemblies from its jurisdiction”); *Miles v. Lansdowne Borough*, No. 11-CV-1913, 2012 U.S. Dist. LEXIS 169338, 2012 WL 5960874, at *9 (E.D. Pa. Nov. 29, 2012) (“There is no evidence that [the defendant] imposed or implemented a land use regulation that *totally excludes religious assemblies from its borders . . .*” (emphasis added)); *Adhi Parasakthi Charitable, Med., Educ., and Cultural Soc’y v. Township of West Pikeland*, 721 F. Supp. 2d 361, 386-87 (E.D. Pa. 2010) (noting that the plaintiff’s religious use was not totally excluded and that the defendant’s zoning ordinance “d[id] not operate as a *total exclusion upon religious land use*” (emphasis added)); *House Where Jesus Shines, Inc. v. City of Bellmead*, No. 08-CV-117, 2009 U.S. Dist. LEXIS 138183, 2009 WL 10669584, at *5 (W.D. Tex. Sept. 11, 2009) (noting that under the total exclusion clause a defendant is “prohibited from imposing or implementing a land use regulation that completely excludes religious assemblies from [its] jurisdiction”).³⁵

34. To the extent the Court indicated otherwise in *Tartikov I* or *II*, it has reconsidered its earlier position.

35. Plaintiffs cite *Vision Church* as supportive of their position, including the following parenthetical: “(classifying *Schad*

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While Plaintiffs’ proposed religious use is excluded from the Village, there is no evidence that other religious institutions are similarly excluded. The evidence actually indicates the opposite—there currently are “three houses of worship” in the Village. (*See* Trial Tr. 760.) Accordingly, Plaintiffs have not established a violation of RLUIPA’s total exclusion provision.

The Parties likewise disagree over the appropriate frame of reference with respect to Plaintiffs’ unreasonable limitations claim. (*See* Pls.’ COL ¶ 106 (“To prove a violation of RLUIPA’s [u]nreasonable [l]imitations provision, the Plaintiffs must produce prima facie evidence demonstrating that the Challenged Laws have the effect of depriving Plaintiffs or any rabbinical college of reasonable opportunities to practice their religion, including the use and construction of structures, with the Village.”); Defs.’ Mem. 49 (“To prove the RLUIPA unreasonable limitations claim, . . . Plaintiffs must show that the [Challenged] Laws unreasonably limit religious assemblies, institutions and structures across the Village.”).) “From the plain language of the statute it is clear that the purpose of this subsection is not to examine the restrictions placed on individual landowners, but to prevent municipalities from broadly limiting where religious entities can locate.” *Adhi Parasakthi*, 721 F. Supp. 2d at 387; *accord Rocky*

as addressing an ordinance [that] completely prohibit[ed] the *expressive conduct at issue*. . . . The same is true of section 2(b)(3) (A) of RLUIPA.” (Pls.’ COL ¶ 102 (alterations in original) (internal quotation marks omitted).) However, this quotation is inaccurate. Plaintiffs have misattributed language quoted by the court in a parenthetical to the court itself. *See Vision Church*, 468 F.3d at 989.

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Mountain Christian Church v. Bd. of Cty. Comm'rs, 613 F.3d 1229, 1238 (10th Cir. 2010) (noting that district court's jury instruction properly required the plaintiff to establish that the county's "regulation, as applied or implemented, ha[d] the effect of depriving both [the plaintiff] and other religious institutions or assemblies of reasonable opportunities to practice their religion, including the use and construction of structures, within [the defendant] [c]ounty" (internal quotation marks omitted)).

The Court is unaware of any case, and Plaintiffs do not cite to one, holding that the Court should consider only the plaintiff's use or the use of similarly situated entities in determining whether the unreasonable limitation clause has been violated. (*See* Pls.' COL ¶ 106.) In *Adhi Parasakthi*, the court mentioned the plaintiff's proposed use for a parcel of land, but ultimately concluded that the plaintiff did not demonstrate that the defendant "broadly limit[ed] where religious entities c[ould] locate." 721 F. Supp. 2d at 387. In *Vision Church*, the court focused on the ability of churches to locate within the defendant village, but ultimately concluded that churches were not unreasonably limited and therefore did not consider whether other religious institutions were unreasonably limited. 468 F.3d at 990. Given the lack of directly applicable precedent, the Court will rely on the plain meaning of RLUIPA's text. The unreasonable limitation clause prohibits a government from "unreasonably limit[ing] religious assemblies, institutions, or structures within [its] jurisdiction." 42 U.S.C. § 2000cc(b)(3)(B). Nothing in this provision suggests that the Court should constrain its focus to Plaintiffs' proposed use and the

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uses of similarly situated entities. The question, then, is whether the Village's zoning ordinance unreasonably limits religious institutions within its jurisdiction.

