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

RHJ MEDICAL CENTER, INC., Plaintiff, v. CITY OF DUBOIS, Defendant.	Civil Action No. 3:09-CV-131 Kim R. Gibson United States District Judge

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff RHJ Medical Center, Inc. ("RHJ" or "Plaintiff") hereby submits this Brief in Support of its Motion for Partial Summary Judgment and states as follows:

I. Introduction

This case presents yet another instance of a city enacting a facially discriminatory zoning ordinance with the bare desire to prevent a politically unpopular group from locating within its borders. Relying on unfounded fears, generalized prejudice, and illegitimate concerns, the City of DuBois ("the City" or "DuBois") has gone to great lengths to prohibit all methadone treatment facilities, and RHJ in particular, from operating within the City. First, pursuant to the blatantly invalid 53 P.S. § 10621 ("Section 621" or "§ 621"), the City enjoined RHJ's operation in DuBois and later, refused to issue RHJ a certificate of use permit. Then, after the Third Circuit Court of Appeals found Section 621 facially invalid under both the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* ("ADA") and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 793 ("the Rehabilitation Act") in *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293 (3d Cir. 2007), DuBois resorted to enacting its own unconstitutional ordinance ("Ordinance Number 1720"). Ordinance Number 1720 suffers from the same constitutional deficiencies as Section 621

and other similar laws prejudicing treatment centers and is further testament to the deep-seeded discrimination the City holds against drug treatment facilities.

In the attempt to validate its constitutional and statutory rights, RHJ filed this action on May 14, 2009 ("the Complaint") seeking declaratory and injunctive relief as well as damages for the City's violation of the United States Constitution, 42 U.S.C. § 1983, the ADA, and the Rehabilitation Act. In response to the Complaint, the City filed a Motion for Judgment on the Pleadings on December 22, 2009, asserting that: (1) RHJ lacked standing; (2) RHJ was barred by res judicata from asserting claims related to Section 621; (3) RHJ was estopped from raising claims related to Section 621 due to waiver; (4) The City was immune from actions taken in accordance with a court order; (5) The imposition of an equitable remedy would infringe on principles of federalism; (6) RHJ's claims were barred by the statute of limitations; (7) RHJ failed to adequately set forth an equal protection claim against Section 621; and (8) RHJ failed to adequately set forth a substantive due process claim against both Section 621 and Ordinance 1720. On December 7, 2010, this Court denied the City's Motion for Judgment on the Pleadings in its entirety and also rejected the City's Motion for a More Definite Statement. *See RHJ Medical Center, Inc. v. City of DuBois*, 754 F.Supp.2d 723 (W.D.Pa. Dec. 7, 2010).

While this case proceeds along the familiar path of so many before it, the sheer bluntness of the City's animus separates this action from the prototypical "not-in-my-backyard" confrontation and makes the matter ripe for summary judgment. Where a discrete and insular minority is targeted, discriminatory intent normally remains below the surface, subject only to inference, speculation, and conjecture. The decision-maker typically attempts to obscure its unlawful motive through the pretext of lawful considerations forcing the harmed party to rely solely on circumstantial evidence. All the proper things are said and done in public while the decision-maker works surreptitiously behind the scenes in violation of the law. This is not that case.

From the very beginning, the City openly displayed its visceral dislike for methadone treatment centers: "[W]e don't like them" is how the Mayor of DuBois John Suplizio ("the Mayor") succinctly put it when word of RHJ first leaked. Each and every decision the City made following this statement was based on this sentiment. When presented with a letter from its construction consultant stating that RHJ did not need a certificate of use, the City ignored it. When offered the opportunity to discuss RHJ in a radio interview, the Mayor publicly denounced RHJ as having "two strikes against it" while the host of the radio interview ("the Host") compared methadone clinics to "garbage." When given the chance to abdicate its discriminatory ways after the *New Directions* decision, the City instead decided to double-down by opposing RHJ's Motion to Dissolve Injunctions and by enacting its own unconstitutional ordinance signaling out methadone treatment centers for dissimilar treatment.

As the Chairman of the DuBois Planning Commission stated at the April 23, 2007 public hearing ("the Public Hearing"):

> The interest of most of the people here is not really based on, do we really have a need, are you good, do you do a good job with what you do? That's not what we're thinking . . . we need to focus on and protect our assets, that's all we're trying to do. We're not trying to say, is there a need to do a good job? It's that simple.

To the City, it was only ever about the need to "as a community . . . pull together and get [RHJ] in the spot they need to be in"—a spot that happened to be far away from similar medical facilities that did not dispense methadone. These are the City's own words and actions straight from the mouths and minds of the representatives and residents which make it up. For all these reasons, of which there can be no factual dispute, RHJ is entitled to summary judgment on the City's liability and is entitled to its requested equitable relief.[1]

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[1] RHJ recognizes that there is a dispute of material fact as to the amount of damages RHJ is entitled to for the violation of its constitutional and statutory rights as both parties have submitted expert

II. Legal Standard

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). A factual dispute is "material" only if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). For an issue to be "genuine," a reasonable fact-finder must be able to return a verdict in favor of the non-moving party. *Id.* In evaluating a motion for summary judgment under Rule 56, the Court must view the evidence presented in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255. There must be enough evidence with respect to a particular issue to enable a reasonable jury to find in favor of the non-moving party. *Id.* at 248. Importantly, the non-moving party cannot simply "rely merely upon bare assertions, conclusory allegations or suspicions" to support its claim. *Fireman's Ins. Co. v. DuFresne*, 676 F.2d 965, 969 (3d Cir. 1982).

III. Statement of Facts

RHJ hereby incorporates by reference its Concise Statement of Material Facts (hereinafter "RHJ Facts at ¶ ___").

IV. Argument

RHJ's Motion for Partial Summary Judgment is predicated on six causes of action attacking two statutes. RHJ challenges both Section 621 (on its face and as-applied) and Ordinance 1720 (on its face) as being violative of the ADA, the Rehabilitation Act, and 42 U.S.C. § 1983 under the Fourteenth Amendment's Due Process and Equal Protection Clauses. As a threshold matter, RHJ has established that it is a proper party to assert these actions and that the City is a proper defendant.

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reports with conflicting damage estimates. As such, RHJ does not seek judgment as a matter of law on the issue of damages, which must proceed to trial. However, there is no such dispute as to the propriety of RHJ's request for declaratory and injunctive relief, which RHJ is entitled to as a matter of law for the City's enactment of Ordinance 1720.

