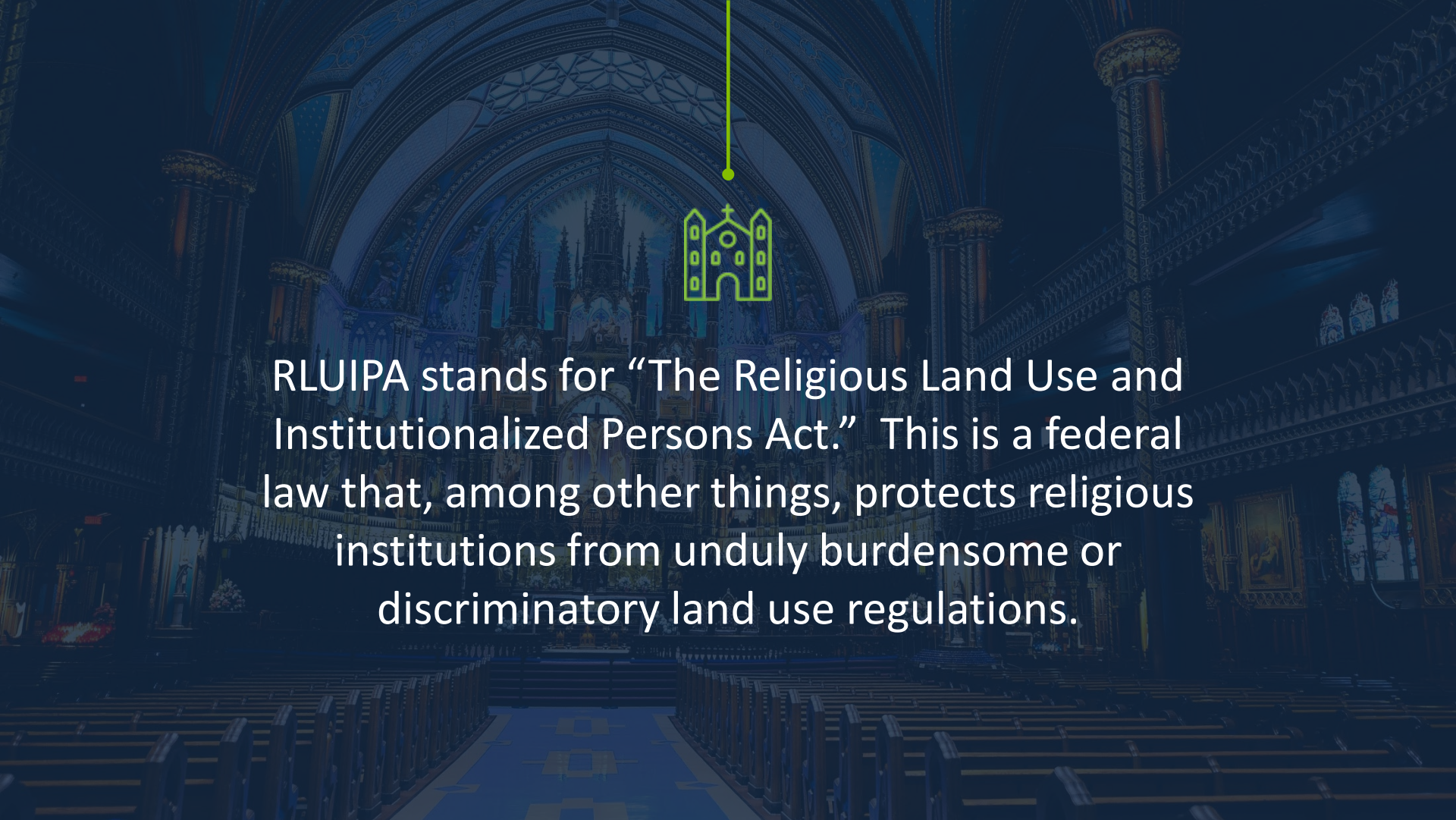


RLUIPA UPDATE: PRINCIPLES | RECENT DEVELOPMENTS AVOIDING LIABILITY

burke
BURKE, WILLIAMS & SORENSEN, LLP

Presented by:
Thomas B. Brown
Gregory R. Aker

International Municipal Lawyers Association Virtual Annual Conference
September 25, 2020



RLUIPA stands for “The Religious Land Use and Institutionalized Persons Act.” This is a federal law that, among other things, protects religious institutions from unduly burdensome or discriminatory land use regulations.



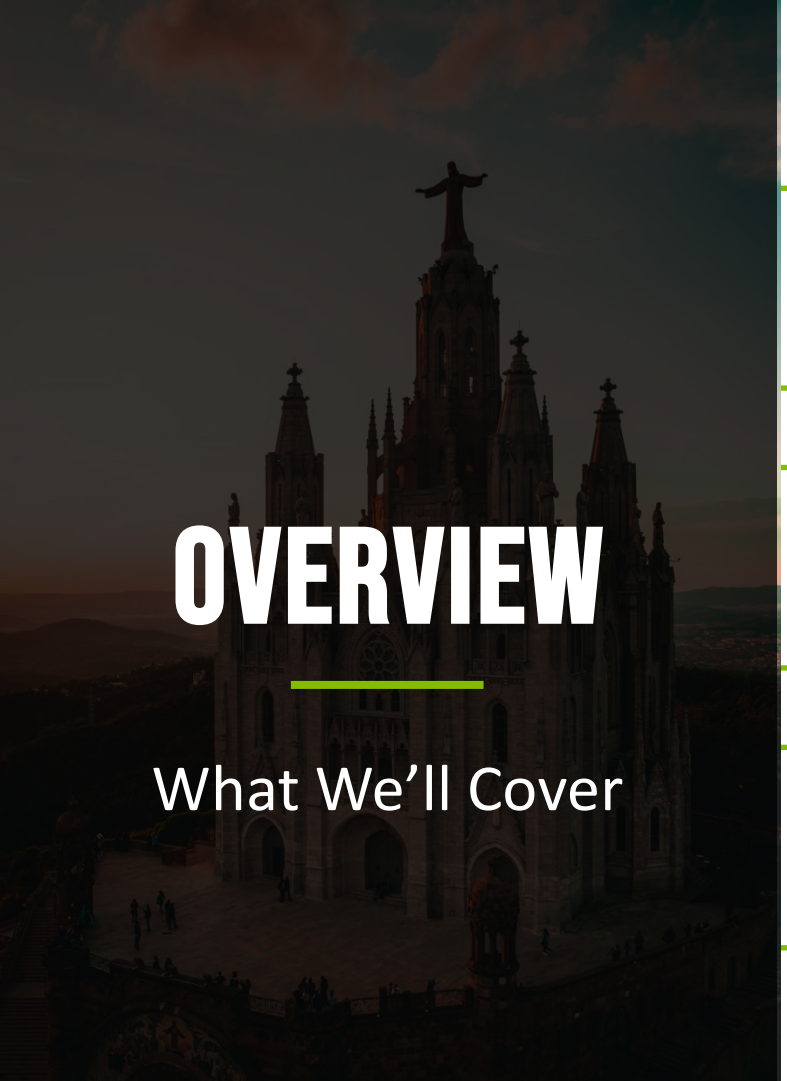
GREGORY R. AKER

Partner, Oakland



THOMAS B. BROWN

Of Counsel, Oakland



OVERVIEW

What We'll Cover

- What is RLUIPA?
- How does it affect land use?
- Key elements

RLUIPA: A CASE STUDY

- Case study: *New Harvest Christian Fellowship v. City of Salinas*
- 2020 WL 2793593 (N.D. Cal. 2020)
- Appeal filed June 15, 2020



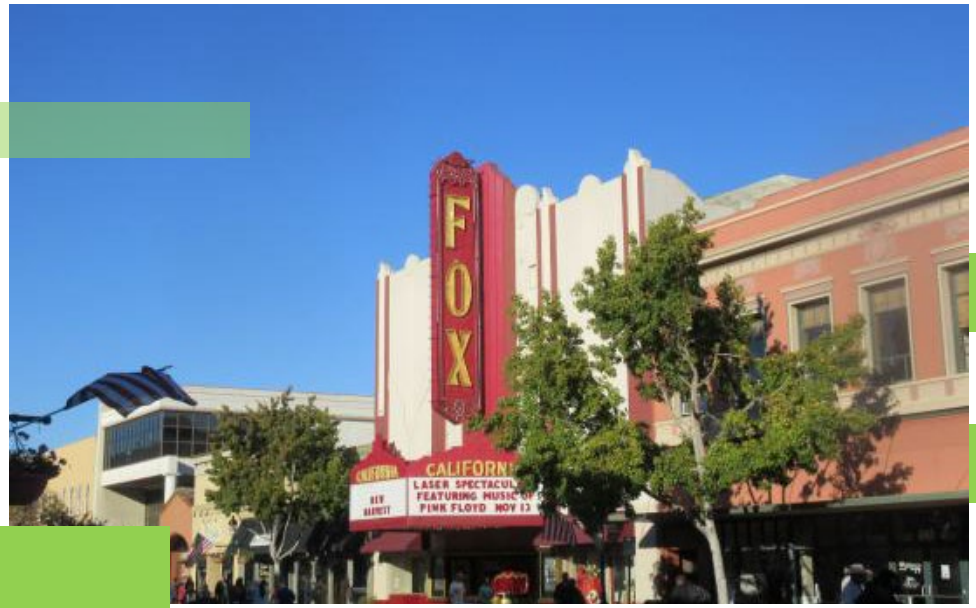


NEW HARVEST CHRISTIAN FELLOWSHIP V. CITY OF SALINAS



- Recent case, good example
- City to revitalize deteriorating downtown
- Church purchased building, for worship services
- City denied CUP, zoning amendment
- Church sued
- MSJ for City, now on appeal