No evidence was offered during trial regarding the limitations placed generally on religious assemblies, institutions, or structures. Plaintiffs' proposed rabbinical college is excluded, but only because of its unique nature and the way that the Challenged Laws were crafted, i.e., in a way tailored to prevent Plaintiffs' use. Indeed, this has been a theme of Plaintiffs' case. Houses of worship are designated as special permit uses, (*see* Village Code § 130-10(G)), but Plaintiffs have offered no evidence that this places any real limitation on their location within the Village. And, as already noted, there are three houses of worship within the Village already. (*See* Trial Tr. 760.) Plaintiffs also are mistaken about the evidence relevant to an unreasonable limitations claim. They argue that the Wetlands Law is "hardly . . . reasonable" because it does not apply to "98.4% of the parcels in Pomona," (*see* Pls.' Mem. 20 (internal quotation marks omitted)), but this information is irrelevant. If the Wetlands Law does not apply to 98.4% of parcels, the location of religious institutions on those parcels is not unreasonably limited. Plaintiffs offer only evidence about the limitations placed on the Subject Property when the relevant question is the limitations placed on all religious uses within the Village's jurisdiction. *See* 42 U.S.C. § 2000cc(b)(3)(B) (barring governments from unreasonably limiting religious structures "*within a jurisdiction*" (emphasis added)). Essentially, Plaintiffs brief this claim as if it should be treated similar to a substantial burden claim. That is not

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the case. *See Adhi Parasakthi*, 721 F. Supp. 2d at 387 (noting that the unreasonable limitation provision was designed “to prevent municipalities from broadly limiting where religious entities can locate”). The unreasonable limitations provision does not mandate that the Village have a reasonable zoning ordinance; it requires only that the zoning ordinance in place not unreasonably limit religious uses. As Plaintiffs have failed to present evidence on the way in which religious uses were otherwise limited by the Village’s zoning ordinance, they have failed to establish an unreasonable limitations claim.

6. RLUIPA Nondiscrimination

RLUIPA’s nondiscrimination provision provides that “[n]o government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.” 42 U.S.C. § 2000cc(b)(2). Defendants concede that “Plaintiffs must provide the same proof required under an Equal Protection claim” to succeed on an RLUIPA nondiscrimination claim. (*See* Defs.’ COL 12 ¶ 1.) Plaintiffs bear the “initial burden of establishing a prima facie claim, after which [Defendants] bear[] the burden of persuasion on the elements of the nondiscrimination claim.” *See Chabad Lubavitch*, 768 F.3d at 198. Because Plaintiffs have established an equal protection violation, they also have established a violation of RLUIPA’s nondiscrimination provision.

*Appendix B***7. RLUIPA Equal Terms**

The equal terms provision of RLUIPA provides that “[n]o 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 nonreligious assembly or institution.” 42 U.S.C. § 2000cc(b)(1). This “statutory command ‘requires equal treatment of secular and religious assemblies and allows courts to determine whether a particular system of classifications adopted by a city *subtly or covertly departs from requirements of neutrality and general applicability.*’” *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County*, 450 F.3d 1295, 1307 (11th Cir. 2006) (alterations and internal quotation marks omitted). As with the substantial burden component of RLUIPA, the meaning of the equal terms section is far from clear, *see Guru Nanak Sikh Soc’y of Yuba City v. County of Sutter*, 326 F. Supp. 2d 1140, 1154 (E.D. Cal. 2003) (asserting that this section “is even less clear” than the “substantial burden” section), *aff’d*, 456 F.3d 978 (9th Cir. 2006), but courts have determined that the “substantial burden and nondiscrimination provisions are operatively independent of one another,” *CLUB*, 342 F.3d at 762. Moreover, some courts have concluded that the nondiscrimination provisions of RLUIPA, which include the equal terms provision, “codify existing Equal Protection Clause and Free Exercise Clause jurisprudence.” *Petra Presbyterian Church v. Village of Northbrook*, No. 03-CV-1936, 2003 U.S. Dist. LEXIS 15105, 2003 WL 22048089, at *11 (N.D. Ill. Aug. 29, 2003), *adopted by* 2004 U.S. Dist. LEXIS 3910, 2004 WL 442630 (N.D. Ill. March 8, 2004); *accord*

