UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ZHANG Jingrong, ZHOU Yanhua, ZHANG Peng, ZHANG Cuiping, WEI Min, LO Kitsuen, LI Xiurong, CAO Lijun, HU Yang, GAO Jinying, CUI Lina, XU Ting, and BIAN Hexiang, Plaintiffs, vs. Chinese Anti-Cult World Alliance (CACWA), Michael CHU, LI Huahong, WAN Hongjuan, ZHU Zirou, & DOES 1-5 Inclusive, Defendants.	Civil Action No. 15-CV-1046 (JBW) (VMS)

OPPOSITION/RESPONSE TO DEFENDANTS MAY 21, 2018 MEMORANDUM OF LAW

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I. INTRODUCTION

Having lost on summary judgment, Defendants have thrown a Hail Mary argument about the constitutionality of the remaining federal claim, 18 U.S.C. § 248 ("FACEA"). Defendants' argument, which comes three years too late, has little merit and ultimately cannot succeed because Defendants have failed to establish that "no set of circumstances exist" under which FACEA would be valid under the "substantially affects" prong of Congress' Commerce Clause authority. Defendants' argument rests exclusively on analogizing FACEA to the Violence Against Women Act, which was struck down in *United States v. Morrison*, 529 U.S. 598 (2000). But quite unlike violence against women, which has no immediate connection to commercial activity, **religious institutions in the United States have an annual revenue of $348 billion**. Congress' Commerce Clause authority includes the power to "regulate to prevent the inhibition or diminution of interstate commerce." *United States v. Weslin*, 156 F.3d 292, 296 (2d Cir. 1998). "This is so even when the activity controlled is not itself commercial." *Id.* The RICO statute is a classic example. Outlawing violence and intimidation at places of religious worship, which have an annual revenue greater than Apple and Microsoft's global revenue *combined*, is rationally connected to preventing the inhibition or diminution of interstate commerce.

Moreover, having raised their as-applied challenges after Plaintiffs developed the evidentiary record, Plaintiffs have been deprived of the opportunity to develop a record to show that Defendants' anti-Falun Gong conduct is the product of interstate commerce. Publicly available information shows that Defendant Chinese Anti-Cult World Alliance receives monetary and other material support from people and entities in China. A complete record would amply show that application of § 248 here is constitutional. Defendants offer no justification for their years-long delay in raising this constitutionality argument. The Court should not countenance such gamesmanship and, for these and other reasons set forth below, should respectfully deny

Defendants' fourth and wholly untimely motion to amend their answer to now assert a constitutional challenge to section 248.

II. OPPOSITION/RESPONSE TO DEFENDANTS' STATEMENT OF (UNDISUPTED) FACTS

As indicated in more detail below, the "undisputed facts" enumerated by Defendants in the brief they filed on May 21, 2018, are in dispute, inaccurate, irrelevant and/or non-dispositive.

Defendants contend that the incidents that occurred at the Falun Gong places of worship do not involve interstate (or even international) commerce. That contention is clearly in dispute. *See, e.g.,* Pls.' Constitutional MOL at 20-26 (§ IV). *See also infra* at 4-11.

The meaning Defendants attribute to Senator Ted Kennedy's exchange with Senator Orin Hatch is inaccurate and also in dispute. In the argument they raise at page seven of their brief, Defendants conflate prayer that occurs at a variety of places *specifically designated* by religions as "places of worship" with prayer that takes place in other types of places. The distinction has nothing to do with the "place" where one prays, but rather whether that place is designated as a "place of worship" by a religion. To be clear, Senator Kennedy was not worried that FACEA might protect the prayer (or other religious activities) of American Natives who practice their religious on mountains and fields, *see* Transcript of 4/11/18 Hr'g ("Hr'g Trans.") at 80:3-5, or the religious prayer activities of persons similarly situated. This was not the concern he expressed when he asked Senator Hatch if the Amendment would create additional rights for abortion protestors who might seek § 248 (a) (2) protection for prayer-related activities occurring outside of an abortion clinic, i.e., "[s]o, to be clear on this, this amendment would cover only conduct actually occurring at an established place of religious worship, a church or synagogue, rather than any place where a person might pray, such as a sidewalk?" (emphasis added). *See* Defendants' Ex. 5 at S15660. Apart from the glaring fact that Senator Kennedy's concern had to do with abortion protestors, the plain language of the question