First, RHJ has proven the necessary elements for a finding of standing. In order to satisfy the requirements of Article III standing under the ADA and the Rehabilitation Act, the plaintiff must establish that it has an "imminent" association with disabled patients. *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 743. The record reveals that RHJ took several concrete steps in order to open up its methadone treatment center and establish a relationship with patients. (RHJ Facts at ¶¶ 9, 12, 19, 20). This association was imminent, and not hypothetical or conjectural. *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 743. In addition, RHJ has demonstrated that any patient who would be admitted to its methadone clinic would necessarily have an impairment that substantially impairs a major life activity. (RHJ Facts at ¶¶ 5-7). Thus, RHJ automatically has an association with an individual known to have a disability and standing for its claim of equitable relief would be proper. *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 762. *See also Addiction Specialists v. Township of Hampton*, 411 F.3d 399, 408 (3d Cir. 2005) (holding that a proposed methadone treatment center has standing under both the ADA and the Rehabilitation Act); *MX Group v. City of Covington*, 293 F.3d 326, 328-29 (6th Cir. 2002) (same). RHJ has also sufficiently established standing for its claims of damages based on its own assertion of lost profits that *it* personally suffered. (RHJ Facts at ¶ 130). Accordingly, Article III is satisfied and the ADA and the Rehabilitation Act require no further proof. *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 743.

Second, there is no dispute that the City is a qualifying public entity within the meaning of both the ADA and the Rehabilitation Act. The ADA specifically protects disabled persons from discrimination by a "public entity", which includes the City of Dubois. *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 763-64 citing *New Directions*, 490 F.3d at 301 n.7. Similarly, the Rehabilitation Act protects disabled persons from discrimination by "any program or activity receiving Federal financial assistance," 29 U.S.C. § 794, which "would include the City of DuBois." *RHJ Medical*

Center, Inc., 754 F.Supp.2d at 764 (citation omitted). The City does not contend otherwise. (RHJ Facts at ¶ 11).

Therefore, the only question left to be resolved is the extent to which the City discriminated against RHJ based on the disabilities of RHJ's clientele. In consideration of the overwhelming direct and circumstantial evidence demonstrating the City's animus towards methadone treatment centers, and RHJ in particular, there can be no doubt that the actions of the City in this case were the product of discriminatory intent. Thus, RHJ is entitled to summary judgment on the City's liability on all six causes of action against the two challenged statutes.

A. RHJ is Entitled to Damages and Equitable Relief under the ADA and the Rehabilitation Act for the City's Enactment of Ordinance Number 1720.

The ADA provides that "[s]ubject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. This statement constitutes a general prohibition against discrimination by public entities, regardless of activity. *New Directions*, 490 F.3d at 301-02. *See also Bay Area Addiction Research and Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 730-31 (9th Cir. 1999) (striking down a ban on methadone clinics within 500 feet of a residential area). The Rehabilitation Act similarly provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). The Third Circuit has noted that "'[a]s the ADA simply expands the Rehabilitation Act's prohibitions against discrimination into the private sector, Congress has directed that the two acts' judicial and agency standards be harmonized' and we will accordingly analyze[] the two provisions together." *Id.* at 302 citing *Newman v. GHS Osteopathic, Inc.*, 60 F.3d 153, 157-58 (3d Cir. 1995). Therefore, the analysis of

RHJ's claims against Ordinance Number 1720 under the ADA and the Rehabilitation Act will be the same. *See Chambers v. School Dist. of Philadelphia*, 587 F.3d 176, 189 (3d Cir. 2009) (noting that the same standards govern claims under the ADA and the Rehabilitation Act); *MX Group, Inc. v. City of Covington*, 293 F.3d 326, 332 (holding that methadone clinic's claims under the ADA and the Rehabilitation Act should be analyzed together "since the results are the same under both Acts.").

In *New Directions*, the Third Circuit definitively established that "a law that singles out methadone clinics for different zoning procedures is facially discriminatory under the ADA and the Rehabilitation Act." *New Directions*, F.3d at 305. In doing so, the Third Circuit joined the Sixth and Ninth Circuits in concluding that municipal ordinances specifically prohibiting methadone clinics from locating in certain areas violate the general proscription contained in the ADA and the Rehabilitation Act. *See MX Group, Inc.*, 293 F.3d at 342; *Bay Area*, 179 F.3d at 737. The Circuit Courts classified such ordinances as "facially discriminatory laws" which "present per se violations" of the ADA and the Rehabilitation Act. *New Directions*, F.3d at 305; *MX Group*, 293 F.3d at 342; *Bay Area*, 179 F.3d at 737. Accordingly, the Third, Sixth, and Ninth Circuits struck down the offending laws as violative of the ADA and the Rehabilitaiton Act.

A similar conclusion was reached in *OPCO v. Borough of Dunmore*, 2011 Pa. Commw. Unpub. LEXIS 319 (Pa.Commw.Ct., April 21, 2011). In *OPCO*, a methadone treatment center sought to develop a property located in the C-4 Commercial District of the borough. *Id.* at *1. The governing zoning ordinance listed a number of permitted uses in the C-4 Commerical District, as well as several conditional uses and special exception uses. "Medical/Dental clinics" were permitted uses while "Methadone Treatment and Other Drug Treatment" was considered a conditional use, which required approval from the borough council on a number of criteria before being allowed. *Id.* at *2. OPCO brought suit challenging the ordinance under the ADA. Relying

on *New Directions*, the court struck down the ordinance stating that, in the land use context, "[s]imply put, a methadone clinic cannot be treated any differently than a medical clinic that is serving as an ordinary medical clinic." *Id.* at *8 citing *Freedom Services, Inc. v. Zoning Hearing Board of the City of New Castle*, 983 A.2d 1286 (Pa.Cmwlth. 2009).[2] The court found that because these provisions treat methadone clinics differently from other medical clinics, "they are facially discriminatory under the ADA and must be struck down." *Id.*

The result should be no different in this case. Like the ordinances and statutes at issue in *New Directions*, *MX Group*, *Bay Area*, and *OPCO*, Ordinance Number 1720 singles out "methadone treatment facilities" for different zoning treatment. Ordinance Number 1720 specifically prohibis methadone clinics in the "Transitional District" while expressly permitting medical facilities "with the exception of methadone treatment facilities" in the "Commercial-Highway Zoning District." (RHJ Facts at ¶ 114). This outright ban of methadone clinics in the "Transitional District" and the "Commercial-Highway Zoning District" is even more egregious than Section 621, which permitted the municipality to waive the prohibition if it approved the issuance of a permit. (RHJ Facts at ¶ 25). Ordinance Number 1720 contains no such provision thereby eliminating any possibility that a methadone clinic can locate in these areas. Moreover, like the