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Guru Nanak, 326 F. Supp. 2d at 1155; *Freedom Baptist Church of Del. Cty. v. Twp. of Middletown*, 204 F. Supp. 2d 857, 869 (E.D. Pa. 2002).

An equal terms claim has four elements: “(1) the plaintiff must be a religious assembly or institution; (2) subject to a land use regulation, that (3) treats the religious assembly on less than equal terms, with (4) a nonreligious assembly or institution.” *See Primera*, 450 F.3d at 1307; *see also Chabad Lubavitch*, 768 F.3d at 197 (noting that a plaintiff must produce prima facie evidence of “unequal treatment” (emphasis and internal quotation marks omitted)). The Eleventh Circuit has “discern[ed]” three kinds of equal terms violations:

(1) a statute that facially differentiates between religious and nonreligious assemblies or institutions; (2) a facially neutral statute that is nevertheless ‘gerrymandered’ to place a burden solely on religious, as opposed to nonreligious, assemblies or institutions; or (3) a truly neutral statute that is selectively enforced against religious, as opposed to nonreligious[,] assemblies or institutions.

Primera, 450 F.3d at 1308; *accord Vision Church*, 468 F.3d at 1003 (following same analysis); *Church of Scientology of Ga., Inc. v. City of Sandy Springs*, 843 F. Supp. 2d 1328, 1361 (N.D. Ga. 2012) (same); *Family Life Church v. City of Elgin*, 561 F. Supp. 2d 978, 989 (N.D. Ill. 2008) (same). Plaintiffs assert that the first (“*Primera* Type 1 Cases”) and second (“*Primera* Type 2 Cases”) categories are applicable here. (*See* Pls.’ Mem. 54-55.)

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In *Primera* Type 1 Cases, the Court is concerned with “facial discrimination.” *Primera*, 450 F.3d at 1308. Plaintiffs assert that the Challenged Laws facially differentiate between its proposed use and the use of other nonreligious institutions, such as libraries, museums, and recreational facilities, but the Court is unpersuaded. Plaintiffs believe that Tartikov is treated differently than museums and libraries because Tartikov is subject to two area requirements while libraries and museums are not subject to any specific building coverage requirements. (See Pls.’ Mem. 55 (“‘Libraries’ and ‘Museums’ are not subject to *any specific building coverage or floor area limitation . . .*” (emphasis added)).) However, they are only partially correct. The Village Code limits maximum building coverage for educational institutions to 10% of the net lot area of a property and maximum total floor area to 20% of the net lot area. See Village Code § 130-10(F)(2)(a)-(b). Museums and libraries are not subject to any explicit floor coverage limitation, (see Weinstein Decl. ¶ 81), but are subject to a maximum lot coverage restriction, see Village Code § 130-12(I) (“In order to ensure the maximum coverage of a lot with vegetation, the prevention of over development of lots, to minimize the adverse visual impacts and to minimize negative impacts of stormwater runoff, there is hereby established a maximum lot coverage of 15%.”). Plaintiffs refer to this limitation as an “impervious surface coverage limitation,” (Pls.’s Mem. 55), but they offer no support for this description. Indeed, their own expert admits that museums and libraries are “subject to the 15% *lot coverage limitation* in Village Code § 130-12 I.” (Weinstein Decl. ¶¶ 77-78 (emphasis added).)

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Plaintiffs also assert that Tartikov is treated differently than museums and libraries because Tartikov must obtain a special use permit to operate within the Village while those other uses are permitted as of right, citing *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163 (9th Cir. 2011). (*See* Pls.’ Mem. 56.) In a parenthetical, Plaintiffs state that *Centro* stands for the proposition that the “requirement of having to obtain a conditional use permit, while other nonreligious assembly were permitted by right, was by itself an Equal Terms violation.” (*Id.*) This is not how the Court interprets *Centro*. In *Centro*, the Ninth Circuit held that the defendant city’s code violated the equal terms provision because it required *all* “religious assemblies” to obtain a conditional use permit, but did not require “similarly situated secular membership assemblies to do the same.” 651 F.3d at 1175.