he addressed to Senator Hatch does not evince a desire to limit the definition of a "place of worship" to include only indoor places of religious worship. To the contrary, he was concerned that the amendment might cover any *ad hoc* place an abortion protestor or anyone else might pray as distinct from the places specific religions designate as *places of worship*.

Defendants quote the Conference Report on Senate Bill 636 as saying that it "covers only conduct occurring at or in the immediate vicinity of a place of religious worship, such as a church, synagogue or other structure used primarily for worship." While this Court has already rejected the Defendants' narrow definitions of "places of worship," *see* Memorandum and Order ("Ct. Order") at 58-59, ECF No. 152, it is relevant that the legislative history discussed by Defendants provides further support for this Court's conclusion, that the attacks carried out at the Spiritual Center tables are covered by § 248, not only as places of worship per se, but also as places in the immediate vicinity of a fixed structure used primarily for worship. *See* Plaintiffs' exhibit H that is attached to April 20, 2018 Letter, ECF No. 144 (making clear that Spiritual Center tables are in close proximity to the Spiritual Center, a fixed structure that is used primarily for worship).

III. ARGUMENT

A. SECTION 248(a)(2) IS A CONSTITUTIONAL EXERCISE OF CONGRESSS' COMMERCE CLAUSE AUTHORITY.

Section 248(a)(2) is a valid exercise of Congress' authority to regulate activities that have a substantial relation to or substantially affect interstate commerce. What Defendants' argument overlooks is that religion in the United States is a significant commercial activity. Indeed, the leading quantitative study on the economic value of religion in the United States places its "most conservative estimate" (based only on "the revenues of faith-based organizations") at **$378 billion annually**. Brian J. Grim and Melissa E. Grim, *The Socio-economic Contribution of Religion to American Society: An Empirical Analysis*, INTERDISC. J. OF RES. ON RELIGION, Vol. 12 (2016), Art. 3, at 2,

available at http://www.religjournal.com/pdf/ijrr12003.pdf. That "is more than the *global* annual revenues of tech giants Apple and Microsoft *combined*." *Id.* (emphasis in original).

Defendants concede that section 248(a)(1), which bars interference with access to abortion clinics, has been consistently upheld as a constitutional exercise of Congress' Commerce Clause power. *See, e.g.*, *United States v. Weslin*, 156 F.3d 292, 296 (2d Cir. 1998). The Second Circuit upheld 248(a)(1) under the third *Lopez* category of Congress' Commerce Clause power, *i.e.*, "activities having a 'substantial relation' to, or which 'substantially affect,' interstate commerce." *Id.* "When Congress enacts a statute on the theory that the activity regulated substantially affects interstate commerce, the scope of judicial review is limited to the question of whether Congress had a rational basis for reaching that conclusion." *Id.*

In concluding that FACE passed constitutional muster, the Second Circuit explained that "Congress may regulate to prevent the inhibition or diminution of interstate commerce." *United States v. Weslin*, 156 F.3d 292, 296 (2d Cir. 1998) (citing *Katzenbach v. McClung*, 379 U.S. 294, 299-300 (1964)). "This is so even when the activity controlled is not itself commercial." *Id.* "Thus, the Supreme Court has held . . . that threats of violence that have the effect of deterring commercial activity are within the ambit of RICO," which was passed pursuant to Congress' Commerce Clause authority, "even though the threats are made for non-commercial purposes." *Id.* (citing *Nat'l Org. for Women v. Scheidler*, 510 U.S. 249 (1994)).

