Religious Land Use: The Nuts and Bolts of RLUIPA

International Municipal Lawyers Association
Webinar
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U.S. Department of Justice
Civil Rights Division

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Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

- Statutory codification of religious freedoms
- Protects use of land for religious purposes
- Protects the rights of incarcerated persons to exercise their religion

RLUIPA Enforcement

- Private lawsuits
  - Damages
  - Injunctive relief
  - Attorneys Fees
- DOJ Enforcement
  - Injunctive relief only

Why RLUIPA?

Congress found:

- “Massive evidence” that local land use officials were discriminating and placing unreasonable restrictions on religious land use.
- Minority religious groups (e.g. Jews, Muslims) disproportionally affected.
- Zoning codes frequently exclude religious use where they permit secular places of assembly.
- Adopted in response to *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990).

From *Sherbert* to RLUIPA

- ***Sherbert/Yoder***: neutral law that burdens religious exercise is subject to strict scrutiny (1963-1990)
- ***Smith***: neutral law of general applicability is okay (1990)
- **RFRA**: Restores strict scrutiny for substantial burden imposed by local, state or federal laws (1993)
- ***City of Boerne***: Strikes down RFRA as applied to local and state laws (1997)
- ***RLUIPA:*** applies strict scrutiny to land use, adds equal terms and nondiscrimination protections, and more (2000)

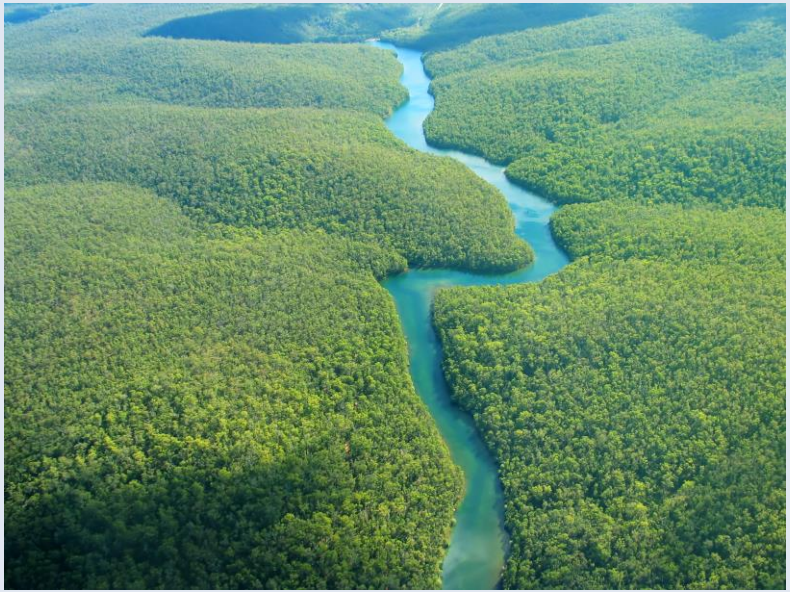
Land Use Regulation

- Zoning laws
- Landmarking laws
- Property interest requirement

Land Use Regulation

Not all courts agree:

- **Environmental Laws**
- **Sewage and Water Service Decisions and/or Regulations**
- **Eminent domain**
- **Fire Codes**



Religious Land Use Is Broad

- “Any exercise of religion”
- “The use, building, or conversion of real property”
- Broad range of religious uses:
  - Houses of worship
  - Religious educational facilities and camps
  - Faith-based community services (e.g. shelters, homeless resource centers, food banks, transitional housing)
  - Religious cemeteries
  - Home worship/home religious use
- Not commercial activity

Four specific prohibitions



- Substantial burden on religious exercise
- Unequal treatment for religious assemblies and institutions
- Religious or denominational discrimination
- Total or unreasonable exclusion

Substantial Burden

- No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution;
- unless the government demonstrates that imposition of the burden . . . is in furtherance of a compelling governmental interest;
- and is the least restrictive means of furthering that compelling governmental interest.