In the Village, *all* educational institutions are subject to the special permit requirement and building and floor area restrictions and *all* libraries and museums are subject to the lot coverage limitation. *See* Village Code §§ 130(10)(F), 130(12). It does not matter whether those institutions are religious or secular. Plaintiffs mistakenly believe that *Primera* Type 1 Cases are concerned with the limitations placed on the Subject Property in comparison to limitations placed on other uses within the Village. Their belief is incorrect because the key question is whether the Village’s zoning ordinance “*facially* differentiates between *religious* and *nonreligious* assemblies or institutions.” *Primera*, 450 F.3d at 1308 (emphases added). There is no proof that the Village’s zoning ordinances do that. All

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Plaintiffs have established is that the Village Code treats educational institutions differently than libraries and museums. Accordingly, Plaintiffs have not established a violation of the equal terms provision on this ground.

Plaintiffs argue next that this is a *Primera* Type 2 Case because the Village's zoning ordinance is "gerrymandered' to place a burden solely on religious, as opposed to secular, assemblies or institutions." (Pls.' Mem. 57.) To succeed on this type of claim, Plaintiffs must "show that the challenged zoning regulation separates permissible from impermissible assemblies or institutions in a way that burdens 'almost only' religious uses." *Primera*, 450 F.3d at 1309.³⁶ Plaintiffs contend that the

36. In *Tartikov II*, the Court denied summary judgment on this claim because Plaintiffs had proffered sufficient evidence that Defendants had "engaged in a religious gerrymander," focusing on the fact that the evidence suggested that "Defendants used the Challenged Laws to uniquely restrict the ability of Plaintiffs to build their rabbinical college in the Village." 138 F. Supp. 3d at 442. Upon further reflection, this may not have been the appropriate standard. The Court relied on evidence that Defendants discriminated against Plaintiffs in adopting the Challenged Laws, but *Primera* suggests that the focus should be on whether the challenged zoning ordinance "burdens almost only religious institutions," 450 F.3d at 1309 (internal quotation marks omitted), placing the focus on the effect of the ordinance rather than on whether the ordinance was adopted to discriminate against the plaintiff. This distinction makes sense. If discrimination against the plaintiff is sufficient to establish an equal terms violation, RLUIPA's nondiscrimination clause could be rendered superfluous, violating the maxim that effect be given to all of a statute's provisions. See *Corley v. United States*, 556 U.S. 303, 314, 129 S. Ct. 1558, 173 L. Ed. 2d 443 (2009) (noting that "one of the most basic interpretive canons" of statutory construction is

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20% restriction on student housing space treats religious educational institutions worse than nonreligious ones because the “vast majority of colleges and universities that offer 100% housing for their students are religious in nature.” (Pls.’ Mem. 58.) *See also* Village Code § 130-10(F) (12) (“A dormitory building shall not occupy more than 20% of the total square footage of all buildings on the lot.”). What the vast majority of religious colleges do, however, is not evidence that the 20% restriction places a limitation on that practice. As far as the Court knows, those colleges could both offer housing to 100% of their students and comply with the 20% housing space restriction. In any event, this requirement applies to religious and secular educational institutions. Accordingly, Plaintiffs have not established an equal terms violation.

8. Fair Housing Act

The FHA “prohibit[s] governmental entities from implementing or enforcing housing policies in a discriminatory manner.” *Tsombanidis*, 352 F.3d at 573. The Act itself make it unlawful to “otherwise make unavailable . . . a dwelling to any person because of race, color, religion, sex, familial status, or national origin.” 42 U.S.C. § 3604(a).³⁷ “The phrase ‘otherwise

that “a statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant” (alteration and internal quotation marks omitted)).

37. It is undisputed that Tartikov’s student family housing qualifies as a dwelling under the FHA. *See* 42 U.S.C. § 3602(b) (defining “[d]welling” to include “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy

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make unavailable’ has been interpreted to reach a wide variety of discriminatory housing practices, including discriminatory zoning restrictions.” *LeBlanc-Sternberg*, 67 F.3d at 424.