NEW HARVEST CHRISTIAN FELLOWSHIP V. CITY OF SALINAS



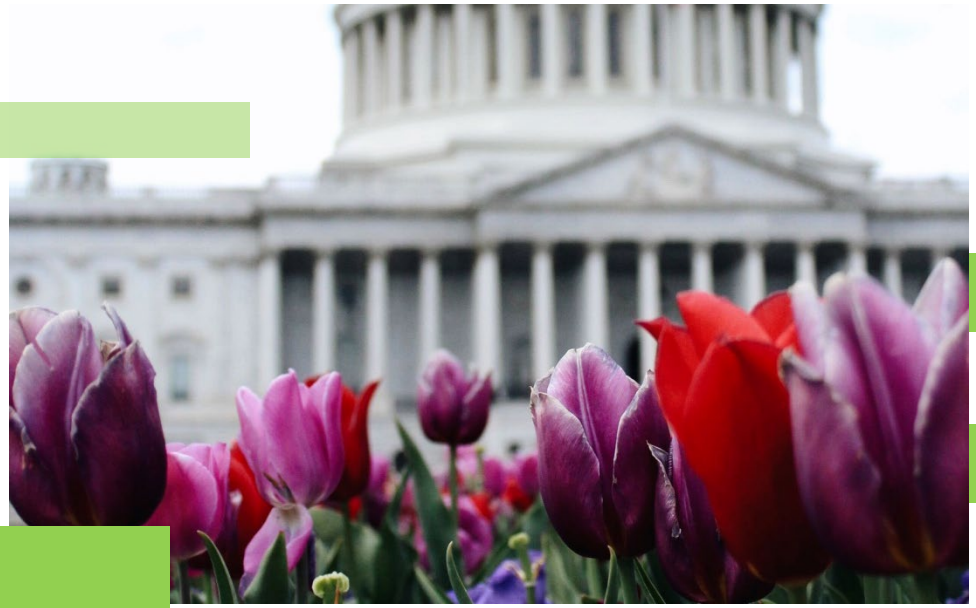
- relevance:
  - common fact pattern – aging downtown
  - both elements: substantial burden and equal terms
  - demonstrates importance of establishing factual record
- will discuss case at relevant points in discussion

RLUIPA IN A NUTSHELL



- Religious Land Use and Institutionalized Persons Act (RLUIPA)
- 42 U.S.C. §2000cc et. seq.
- Enacted by Congress in 2000
  - To “protect free exercise of religion guaranteed by First Amendment from governmental regulation.”

RLUIPA - BACKGROUND



- Replaced Religious Freedom Restoration Act Of 1993 (RFRA) which Supreme Court ruled unconstitutional.
- Sponsored by Sens. Hatch & Kennedy; signed by President Clinton 2000.
- Two categories: land use & prisons.

BACKGROUND

- RLUIPA is constitutional exercise of Congress' spending power.
- *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024 (9th Cir. 2004)





SUBSTANTIAL BURDEN



- RLUIPA prohibits zoning and landmarks laws that substantially burden the religious exercise of churches or other religious assemblies or institutions unless:
  - Regulation furthers compelling governmental interest; and
  - Regulation is least restrictive means of furthering that compelling interest.
  - 42 U.S.C. §2000cc (a)(1)



DISCRIMINATION & EXCLUSION

- RLUIPA also prohibits zoning laws that:
  - (1) treat churches/other religious assemblies or institutions on less than equal terms with nonreligious institutions [42 U.S.C. §2000 (b)(1)];
  - (2) discriminate against assemblies/institutions on basis of religion [42 U.S.C. §2000 (b)(2)];
  - (3) totally exclude religious assemblies from jurisdiction [42 U.S.C. §2000 (b)(3)(A)]; or
  - (4) unreasonably limit religious assemblies, institutions, or structures within jurisdiction [42 U.S.C. §2000 (b)(3)(B)].

LAND USE ACTIONS AFFECTED BY RLUIPA

- Rezonings, text amendments
- Site plan review
- Variance
- CUPs
- Zoning enforcement
- Eminent domain? Probably not.
    - *St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616 (7th Cir. 2007)
    - *Faith Temple Church v. Town of Brighton*, 405 F.Supp.2d 250 (W.D. N.Y. 2005)
    - Decline to follow *Cottonwood Christian Ctr. v. Cypress Redev. Agency*, 218 F.Supp.2d 1203 (C.D. Cal.2002)





SUBSTANTIAL BURDEN

- RLUIPA prohibits zoning and landmarks laws that substantially burden the religious exercise of churches or other religious assemblies or institutions **unless**:
  - Regulation furthers compelling governmental interest; and
  - Regulation is least restrictive means of furthering that compelling interest.
  - 42 U.S.C. §2000cc (a)(1)

SUBSTANTIAL BURDEN: EXERCISE OF RELIGION



EXERCISE OF RELIGION

- “Any exercise of religion, whether or not compelled by, or central to, a system of religious belief” (42 U.S.C. § 2000cc-5(7)(A).)

- “Religious exercise” defined broadly “to the maximum extent permitted by terms of [statute] and Constitution.” (42 U.S.C. § 2000cc-3(g))



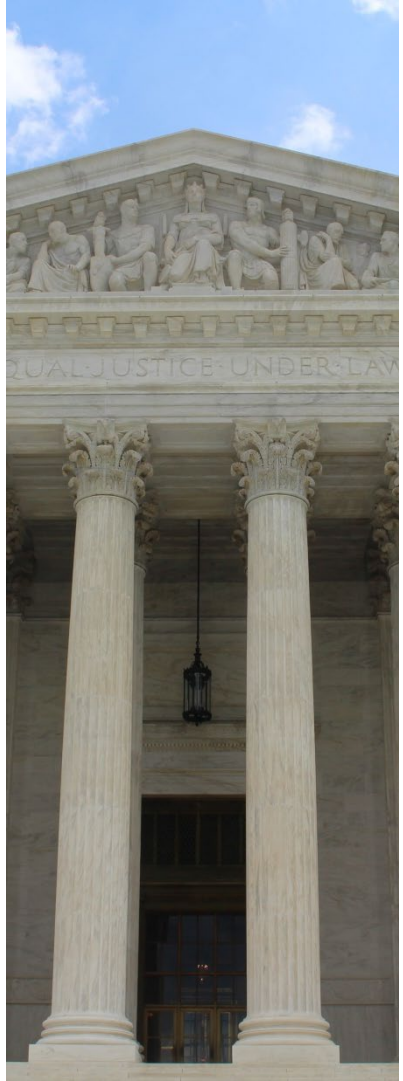
SUBSTANTIAL BURDEN: WHAT IS IT?

- What is “substantial burden”?
- Not defined in RLUIPA
- Left up to courts
- Question of fact
- US Supreme Court has not decided
- Many federal district and circuit court decisions
- State courts



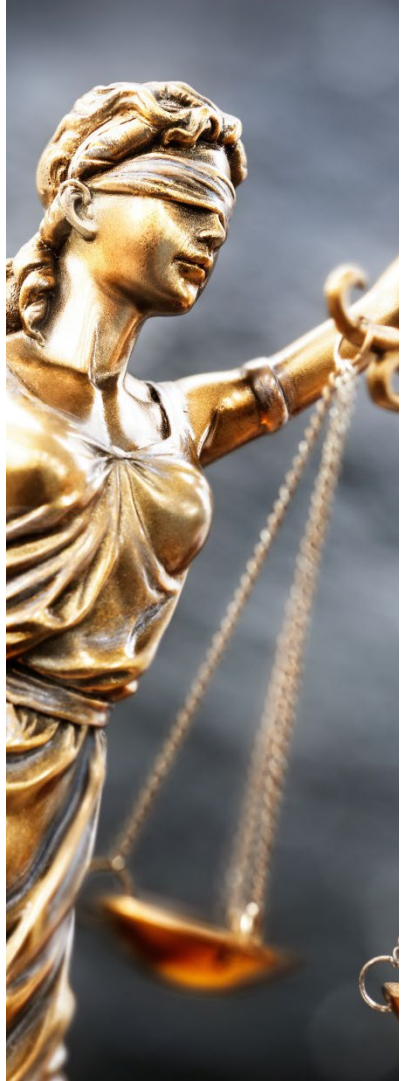
SUBSTANTIAL BURDEN

- Ninth Circuit definition:
  - Regulation must be "oppressive to significantly great extent."
  - Must impose "significantly great restriction or onus."
  - *Guru Nanak Sikh Society v. County of Sutter*, 456 F.3d 978,988 (9th Cir. 2006).



SUBSTANTIAL BURDEN

- RLUIPA is not a free pass from zoning!
  - *Living Water Church of God v. Charter Twp. of Meridian*, 258 Fed. App'x 729, 736-737 (6th Cir. 2007)
  - RLUIPA "not intended to operate as outright exemption from land-use regulations." (quoting Civil Liberties for *Urban Believers v. City of Chicago*, 342 F.3d 752, 762 (7th Cir. 2003))



SUBSTANTIAL BURDEN

- RLUIPA does not guarantee right to exercise religion wherever desired, excuse compliance with or grant “blanket immunity” from land use regulations:
  - *Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 544 (S.D.N.Y. 2006), aff'd, 504 F.3d 338 (2d Cir. 2007)





SUBSTANTIAL BURDEN CASES:

- *First Lutheran Church v. City of St. Paul*, 326 F.Supp.3d 745 (D. Minn. 2018).
  - Requiring church daytime homeless shelter to post sign prohibiting nighttime trespassers substantially burdened church because sign undermined goal of “welcoming all individuals”.