There is very little question that Congress had a rational basis to conclude that the rash of religious-based violence targeting churches, synagogues, and other places of religious worship, impacted the tremendous interstate commercial activity of religion in America. Congress had conducted significant findings and was well-familiar with the plague of religious violence when it passed 18 U.S.C. § 247. Thus, Section 248 is a valid exercise of Congress' power to "regulate to prevent the inhibition or diminution of interstate commerce." *Weslin*, 156 F.3d at 296. It does not

matter that violence aimed at interfering with or intimidating those attempting to come or go from places of religious worship is itself a non-commercial activity. *Id.* But that is the thrust of Defendants' argument. *See* Defs.' Unconstitutionality Br. at 9 ("Section 248(a)(2) is plainly attempting to outlaw non-commercial, non-economic activity . . . .").

Defendants also make much of the fact that Congress made no express findings about the effect of religious violence and intimidate on interstate commerce. Yet, "Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce." *United States v. Lopez*, 514 U.S. 549, 562 (1995). The only question is "whether a rational basis existed for concluding that a regulated activity sufficiently affected interstate commerce." *Id.* at 557. Where the annual revenue of faith-based organizations in the United State is more than the *global* annual revenues of tech giants Apple and Microsoft *combined*" – $378 billion – Congress had a rational basis to conclude that acts of violence and intimidation that deter people from attending places of religious worship have a substantial effect on interstate commerce.

Defendants rely heavily on *Morrison*, but that reliance is misplaced. Unlike the Violence Against Women Act, FACEA satisfies three prongs of the "substantially affects" commercial standard: (1) whether the link between the prohibited activity and the effect on interstate commerce is attenuated, (2) whether the activity is commercial, and (3) whether there are relevant congressional findings. Defendants' contention, moreover, that the statute would not pass muster even if it included the same express jurisdictional element as included in 18 U.S.C. § 247 is incorrect.

1**. The link between the prohibited activity and the effect on interstate commerce is not attenuated.**

a. FACEA prohibits conduct that interferes on its face with interstate activity including the prohibited conduct that is relevant here.

Defendants' Facial Challenge. Several Circuit Courts have held that the activities assailants target when they attack places of worship and their congregants are sufficiently connected to

interstate commerce under the Morrison "substantially affects" category. In the *United States. v. Grassie*, 237 F. 3d 1119, 1209 (10th Cir. 2001), the Tenth Circuit's discussion of the legislative history of 18 U.S.C. § 247 makes clear that the specific impact of church attacks on interstate commerce is significant in that these attacks implicate a "broad range of activities in which churches engage, including … educational and religious activities, the purchase and distribution of goods and services, … , and the collection and distribution of funds for these and other activities across state lines."[1] In the *United States v. Odom*, 252 F. 3d 1289, 1291 (11th Cir. 2001), the Eleventh Circuit made the same observations noting that while "churches are not commonly considered business enterprises, they nevertheless "can and do engage in commerce." *Id.* at 1289. This is because, "the business or commerce of a church involves the solicitation and receipt of donations, and the provision of spiritual, social, community, educational (religious or non-religious) …..... [while [t]he purchase and receipt of goods or services necessary for or common to the maintenance of any building, such as gas, electricity, insurance, or mortgage loans, do not prove that the function of the building is to engage in commerce.... [,] the receipt of donations, the purchase of hymnals and payment of dues are the type of commercial activities by which a church would conduct its business as a church, and therefore engage in commerce. *Id.* at 1295-96 (internal citations omitted). In both cases, the Circuits identified circumstances where attacks on places of worship implicate and effect interstate commerce. Thus, the Defendants' facial challenge must be denied because Defendants have not established that "no set of circumstances" exist under which 248 would be valid under the "substantially affects" prong. *See United States v. Salerno*, 481 U.S. 739, 745 (1987).