A plaintiff can establish a violation of the FHA by proving discrimination in the form of: (1) “disparate treatment or intentional discrimination” or (2) “disparate impact of a law.” *Human Res. Research & Mgmt. Grp., Inc. v. County of Suffolk*, 687 F. Supp. 2d 237, 254 (E.D.N.Y. 2010); *see also Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2525, 192 L. Ed. 2d 514 (2015) (“The Court holds that disparate-impact claims are cognizable under the Fair Housing Act”); *LeBlanc-Sternberg*, 67 F.3d at 425 (“An FHA violation may be established on a theory of disparate impact or one of disparate treatment.”). “To establish a prime facie case of intentional discrimination under the FHA, plaintiffs must present evidence that animus against the protected group was a significant factor in the position taken by the municipal decision-makers themselves or by those to whom the decision-makers were knowingly responsive.” *Human Res. Research*, 687 F. Supp. 2d at 254 (internal quotation marks omitted). Relevant considerations for “discerning a racially discriminatory intent include the historical background of the decision particularly if it reveals a series of official actions taken for invidious purposes, departures from the normal procedural sequence, substantive departures, and the legislative or administrative history especially where

as, a residence by one or more families”).

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there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports.” *Mhany Mgmt.*, 819 F.3d at 606 (alterations, citations, and internal quotation marks omitted).

“After the plaintiff has established a prima facie case, the burden then must shift to the defendant to articulate some legitimate, nondiscriminatory reason for the action.” *Harris v. Itzhaki*, 183 F.3d 1043, 1051 (9th Cir. 1999). If the defendant proffers such a reason, the burden shifts back to the plaintiff to show that he or she has “been the victim of intentional discrimination, either directly by persuading the court that a discriminatory reason more likely motivated the defendant or indirectly by showing that the defendant’s proffered explanation is unworthy of credence.” *Id.* (alterations and internal quotation marks omitted); *see also Mhany Mgmt.*, 819 F.3d at 613 (“If a defendant meets its burden of production, the sole remaining issue is discrimination *vel non*. The plaintiffs must prove that the defendants intentionally discriminated against them on a prohibited ground.” (alteration and internal quotation marks omitted)).

The considerations relevant to whether Defendants acted with discriminatory intent are the same as those the Court has already considered in connection with Plaintiffs’ equal protection claim. The Court need not rehash them here. Plaintiffs have established that discriminatory animus was a significant factor in the passage of the Challenged Laws. Focusing on the housing aspect of the Challenged Laws specifically, Defendants first adopted the laws prohibiting student family housing in direct response

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to Ramapo's decision to enact the ASHL, crafting Local Law No. 5 of 2004 to prohibit the student family housing contemplated by the ASHL. Marshall was particularly displeased with the ASHL, stating that Ramapo officials passed the law to cater to the Orthodox Jewish vote. (*See* Trial Tr. 619; Pls.' Ex. 109, at POM0013281.) Then, as more information became available about Tartikov's intended use for the Subject Property, Defendants supported and passed additional laws placing even more hurdles in front of Plaintiffs.³⁸

Because Plaintiffs have carried their initial burden, Defendants must come forward with "legitimate, nondiscriminatory reason[s] for the[ir] action[s]." *Harris*, 183 F.3d at 1051. None of the reasons Defendants proffer

38. The allocation of burdens for a disparate impact claim are slightly different than those applicable to disparate treatment claims. First, a plaintiff "must . . . establish a prima facie case by showing, (1) the occurrence of certain outwardly neutral practices, and (2) a significantly adverse or disproportionate impact on persons of a particular type produced by the defendant's facially neutral acts or practices." *Mhany Mgmt.*, 819 F.3d at 617 (internal quotation marks omitted). The defendant may rebut the prima facie case by "proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the . . . defendant." *Id.* (internal quotation marks omitted). "[I]f the defendant meets its burden, the burden of proof shifts back to the *plaintiff* to show that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect." *Id.* (internal quotation marks omitted). Because Plaintiffs have established a disparate treatment claim, the Court declines to consider whether the same evidence also is sufficient to establish a disparate impact claim.

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for adopting the Challenged Laws is legitimate. As discussed above, the Court credits very little of Ulman's testimony about what motivated the adoption of the laws. Plaintiffs have proven that their intended purpose was to thwart the development of the rabbinical college because it was proposed by Orthodox/Hasidic Jews. Accordingly, Plaintiffs have established a violation of 42 U.S.C. § 3604.

