

## MEMORANDUM

To: Town of Somers Zoning Commission

From: Evan J. Seeman, Esq.

Date: February 3, 2020

Subject: Special Use Permit Application Nos. 19-012; 19-013; 19-014; 19-015 Submitted by Hillsdale College; Sincerity of Religious Beliefs Under RLUIPA and Related Federal and State Law.

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In these proceedings, the applicant, Hillsdale College (the "College") has raised protection under the Religious Land Use & Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"), 42 U.S.C. § 1983, the United States Constitution, and the Connecticut Constitution. Sincerely held religious beliefs are entitled to protection under these laws. Religious beliefs that are not sincere are not afforded protection. The United States Supreme Court has stated that to qualify for protection under RFRA, RLUIPA's sister statute, "an asserted belief must be 'sincere,' and that an insincere religious belief will not qualify for exemption from otherwise applicable requirements. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 718, footnote 28 (2014); *see id.* at 718 ("the scope of RLUIPA shows that Congress was confident of the ability of the federal courts to weed out insincere claims....").

On January 21, 2020, the Town of Somers Zoning Commission ("Commission") requested that the applicant, Hillsdale College ("College") respond to the following items:

- Provide any materials or plans regarding the previously proposed operation of "The Prestley and Helen Blake Center for Business, Ethics, and Entrepreneurship."
- How will the seminar offerings be different from the originally proposed "The Prestley and Helen Blake Center for Business, Ethics and Entrepreneurship."<sup>1</sup>

The information was requested in order to understand whether the College's plans in these applications constitute "sincerely held" religious beliefs that are entitled to protection under state and federal law. Whether there is or is not a sincerely held religious belief is a question of fact for the fact-finder. *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 674 (10th

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<sup>1</sup> These were request numbers 42 and 43, respectively.

Cir. 2006); *Church of Universal Love & Music v. Fayette County*, 2008 WL 4006690, at \*7 (W.D. PA Aug. 26, 2008).<sup>2</sup>

Thus, while the College is claiming protection under RLUIPA it unilaterally refused to produce information because it deems the information irrelevant. It is not the role of the College to decide what is relevant.

The information is relevant because, in order to determine whether the College's proposed use should be afforded protection under RLUIPA and related state and federal law in whole or in part, the Commission must first consider whether the activities constitute a religious exercise of a sincerely held religious belief. Courts in the Second Circuit have cautioned, "RLUIPA occupies a treacherous narrow zone" because there could be the risk that a religious organization is afforded special accommodations for secular activities that would not be afforded to secular organizations." *Chabad Lubavitch of Litchfield County, Inc. v. Borough of Litchfield*, 2016 WL 3706966, at \*6 (Jan. 27, 2016). The requested information would help ensure that the Commission is able to provide considerations that protect religious activities.

Copy to:

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Jennifer Roy, Zoning Enforcement Officers

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<sup>2</sup> The court in *Church of Universal Love & Music* declined entering summary judgment because factual questions remained as to whether the proposed use was a "sincerely held" religious belief. *Id.* at \*6-7. In reaching this conclusion, the Court noted the course of events taken by the religious group with respect to zoning requirements (seeking various petitions, requesting a variance and/or rezoning of the subject property). *Id.* a 7, footnote 6.