

RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000

ALI-ABA LAND USE INSTITUTE

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Summary of Act

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), codified at 42 U.S.C. § 2000cc-1 et seq., is a federal law that covers two areas of religious activity. The first aspect prohibits the imposition of burdensome land use regulations on religious institutions. To establish a violation of Section 1, the plaintiff must demonstrate that the defendant's conduct satisfies at least one of RLUIPA's jurisdictional prerequisites and that the conduct imposes a "substantial burden" on Plaintiff's religious exercise. From this point, the burden shifts to the defendant to prove that its imposition of a "substantial burden" is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling interest. 42 U.S.C. § 2000cc(a)(1).

State Cases

County of Los Angeles v. Sahag-Mesrob Armenian Christian School, 188 Cal. App. 4th 851 (2011)

County of Los Angeles sued Sahag-Mesrob, a private religious school, alleging the school violated the county zoning code and seeking declaratory and injunctive relief to prevent the operation of the, school until a conditional use permit was secured. The school began operating in a single-family residential zone without first obtaining a conditional use permit. The school's request for a "clean hands" waiver, which would have allowed the school to continue operating while the- conditional use permit application was processed was denied. A declaration was submitted by a supervising regional planner describing traffic and parking problems and stated that environmental review was necessary. The Superior Court of Los Angeles granted the county's motion for a preliminary injunction and the Sahag-Mesrob school appealed. The Court of Appeal affirmed. holding that requiring the religious school to comply with a neutral conditional use permit application process and with the California Environmental Quality Act before operating in a single residential zone did not constitute "substantial burden" on exercise of religious freedom under the RLUIPA. The Court also held that denial of the school's clean hands waiver request to continue operating while its application for a conditional use permit was being processed did not violate the "equal terms" provision of the RLUIPA.

Fortress Bible Church v. Feiner, 734 F. Supp. 2d 409 (S.D. N.Y. 2010)

Plaintiffs, the Fortress Bible Church and its minister sued the Town of Greenbaugh and others, alleging that the defendants acted arbitrarily, capriciously, and unlawfully in processing church's application to construct a new church facility in a mixed-use neighborhood. Plaintiffs claimed that denial of their application constituted a "substantial burden" because plaintiffs were

required to continue their religious practice in inadequate facilities. The district court held that the town violated RLUIPA when it used the State Environmental Quality Review Act (SEQRA) process to deny the church the right to construct its new building because the town had failed to demonstrate any compelling governmental interests sufficient under the RLUIPA to justify denial of the church's application. Rather, the evidence established that the town's concerns were contrived for the sole purpose of rationalizing its denial of the church's SEQRA application. The court found that the town "had no mechanistic assessments in place for evaluating the Church's application, but rather relied on the subjective opinions of nonprofessional Town Board members and a multitude of consultants ... regarding whether they considered the Church's proposed plan and mitigation measures to be adequate."

In addition, in defining "religious exercise" under the RLUIPA, the court held that the statute "does not protect buildings or structures *per se*, but rather protects their use *for the purpose of religious exercise*." Thus, the relevant question to ask is whether the facility to be constructed is to be devoted to a religious purpose. The court interpreted "devoted" to require "a careful, fact-sensitive balancing of secular purposes and religious purposes in relation to the spaces being constructed, as opposed to a strict requirement of exclusive use for religious purposes, which would be inconsistent with the text and legislative history of RLUIPA." The court found plaintiff's proposed use of the facility, as a church and school for religious purposes to be sufficient to meet the "religious exercise" requirement.

Federal Cases

***Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 2011 DJDAR 10430 (9th Cir. 2011)**

In 2007, the Church bought a vacant J.C. Penney department store out of foreclosure in City's Old Town Main Street. The City had previously designated the area as a tourist district as part of its revitalization efforts, which included allowing bars and nightclubs along the street. The church was aware of the tourist designation and the requirement for a conditional use permit to hold church services, but could not delay. Under then-applicable state law, new bars, nightclubs and liquor stores were prohibited within 300 feet of a church.

In a "reverse urban blight" decision, the City denied the conditional use permit because the church use was inconsistent with a 24/7 downtown neighborhood involving retail, residential, office and entertainment. The liquor license problem was the "pivotal factor." After the CUP was rejected, the Church lost the property to foreclosure, Arizona adopted a state version of RLUIPA, and changed the law to allow waivers of the statutory ban on liquor licenses within 300 feet of a church.

The Ninth Circuit held that Yuma's requirement that religious assemblies obtain a conditional use permit violated the "equal terms" provision of RLUIPA because similarly situated secular assemblies are not subject to the same requirement. The court rejected the argument that churches were not similarly situated to secular assemblies under the state law, because the City's CUP requirement applied broadly to all religious uses, not just churches that triggered application of the state law. Under the recent decision in *Sossamon v. Texas*, 131 S.Ct.