[1] *See* 142 Cong. Rec. S7908–04 at *S7909 (1996) (joint statement of floor managers regarding H.R. 3525, The Church Arson Prevention Act of 1996); 142 Cong. Rec. S6517–04, *S6522 (1996) (statement of Sen. Kennedy); "Church Burnings: Hearings on the Federal Response to Recent Incidents of Church Burnings in Predominantly Black Churches Across the South Before the Senate Comm. on the Judiciary,"104th Cong., 37 (1996) (appendix to the prepared statement of James E. Johnson and Deval L. Patrick).

Defendants' As-Applied Challenge. As noted, Defendants' as-applied challenge is untimely because the record is not sufficiently developed to support it. *See, e.g.*, *United States v. Goodale*, 831 F. Supp. 2d 804, 817 *DCV 2011("[A] defendant may not make an as-applied challenge without a record to establish the specific facts in the case."). Nonetheless, Plaintiffs anticipate proving at trial that the activities that are challenged in this case involve the very same kind of conduct that constitutes an attack on places of worship/congregants that courts have held establish a sufficient next with interstate commerce. As in *Odom*, 252 F. 3d at 1291, by attacking Plaintiffs engaged in proselytizing at their places of religious worship, *see* Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, ECF No. 115, at e.g., 2, 7, and 18, Defendants have targeted and violently disrupted Plaintiffs' religious and educational activities, activities that are supported by the proselytizing materials the Spiritual Center purchases from vendors from out-of-state.[2] Defendants have also destroyed or damaged the proselytizing materials, that is, the DVDs, books, booklets, fliers, and brochures that Plaintiffs distribute to (inter alia) describe the nature of the Falun Gong belief system and practice.[3] Defendant Li, for example, damaged these materials when she overturned the Falun Gong cart that was used by Plaintiff Li and Cao to return the Spiritual Center materials to the Spiritual Center at the end of the day in July 2011.[4] Other Defendants have also knocked these materials to the ground and damaged them.[5] In addition, Defendants have torn apart

[2] *See* Declaration of Yuebin Yu, attached to Pls.' Constitutional MOL as Ex. F ¶¶ 2-4 (demonstrating that the religious/educational materials are supplied in bulk by out-of-state vendors.).
[3] *See supra* at note 2.
[4] *See, e.g.,* Compl. ¶ 81; Deposition of Li Xiurong ("Pl. Li Dep.") at 115:2-9.
[5] Plaintiff Zhang Jingrong alleged that Wan approached the Spiritual Center table, knocked religious materials that were on display onto the ground, and while holding a piece of paper said, "I will eradicate you all from the United States." Compl. ¶ 101. *See also* Deposition of Zhang Jingrong ("Zhang Dep.") at 77:2-8 (same). According to Plaintiff Zhou, Wan knocked the religious materials to the ground at another Falun Gong place of worship on the very same day. *See* Compl. ¶ 102; Deposition of Zhou ("Zhou Dep.") at 201:15-18.

the walls of the spiritual center booths where Plaintiffs display their banners and engage in religious activities and worship.[6]

Defendants' reliance here on *Morrison* is misplaced. *Morrison* expressly rejected the "but-for" causal chain "from the occurrence of the prohibited conduct (violence perpetrated against women) to every attenuated effect upon interstate commerce." *Morrison* 529 U.S. at 615. It is that reasoning the Court opined would allow Congress to regulate any crime so long as the nationwide occurrence of the conduct effects "employment", "production", "transit", or "consumption" [or for that matter any other incidental activity engaged in by a few, some, many or most women]. The clearly attenuated link in *Morrison* is not present here. Here Circuits Courts have identified specific ways in which attacks on places of worship affect the commercial services they provide, *see, e.g.,* the discussions in *Odum* 252 F. 3d at 1291 and in *Grassie* 237 F. 3df at 1209. *See also* Pls.' Constitutional MOL at 17-18; 24-25, where Plaintiffs provide further detail about these and related points.[7]