SUBSTANTIAL BURDEN: ALTERNATIVE LOCATIONS

- *The Victory Ctr. V. City of Kelso*, 2012 WL 1133643 (__D. Cal. ___)
- Zoning enforcement.
- Zoning prohibited religious and other assembly uses on ground floor in small downtown Commercial Town Center.
- No substantial burden b/c Victory Center could locate anywhere outside CTC's subarea and above ground floor.

SUBSTANTIAL BURDEN: ALTERNATIVE LOCATIONS

- Hand of Hope v. City of Raleigh, 386 F.Supp.3d 618 (E.D. N.C. 2019).
- Church-affiliated pregnancy resource center could conduct its medical activities outside of residential areas

SUBSTANTIAL BURDEN: ALTERNATIVE LOCATIONS

- *Marianist Province v. City of Kirkwood*, 944 F.3d 996 (8th Cir. 2019).
- Vianney HS free to hold baseball games during day, or at night at football stadium where lights allowed



SUBSTANTIAL BURDEN: SELF-IMPOSED BURDEN

- No RLUIPA burden where the plaintiff's own conduct causes the burden.
- E.g.: Where a church buys a property it knows may not be used for religious assembly under the zoning.



SUBSTANTIAL BURDEN: SELF-IMPOSED BURDEN

- *Spirit of AlohaTemple v. County of Maui*, 322 F. Supp. 3d 1051, 1065 (D. Hawaii 2018)
- *Livingston Christian Schools v. Genoa Charter Township*, 858 F.3d 996, 1004 (6th Cir. 2017)
- *Petra Presbyterian Church v. Village of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007).

SUBSTANTIAL BURDEN: SELF-IMPOSED BURDEN

- *Hand of Hope v. City of Raleigh*, 386 F.Supp.3d 618 (E.D. N.C. 2019)
- Church bought property knowing it would have to be rezoned; thus, City was not "responsible for the impediment" .
- Tip: Get a strong factual record

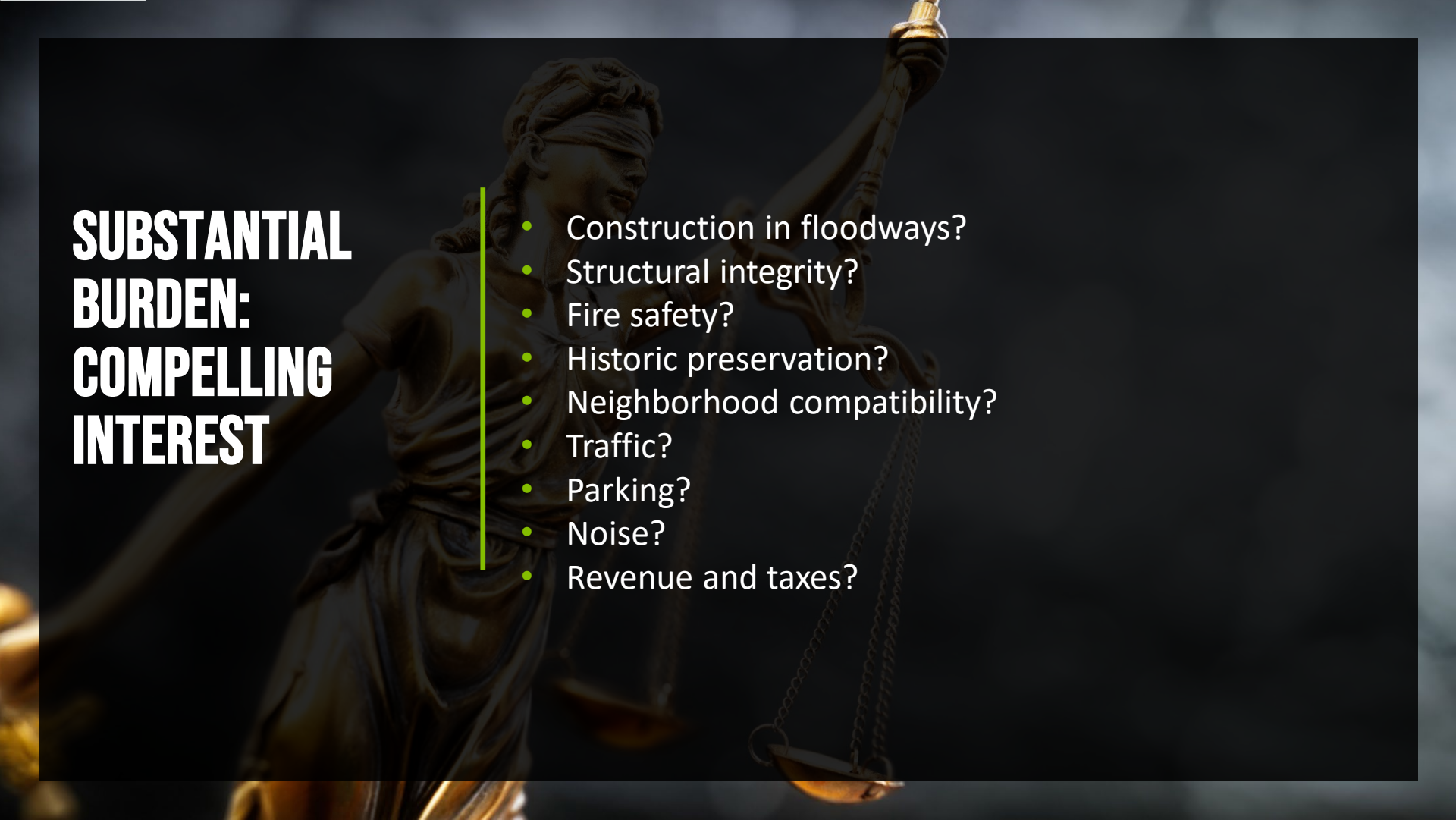
SUBSTANTIAL BURDEN: SELF-IMPOSED BURDEN

- Exacting Task; "interest of highest order."
  - *Church of the Lukumi BaBablu Aye, Inc. v. City of Haleah* (1993) 508 U.S. 520, 546.
- Preservation of zoning, industrial base, property values not compelling.
  - *Grace Church of North County v. City of San Diego* (2008) 555 F.Supp.2d 1126
  - *International Church of the Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059 (9th Cir. 2011)
- Safety/crime prevention is compelling
  - *U.S. v. Salerno* (1987) 481 U.S. 739



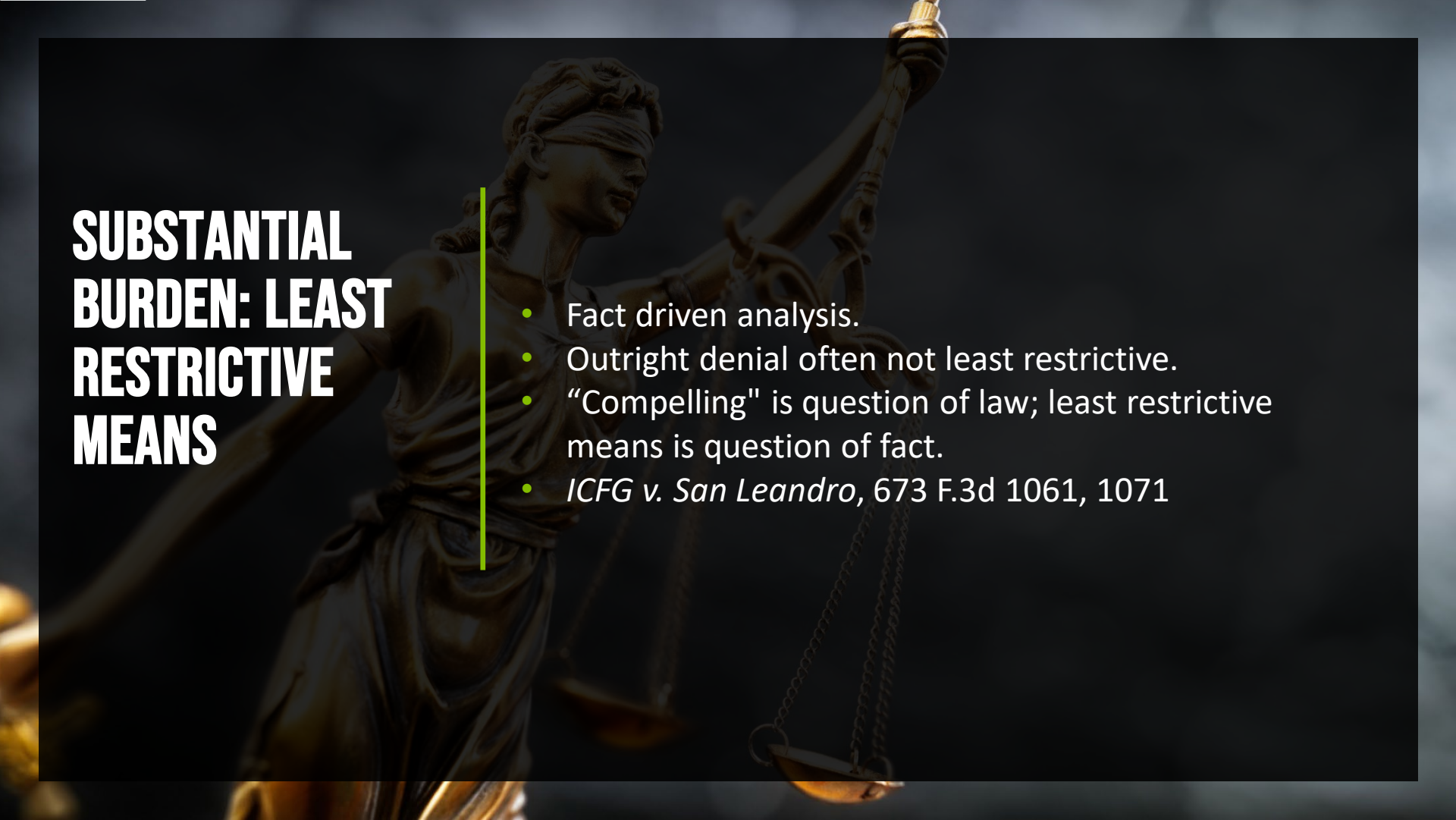
SUBSTANTIAL BURDEN: COMPELLING INTEREST

- Should be:
- Clearly articulated in findings
- Fact-based
- Not vague, generalized