The FHA also makes it unlawful "to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected" by the FHA. 42 U.S.C. § 3617. The implementing regulations interpret § 3617 to cover "[t]hreatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons." 24 C.F.R. § 100.400(c)(2). To establish a § 3617 claim, Plaintiffs "must demonstrate (1) that they aided or encouraged members of a protected class in the exercise or enjoyment of their FHA rights, and (2) that as a result of their actions, they suffered coercion, intimidation, threats, interference or retaliation." *Wentworth v. Hedson*, 493 F. Supp. 2d 559, 565 (E.D.N.Y. 2007); *see also United States v. Weisz*, 914 F. Supp. 1050, 1054 (S.D.N.Y. 1996) ("[T]o bring a claim within § 3617, a plaintiff must allege conduct on the part of a defendant which in some way or other implicates the concerns expressed by Congress in the FHA. If it were otherwise, the FHA would federalize any dispute involving residences and people who live

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in them.”). Plaintiffs’ proof is sufficient to establish a violation of § 3617 because Defendants have piled on layers of regulation to interfere with Plaintiffs’ use of the Subject Property. Indeed, Defendants’ principal purpose in enacting the Challenged Laws was to prohibit Plaintiffs from building dwellings on the property.

9. New York Constitutional Right to Freedom of Worship

The New York State Constitution provides that “[t]he free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind” N.Y. Const. Art I, § 3. The New York Court of Appeals has held, in analyzing a state free exercise claim, that “when the State imposes an incidental burden on the right to free exercise of religion,” the courts are to consider the “interest advanced by the legislation that imposes the burden,” and then “the respective interests must be balanced to determine whether the incidental burdening is justified.” *Catholic Charities of Diocese of Albany v. Serio*, 7 N.Y.3d 510, 859 N.E.2d 459, 466, 825 N.Y.S.2d 653 (N.Y. 2006) (alteration and internal quotation marks omitted); *see also Fortress Bible II*, 694 F.3d at 221 n.9 (noting that New York state courts “employ a balancing test to determine if the interference with religious exercise was unreasonable”). As discussed above, the burden imposed on Plaintiffs’ religious exercise is substantial. Therefore, Defendants interests must be equally substantial. Defendants fall short of the mark because their stated interests and justifications for the

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Challenged Laws do not hold up to scrutiny. Moreover, Defendants can achieve many of their goals through other avenues, such as imposing size restrictions on the issuance of a special permit. Accordingly, balancing the burden imposed on Plaintiffs' religious exercise against the interests advanced by the Challenged Laws, the Court concludes that Defendants have violated the New York State Constitution.

10. *Berenson*

Plaintiffs contend that Defendants' zoning ordinance must be set aside because it violates the standard established by the New York Court of Appeals in *Berenson v. Town of New Castle*, 38 N.Y.2d 102, 341 N.E.2d 236, 378 N.Y.S.2d 672 (N.Y. 1975). In *Berenson*, the plaintiffs filed a declaratory judgment action attacking the "validity of the [z]oning [o]rdinance of the Town of New Castle in its entirety on the ground that the ordinance exclude[d] multifamily housing from the list of permitted uses." *Id.* at 238. The court established a two-part test for determining whether an ordinance "excluding multifamily housing as a permitted use" is valid. *Id.* at 241-42. "The first branch of the test . . . is simply whether the board has provided a properly balanced and well ordered plan for the community." *Id.* at 242. The second requirement is that, "in enacting a zoning ordinance," the town or village board must give "consideration . . . to regional needs and requirements." *Id.* The court noted that "a town need not permit a use solely for the sake of the people of the region if regional needs are presently provided for in an adequate manner." *Id.* at 242-43.