2. **Congressional Findings do establish that violence at places of worship substantially affect interstate commerce.**

The Defendants' contention that Congress made no findings concerning any effect that threats or violence at places of worship has on interstate commerce" is inaccurate. Indeed, as argued by Plaintiffs in their Constitutional MOL at 11-13, Congress made clear findings that attacks at places of worship substantially affect interstate commerce, due in large part to the church-related commercial activities that are also impacted by such violence. *See* Plaintiffs' Constitutional MOL at 11-13, 22. Arguments that congressional findings that pertain to the very same type of regulated activity are not relevant here are without merit. The issue is whether Congress has made findings

[6] According to Plaintiff Peng Zhang, Defendant Wan attempted to tear off the walls of another spiritual center booth in July 2014. *See* Compl. ¶ 109; Deposition of Zhang Peng at 106:10-107:8. Plaintiff Zhou has similarly alleged that Defendant Zhu attempted to tear apart a Falun Gong banner that serves educational and religious proselytizing purposes. Compl. ¶ 112; Deposition of Zhou at 111:4-20.

[7] *See also* Pls.' Constitutional MOL at 18-20, 25-26, where Plaintiffs discuss the extent to which the Defendants' carry out the prohibited conduct through an infrastructure that substantially supports and affects interstate commerce.

indicating that the relevant activities including threats or violence at places of worship substantially affects interstate commerce, which as noted they have. Indeed, Congress has expressly found that attacks on places of worship substantially affect interstate commerce in so far as they implicate the broad range of commercial activities that such places engage in. *See* Pls.' Constitutional MOL at 11-13 where this factor is discussed at greater length.

3. **The regulated activity is commercial.**

Defendants' reliance on *Morrison* here is also misplaced. The gender-motivated acts of violence the Supreme Court in *Morrison* held could not be considered economic, *Morrison* 529 U.S. at 611-613, are rarely carried out as paid-for services by hit men, recruits, and/or ideological loyalists. In that regard, these acts are unlike the church related violence that are routinely funded by foreign terrorist organizations and/or domestic home-grown (white-supremacist and other) groups. *See* Pls.' Constitutional MOL at 14-16. The payment of $200,000.00 by a U.S. informant to a recruit to carry out domestic terrorism involving two synagogues, an amount the Second Circuit deemed plausible to purchase the services of a person for this purpose, *see, e.g., U.S. v Cromite,* 727 F. 3d 194, 221 (2d Cir 2013), is hardly akin to the gender-motivated violence the Supreme Court in *Morrison* held could not be considered economic, activities that rarely involve the recruitment of hit men or other third parties to perpetrate a violent attack.

The gender-motivated violence Morrison held could not be considered economic, *Morrison* 529 U.S. at 611-613, is similarly unlike the conduct that is challenged herein. The financial cost of the CACWA activities that include – indeed feature – the *douzheng* suppression of Falun Gong believers at their places of worship (and elsewhere) is not insignificant. Pls.' Constitutional MOL at 23 -25. There is also much to suggest that the cost of these activities is handled by Beijing as part of a *quid pro quo* arrangement. The China Anti-Cult Alliance ("CACA") has instructed its membership to support overseas anti-Falun Gong ("CACA") organizations, especially by funding their *douzheng*

activities through the state-owned enterprises that Beijing has set up overseas. *See* "Excerpts from CACA Overseas Anti-cult Work," attached as Ex. 25, to Pls.' Memorandum in Opposition to Defs.' Motion for Summary Judgment, ("Pls. Opp. MOL") ECF No. 115. Plaintiffs are now looking for an expert in the area of Chinese money laundering to help them ascertain how and the extent to which Beijing provided funds to recruit and support CACWA's *douzheng* mandate. However, due to the Defendants' untimely raising of their constitutional defense, Plaintiffs were not afforded the time needed to identify such an expert and/or obtain further evidence to support this prong of the *Lopez* test. As a result, Plaintiffs can only reiterate that Defendants' as-applied challenge is premature.