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[2] In *Freedom Services, Inc. v. Zoning Hearing Board of the City of New Castle*, 983 A.2d 1286 (Pa.Cmwlth. 2009), the Pennsylvania Commonwealth Court overturned the denial of a methadone clinic's request for a special exception on the basis of inadequate parking. The city contended that the methadone clinic failed to present sufficient evidence that it would not harm the health and safety of the community, given the general unsuitability of the volume of cars and patients and the extensive hours of operation of the medical clinic, and because it failed to show how the parking and traffic needs would blend in with the existing businesses and residences. *Id.* at 1292. In addition, the city found that children were present in the area, and other pedestrian and vehicular traffic in the area would seriously be compromised by the parking request of the applicant because of the high volume of cars emanating from the clinic. *Id.* While the Court understood the city's "and neighboring residents' concerns about having this type of facility in the neighborhood", the court stated that these concerns could not serve as a basis for treating methadone clinics differently for zoning purposes. *Id.* "Simply put, a methadone clinic cannot be treated any differently than a medical clinic that is serving as an ordinary medical clinic." *Id.*

offending zoning ordinance in *OPCO*, Ordinance Number 1720 treats methadone clinics different than other medical facilities, which are permitted as of right in the "Transitional District" and the "Commercial-Highway Zoning District." (RHJ Facts at ¶ 114). The fact that Ordinance Number 1720 permits methadone clinics to locate in the "O-1 Office District" "in no way alters the fact that [Ordinance Number 1720] facially singles out methadone clinics, and thereby methadone patients, for different treatment, thereby rendering the statute facially discriminatory." *New Directions*, F.3d at 304.

Because Ordinance Number 1720 is facially discriminatory, it is inappropriate to apply the "reasonable modification" test. *Id.* at 305. *See also MX Group*, 293 F.3d at 344-45; *Bay Area*, 179 F.3d at 734-35. The only way to modify a facially discriminatory statute is to remove the discriminatory language. *New Directions*, F.3d at 305. However, as the Third Circuit found, "amending [Section 621] to remove the facial discrimination against methadone clinics would 'fundamentally alter' the statute." *Id.* (citation omitted). The same is true for Ordinance Number 1720. The removal of Ordinance Number 1720's prescription against methadone clinics would fundamentally alter the character and purpose of a law that is specifically designed to ban methadone clinics from areas where the City clearly does not want them.

Having established that Ordinance Number 1720 is facially discriminatory and that the reasonable modification test is inapplicable, the only remaining inquiry is whether RHJ's clients pose a significant risk. *Id.* at 305. In determining whether methadone patients presented a significant risk for purposes of Section 621, the Third Circuit stated that "we cannot base our decision on the subjective judgments of the people purportedly at risk, the Reading residents, City Council, or even Pennsylvania citizens, but must look to objective evidence in the record of any dangers posed by methadone clinics and patients." *Id.* at 306. This purported risk must be

substantial, not speculative or remote, and the plaintiff is not required to show that its operation and clients pose no risk at all. *Id.*

Like the Third Circuit found in *New Directions*, the record in this case contains ample evidence that RHJ clients, and methadone patients as a class, do not pose a significant risk and the City failed to offer any evidence to the contrary. (RHJ Facts at ¶¶ 7-8). More importantly, the record demonstrates no link between methadone clinics and increased crime or any other possible concerns like heavy traffic, loitering, noise pollution, littering, double parking, or jaywalking.[3] Thus, no triable issue of fact exists as to whether RHJ's clients, or methadone patients generally, pose a significant risk. *New Directions*, F.3d at 307.

Based on the foregoing, and in consideration of the decisions in *New Directions*, *MX Group*, *Bay Area*, and *OPCO*, Ordinance Number 1720 facially violates the ADA and the Rehabilitation Act as a matter of law and RHJ is entitled to damages and equitable relief for the remedy thereof. *See also See Habit Management, Inc. v. City of Lynn*, 235 F.Supp.2d 28 (D.Mass. 2002), (granting summary judgment to a methadone clinic on its ADA challenge to an ordinance which barred methadone clinics from a business zone but allowed other clinics as a matter of right).

B. RHJ is Entitled to Damages and Equitable Relief under 42 U.S.C. § 1983 for the City's Enactment of Ordinance Number 1720.

1. Ordinance Number 1720 is a Facial Violation of the Substantive Due Process Clause.

Substantive due process claims apply when a plaintiff challenges the validity of a legislative act. *Nicholas v. Pennsylvania State University*, 227 F.3d 133, 139 (3rd Cir. 2000). A legislative act will typically withstand substantive due process scrutiny if the government "identifies the legitimate state interest that the legislature could rationally conclude was served by the statute." *Id.* at 139 (citation omitted). "The new ordinance as well as [Section] 621 clearly appear to be legislative

[3] Even if such connections existed, the Third Circuit was skeptical that they would qualify as the substantial harms contemplated for the "significant risk" test. *New Directions*, F.3d at 306.

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In the attempt to validate its constitutional and statutory rights, RHJ filed this action on May 14, 2009 ("the Complaint") seeking declaratory and injunctive relief as well as damages for the City's violation of the United States Constitution, 42 U.S.C. § 1983, the ADA, and the Rehabilitation Act. In response to the Complaint, the City filed a Motion for Judgment on the Pleadings on December 22, 2009, asserting that: (1) RHJ lacked standing; (2) RHJ was barred by res judicata from asserting claims related to Section 621; (3) RHJ was estopped from raising claims related to Section 621 due to waiver; (4) The City was immune from actions taken in accordance with a court order; (5) The imposition of an equitable remedy would infringe on principles of federalism; (6) RHJ's claims were barred by the statute of limitations; (7) RHJ failed to adequately set forth an equal protection claim against Section 621; and (8) RHJ failed to adequately set forth a substantive due process claim against both Section 621 and Ordinance 1720. On December 7, 2010, this Court denied the City's Motion for Judgment on the Pleadings in its entirety and also rejected the City's Motion for a More Definite Statement. *See RHJ Medical Center, Inc. v. City of DuBois*, 754 F.Supp.2d 723 (W.D.Pa. Dec. 7, 2010).

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Therefore, the only question left to be resolved is the extent to which the City discriminated against RHJ based on the disabilities of RHJ's clientele. In consideration of the overwhelming direct and circumstantial evidence demonstrating the City's animus towards methadone treatment centers, and RHJ in particular, there can be no doubt that the actions of the City in this case were the product of discriminatory intent. Thus, RHJ is entitled to summary judgment on the City's liability on all six causes of action against the two challenged statutes.