Substantial Burden

section applies only if:

1. Federal Financial Assistance;
2. Interstate Commerce; or
3. Individualized Assessment

Substantial Burden Factors

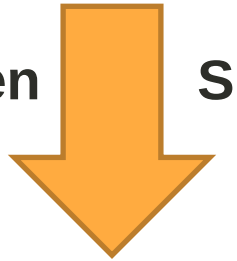
- Substantial pressure to modify behavior and violate beliefs
- Factors considered:
  - Plaintiff's genuine need for the space
  - Effectively deprives the group of religious exercise
  - Was the denial/decision absolute or conditional
  - Arbitrariness/bad faith
  - Alternative locations
  - Delay, uncertainty, and expense
  - Reasonable expectation or self-imposed harm

Shifting Burden

***Plaintiff shows*:**

Religious exercise is **substantially burdened** by local government.

Burden Shifts



***Defendant must then show*:**

The decision, ordinance, or practice is in furtherance of a **compelling interest** enforced in the **least restrictive means.**

Substantial Burden Case Example:
St. Timothy's Church v. City of Brookings,
726 F.Supp.3d 1231 (D. Or. 2024)

- Church serves meals to homeless 4-6 days per week.
- City issues cease and desist order.
- City then makes "benevolent meal service" a conditional use, limited to 2 days per week.
- Church files lawsuit.
- United States files statement of interest.
- Court finds a substantial burden.

Substantial Burden Case Example:
Andon, LLC v. City of Newport News,
813 F.3d 510 (4th Cir. 2016)

- In assessing whether a religious organization or the government was responsible for the impediment, Courts will assess whether the religious organization had a reasonable expectation of the desired use of the property.

- If there is no reasonable expectation of the desired use, Courts will generally hold the burden is self-imposed.

Equal Terms:

Religious assemblies must be treated as well as comparable nonreligious assemblies

Religious land use:

Churches, mosques, temples, synagogues, houses of worship

Religious schools

Secular land use:

Clubs, theaters, community centers, day cares, banquet halls, etc.

Secular schools, public schools

Three Kinds of Equal Terms Claim

1. Statute that facially differentiates between religious and nonreligious assemblies or institutions;
2. Facially neutral statute that is nevertheless "gerrymandered" to place a burden solely on religious, as opposed to nonreligious, assemblies or institutions; or
3. Truly neutral statute that is selectively enforced against religious, as opposed to nonreligious assemblies or institutions

Equal terms (facial) case example:
United States v. City of Troy,
592 F.Supp.3d 591 (E.D. Mich. 2022)

District	Minimum Setback Requirements and Parking Restrictions				
	Front	Rear	Sides	Adjacent to Residential	Parking Restrictions in Setback Areas
Community Business	10'	30'	20'*	75'	≤ 50% of front; not within 10' of residential or public street
General Business	10'	30'	20'*	75'	≤ 50% of front; not within 10' of residential or public street
Integrated Industrial & Business	30'	20'	10'	50'	Not in front; not within 10' of residential or public street
Office	10'	30'	20'	50'	≤ 50% of front; not within 10' of residential or public street
Office Mixed Use	10'	30'	20'**	50'	≤ 50% of front; not within 10' of residential or public street
Research Center	30'	20'	20'	50'	Not in front or by public street; not within 10' of residential

**No setbacks are required where the lot abuts a non-residential lot unless the property's related wall has windows; a minimum 10' setback is required where the property's wall has windows or openings.*
***In the Office Mixed Use district, the sum total of both side setbacks must be at least 60 feet*

Equal terms (as-applied) case example:
United States v. City of Hollywood, Fl. (2006)



Proposed location of synagogue



Full-time day care permitted

Discrimination

- **Prohibits intentional religious discrimination, including discrimination based upon religious denomination**
- **Does not require a comparison to another assembly or institution**





Discriminatory Intent Factors

- Impact of the official action
- Historical background of the decision
- Procedural departures
- Substantive departures
- Statements by decision-makers and community members

Discrimination case example:
United States v. Farmersville, TX
(E.D. Tex. 2019)







Discrimination case example:

Bethel World Outreach Ministries v. Montgomery County Council, 706 F. 3d 548 (4th Cir. 2013)

1. Facially neutral zoning ordinance adopted to restrict size of all private institutional facilities in area designated as agricultural reserve. Clear evidence that residents opposed the prior request of a predecessor entity to construct four 1000-seat churches.
2. In response to that request, the County began reviewing and adopted the challenged zoning ordinance.
3. No evidence, however, that the zoning ordinance was adopted because the plaintiff was a religious organization.
4. Fourth Circuit affirmed District Court's grant of summary judgment in favor of County on nondiscrimination claim.

