International Municipal Lawyers Association
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IMLA NEWS
Issue 12 – November 6, 2023

FEATURED CASES:

Eleventh Circuit Hears Thai Mediation Association Case Again – Finds City Violated Alabama Religious Freedom Amendment

Thai Meditation Center of Alabama v. City of Mobile, No. 22-11674 (11th Cir. Oct. 2, 2023).

The 11th Circuit Court revisited a property use dispute between the city of Mobile, Alabama, and the Thai Meditation Association of Alabama ("TMAA"), centered on Association's efforts to rezone a residential property into a meditation center. In the latest ruling, the 11th Circuit reversed the district court's decision on the Alabama's Religious Freedom Restoration Act ("ARFA"), instructing the court to grant summary judgment in favor of TMAA. Significantly, the court rejected the city's argument, previously supported by the district court, that the burden on TMAA's religion resulting from the zoning denial was justified by a compelling government interest in preserving the neighborhood's character and addressing traffic concerns.

Background: Plaintiffs in this case are the Thai Meditation Association of Alabama and four of its organizers (collectively "TMAA"). TMAA filed suit against the City of Mobile, AL over a multi-year dispute regarding the city's zoning regulations.

The original location for TMAA's operations was a converted home in a residential neighborhood; however, the property was located in an area with an R-1 zoning designation, "which allows for residential usage as of right and allows for other uses—like religious uses—subject to 'planning approval' by the Planning Commission." After the city received complaints about TMAA's operating out of a converted home in a residential neighborhood, the organization attempted to obtain the required zoning authorization from the City Council's Planning Commission but was unsuccessful.

Presently, TMAA operates out of a commercially zoned property located in a shopping center. Unlike the R-1 residential zoning designation, the commercial zoning designation allows religious uses "by

right." However, plaintiffs allege that this location is insufficient for the practice of their religion. Specifically, plaintiffs claim it is "far too loud and disruptive for them to meditate—that is, to practice their religion" and "too small to allow them to hold classes to teach others about their religion."

For several years, TMAA sought to relocate to a location better suited for their religious practice. In 2015, TMAA purchased a house on Eloong Drive with the intention of relocating to the property. However, the Eloong Drive property is also located in an R-1 designated area. TMAA applied for planning approval of the property's intended use and "alleges they received positive feedback on their preliminary plans." Over the course of the pre-approval process, the City of Mobile alleged they received "immense pushback" from neighbors who both questioned and objected to the "Buddhist character" of the proposed usage. Ultimately, the City denied TMAA's application, citing to "compatibility concerns" between the proposed usage and the "small neighborhood in which the Eloong Drive property is located."

Appeal: The TMAA appealed. This appeal concerns three of the parties' six original claims: the Religious Land Use and Institutionalized Persons Act ("RLUIPA") violation, the Free Exercise claim, and the ARFA claim. The Eleventh Circuit vacated the RLUIPA judgment (finding summary judgment improper for either party), affirmed the Free Exercise judgment in favor of the City, and reversed the ARFA claim, directing the district court to enter judgment in favor of the TMAA (the City has failed to carry its burden to demonstrate a compelling government interest).

RLUIPA Substantial Burden

TMAA alleges violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) by the City of Mobile. The 11th Circuit explains that, while the RLUIPA is intended to "protect religious land uses from discriminatory processes," this protection is limited to "substantial burdens." On this claim, district court granted summary judgment to the City of Mobile based off of its determination that the City's denial of planning authorization did not impose a "substantial burden" on TMAA.

However, the Circuit Court vacated this judgment based on their determination that the substantial burden analysis could not be completed while "genuine and material" factual disputes remained. Citing an example from the parties' filings, a disagreement over the availability of an alternative site for TMAA's meditation center, the court asserts that "[a] factual dispute like this on a key factor precludes the issuance of summary judgment at this stage." Thus, the court declined to assess the merits of TMAA's claim and vacated the entry of summary judgment on this count.

Free Exercise Clause

On this count, the Circuit Court affirmed the entry of summary judgment despite disagreeing with the lower court's method of analysis. While the district court tied its reasoning to the "substantial burden" analysis under RLUIPA, the Circuit Court asserts that a separate analysis is necessary.

The Free Exercise Clause of the Constitution provides protection against government action which may "incidentally burden religious practices—subject to rational basis review—so long as it is both 'neutral' and 'generally applicable.'" In accordance with precedent which "found the enforcement of zoning ordinances as both neutral and generally applicable," the court applies rational basis review to the City of Mobile's planning approval process.

While the approval process "necessarily requires individual assessment," the "specific criteria which guide the approval or denial of a particular use" are applied universally, regardless of whether the proposed usage is religious or secular." Thus, the planning approval process does not "violate general applicability." In concert with TMAA's failure to raise a challenge to the neutrality of the planning approval process, this leads to the court's determination that summary judgment was

proper as “the City’s asserted interests in traffic safety and zoning are ‘rationally related to a legitimate government interest.’”

Alabama Religious Freedom Amendment

Finally, TMAA’s state constitutional law claim alleges a violation of the Alabama Religious Freedom Amendment which has historically been interpreted analogously to the federal Constitution’s First Amendment. Specifically, the ARFA provides religious freedom protections from state and local law “unless the city can demonstrate that the burden is the least restrictive means of achieving a compelling government interest.”