1651 (2011), the Ninth Circuit held that municipalities are liable for monetary damages under RLUIPA and remanded for hearing on damages.

Grace Church of Roaring Fork Valley v. Board of County Commissioners of Pitkin County, 742 F. Supp. 2d 1156 (D. Colo. 2010)

Plaintiff, Grace Church, brought an action against the county board of commissioners and others, challenging the denial of the church's application for a special use permit to construct a new church. Plaintiff alleged that denial of the application violated the RLUIPA. Following settlement and the board of commissioners' resolution approving the special use permit, the church sought to recover damages attributable to the delay in religious use of the property. The defendants moved for summary judgment. The district court held that denial of the church's application for a special use permit to construct its new church did not constitute a substantial burden on religious exercise. Thus, the board's action did not violate the RLUIPA because the denial did not prevent the church and its members from assembling or engaging in their religious practices within the county. In addition, the court held that the church failed to establish violation of the equal terms provision of the RLUIPA because it failed to offer evidence that a similarly situated nonreligious comparator received differential treatment under the challenged regulation. Furthermore, the court held that the board did not implement county's land use code in a discriminatory manner that would violate the RLUIPA because the commissioner's questions regarding the church's application and its future plans did not show hostility or disregard of the church's religious needs. Finally, the court held that the board's denial of the application did not violate the unreasonable limitations provision of RLUIPA because the primary impediment to constructing the new church was the high cost of real estate and that is something beyond the county board's control.

River of Life Kingdom Ministries v. Village of Hazel Crest, 611 F.3d 367 (7th Cir. 2010)

The River of Life Church brought suit alleging that zoning ordinances of the Village of Hazel Crest violated the "equal terms" provision of RLUIPA by excluded noncommercial uses. The District Court for the Northern District of Illinois denied the Church's motion for a temporary restraining order and preliminary injunction against enforcement of the zoning ordinance. The Seventh Circuit affirmed. A rehearing en banc was granted to consider the proper standard for applying the "equal terms" provision of the RLUIPA.

The River of Life Church wanted to relocate to a building in the Village of Hazel Crest. However, the building is in a part of Hazel Crest that is zoned commercial. The zoning ordinance excludes new noncommercial uses from the district including churches, community centers and schools.

The Seventh Circuit granted a rehearing en banc because of the existence of an intercircuit conflict with respect to the proper test for applying the "equal terms" provision. The Third Circuit "ruled that 'a regulation will violate the Equal Terms provision only if it treats religious assemblies or institutions less well than secular assemblies or institutions that are similarly situated as to the regulatory purposes. The court must identify first the goals of the challenged zoning ordinance and second the secular assemblies (meeting places) that are comparable to the plaintiffs religious assembly in the sense of having roughly the same relation

to those goals. . . [I]f a secular assembly is allowed and the religious assembly banned even though the two assemblies don't differ in any way material to the regulatory behind the ordinance, then neutrality has been violated and equality denied." The Eleventh Circuit has adopted an alternative test where the language of the equal-terms provision is read literally: "a zoning ordinance that permits any 'assembly,' as defined by dictionaries, to locate in a district must permit a church to locate there as well . . ." Thus, under the Eleventh Circuit approach, "where private clubs are allowed, so must churches be." Troubled with both tests, the Seventh Circuit deemed the Third and Eleventh Circuit approaches unsatisfactory.

The Seventh Circuit held that a regulation will violate the equal-terms provision of the RLUIPA only if it treats religious assemblies or institutions less well than secular assemblies or institutions that are similarly situated as to accepted zoning criteria. The Hazel Crest zoning ordinance did not violate the "equal terms" provision because secular assemblies such as community centers, meeting halls, and libraries were also excluded. Thus, the Seventh Circuit found that the Hazel Crest ordinance did not violate the RLUIPA.

Rocky Mountain Christian Church v. Board of County Commissioners, 613 F.3d 1229 (10th Cir. 2010)

The Rocky Mountain Church and United States as intervenor brought an action against the Board of County Commissioners, alleging that the Board's denial of the Church's special use application to expand its campus violated the RLUIPA. The District Court for the District of Colorado granted plaintiffs' motion for a mandatory permanent injunction in part and the Board appealed. The Tenth Circuit affirmed and Found that the evidence was sufficient to establish that the Church and a comparator school were similarly situated for purposes of RLUIPA's "equal terms" provision. The Church and school were both located in an agricultural district, the total resulting square footage of the two expansion projects were similar, and both proposals sought to expand existing uses by building gymnasiums of roughly the same size. Thus, the Tenth Circuit found that the Board applied the zoning ordinance governing special use permits non-neutrally by treating the Church less favorably than the school. The Board used a less advantageous method to calculate whether the Church's proposed use was over-intensive and treated the Church's special use application as a new application instead of an existing use. Thus, the Tenth Circuit concluded that the permanent injunction did not constitute an abuse of discretion by the District Court.

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