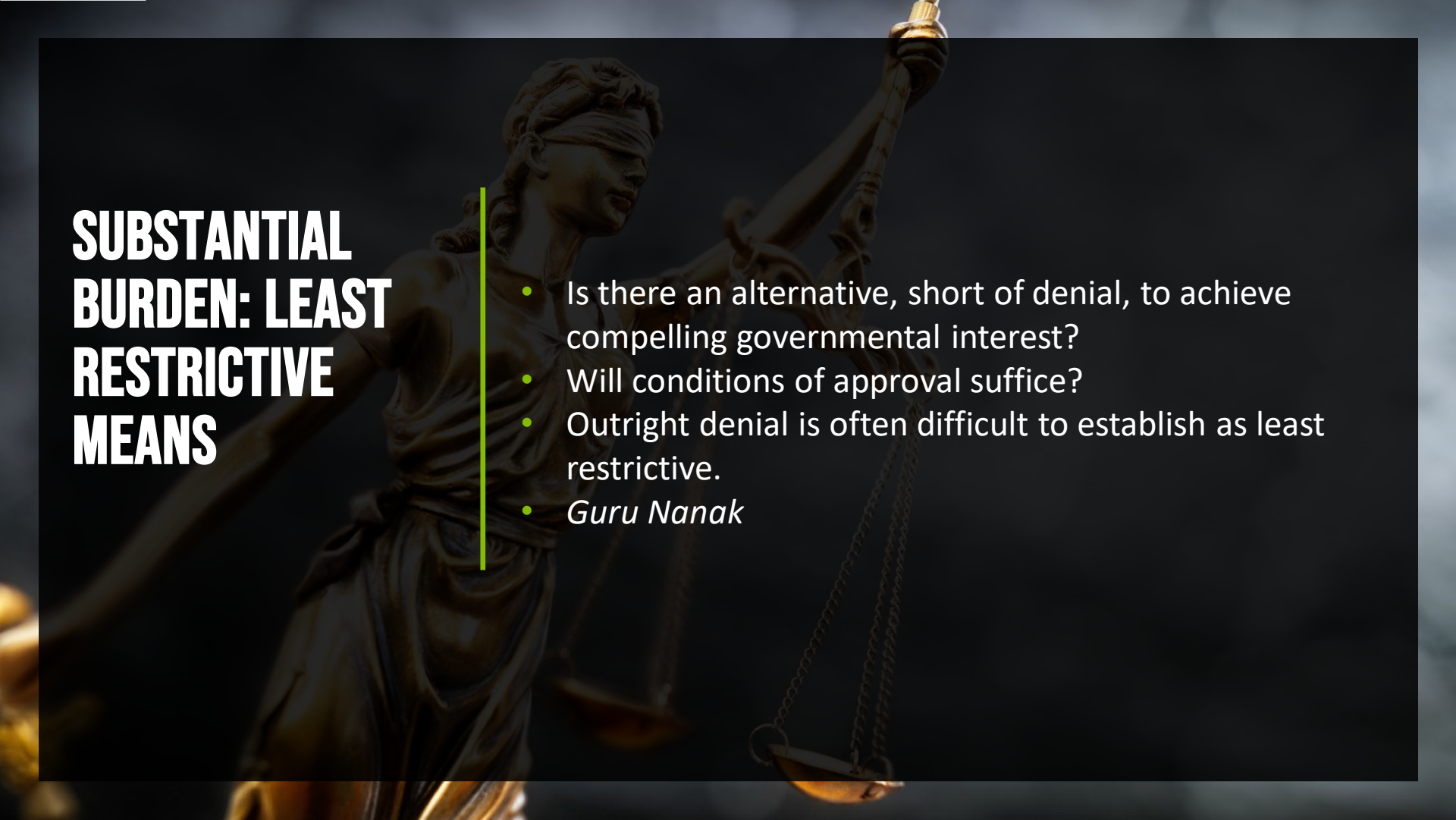
SUBSTANTIAL BURDEN: COMPELLING INTEREST

- Construction in floodways?
- Structural integrity?
- Fire safety?
- Historic preservation?
- Neighborhood compatibility?
- Traffic?
- Parking?
- Noise?
- Revenue and taxes?



SUBSTANTIAL BURDEN: LEAST RESTRICTIVE MEANS

- Fact driven analysis.
- Outright denial often not least restrictive.
- “Compelling" is question of law; least restrictive means is question of fact.
- *ICFG v. San Leandro*, 673 F.3d 1061, 1071



SUBSTANTIAL BURDEN: LEAST RESTRICTIVE MEANS

- Is there an alternative, short of denial, to achieve compelling governmental interest?
- Will conditions of approval suffice?
- Outright denial is often difficult to establish as least restrictive.
- *Guru Nanak*



RLUIPA: EQUAL TERMS

- RLUIPA also prohibits zoning and landmarks laws that:
- treat churches/other religious assemblies or institutions on less than equal terms with nonreligious institutions
- 42 U.S.C. §2000 (b)(1)

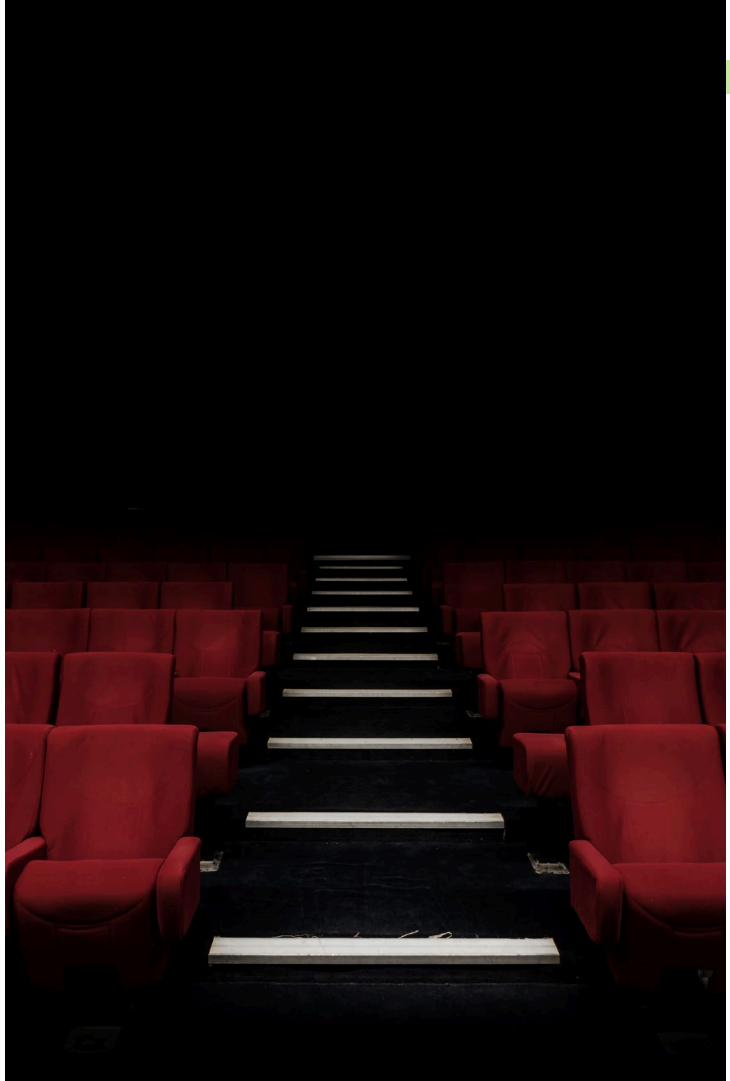


RLUIPA: EQUAL TERMS

- Seminal Ninth Circuit Decision:
- *Centro Familiar v. City of Yuma*, 651 F.3d 1163 (9th Cir. 2011)
- Struck down Yuma's ostensibly neutral zoning provisions

RLUIPA: EQUAL TERMS

- Church may not be treated “on less than equal terms” with secular assembly
- Zoning law may be facially invalid or invalid as applied
- Church to produce prima facie evidence
- Burden shifts to government to justify disparate treatment
- Unequal terms need not be significant: as of right vs. CUP



RLUIPA: EQUAL TERMS

- Recent case: *Church of Our Lord v. City of Markham*, 913 F.3d 670 (7th Cir. 2019).
- Churches allowed with CUP, while theatres and auditoriums allowed as of right.