Unreasonable or total exclusion

Prohibits a land use regulation that:

- **Totally excludes; or**
- **Unreasonably limits religious assemblies or institutions from a jurisdiction**

Unreasonable Limitation

"What is reasonable must be determined in light of all the facts, including the actual availability of land and the economics of religious organization."
Chabad of Nova, Inc. v. City of Cooper City, 575 F. Supp. 2d 1280 (S.D. Fla. 2008).

Unreasonable limitation case example: *United States v. Toms River,* (D. N.J. 2020)

- Pre 2009, 400+ parcels qualified.
- From 2009 and 2017, acreage minimum increased to 10 acres.
- 2018 - only 74 parcels qualified. None were available.
- United States filed a complaint alleging Toms River unreasonably limited opportunities for religious worship, particularly to Orthodox Jewish community.
- Case resolved with Consent Order that required Toms River to roll back its zoning code.

Safe Harbor Provision

42 U.S.C. § 2000cc-3(e)

A government may avoid the preemptive force of any provision of [RLUIPA] by:

- changing the policy or practice that results in a substantial burden on religious exercise;
- retaining the policy or practice and exempting the substantially burdened religious exercise;
- providing exemptions from the policy or practice for applications that substantially burden religious exercise;
- or any other means that eliminates the substantial burden.

DOJ RLUIPA Enforcement

Lawsuits

- Injunctive relief only
- Revise zoning ordinance, grant permits
- Since 2000, DOJ has filed 29 enforcement lawsuits

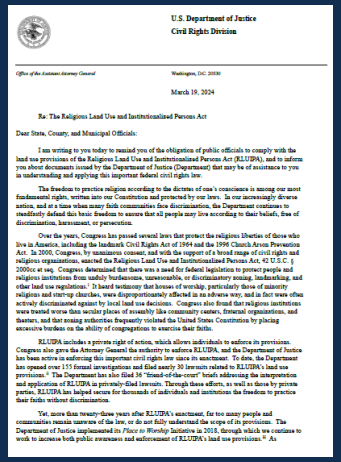
Statements of Interest

- DOJ can filed friend of the court briefs
- Explain DOJ's view on RLUIPA
- Since 2000, DOJ has filed 38 statements of interest regarding RLUIPA's land use provisions

Online Resources

DOJ Place to Worship Initiative
www.justice.gov/crt/place-worship-initiative

DOJ RLUIPA Website
https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General Washington, DC 20530

March 19, 2024

Re: The Religious Land Use and Institutionalized Persons Act

Dear State, County, and Municipal Officials:

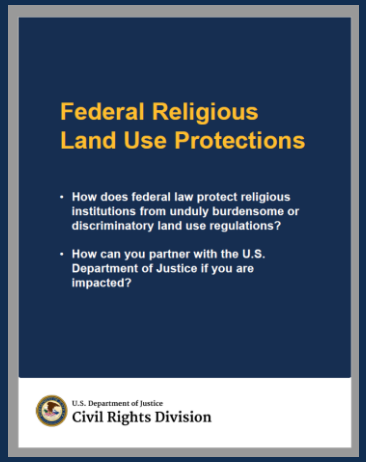
I am writing to you today to remind you of the obligation of public officials to comply with the land use provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), and to inform you about documents issued by the Department of Justice (Department) that may be of assistance to you in understanding and applying this important federal civil rights law.

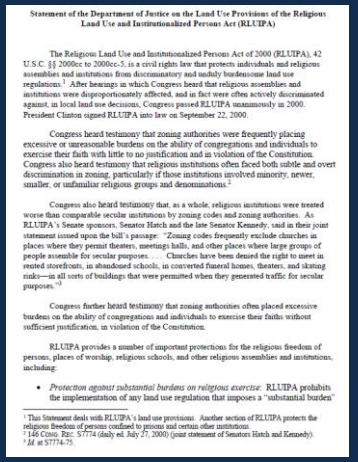
The freedom to practice religion according to the dictates of one's conscience is among our most fundamental rights, written into our Constitution and protected by our laws. In our increasingly diverse nation, and at a time when many faith communities face discrimination, the Department continues to steadfastly defend this basic freedom to ensure that all people may live according to their beliefs, free of discrimination, harassment, or persecution.

