

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

<p>BUSINESS LEADERS IN CHRIST,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>THE UNIVERSITY OF IOWA, <i>et al.</i></p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>Civ. Action No. 3:17-cv-00080-SMR-SBJ</p> <p style="text-align: center;"><b>SUPPLEMENTAL BRIEF</b></p>
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At yesterday’s hearing, in response to the Court’s questioning, counsel for Plaintiff offered to provide additional citations in support of its legal arguments concerning discriminatory enforcement. The citations are listed below, along with a quote directing the Court to the relevant proposition of law.

- *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) (“We reject the contention advanced by the city . . . that our inquiry must end with the text of the laws at issue. Facial neutrality is not determinative. The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause forbids subtle departures from neutrality . . . and covert suppression of particular religious beliefs. . . . 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. The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders.” (internal citations omitted)).
- *Mitchell Cty. v. Zimmerman*, 810 N.W.2d 1, 16 (Iowa 2012) (“[T]he County declined . . . to regulate various *other* sources of road damage besides steel wheels. Rather, it chose to prohibit only a particular source of harm to the roads that had a religious origin. . . . The underinclusion of the ordinance undermines its general applicability.”).
- *Peter v. Wedl*, 155 F.3d 992, 997 (8th Cir. 1998) (“[Defendant’s] invocation of a “long-standing policy” rings hollow in light of its actual practice[s]. . . . Viewed in its entirety, the evidence in this case strongly suggests that [Defendant’s] policy is a mere pretext for religious discrimination.”).

- *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 167–68 (3d Cir. 2002) (“On its face, Ordinance 691 is neutral and generally applicable. But ‘[o]fficial action that targets religious conduct for distinctive treatment cannot be shielded [from constitutional attack] by mere compliance with the requirement of facial neutrality.’ *Lukumi*, 508 U.S. at 534. We must look beyond the text of the ordinance and examine whether the Borough enforces it on a religion-neutral basis[.] . . . Because Ordinance 691 is neutral and generally applicable on its face, if the Borough had enforced it uniformly, *Smith* would control and the plaintiffs’ claim would accordingly fail. The Borough insists it has done so, but the record shows otherwise. . . . We believe that the Borough’s selective, discretionary application of Ordinance 691 against the *lechis* violates the neutrality principle of *Lukumi* and *Fraternal Order of Police* because it ‘devalues’ Orthodox Jewish reasons for posting items on utility poles by ‘judging them to be of lesser import than nonreligious reasons,’ and thus ‘single[s] out’ the plaintiffs’ religiously motivated conduct for discriminatory treatment. *Lukumi*, 508 U.S. at 537” (some internal citations omitted)).
- *Blackhawk v. Pennsylvania*, 381 F.3d 202, 209–10 (3d Cir. 2004) (“The fee requirement at issue here fails the general applicability requirement [because] . . . the Game Code creates a regime of individualized, discretionary exemptions”).
- *Rader v. Johnston*, 924 F. Supp. 1540, 1552–53 (D. Neb. 1996) (“In this case UNK administrators grant exceptions to the policy, at their discretion, in a broad range of circumstances not enumerated in the rule and not well defined or limited. . . . In summary, although exceptions are granted by the defendants for a variety of non-religious reasons, they are not granted for religious reasons. . . . The defendants in this case have created a system of ‘individualized government assessment’ . . . . Accordingly, I conclude the parietal rule cannot be viewed as generally applicable to all freshman students.”).

Respectfully submitted this 19th day of January, 2018.

/s/ Eric S. Baxter

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