RLUIPA: EQUAL TERMS

- Importance of identifying “secular comparators”
- Context is key: what are city’s “accepted zoning criteria” or objectives?

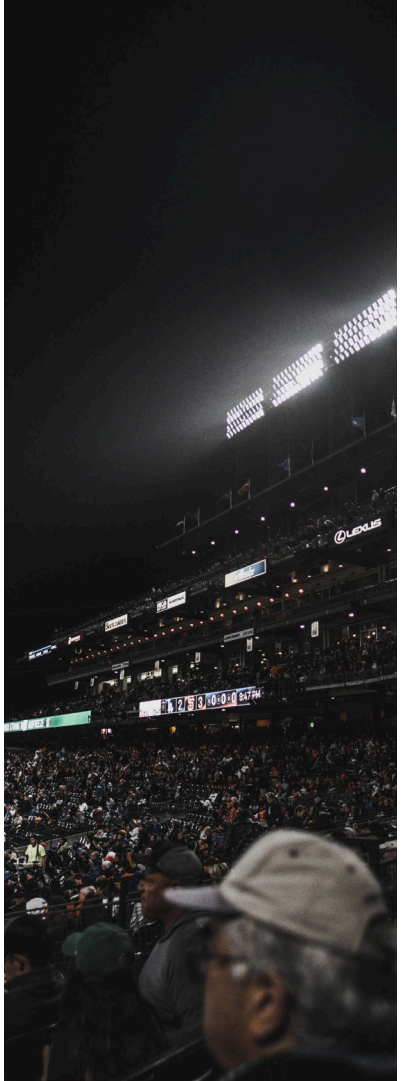


RLUIPA: EQUAL TERMS

- Examples of zoning objective found illegitimate:
- *Centro Familar v. City of Yuma*, 651 F.3d 1163 (9th Cir. 2011).
- In effort to promote “street of fun,” city restricted churches but allowed “jails and prisons”
- No violation if neutral zoning provision applied against church.

RLUIPA: EQUAL TERMS

- No violation where comparable secular use allowed (“grandfathered” as legal nonconforming use) under previous zoning ordinance.
- *Marianist Province v. City of Kirkwood*, 944 F.3d 996 (8th Cir. 2019).
- Nighttime lights restricted at Catholic HS, while under prior ordinance lights allowed at Kirkwood HS.



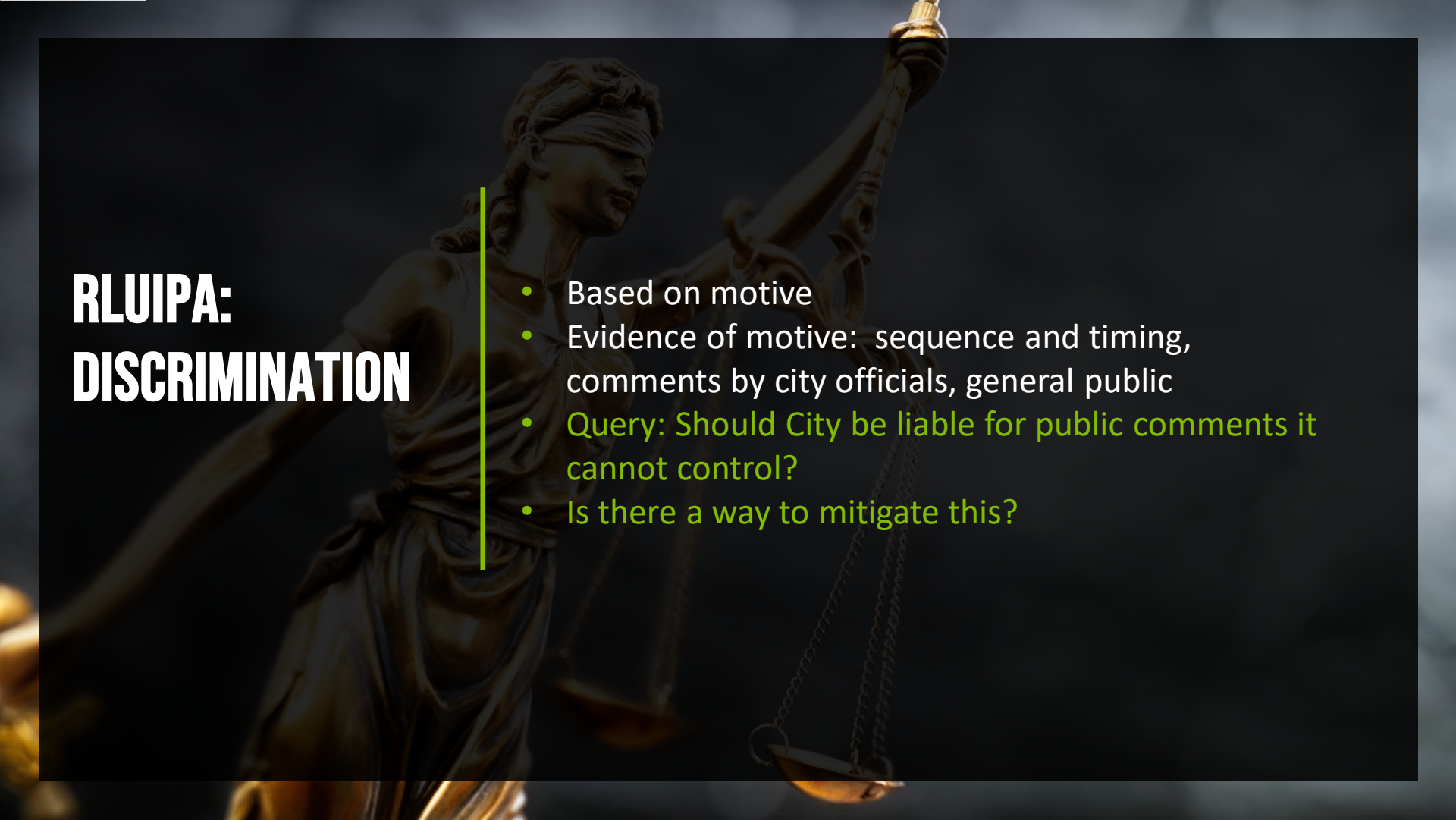
RLUIPA: EQUAL TERMS

- Recent case: *Calvary Chapel v. Riverside County*, 948 F.3d 1172 (9th Cir. 2020).
- Church could operate special event center in Citrus/Vineyard zone, just as secular groups could, provided they rent their event facilities in return for compensation.



RLUIPA: EQUAL TERMS

- Strategy in defending the municipal client:
  - Take a hard look at the zoning provision in question
  - Develop the facts: religious assembly vs. alleged secular comparators
  - Common experience as to characteristics of subject uses
  - Look for case authorities with similar facts
  - Identify the city's zoning objectives? Are they legitimate?
  - How does the differential treatment further those goals?
  - Bring in experts! Importance of objective data



RLUIPA: DISCRIMINATION

- Based on motive
- Evidence of motive: sequence and timing, comments by city officials, general public
- Query: Should City be liable for public comments it cannot control?
- Is there a way to mitigate this?

RLUIPA: DISCRIMINATION

- *Jesus Christ Is the Answer v. Baltimore*, 915 F.3d 256 (4th Cir. 2019).
- Discriminatory motive based on remarks showing “ethnic and religious” bias of neighbors.
- Also timing of County’s denial of church’s petition.



RLUIPA: DISCRIMINATION

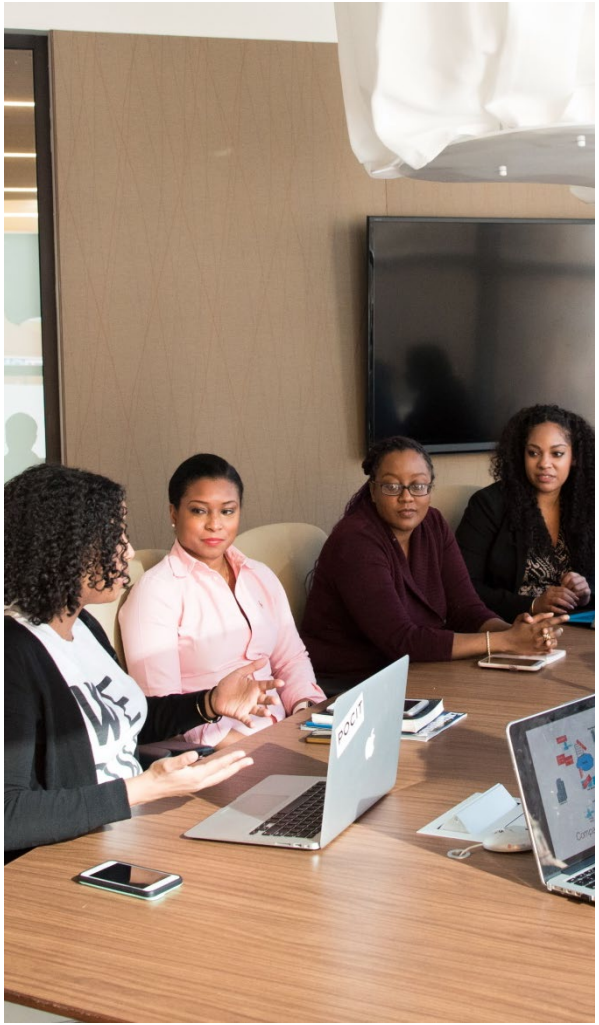
- *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, 945 F.3d 83 (2nd Cir. 2019)
- Congregation purchased property to build rabbinical college with housing
- City passed two laws to prevent
- Court ruled for Congregation on discrimination claims, based on evidence of discriminatory purpose--public comments at hearings)



RLUIPA: PARTIES

- RLUIPA allows a wide range of plaintiffs
- Who may be sued? Governments, officials.