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In *Tartikov II*, the Court stated that there are two ways to prove a *Berenson* violation: (1) by showing that the town's or village's zoning ordinance was enacted with an exclusionary purpose, or (2) that it ignored local or regional housing needs. *See* 138 F. Supp. 3d at 444-45. The Court concluded that summary judgment was inappropriate on this claim because, although Plaintiffs failed to demonstrate that the Challenged Laws were enacted without giving proper regard to local and regional housing needs, there was "sufficient evidence for a reasonable jury to conclude that the Village enacted the Challenged Laws for an improper exclusionary purpose." *Id.* at 445. In reaching this conclusion, the Court focused on the Challenged Laws rather than the Village's Zoning Code as a whole. But, the issue before the Court in *Berenson* was the validity of "the [z]oning [o]rdinance of the Town of New Castle" and the town's decision to exclude "multifamily residential housing from the list of permitted uses." *Berenson*, 341 N.E.2d at 238. While no Party directly addresses the Court's approach in their papers, the Court finds it significant that Plaintiffs' papers focus on the Village's Zoning Code rather than the Challenged Laws themselves in addressing their *Berenson* claim. (*See* Pls.' Mem. 59 ("With respect to the second *Berenson* prong, the appropriate inquiry is whether the *zoning ordinance* on its face allows the construction of sufficient housing to meet the town's share of the region's housing needs. Here, Plaintiffs established that Pomona's *zoning scheme* is impermissible pursuant to New York law because its exclusionary scheme was enacted for an improper, discriminatory purpose and, consequently, is invalid." (emphases added) (internal quotation marks

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omitted))).) Certain provisions of the Village’s zoning ordinance were enacted for a discriminatory purpose, i.e., the Challenged Laws, but no evidence was introduced proving that the zoning scheme itself was enacted for an improper purpose. Nor is there any evidence that the Board of Trustees failed to consider regional housing needs in adopting the Village’s zoning ordinance. Indeed, Ulman testified that the Village has always believed that it is in “compliance with the regional requirements of housing.” (Trial Tr. 922.) Therefore, Plaintiffs have not established a *Berenson* violation.

C. The Appropriate Remedy

Plaintiffs’ seek an order enjoining the enforcement of the Challenged Laws such that Tartikov will be permitted to “apply for a special permit and site plan not subject to the challenged provisions.” (Pls.’ Mem. 60.) The Court finds that this is an appropriate and adequate remedy. *Cf. United States v. City of New York*, 717 F.3d 72, 95(2d Cir. 2013) (“Once liability for racial discrimination has been established, a district court has the duty to render a decree that will eliminate the discretionary effects of past discrimination and prevent like discrimination in the future.”) Plaintiffs shall submit a proposed judgment consistent with the Court’s rulings within 30 days from the date of this Opinion. Within 15 days of Plaintiffs’ submission, Defendants may file a letter specifying its position on the proposed judgment. The Court will review the submissions and enter the judgment forthwith.

Plaintiffs also ask that the Court appoint a federal monitor to oversee all future proceedings. “This Court

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has broad discretion to appoint a compliance monitor as a form of equitable remedy.” See *U.S. Commodity Futures Trading Comm’n v. Deutsch Bank AG*, 16-CV-6544, 2016 U.S. Dist. LEXIS 145479, 2016 WL 6136664, at *2 (S.D.N.Y. Oct. 20, 2016); see also *United States v. Yonkers Bd. of Educ.*, 29 F.3d 40, 44 (2d Cir. 1994) (“The power of the federal courts to appoint special masters to monitor compliance with their remedial orders is well established.”). The Court holds that the appointment of a monitor is not warranted in this case. The only issue before the Court is whether Tartikov’s special use permit should be subject to the Challenged Laws. The Court has held that Defendants cannot enforce the Challenged Laws against Tartikov. The onus is now on Plaintiffs to submit an application to the appropriate body. The Court finds it inappropriate to insert a federal monitor into the permit application process. “[F]ederal courts should not become zoning boards of appeal.” *Harlen Assocs.*, 273 F.3d at 505. “State courts are better equipped in this arena” and “principles of federalism” dictate that the Court should refrain from interfering unnecessarily in the application process. *Id.* (internal quotation marks omitted). Accordingly, Plaintiffs’ request is denied.

III. CONCLUSION

For the foregoing reasons, the Court holds that Plaintiffs have established violations of the First and Fourteenth Amendments of the United States Constitution, certain provisions of RLUIPA, the FHA, and §§ 3, 9, and 11 of the New York State Constitution. Plaintiffs are directed to submit a proposed judgment

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within 30 days of the date of this Opinion that is consistent with the Court's ruling. Defendants have 15 days to respond.

SO ORDERED.

Dated: December 7, 2017
White Plains, New York

/s/ Kenneth M. Karas
KENNETH M. KARAS
United States District Judge