4. **The absence of a jurisdictional element.**

Defendants further contend that "if a jurisdictional element were somehow read into Section 248 (a) (2), the statute would still be unconstitutional as applied … because the alleged intimidation and assaults occurred locally on Main Street, Flushing." Defs.' Unconstitutionality Br. at 17. However, as the Eleventh Circuit emphasized in *the United States v. Ballard*, 395 F.3d 1218, 1227-28 (2005), the "nature of Congress' commerce power has always been construed by the Supreme Court to include the use of the channels and instrumentalities of interstate commerce 'to promote immorality, dishonesty, or the spread of any evil or harm … [interstate].'" Importantly, "[a]n act that promotes harm , not the harm itself, is all that must occur in commerce to permit congressional regulations." *Id. See also Brooks v. United States,* 267 U.S. 432, 436 (1925). Defendants' view, that Congress' power over the channels and instrumentalities authorizes it to proscribe only those harmful activities whose ultimate *actus reus* occurs within a channel or instrumentality of commerce, misconstrues the nature of Congress' commerce authority. As the evidentiary record makes clear, Defendants have relied on the channels and instrumentalities of commerce to promote and spread harm against Plaintiffs. They have, for example, used the Internet to download CACWA materials from a foreign website to promote and instigate the violent suppression (*douzheng)* and forced

conversion through torture (*zhuanhua*) of Falun Gong believers in Flushing, Queens. Defendant Li has routinely used her cell phone to solicit support and backup during many of the violent confrontations she has instigated against Plaintiffs at or in the vicinity of Falun Gong places of worship.[8] The uniform Defendants wear during many of the incidents (and at other times) that labels Falun Gong a *xie jiao* and which is manufactured in and shipped from China to the United States through (as yet unidentified) channels of international commerce, is also used to promote hatred towards and dishonesty about the nature of Falun Gong. Whatever foreign funding CACWA receives to promote the d*ouzheng* mission against believers at their place of worship and elsewhere also travels through the channels and infrastructure of (international) commerce.

B. Whether FACEA is Constitutional Under the Thirteenth Amendment

FACEA appears to penalize attacks on places of worship based on religious bias for the simple reason that it specifically penalizes attacks carried against persons while they are "exercising or seeking to exercise the First Amendment right of religious freedom." *See* § 248 (a) (2). It does not, however, expressly exclude acts that are politically or otherwise motivated. That said, there is nonetheless much to support the Magistrate Judge's determination that the "[f]requent threats to "kill" and "dig out [the] hearts, livers and lungs" of Falun Gong practitioners, *see* Complaint, ECF No. 3 ¶¶ 101-102, 108, and the call for a douzheng campaign against Falun Gong, if true, describe a religious-based animus." *See Zhang Jingrong v. Chinese Anti-Cult World All.*, No. 15-CV-1046, 2018 WL 1326387 --F. Supp.-- (E.D.N.Y. Mar. 14, 2018 at 12. As noted elsewhere, the evidentiary record developed through discovery supports these allegations. *See, e.g.*, Pls.' Opp. MOL, ECF No. 115, at 16. In addition, virtually all of the Falun Gong beliefs Defendants claim to dislike (if not detest) emphasize factors defined as "religious" by the Circuits. Examples abound: Defendant Chu has cast

[8] *See*, e.g., Compl. ¶¶ 77, 81, 103, 113; Pls.' Local Rule 56.1 Opp. to Defs.' Motion for Summary Judgment at 44, 45; Declaration of Lo Kitsuen attached as Ex. 8 to Pls.' Opp. MOL; Declaration of Cuiping Zhang, attached as Ex. 9 to Pls.' Opp. MOL; Deposition of Li Xiurong ("Pl. Li Dep.") at 63:3-22.

