Ann Arbor and Vicinity v. Pittsfield Charter Tp., 947 F.Supp.2d 752, 771 (E.D. Mich. 2013). Because ABBC had not identified a "similarly situated" comparator, its pleading was inadequate for RLUIPA's Equal Terms purposes.

Similarly, ABBC failed under RLUIPA's Nondiscrimination Clause "Nothing in ABBC's complaint, or its response to Moffatt's motion to dismiss, raises an inference that ABBC's rezoning request was denied because of its religious beliefs. Instead, the facts demonstrate that the rezoning request was denied because churches of all types, along with many other secular institutions, do not align with Moffatt's goals regarding its commercial districts."

ABBC also failed to demonstrate that the Ordinance unreasonably limited its ability to practice its faith in Moffatt. "Churches and other religious buildings are welcome in four of the Township's six zoning districts . . ." (In fact, Moffat officials had recommended that ABBC purchase the local Catholic church in order to facilitate the growth of its congregation.)

http://www.leagle.com/decision?q=In_FDCO_20140205F85.xml/ALGER_BIBLE_BAPTIST_CHURCH_v._TOWNSHIP OF MOFFATT (last accessed Feb. 6, 2014)

Speech: Ordinance Requiring Closure of Adult Bookstores in Early Morning and on Sundays Does Not Pass "Secondary Effects" Test

***Annex Books, Inc. v. City of Indianapolis*, No. 13-1500 (7th Cir. Jan. 24, 2014).**

Indianapolis, Indiana requires adult bookstores to remain closed between midnight and 10 a.m. every day of the week and all day on Sunday. No other retail businesses in the City are similarly circumscribed. Annex Books and other adult bookstores challenged the ordinance as an unlawful limitation on their free speech.

At trial before the District Court for the Southern District of Indiana, the City argued that limiting store hours reduced armed robberies near the bookstores. The court found this to be an adequate justification for the limitation on speech – specifically a control of the secondary effects of these businesses - and ruled for the City. The bookstores appealed.

HELD: The Seventh Circuit reversed, holding that the regulation was not a reasonable time, place, and manner restriction aimed at secondary effects, but rather a regulation based on the content of the material sold in the bookstores.

DISCUSSION: In *Renton v. Playtime Theaters, Inc.* the Supreme Court ruled that state and local government is free to regulate adult establishments with reasonable time, place, and manner restrictions, but that government cannot regulate the establishments based on their speech and local dissatisfaction with the content of that speech. Time, place, and manner restrictions may, however, be used to counter the "secondary effects" that are demonstrated to result to third parties from adult establishments, such as a decrease in nearby property values and an increase in neighborhood crime.

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The Seventh Circuit held the City's justification in this case – that limiting the hours of these establishments to those specified in the ordinance would limit armed robberies – was "weak" on various fronts. First, as a statistical matter the court pointed out that the City had not done a "multivariate regression to control for other variables, such as the presence of late-night taverns." The City's data did not show that robberies are more likely at adult bookstores than other late-night establishments – at least not in any degree to be "statistically significant." In addition, the court pointed out that the City was misapplying the reasoning of *Renton* because the secondary effects approach has never been endorsed by the Supreme Court to allow the closure of establishments in order to protect patrons of those establishments. Instead, the secondary effects approach is permitted to protect third parties—in this case, those that "want nothing to do with dirty books from harms created by adult businesses." The essential problem for the court was the City's closure of the stores altogether; as the Supreme Court had put it in *Los Angeles v. Alameda Books, Inc.*, "a city may not regulate the secondary effects of speech by suppressing the speech itself."

The City countered that patrons are free to patronize the stores during open hours and, therefore, no speech is suppressed because people can still ultimately get the reading materials they want. The court did not accept the argument that delay had no impact on speech. It posed a hypothetical to test the City's proposition: Suppose that the City prohibited the distribution of newspapers on Sundays (to reduce traffic accidents, early-morning robberies and pollution). In that scenario all the news and advertising could still appear in the paper on the following Monday, and it would still be available on-line on Sunday. The court asked what the difference would be, from a First Amendment perspective, between prohibiting the sale of paper newspapers on Sunday and prohibiting the sale of paper adult magazines on Sunday. There was none: "Indianapolis likes G-rated newspapers but not sexually-oriented books, magazines and movies. "

Unless the City could demonstrate that the adult materials were obscene—which it had not – there were no grounds to force closure of the bookstores in the early morning and on Sundays. The Circuit Court reversed and ordered an injunction against the closure ordinance.

http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2014/D01-24/C:13-1500:J:Easterbrook:aut:T:fnOp:N:1279403:S:0 (last accessed Feb. 5, 2014).

Taxation: Fannie Mae and Freddie Mac Exemption From Paying County Transfer and Recording Taxes Is Permitted By Statute and Does Not Violate the Commerce Clause

***Montgomery County v. Federal National Mortgage Association*, No. 13-1691 (4th Cir. Jan. 27, 2014).**

As a general rule, when real property is transferred between parties, state and local transfer taxes apply. This is the case in both South Carolina and Maryland, and many other states. Fannie Mae and Freddie Mac, which provide a secondary market for residential mortgages, came into ownership of numerous properties around the nation due to foreclosures stemming

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