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The ADA provides that "[s]ubject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. This statement constitutes a general prohibition against discrimination by public entities, regardless of activity. *New Directions*, 490 F.3d at 301-02. *See also Bay Area Addiction Research and Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 730-31 (9th Cir. 1999) (striking down a ban on methadone clinics within 500 feet of a residential area). The Rehabilitation Act similarly provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). The Third Circuit has noted that "'[a]s the ADA simply expands the Rehabilitation Act's prohibitions against discrimination into the private sector, Congress has directed that the two acts' judicial and agency standards be harmonized' and we will accordingly analyze[] the two provisions together." *Id.* at 302 citing *Newman v. GHS Osteopathic, Inc.*, 60 F.3d 153, 157-58 (3d Cir. 1995). Therefore, the analysis of

RHJ's claims against Ordinance Number 1720 under the ADA and the Rehabilitation Act will be the same. *See Chambers v. School Dist. of Philadelphia*, 587 F.3d 176, 189 (3d Cir. 2009) (noting that the same standards govern claims under the ADA and the Rehabilitation Act); *MX Group, Inc. v. City of Covington*, 293 F.3d 326, 332 (holding that methadone clinic's claims under the ADA and the Rehabilitation Act should be analyzed together "since the results are the same under both Acts.").

In *New Directions*, the Third Circuit definitively established that "a law that singles out methadone clinics for different zoning procedures is facially discriminatory under the ADA and the Rehabilitation Act." *New Directions*, F.3d at 305. In doing so, the Third Circuit joined the Sixth and Ninth Circuits in concluding that municipal ordinances specifically prohibiting methadone clinics from locating in certain areas violate the general proscription contained in the ADA and the Rehabilitation Act. *See MX Group, Inc.*, 293 F.3d at 342; *Bay Area*, 179 F.3d at 737. The Circuit Courts classified such ordinances as "facially discriminatory laws" which "present per se violations" of the ADA and the Rehabilitation Act. *New Directions*, F.3d at 305; *MX Group*, 293 F.3d at 342; *Bay Area*, 179 F.3d at 737. Accordingly, the Third, Sixth, and Ninth Circuits struck down the offending laws as violative of the ADA and the Rehabilitaiton Act.

A similar conclusion was reached in *OPCO v. Borough of Dunmore*, 2011 Pa. Commw. Unpub. LEXIS 319 (Pa.Commw.Ct., April 21, 2011). In *OPCO*, a methadone treatment center sought to develop a property located in the C-4 Commercial District of the borough. *Id.* at *1. The governing zoning ordinance listed a number of permitted uses in the C-4 Commerical District, as well as several conditional uses and special exception uses. "Medical/Dental clinics" were permitted uses while "Methadone Treatment and Other Drug Treatment" was considered a conditional use, which required approval from the borough council on a number of criteria before being allowed. *Id.* at *2. OPCO brought suit challenging the ordinance under the ADA. Relying

on *New Directions*, the court struck down the ordinance stating that, in the land use context, "[s]imply put, a methadone clinic cannot be treated any differently than a medical clinic that is serving as an ordinary medical clinic." *Id.* at *8 citing *Freedom Services, Inc. v. Zoning Hearing Board of the City of New Castle*, 983 A.2d 1286 (Pa.Cmwlth. 2009).[2] The court found that because these provisions treat methadone clinics differently from other medical clinics, "they are facially discriminatory under the ADA and must be struck down." *Id.*

The result should be no different in this case. Like the ordinances and statutes at issue in *New Directions*, *MX Group*, *Bay Area*, and *OPCO*, Ordinance Number 1720 singles out "methadone treatment facilities" for different zoning treatment. Ordinance Number 1720 specifically prohibis methadone clinics in the "Transitional District" while expressly permitting medical facilities "with the exception of methadone treatment facilities" in the "Commercial-Highway Zoning District." (RHJ Facts at ¶ 114). This outright ban of methadone clinics in the "Transitional District" and the "Commercial-Highway Zoning District" is even more egregious than Section 621, which permitted the municipality to waive the prohibition if it approved the issuance of a permit. (RHJ Facts at ¶ 25). Ordinance Number 1720 contains no such provision thereby eliminating any possibility that a methadone clinic can locate in these areas. Moreover, like the

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[2] In *Freedom Services, Inc. v. Zoning Hearing Board of the City of New Castle*, 983 A.2d 1286 (Pa.Cmwlth. 2009), the Pennsylvania Commonwealth Court overturned the denial of a methadone clinic's request for a special exception on the basis of inadequate parking. The city contended that the methadone clinic failed to present sufficient evidence that it would not harm the health and safety of the community, given the general unsuitability of the volume of cars and patients and the extensive hours of operation of the medical clinic, and because it failed to show how the parking and traffic needs would blend in with the existing businesses and residences. *Id.* at 1292. In addition, the city found that children were present in the area, and other pedestrian and vehicular traffic in the area would seriously be compromised by the parking request of the applicant because of the high volume of cars emanating from the clinic. *Id.* While the Court understood the city's "and neighboring residents' concerns about having this type of facility in the neighborhood", the court stated that these concerns could not serve as a basis for treating methadone clinics differently for zoning purposes. *Id.* "Simply put, a methadone clinic cannot be treated any differently than a medical clinic that is serving as an ordinary medical clinic." *Id.*

offending zoning ordinance in *OPCO*, Ordinance Number 1720 treats methadone clinics different than other medical facilities, which are permitted as of right in the "Transitional District" and the "Commercial-Highway Zoning District." (RHJ Facts at ¶ 114). The fact that Ordinance Number 1720 permits methadone clinics to locate in the "O-1 Office District" "in no way alters the fact that [Ordinance Number 1720] facially singles out methadone clinics, and thereby methadone patients, for different treatment, thereby rendering the statute facially discriminatory." *New Directions*, F.3d at 304.

Because Ordinance Number 1720 is facially discriminatory, it is inappropriate to apply the "reasonable modification" test. *Id.* at 305. *See also MX Group*, 293 F.3d at 344-45; *Bay Area*, 179 F.3d at 734-35. The only way to modify a facially discriminatory statute is to remove the discriminatory language. *New Directions*, F.3d at 305. However, as the Third Circuit found, "amending [Section 621] to remove the facial discrimination against methadone clinics would 'fundamentally alter' the statute." *Id.* (citation omitted). The same is true for Ordinance Number 1720. The removal of Ordinance Number 1720's prescription against methadone clinics would fundamentally alter the character and purpose of a law that is specifically designed to ban methadone clinics from areas where the City clearly does not want them.