Over the years, Congress has passed several laws that protect the religious liberties of those who live in America, including the landmark Civil Rights Act of 1964 and the 1996 Church Arson Prevention Act. In 2000, Congress, by unanimous consent, and with the support of a broad range of civil rights and religious organizations, enacted the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq. Congress determined that there was a need for federal legislation to protect people and religious institutions from unduly burdensome, unreasonable, or discriminatory zoning, landmarking, and other land use regulations.[1] It heard testimony that houses of worship, particularly those of minority religions and start-up churches, were disproportionately affected in an adverse way, and in fact were often actively discriminated against by local land use decisions. Congress also found that religious institutions were treated worse than secular places of assembly like community centers, fraternal organizations, and theaters, and that zoning authorities frequently violated the United States Constitution by placing excessive burdens on the ability of congregations to exercise their faiths.

RLUIPA includes a private right of action, which allows individuals to enforce its provisions. Congress also gave the Attorney General the authority to enforce RLUIPA, and the Department of Justice has been active in enforcing this important civil rights law since its enactment. To date, the Department has opened over 155 formal investigations and filed nearly 30 lawsuits related to RLUIPA's land use provisions.[2] The Department has also filed 36 "friend-of-the-court" briefs addressing the interpretation and application of RLUIPA in privately-filed lawsuits. Through these efforts, as well as those by private parties, RLUIPA has helped secure for thousands of individuals and institutions the freedom to practice their faiths without discrimination.

Yet, more than twenty-three years after RLUIPA's enactment, far too many people and communities remain unaware of the law, or do not fully understand the scope of its provisions. The Department of Justice implemented its *Place to Worship* Initiative in 2010, through which we continue to work to increase both public awareness and enforcement of RLUIPA's land use provisions.[3] As





Statement of the Department of Justice on the Land Use Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc to 2000cc-5, is a civil rights law that protects individuals and religious assemblies and institutions from discriminatory and unduly burdensome land use regulations.[1] After hearings in which Congress heard that religious assemblies and institutions were disproportionately affected, and in fact were often actively discriminated against, in local land use decisions, Congress passed RLUIPA unanimously in 2000. President Clinton signed RLUIPA into law on September 22, 2000.

Congress heard testimony that zoning authorities were frequently placing excessive or unreasonable burdens on the ability of congregations and individuals to exercise their faith with little to no justification and in violation of the Constitution. Congress also heard testimony that religious institutions often faced both subtle and overt discrimination in zoning, particularly if those institutions involved minority, newer, smaller, or unfamiliar religious groups and denominations.[2]

Congress also heard testimony that, as a whole, religious institutions were treated worse than comparable secular institutions by zoning codes and zoning authorities. As RLUIPA's Senate sponsors, Senator Hatch and the late Senator Kennedy, said in their joint statement issued upon the bill's passage: "Zoning codes frequently exclude churches in places where they permit theaters, meetings halls, and other places where large groups of people assemble for secular purposes. . . . Churches have been denied the right to meet in rented storefronts, in abandoned schools, in converted funeral homes, theaters, and skating rinks—in all sorts of buildings that were permitted when they generated traffic for secular purposes."[3]

Congress further heard testimony that zoning authorities often placed excessive burdens on the ability of congregations and individuals to exercise their faiths without sufficient justification, in violation of the Constitution.

RLUIPA provides a number of important protections for the religious freedom of persons, places of worship, religious schools, and other religious assemblies and institutions, including:

- *Protection against substantial burdens on religious exercise.* RLUIPA prohibits the implementation of any land use regulation that imposes a "substantial burden"

[1] This Statement deals with RLUIPA's land use provisions. Another section of RLUIPA protects the religious freedom of persons confined to prisons and certain other institutions.
[2] 146 Cong. Rec. S7774 (daily ed. July 27, 2000) (joint statement of Senators Hatch and Kennedy).
[3] *Id.* at S7774-75.

Questions?



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