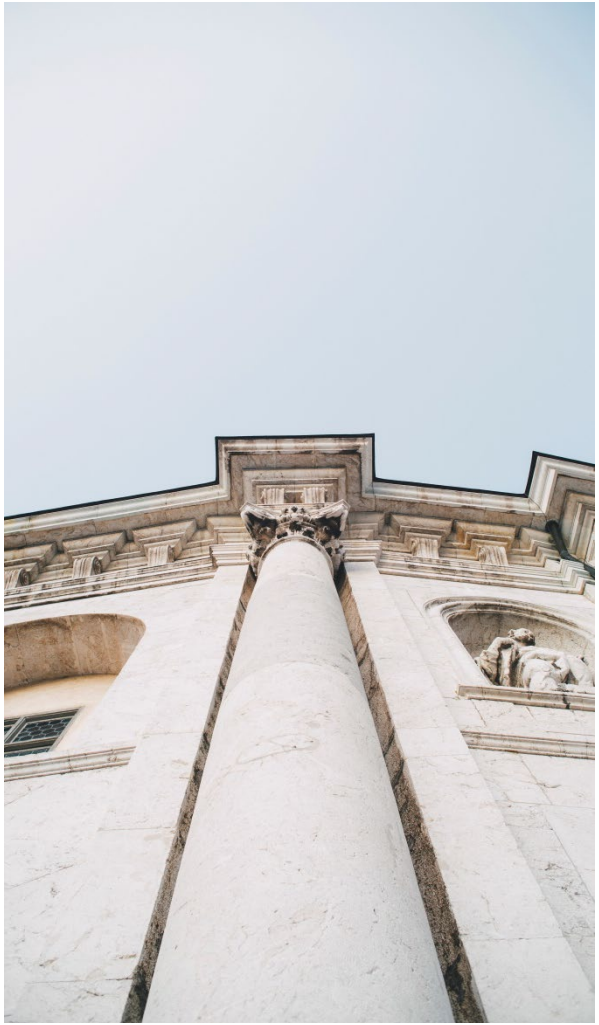




RLUIPA: RELIEF

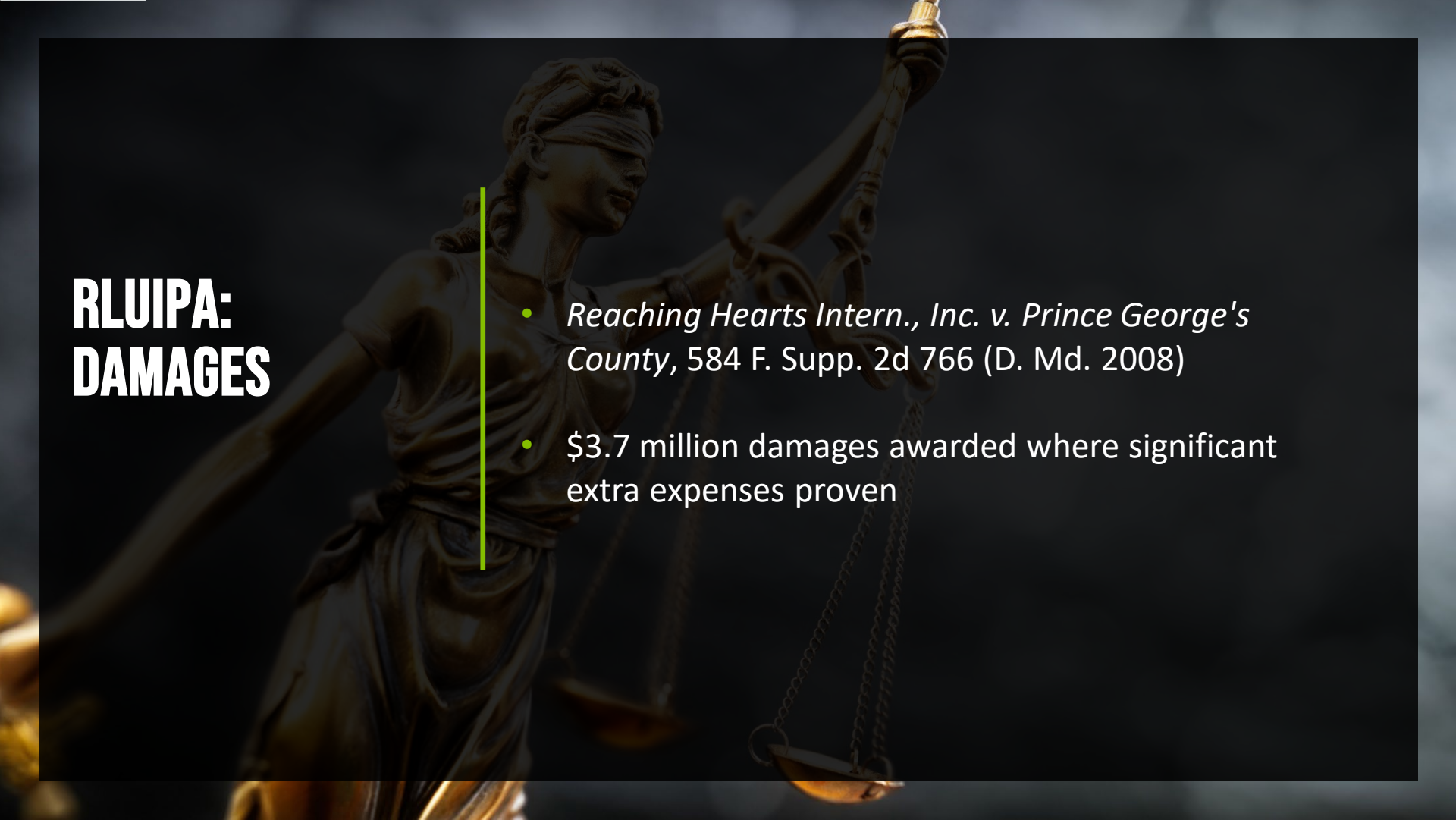
- Declaratory, injunctive relief
- “Appropriate” relief
- Damages
- *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163 (9th Cir. 2011)
- 42 USC 1983
- Attorneys fees





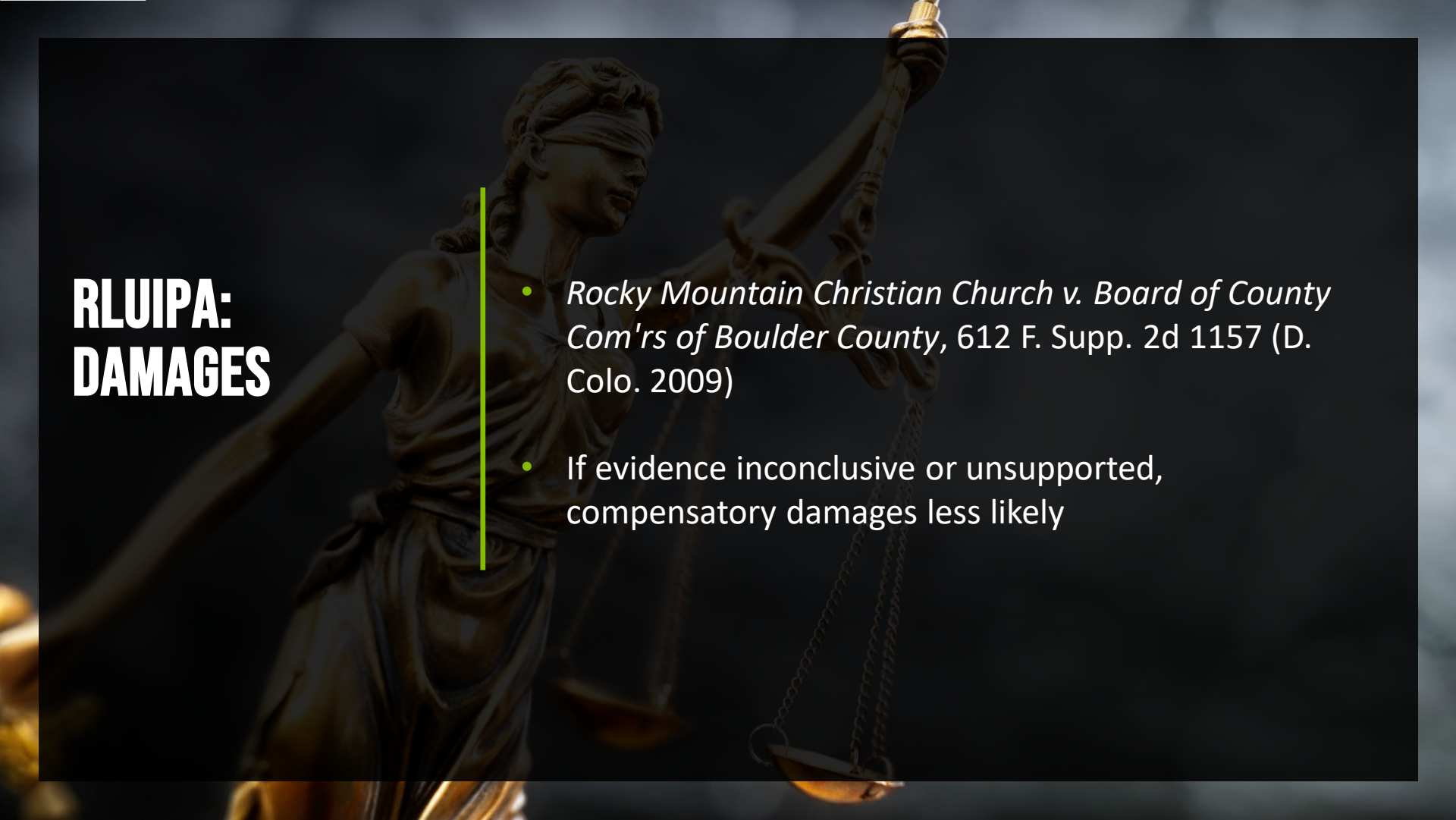
RLUIPA: RELIEF

- *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163 (9th Cir. 2011)
- Compensatory damages upheld for costs of maintaining two properties for two years due to denial of permit