Having established that Ordinance Number 1720 is facially discriminatory and that the reasonable modification test is inapplicable, the only remaining inquiry is whether RHJ's clients pose a significant risk. *Id.* at 305. In determining whether methadone patients presented a significant risk for purposes of Section 621, the Third Circuit stated that "we cannot base our decision on the subjective judgments of the people purportedly at risk, the Reading residents, City Council, or even Pennsylvania citizens, but must look to objective evidence in the record of any dangers posed by methadone clinics and patients." *Id.* at 306. This purported risk must be

substantial, not speculative or remote, and the plaintiff is not required to show that its operation and clients pose no risk at all. *Id.*

Like the Third Circuit found in *New Directions*, the record in this case contains ample evidence that RHJ clients, and methadone patients as a class, do not pose a significant risk and the City failed to offer any evidence to the contrary. (RHJ Facts at ¶¶ 7-8). More importantly, the record demonstrates no link between methadone clinics and increased crime or any other possible concerns like heavy traffic, loitering, noise pollution, littering, double parking, or jaywalking.[3] Thus, no triable issue of fact exists as to whether RHJ's clients, or methadone patients generally, pose a significant risk. *New Directions*, F.3d at 307.

Based on the foregoing, and in consideration of the decisions in *New Directions*, *MX Group*, *Bay Area*, and *OPCO*, Ordinance Number 1720 facially violates the ADA and the Rehabilitation Act as a matter of law and RHJ is entitled to damages and equitable relief for the remedy thereof. *See also See Habit Management, Inc. v. City of Lynn,* 235 F.Supp.2d 28 (D.Mass. 2002), (granting summary judgment to a methadone clinic on its ADA challenge to an ordinance which barred methadone clinics from a business zone but allowed other clinics as a matter of right).

B. RHJ is Entitled to Damages and Equitable Relief under 42 U.S.C. § 1983 for the City's Enactment of Ordinance Number 1720.

1. Ordinance Number 1720 is a Facial Violation of the Substantive Due Process Clause.

Substantive due process claims apply when a plaintiff challenges the validity of a legislative act. *Nicholas v. Pennsylvania State University*, 227 F.3d 133, 139 (3rd Cir. 2000). A legislative act will typically withstand substantive due process scrutiny if the government "identifies the legitimate state interest that the legislature could rationally conclude was served by the statute." *Id.* at 139 (citation omitted). "The new ordinance as well as [Section] 621 clearly appear to be legislative

[3] Even if such connections existed, the Third Circuit was skeptical that they would qualify as the substantial harms contemplated for the "significant risk" test. *New Directions*, F.3d at 306.

acts." *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 768. As such, RHJ does not need to meet the more stringent "shocks the conscience test" to establish that its substantive due process rights were violated. *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 768. To be successful on its facial substantive due process challenge, RHJ must establish "facts that would support a finding of arbitrary or irrational legislative action by the" City of DuBois. *County Concrete Corp. v. Town of Roxbury*, 442 F.3d 159, 169 (3rd Cir. 2006) (citation omitted). In *County Concrete Corp.*, the Third Circuit found that the appellants sufficiently alleged that the municipality acted for reasons unrelated to land use planning. *Id.* at 170. The appellants charged the municipality with impeding appellants' business on one tract of land, and their attempts to expand to another tract, through false accusations, verbal disparagement and the imposition of illegal conditions and restrictions. *Id.* Following this alleged animus, the municipality enacted an ordinance rezoning appellants' land from Industrial to either Rural Residential or Open Space. *Id.* The Court concluded that "[t]here is nothing in the complaint that would indicate any possible motivation for the enactment of the Ordinance other than a desire to prevent appellants from continuing to operate and expand their [] business." *Id.* This type of "animus is not a legitimate reason for enacting a zoning ordinance and is unrelated to land use planning." *Id.* (citations omitted).

Like *County Concrete Corp.*, the facts of this case show beyond dispute that the actions of the City were based on an animus towards RHJ and its prospective clients rather than any concerns about land use planning. RHJ signed a lease at 994 Beaver Drive, DuBois, Pennsylvania, 15801 ("the Site") on March 31, 2006 which was zoned in the "Transitional District," and permitted medical, psychological, and therapeutic facilities to open. (RHJ Facts at ¶¶ 19, 21, 22). Notwithstanding, the City believed that "RHJ's search should have included a meeting with the Council of the City of DuBois so that City Council could advise RHJ of those areas where such a facility could best be located." (*Id.* at ¶ 23). The City made this assertion despite the fact that RHJ

had chosen a location that was, at the time, zoned for a methadone treatment center. *See Angel Fuller-McMahan*, 2005 U.S.Dist. LEXIS 13956 at *6-7 (D. Me. July, 12, 2005) (finding relevant for purposes of discriminatory intent the fact that when methadone clinic selected site, "nothing in the city's zoning ordinance or elsewhere in its ordinances rendered a methadone clinic an inappropriate use" for its desired location).

After RHJ's plans to open the clinic became public, the Mayor conducted a radio interview in which he (1) stated that the City had a drug problem that needs to be taken care of by "the proper people", not RHJ (*Id.* at ¶ 39); (2) repeatedly stated that RHJ had two strikes against it even though a business opening in DuBois is not normally considered to have two strikes against it if the business does not approach and educate the City's leaders prior to opening (*Id.* at ¶¶ 40, 41, 45, 50, 52); (3) listened to the Host state that methadone clinics "makes the kind of the hair on the back of your neck stand up" (*Id.* at ¶ 42); (4) failed to correct the Host when he asked whether "we, as a people, have to accept Philadelphia's garbage" a.k.a. methadone patients (*Id.* at ¶¶ 43-44); (5) idly stood by as the Host read on air the personal cell phone number of RHJ's sponsor although this was "absolutely not" common practice for the Mayor (*Id.* at ¶¶ 47-49); (6) responded that he "would have a problem" if a methadone clinic attempted to locate in DuBois (*Id.* at ¶ 53); (7) pronounced that "we don't like them" when discussing methadone clinics (*Id.* at ¶ 40); and (8) stated that "what we need to do then, as a community, is we need to pull together and get [RHJ] in the spot they need to be in" (*Id.* at ¶ 54). In determining animus, comments from those who hold positions of influence, like the Mayor, are especially relevant. *See Pathways Psychosocial v. Town of Leonardtown, MD*, 133 F.Supp.2d 772, 783-84 (D.Md. 2001) (finding clear evidence of discriminatory intent where record shows "Council members agreeing with or responding directly to community opposition based on fears and stereotypes of mentally disabled people."); *Regional Economic Community Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 50-51 (2nd Cir.