aspersion on Plaintiffs' sincerely held belief that the earth/universe is destroyed and reborn although it figures as a major component of the cosmological beliefs of many Eastern religions.[9] Defendants Li and Chu have cast aspersions on the Falun Gong belief that personal and national catastrophes and suffering are caused by karma, a belief that is not only shared by most Eastern religions, but also defined as "religious" by U.S. courts insofar as it seeks to explain the causes of human suffering.[10] In addition, an assortment of beliefs that Defendants attribute incorrectly to the Falun Gong belief system figure among the types of belief defined as "religious" under U.S. law.[11] This coupled with Defendant Chu's mockery of the Falun Gong prayer (FZN)[12], that Defendants carry out their intimidation and violence at Falun Gong places of worship (and not at the grocery store) while Plaintiffs are exercising their religious beliefs supports the inference that the prohibited conduct here is motivated by religion and that FACEA may, for that reason, be constitutional under the Thirteenth Amendment.

III. 18 U.S.C. § 248 DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE

In *Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1971), the Supreme Court determined that a statute will not violate the establishment as long as it: (1) has a secular legislative purpose, (2) neither advances nor inhibits religion in its principal or primary effect, and (3) does not foster an excessive government entanglement with religion. *Id.* The requirement that the law serve a "secular legislative purpose" does not mean the law's purpose must be unrelated to religion. *See Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos,* 483 U.S. 327, 335 (1987). Rather, the

[9] *See* Deposition of Defendant Chu ("Chu Dep.") at 38:16-39-7.
[10] *See* Chu Dep. at 154:6-155:16; Deposition of Defendant Li (" Li Dep.") at 223:15-20.
[11] These include Defendant's inaccurate contention that Falun Gong teaches that the offspring of interracial parents do not have the same access to salvation as other persons and are viewed as such as moral inferiors. As Plaintiffs have explained, persons of mixed races can succeed in cultivation and reach consummation. *See* Plaintiffs' MOL in further Support of Motion for Partial Summary Judgment, ECF No. 109, at 5. Apart from that consideration, the belief that Defendants dislike is concerned with salvation; as such, it is a type of belief U.S. Courts define as "religious." *See, e.g.,* Ct. Order, ECF No. 152, at 66.
[12] *See* Chu Dep. at 211:115 - 212:4 (during which discussion Chu was holding his hands in the FZN prayer position)

objective is to prevent the government from abandoning neutrality and acting with the intent to promote a particular religious point of view over the views of other religions. *Id.* Here, the purpose of the statute is clearly neutral. This Court has determined (*inter alia*) that "[a]ny place a religion is practiced is protected by the constitutional construction of this statute, *"see* Ct. Order at 57, ECF No. 152.[13]

The Defendants base their establishment clause argument largely on a misreading of Senator Ted Kennedy's concerns. S*ee* Defs.' Unconstitutionality Br. at 19-20. However, as noted *supra* at § II, Senator Ted Kennedy was not raising concerns that would impermissibly favor indoor over outdoor places of worship or fixed-structured facilities over places of worship that lack fixed structures. Apart from the Senator's record as an advocate of religion freedom for all faith-based groups, the plain language of his question to Senator Hatch makes clear that he was concerned that abortion protesters (or others) might be afforded protection under § 248 (a) (2) based on prayer carried out outside of an abortion clinic or at some other place not designated as a place of worship by a religious practice. This is a far cry from the protection afforded to religious believers at the places specifically designated as places of worship by their religions.

IV. CONCLUSION

For all of the reasons set forth here in addition to those set forth by Plaintiffs in their Constitutional MOL, Plaintiffs respectfully ask that Defendants' motion to amend be denied as untimely and prejudicial. In addition, Plaintiffs ask that Defendants' Brief asserting the unconstitutionality of FACEA be denied on its lack of merit.

Dated: May 25, 2018

[13] The Court's comments that the "FACEA's language counsels for an expansive interpretation" is also relevant here, as are the comments that follow immediately thereafter, and those that immediately precede. *See* Ct. Order, ECF No. 152 at 58 - 59.