Similarly to the RLUIPA analysis, as discussed above, the ARFA “requires the government’s action to satisfy strict scrutiny to survive review.” However, in contrast to RLUIPA, “the ARFA is triggered by a much lower burden on religious freedom.” Therefore, whether the City’s planning decision constitutes a “substantial burden” on TMAA’s rights need not be determined because “any burden—even an incidental or insubstantial one—suffices to trigger strict scrutiny.” *TMAA I*, 980 F.3d at 840.

Finding that ARFA is clearly implicated by TMAA’s claims, ultimately, the court determines that the City’s “generalized invocations of neighborhood character and zoning fail” to demonstrate a “compelling government interest,” as is required by the ARFA. In making this determination, the court disagrees outright with the district court’s findings of a “substantial burden” based on the City’s interest in preserving the neighborhood character. However, the 11th Circuit asserts, “we have never held that neighborhood character or zoning are compelling government interests sufficient to justify abridging core constitutional rights.”

Thus, summary judgment was reversed, and the district court was instructed to enter judgment for TMAA. In conclusion, the court warns that “[t]hese concerns underscore why it is necessary to hold government entities to their burden to state and support a well-defined government interest.”

Thai Meditation Center of Alabama v. City of Mobile

SHORT SUMMARIES:

1st Circuit – Contracts – Police – Secondary Employment – Collective Bargaining

The issue in this case involves whether the terms of a Collective Bargaining Agreement were ambiguous or clear. Police officers engaged in secondary employment through the police department and sought to be paid based upon their regular compensation plus various incentives applicable to their pay when working for the city. The city charged an agency fee of 10% for managing the secondary employment agreements which reduced the pay the officers received. The lower court concluded that the contract terms were ambiguous and awarded the officers the compensation they sought. On appeal the panel concluded that the terms of the contract were unambiguous using the antiquated (but quite appropriate) rule of statutory construction – *expressio unius est exclusio alterius*. The contract language: "one and one half times the maximum patrolman's rate of pay including night differential." This the city argued was the limit of the compensation intended, whereas the officers sought various augmentations the city pays them under other terms of the agreement.

Owens v. City of Malden, **22-1674P-01A.pdf (uscourts.gov)**

4th Circuit – Judicial Immunity – Facts are stranger than fiction

I offer this case primarily because sometimes facts are better than fiction. In a domestic dispute, one spouse asserted that the other spouse had failed to turn over property that the court had ordered be returned. During a hearing on this claim, the judge adjourned the hearing to reconvene at the home of the recalcitrant spouse. During the ride to the house this recalcitrant spouse researched some law and when they all arrived at the house objected to the forced entry into the home. From the court's decision: "We need not speculate as to what went on after the court's entry into Gibson's home. Unbeknownst to Judge Goldston, her bailiff recorded the first part of the search. The video painted a striking picture. Judge Goldston, her list of unproduced assets in hand, directed proceedings. When the ex-wife identified some photos hanging on the wall as being on the list, Judge Goldston told her to "take 'em." When the ex-wife opened a closet to reveal some yearbooks, Judge Goldston said, "Get 'em." And when the ex-wife said that their old DVD collection was downstairs, Judge Goldston accompanied her down and told her to "go in there and pick the ones you want." The ex-wife sifted through the DVDs as Judge Goldston sat in a rocking chair, shoes off, supervising and giving orders." The judge claimed absolute judicial immunity. The panel being comprised of judges recognized how important judicial immunity should be, but also noted that it only protects judicial acts and in denying immunity said: "Rather, it is based on the fact that the judge clearly exceeded the most common understandings of the proper judicial role."

Gibson v. Goldston, **221757.P.pdf (uscourts.gov)**

1th Circuit – Legislative Immunity

Because legislative immunity principles can be raised by local government officials, a case from Florida may prove valuable should local officials be called upon to testify regarding their motives in adopting local legislation. The case involves Florida's continuing efforts to be about as "unwoke" as possible. Seeing Critical Race Theory as an attack on the students of Florida, the state passed a law prohibiting its inclusion in curricula. A professor and some others challenged the law based on a claim that it violated the 14th Amendment and sought documents from the legislature. The defendants challenged on legislative privilege. The 11th Circuit concluded that legislative privilege applies to preclude the court from requiring disclosure of documents and testimony from the legislature.

Pernell v. Florida Board of Governors of the State University, **202310616.pdf (uscourts.gov)**

11th Circuit – Qualified Immunity – Warrants – False Information

A gentleman was arrested for involvement in a methamphetamine transaction. Based on confidential informant help government officials monitored a drug deal and arrested the Plaintiff for driving the purchaser of a fair amount of meth to the site of the deal. After having spent six months in jail and six months on probation pending trial, the DA cut the Plaintiff some slack and dropped the charges based on the expectation that time served would be the result of any conviction. But, not having been convicted, the Plaintiff sought to win the 1983 Litigation Lottery and sued. The claims included arguments based on misstatements in the warrant application. The panel, however, noted that the application correctly stated "The affidavit accurately certified, as the basis for probable cause, that the drug task force had "prearranged" the purchase of a trafficking quantity of methamphetamine

from Smith, and that Land and Smith had arrived together at the designated time and place. It explained that Land had "driven [Smith] to the meeting location," was "positively identified" as the driver of the vehicle, and "was present" for the surveilled purchase." While there may have been other information in the application that was erroneous, the quoted language provided sufficient probable cause to arrest the Plaintiff.

Land v. Sheriff of Jackson County Florida, **202212324.pdf (uscourts.gov)**