2002) (finding evidence of discriminatory intent where mayor publicly stated that a halfway house for recovering alcoholics "would have trouble" getting into the city and that "this [c]ity has done more than its share"); *Smith-Berch, Inc. v. Baltimore County, Maryland*, 68 F.Supp.2d 602, 611 (D.Maryland 1999) ("the fact that Councilman []'s representative also publicly expressed the Councilman's opposition to the facility is relevant, because as a member of the County Council, [the] Councilman [] exercises some meaningful measure of power and influence over the County's zoning process.")

On October 23, 2006, at the behest of the DuBois City Council ("the City Council"), the City Solicitor sent a letter to RHJ advising them of the fact that it considered the Beaver Meadow Walkway to be a public park under Section 621 and that RHJ needed to obtain the express permission of the City Council before opening. (RHJ Facts at ¶ 58). The City Solicitor also indicated that she checked the records of the City and could not find where RHJ applied for a certificate of use. (*Id.* at ¶ 59). According to the City Solicitor, this was a requirement because RHJ was "clearly intending to change [the] use" of 994 Beaver Drive, which "was never operated as a methadone treatment center by the previous occupant." (*Id.*). The City Solicitor subjected RHJ to this requirement despite the fact that (1) the City was in possession of a letter from its construction consultant stating that RHJ did not need a certificate of use, (*Id.* at ¶¶ 28-33), and (2) the issuance of a certificate of use was an administrative, objective decision based solely on "whether the use is permitted in that particular zoning district" and without any involvement from the City Solicitor or the Mayor. (*Id.* at ¶¶ 35-37). Evidence of animus is established by proof that the city ignored the initial recommendation of its professional planning staff. *Joseph's House and Shelter, Inc. v. City of Troy Planning Board*, 2009 U.S. Dist. LEXIS 71240 at *10 (N.D.N.Y. March 31, 2009). *See also Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565, 580 (2d Cir. 2003) (same); *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 49 (2d Cir. 1997) (finding evidence of

discrimination in decision to ignore counsel's straightforward analysis on whether a project should be classified as a hospital). Equally relevant for purposes of animus is the involvement in the permit process of those who do not normally play a role. *See Pathways Psychosocial*, 133 F.Supp.2d at 784 (finding evidence of discriminatory intent where mayor of town, who was not normally involved in issuing permits, was involved in plaintiff's application for permit).

On October 25, 2006, RHJ opened the clinic as planned. (RHJ Facts at ¶ 60). A mere two days later, the City filed for an injunction arguing that RHJ was opening the clinic in violation of Section 621. (*Id.* at ¶ 61). After the parties stipulated that the sidewalk constituted a public park for purposes of Section 621, the Court entered a permanent injunction. (*Id.* at ¶ 62). RHJ then made a formal request for a certificate of use application to the Mayor and was provided a "case specific application" from the City Solicitor who had never before amended the standard certificate of use form. (*Id.* at ¶¶ 63-66). *See Start, Inc. v. Baltimore County, Maryland*, 295 F.Supp.2d 569, 580 (D. Md. 2003) (holding that departures from normal procedural sequences and departures from normal substantive criteria as factors supporting a finding of discriminatory intent); *Sunrise Dev., Inc. v. Town of Huntington*, 62 F.Supp.2d 762, 774 (E.D.N.Y. 1999) (same). At the Public Hearing on RHJ's certificate of use application, prominent DuBois residents spread irrational concerns, unjustified fears, and blatant stereotypes about methadone treatment centers and methadone patients while the City Council remained silent. (*Id.* at ¶¶ 69-97). *See Innovative Health Systems, Inc. v. City of White Plains*, 117 F.3d 37 (2d Cir. 1997) (finding evidence of discrimination where public hearing on zoning application of alcohol treatment facility was replete with discriminatory comments about drug and alcohol dependent persons based on stereotypes and general, unsupported fears). At one point, the City Solicitor interrupted an RHJ representative to instruct him, the residents, and the City Council that RHJ needed to demonstrate an "overriding reason" why it

should be permitted to locate at the Site under Section 621. (*Id.* at ¶ 81). Section 621 contains no such requirement as the City Solicitor later admitted. (*Id.* at ¶ 82).

Following the Public Hearing, on May 14, 2007, the City Council voted unanimously to deny RHJ's application and issued a document detailing its reasoning ("the Findings of Fact and Conclusions of Law") (*Id.* at ¶¶ 98-99). The Findings of Fact and Conclusions of Law was littered with bogus rationales for denying RHJ's request to locate at the Site further evidencing the City's animus towards methadone treatment centers. For instance, the City claimed that RHJ would depend on the City's police and fire force and did not have a means to transport patients if there was an overdose. (*Id.* at ¶ 101). However, that would make RHJ the same as any other business in DuBois and is not a legitimate reason for the denial of RHJ's application. *See Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1105 (3d Cir. 1996) (holding that, for purposes of zoning, "[t]he mere fact that an entity will at times require the assistance of local police and other emergency services does not rise to the level of imposing a cognizable administrative and financial burden upon the community."); *South Middlesex Opportunity Council, Inc. v. Town of Framingham*, 752 F.Supp.2d 85 (D. Mass 2010) (holding that "[c]ourts [] have found that these arguments about community resources are not legitimate justifications for discriminatory housing determinations"). The City also claimed that RHJ did not perform a need assessment to determine if DuBois needed a methadone clinic despite the fact that the Mayor repeatedly conceded that "there was a drug problem in [DuBois] and that [DuBois] needed a methadone clinic." (RHJ Facts at ¶¶ 39, 55, 105).

On June 16, 2007, the Third Circuit ruled that Section 621 violated the ADA and the Rehabilitaiton Act in *New Directions*. (*Id.* at ¶ 108). On June 25, 2007, the City Solicitor discussed the *New Directions* decision at a city council meeting, which was covered by a local newspaper. (*Id.* at ¶ 109). According to the newspaper, the City Solicitor utterly dismissed the *New Directions*

decision but believed it prudent to revise the City's zoning to prepare for the inevitable implications from the case. (*Id.* at ¶ 110).