RLUIPA: DAMAGES

- *Reaching Hearts Intern., Inc. v. Prince George's County*, 584 F. Supp. 2d 766 (D. Md. 2008)
- $3.7 million damages awarded where significant extra expenses proven



RLUIPA: DAMAGES

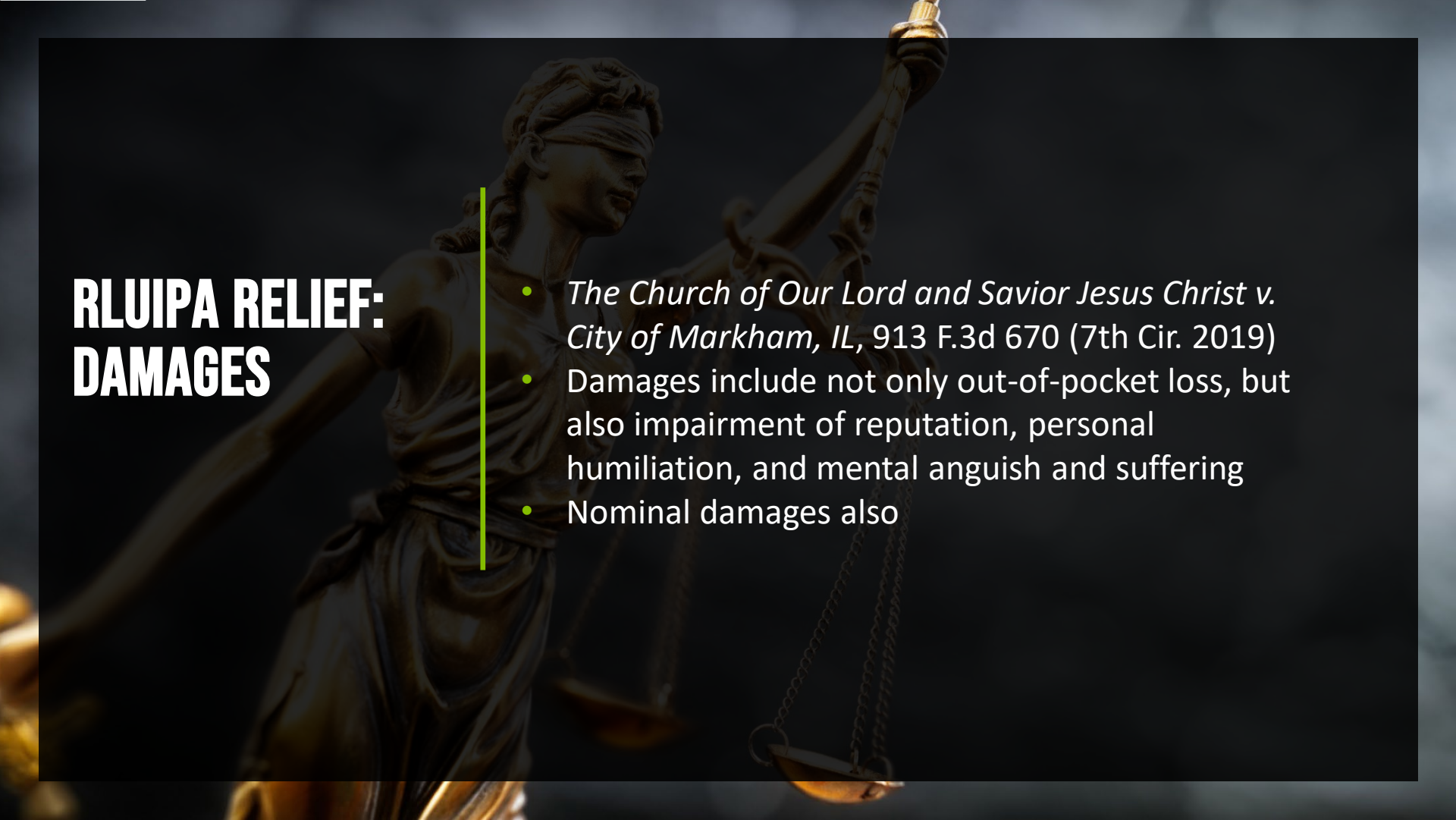
- *Rocky Mountain Christian Church v. Board of County Com'rs of Boulder County*, 612 F. Supp. 2d 1157 (D. Colo. 2009)
- If evidence inconclusive or unsupported, compensatory damages less likely

RLUIPA RELIEF: DAMAGES

- *International etc. v. San Leandro*, 902 F.Supp.2d 1286 (N.D. Cal. 2012)
- Lost opportunity for membership growth, and attendant contributions, too speculative







RLUIPA RELIEF: DAMAGES

- *The Church of Our Lord and Savior Jesus Christ v. City of Markham, IL*, 913 F.3d 670 (7th Cir. 2019)
- Damages include not only out-of-pocket loss, but also impairment of reputation, personal humiliation, and mental anguish and suffering
- Nominal damages also



RLUIPA DEFENSES: RIPENESS

Cases must be ripe for judicial review. *Reno v. Catholic Social Servs.*, 509 U.S. 43, 57-58 (1993).

Land use challenges not ripe w/o "final decision."

MacDonald, Sommer & Frates v. Yolo Cnty., 477 U.S. 340, 351 (1986); *Williamson Cnty. Reg. Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 191 (1985)

Must reject development plan and then deny variance.

RLUIPA RELIEF: RIPENESS

- Ripeness principles apply in RLUIPA context.
- *Guatay Christian Fellowship v. Cnty. of San Diego*, 670 F.3d 957, 976-81 (9th Cir. 2011)
- *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1035 (9th Cir.2004)
- Second application? Reconsideration?
- *Guru Nanak*

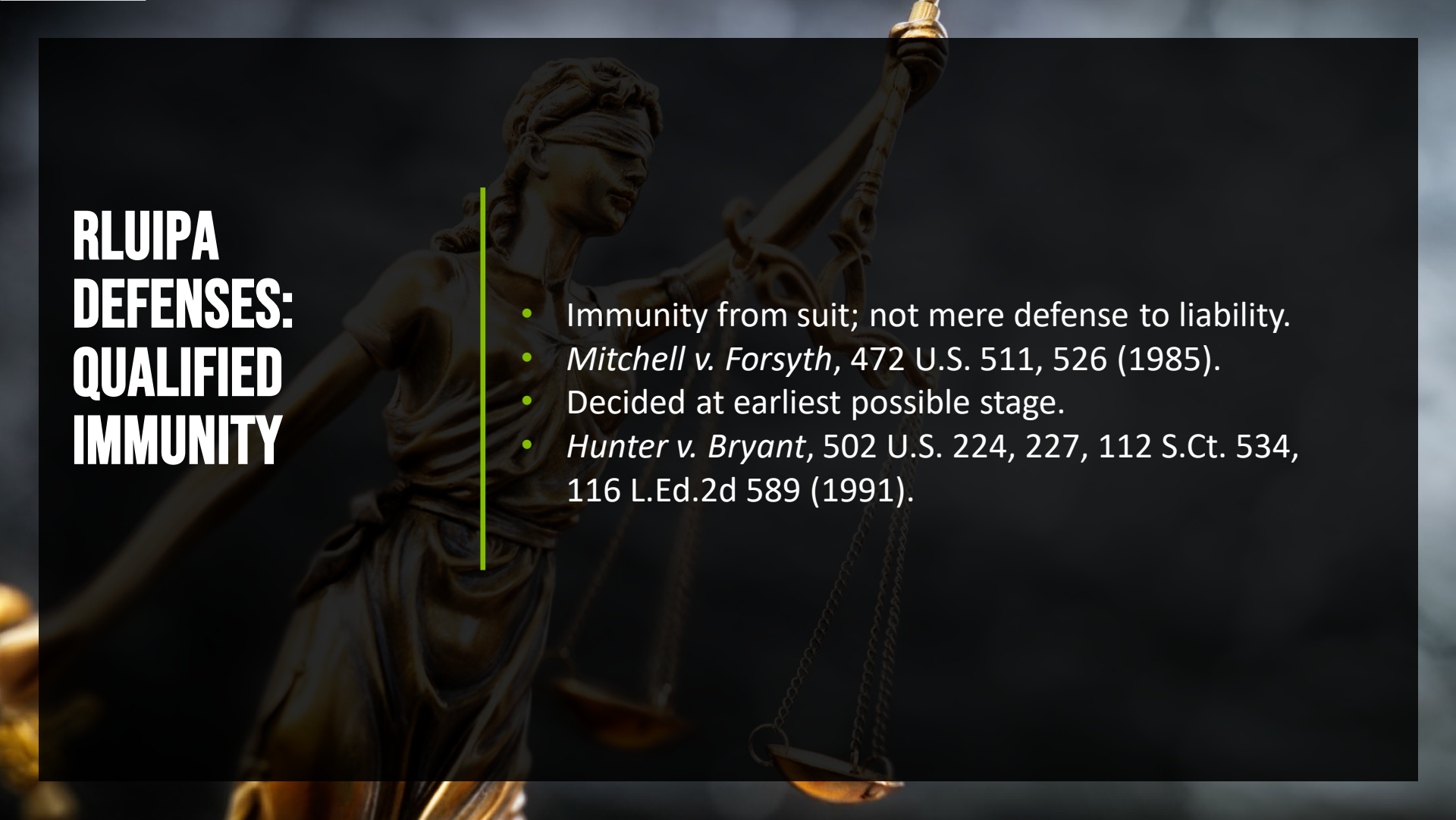
RLUIPA RELIEF: RES JUDICATA

- Prior administrative proceeding binding in later civil actions to same extent as state court decision if administrative proceeding possessed requisite judicial character.
- *White v. City of Pasadena*, 671 F.3d 918, 927 (9th Cir.2012)
- *Miller v. County of Santa Cruz*, 39 F.3d 1030, 1034-35 (9th Cir.1994).