Those implications came to fruition on November 15, 2007, when RHJ filed a Motion to Dissolve Injunctions based on *New Directions*. (*Id.* at ¶ 112). Only one week later, the City decided to take action by drafting Ordinance Number 1720 to ensure that RHJ would be unable to locate at the Site regardless of the outcome of its Motion to Dissolve Injunctions. (*Id.* at ¶ 113). Despite the clear pronouncement of the Third Circuit in *New Directions*, the City enacted a zoning ordinance that specifically singled out methadone facilities for different treatment. (*Id.* at ¶ 114). As if that was not enough, the City actively opposed RHJ's Motion to Dissolve Injunctions because it believed that *New Directions* was not "directly controlling in the case at hand." (*Id.* at ¶¶ 122, 123). In addition, the City now claimed that it would have denied RHJ's application for a certificate of use regardless of Section 621 on the grounds of inadequate parking at the Site under the City's ordinances. (*Id.* at ¶ 124). The City made this implausible claim despite the fact that the Mayor admitted that the alleged failure of RHJ to comply with the City's zoning ordinances played no role in his decision to deny RHJ's application for a certificate of use as his decision was based solely on Section 621. (*Id.* at ¶ 125). On March 6, 2008, nearly nine months after *New Directions* was decided, the Court dissolved the injunction. (*Id.* at ¶ 127). However, it was too late and RHJ was forced to terminate its lease at the Site in July of 2008. (*Id.* at ¶ 129).

A review of these facts—"which are all-too-common in situations where a municipality uses zoning practices to prevent the opening of a methadone clinic it opposes"—leads to one inescapable conclusion: the actions of the City were based on an improper animus that was completely detached from any land use planning purpose. *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 770. The City utilized every means possible to prevent RHJ from operating at the Site and when it lost the facially invalid Section 621, it decided to pursue its own unconstitutional course in the blatant

attempt to single out methadone clinics from other medical facilities, and greatly restrict where they could be located. The City's actions were in direct dereliction of the protections afforded by the Substantive Due Process Clause.

2. Ordinance Number 1720 is a Facial Violation of the Equal Protection Clause.

In an equal protection challenge the question is whether the City has irrationally distinguished between similarly situated classes. *County Concrete Corp.*, 442 F.3d at 171. (citation omitted). The Supreme Court's decision in *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000), allows parties to assert a "class of one" equal protection claim for land use and zoning challenges. *See Discovery House, Inc. v. Consolidated City of Indianapolis*, 319 F.3d 277, 282 (7th Cir. 2003) (finding that an *Olech* "class of one" claim is viable under the Equal Protection Clause for a methadone clinic to challenge the denial of a zoning permit).

Under the class of one approach, a single plaintiff can present itself as a class irrespective of innate characteristics. *Olech*, 528 U.S. at 564. In the Third Circuit, no malice finding is required and, under *Olech*, a plaintiff must establish that: (1) the defendant treated him differently from others similarly situated; (2) the defendant did so intentionally, and (3) there was no rational basis for the difference in treatment. *Hill v. Borough of Kutztown*, 455 F.3d 225, 239 (3d Cir. 2006). In consideration of *Olech* and the undisputed factual circumstances of this case, RHJ has established as a matter of law that Ordinance Number 1720 constitutes a facial violation of the Equal Protection Clause.

First, DuBois applied a different standard to RHJ than other medical facilities. The class, as stated, is RHJ as a medical facility. *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 772. Under Ordinance Number 1720, methadone clinics are not allowed to open in zones where other similar medical facilities are allowed to operate. RHJ has established that the City intentionally treated RHJ's medical facility—a methadone clinic that treated recovering opioid addicts—differently from

other similarly situated medical facilities. These uncontroverted facts satisfy the first prong of *Hill*, 455 F.3d 225, 239 (3d Cir. 2006). *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 772.

Second, the element of intent necessary under *Hill* is similar to the showing of animus that RHJ has already proven in its substantive due process claim. *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 772. The finding that the actions of the City were based on an animus towards RHJ, and the patients its clinic intended to serve, is sufficient to establish that the actions of the City were intentional. *Id.*

Third, *Hill* asks whether there was a rational basis for the difference in treatment. *Hill*, 455 F.3d at 239. Although traditional forms of rational basis review are quite deferential, the Supreme Court has articulated a heightened, more searching form of rational basis review when dealing with a discrete and insular minority. *Maldonado v. Houstoun*, 157 F.3d 179, 185 n.7 (3d Cir. 1998) (citation omitted). *See also City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) (engaging in a "searching inquiry" into the reasons why the City denied a permit for a home for the mentally retarded notwithstanding the fact that rational basis review applied); *Romer v. Evans*, 517 U.S. 620 (1996) (applying a similar form of heightened rational basis and finding an "inevitable inference" that a law focused solely on gays and lesbians was motivated by an impermissible animus under the Equal Protection Clause).

The import of *Cleburne* and *Romer* is that when the government discriminates against "discrete and insular minorities", courts should employ a more thorough version of rational basis review that inquires into the government's motivation and animus. *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 773. A law singling out methadone treatment centers and its disabled clients is

deserving of this more searching inquiry.[4] However, regardless of the standard applied, Ordinance Number 1720 cannot pass constitutional muster.

The Mayor explained the reasoning behind Ordinance Number 1720's differing treatment of methadone clinics as follows:

> A: A methadone drug treatment facility is best handled near the hospital. If somebody needs help, something doesn't go right, you have the hospital there that can pitch in and help. It's right there. I guess a normal doctor's office, somebody is coming in and saying --- you know, my physical or something like that is totally different than somebody being --- you know, somebody needing medical help.
>
> Q: Is your answer based on the fact that methadone is being distributed at a methadone clinic and that's why it needs to be at the medical center?
>
> A: I'm saying any type of drug facility like that would be best handled in that area.

(RHJ Facts at ¶ 119).

Later in his deposition, the Mayor stated that he knew of no reason why Ordinance 1720 singled out methadone treatment centers. *(Id.* at ¶ 120). The Mayor's justifications, or lack thereof,

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[4] Congress' stated purposes in enacting the ADA supports the use of a heightened standard of scrutiny when the disabled are subject to different treatment. Within the text of the ADA, Congress set forth its broad goal of "providing a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1) (1999). Congress found that

> individuals with disabilities are a **discrete and insular minority** who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.

42 U.S.C. § 12101(a)(7) (1999) (emphasis added). This sweeping language - most noticeably Congress's analogizing the plight of the disabled to that of "discrete and insular minorities" like racial minorities, *see U.S. v. Carolene Prods. Co.*, 304 U.S. 144, 153 n. 4 (1938) (defining religious, national, and racial minorities as "discrete and insular minorities"), - strongly suggests that Congress views the disabled along the same lines as traditionally protected classes.

place this case squarely within prior caselaw invaliding government actions based on the Equal Protection Clause. In *Sullivan v. City of Pittsburgh*, 811 F.2d 171 (3rd Cir. 1987), the Third Circuit evaluated the city's denial of a conditional use permit to an alcohol treatment facility under the Equal Protection Clause. The *Sullivan* court pointed out that the city took "unjustified action in an atmosphere charged with hostility towards a minority group." *Id.* at 185 According to the court, "[t]he record more than adequately supports a conclusion that the [c]ity was motivated by the handicapped status of [the alcohol treatment facility] when it denied the relevant conditional use permit applications." *Id.* at 182. The Third Circuit stressed that the city could offer the district court no substantive justification for its actions and thus concluded that the alcohol treatment facility was likely to prevail on the merits of its equal protection claim. *Id.* at 183, 185.

A similar result was reached in *Open Homes Fellowship, Inc. v. Orange County, Fla.*, 325 F.Supp.2d 1349 (M.D.Fla. 2004). In *Open Homes Fellowship*, the district court conducted an analysis under the Equal Protection Clause to determine whether the county may require a drug rehabilitation center to apply for a special permit when other multiple-dwelling facilities may, as of right, locate in a particular zone. *Id.* at 1356. On this question, the court found *Cleburne* controlling. *Id.* Based on *Cleburne*, the Court first assessed whether the uses for which the County does not require special permits—i.e. community residential homes, adult daycare centers, and dormitories, are similarly situated to the facility's use as a drug rehabilitation center. *Id.* at 1357. The court found that there was no discernible difference between these uses and the facility's except that the facility would be treating persons with a drug addiction. *Id.* at 1357-58 ("[B]ut for the fact that [the facility's] residents are recovering drug and alcohol addicts, if Plaintiff was operating its Program as any of these other uses, it would be allowed in an R-3 zone as of right.").

The court then looked at the rationales proffered by the county for the differing treatment to determine whether the county proffered any rational basis for believing that the facility would pose

a special threat to the county's articulated interests of safety, traffic and trash control, intensity of use, and general prevention of disruption to the neighborhood. *Id.* at 1358. While the court acknowledged that safety is a legitimate interest, the court found that the county could not provide any rational reason for why the facility poses a special threat to this interest. *Id.* The Court found that the county appeared to base its safety concerns on the unsubstantiated negative attitudes of community opponents who vocalized their opinions. *Id.* at 1359-60. As in *Cleburne*, the court found that the county "improperly deferred to the objections of a fraction of the body politic and illegally gave these biases effect." *Id.* at 1360. There was simply no evidence to suggest that because the facility's patients are recovering addicts, they presented a special safety threat. Accordingly, the district court granted the drug rehabilitation center's motion for summary judgment on its equal protection claim. *Id.* at 1365.

In this case, like the city in *Sullivan*, DuBois took "unjustified action in an atmosphere charged with hostility towards a minority group" and can present no substantive justification for treating methadone clinics differently in Ordinance Number 1720. Indeed, the Mayor conceded that he knew of no reason why Ordinance 1720 singles out methadone clinics even though he sat through the Public Hearing where methadone patients were repeatedly disparaged by prominent residents. Just as in *Open Homes Fellowship*, there is no discernible difference between methadone treatment centers and other similar medical facilities except that the methadone clinics would be treating persons with a drug addiction. Methadone treatment centers would not pose a special threat to any conceivable concern on the part of the City above and beyond what a non-drug related medical facility would present. If there is no concern about the hospitalization of individuals attending the medical facilities that would be permitted in the area, it is difficult to believe that recovering methadone patients would present any different or special hazard considering they would be in a supervised outpatient rehabilitation program regulated by federal law. (RHJ Facts at

¶ 6). Indeed, RHJ has experienced no criminal incidents and has consistently obtained positive reports from federal and state regulators at its other locations. (*Id.* at ¶ 8). The totality of these uncontroverted facts point to one conclusion: the City was motivated by the handicapped status of the methadone treatment center when it enacted Ordinance 1720. As such, Ordinance 1720 constitutes a facial violation of the Equal Protection Clause.

C. RHJ is Entitled to Damages under the ADA and the Rehabilitation Act for the City's Enforcement of Section 621.

In light of *New Directions*, the analysis of RHJ's challenge to Section 621 under the ADA and the Rehabilitation Act is simple. In *New Directions*, the Third Circuit held that Section 621 was a facial violation of both the ADA and the Rehabilitation Act. *New Directions*, 490 F.3d at 305. The City enforced Section 621 against RHJ when the City enjoined RHJ's operation at the Site because of its location within 500 feet of the Beaver County Walkway, which the City considered to be a public park. (RHJ Facts at ¶ 57, 61). Thereafter, the City mandated that RHJ fill out a "case specification application" for a certificate of use permit pursuant to Section 621 and held a public hearing devoted exclusively to whether RHJ could present an "overriding reason" to "ignore the legislative mandate" in Section 621. (*Id.* at ¶¶ 64, 67, 81). Thus, the City applied an invalid statute against RHJ to prevent RHJ from opening, operating, and making profit. (*Id.* at ¶ 130).

The City has no defense for its actions as this Court has already rejected the City's contention that it was immune from liability because its actions were authorized by a duly enacted state law and a court's order. *RHJ Medical Center, Inc.*, 754 F.Supp.2d at 764-65. Moreover, the City admitted that Section 621 was the *sole* reason RHJ was denied a certificate of use and prevented from operating at the Site prior to the enactment of Ordinance 1720. (RHJ Facts at ¶ 125). Accordingly, the City is liable for damages under the ADA and the Rehabilitation Act for its enforcement of Section 621 against RHJ in an amount to be determined at trial.

D. RHJ is Entitled to Damages under 42 U.S.C. § 1983 for the City's Enforcement of Section 621.

1. Section 621 Violates the Substantive Due Process Clause on its Face and as Applied to RHJ.

For the reasons detailed in RHJ's analysis of Ordinance Number 1720 under the Substantive Due Process Clause, Section 621 is equally violative of the Substantive Due Process Clause on its face and as applied to RHJ.

2. Section 621 Violates the Equal Protection Clause on its Face and as Applied to RHJ.

For the reasons detailed in RHJ's analysis of Ordinance Number 1720 under the Equal Protection Clause, Section 621 is equally violative of the Equal Protection Clause on its face and as applied to RHJ.

V. Conclusion

Based on the foregoing, RHJ respectfully requests that this Court grant its motion for partial summary judgment and enter judgment on liability in RHJ's favor and against the City of DuBois with respect to all claims asserted by RHJ.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief in Support of the Motion for Partial Summary Judgment was served this 27th day of October 2011, via Electronic Filing, upon the following:

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