RLUIPA DEFENSES: QUALIFIED IMMUNITY

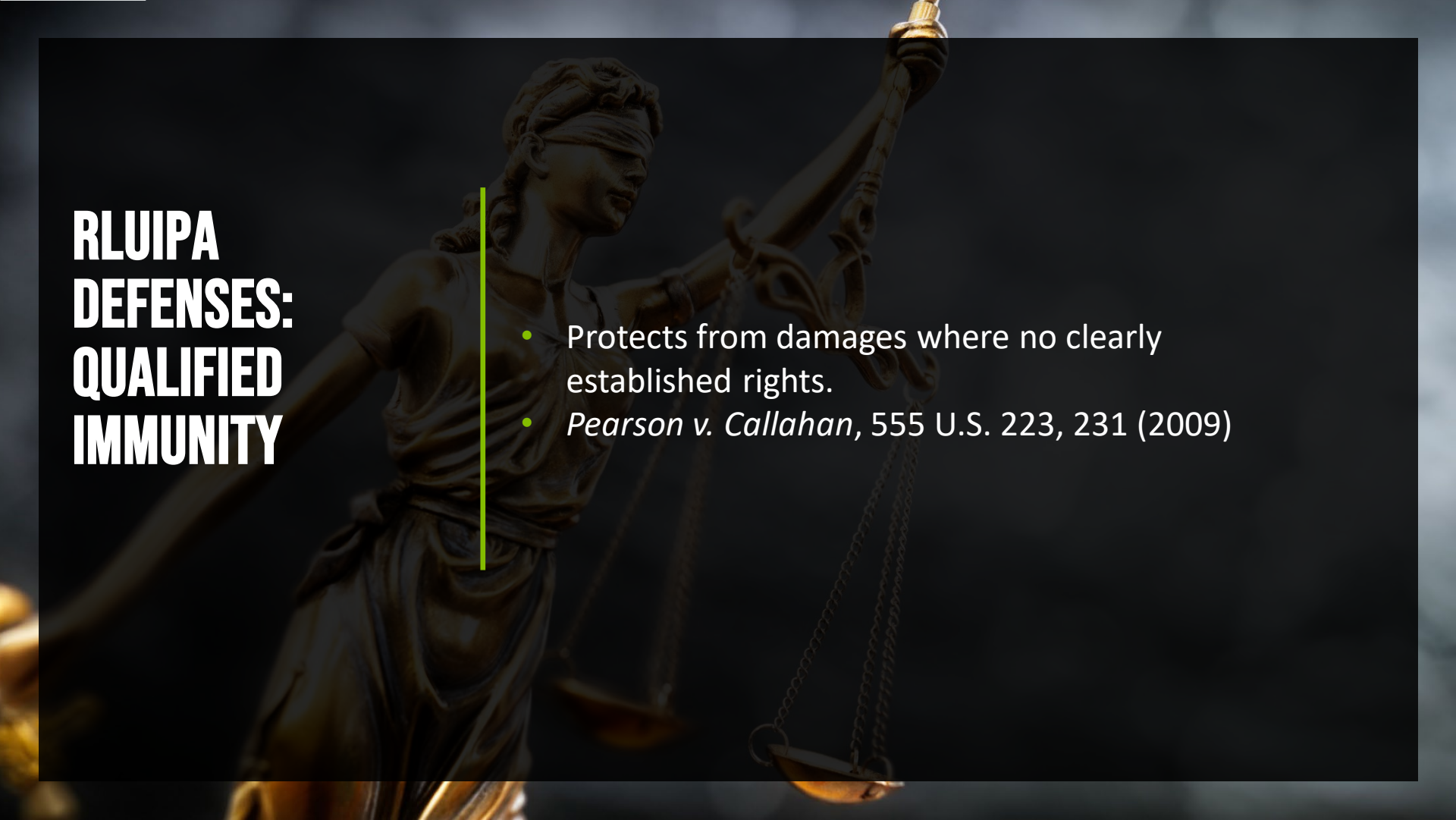
- *Navajo v. Shasta County*, 873 F.Supp.2d 1247 (E.D. Cal. 2012)
- Only immunity from money damages, not from declaratory/injunctive relief
- Applies in RLUIPA cases





RLUIPA DEFENSES: QUALIFIED IMMUNITY

- Immunity from suit; not mere defense to liability.
- *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985).
- Decided at earliest possible stage.
- *Hunter v. Bryant*, 502 U.S. 224, 227, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991).



RLUIPA DEFENSES: QUALIFIED IMMUNITY

- Protects from damages where no clearly established rights.
- *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)

RLUIPA DEFENSES: QUALIFIED IMMUNITY

- (1) identify specific right violated;
- (2) whether right was clearly established; and
- (3) whether reasonable officer would have believed policy or decision was lawful.
- *McDade v. West*, 223 F.3d 1135, 1142 (9th Cir.2000).



ANY QUESTIONS?



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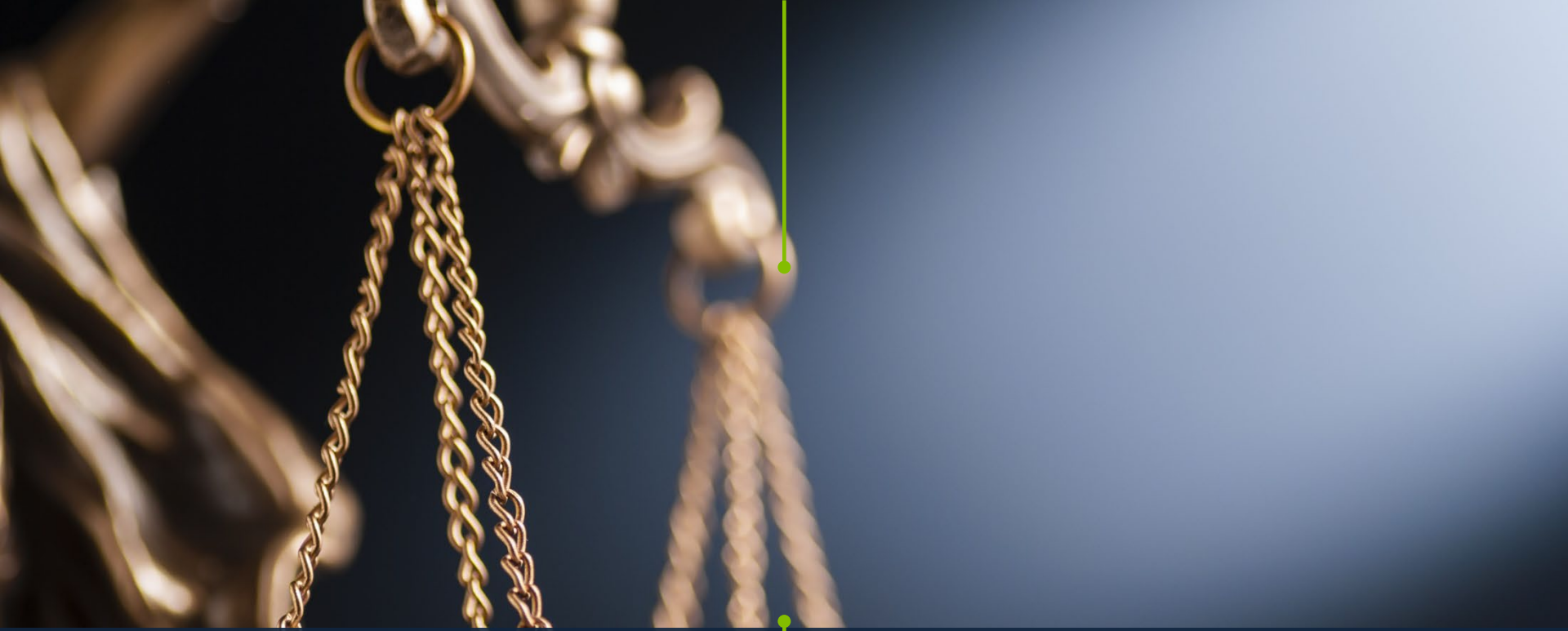
GREGORY R. AKER

Oakland

1901 Harrison Street, Suite 900
Oakland, CA 94612

gaker@bwslaw.com

+510.273.8780



burke
BURKE, WILLIAMS & SORENSEN, LLP

THOMAS B. BROWN

Oakland

1901 Harrison Street, Suite 900
Oakland, CA 94612

tbrown@bwslaw.com

+510.273.8780


THANK YOU