

Religious Land Use and Institutionalized Persons Act

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Religious Land Use and Institutionalized Persons Act

- Congress enacted RLUIPA in 2000 in response to the Supreme Court's finding that RFRA was unconstitutional
- The law was passed by unanimous consent
- RLUIPA requires that strict scrutiny be used in free exercise cases involving land use regulations and institutionalized persons

RLUIPA

- General Rule:

- No government shall impose or implement a land use regulation in a manner that imposes a **substantial burden** on **religious exercise**, unless the government demonstrates a **compelling governmental interest** that is the **least restrictive means** of furthering that interest

RLUIPA

- General Rule

- The general rule applies when the substantial burden affects interstate commerce or when the substantial burden is imposed under a system of land use regulations that involve **individualized assessments**
 - × The individualized assessment aspect includes zoning regulations that allow for variances or special permits
 - × Some courts have also found land use regulations to affect interstate commerce

Lack of Definitions

- What is “religious exercise”?
- What is a “land use regulation?”
- What is a “substantial burden”?
- What is a “compelling governmental interest?”

Substantial Burden: Will we ever agree?

- **Only one trend is clear: the facts of the case ultimately control the court’s ruling.**
- Michigan Supreme Court: a complete and total exclusion of religious activity within the city.
- Michigan Federal Courts: government action that places substantial pressure on claimant that violates religious beliefs or effectively bars a church from using its property.
 - something more than exclusion from a particular piece of property, but something less than total exclusion

More Substantial Burdens

- A third approach focuses more on the *government's treatment* of the religious applicant than on resulted coercion or on availability of alternatives.
- The 1st, 2nd, 7th, 9th, and 10th Circuits: “*delay, uncertainty and expense*” of multiple land use applications.
- 5th Circuit: relevant inquiry is not whether government burdens religious free exercise, but whether the regulations substantially burden a *specific religious practice*.

Examples

- a denial of a church's application for a conditional use permit when it forecloses a church from any *church* use of its property. (CA)
- a prohibition limiting the number of worshippers at prayer meetings when it requires "turning people away." (CT)
- the denial of special use permit to finish the fourth floor of a building was, but denying an expansion of parking was not. (TX)

**The Face of a RLUIPA case:
CSBC agreed to buy a Wal-Mart
Zoning permitted church use**



**Religious Uses are Not Immune
from Land Use Regulation**



- **RLUIPA “does not provide religious institutions with immunity from land use regulation....In many cases, real property is used by religious institutions for purposes that are comparable to those carried out by other institutions...this alone does not automatically bring these activities within [RLUIPA’s] definition of ‘religious exercise.’” Joint Statement of Senators Hatch and Kennedy, 146 Cong. Rec. S7776**



- City rezones land to exclude religious assembly but allows secular assembly.
- City files a “nuisance” suit against Church asking the Court to preclude the Church from “entering, occupying or using” the building.

Church secures a Temporary Restraining Order
and case settled 8 months later.



If There is a “Substantial Burden” Has the Church Won?

- No, even if a land use regulation constitutes a substantial burden on religious exercise, it is permissible if it furthers:
 - a *compelling government interest AND*
 - by the *least restrictive means possible*
- Once substantial burden is proven, the burden shifts to the government to make the above showing

How Compelling is “Compelling”?

- Most Popular: Public Safety and Health
 - MERE SPECULATION, not compelling.
 - Need **specific evidence** that religious practices jeopardizes City’s stated interests.
 - Does the religious conduct truly undermine any of the city's interests?

Under RLUIPA Cannot “Totally Exclude”

- RLUIPA prohibits a government from totally excluding a religious assembly from the jurisdiction

EQUAL TERMS

- RLUIPA also prohibits government from treating a religious use on less than equal terms with similar nonreligious uses and from otherwise discriminating on the basis of religion
- The Equal Terms aspect of RLUIPA operates independently of the General Rule:
 - **NO substantial burden required**

What type of uses are “equal”?

- Uses where "groups or individuals dedicated to similar purposes- whether social, educational, recreational, or otherwise- can meet together to pursue their interests."
 - Private parks
 - Playgrounds
 - Recreation Centers
 - Funeral Homes
 - Lodges
 - Dance Halls
 - Auditoriums

Is RLUIPA Constitutional?

- The Supreme Court held that RLUIPA is constitutional as applied to institutionalized persons in *Cutter v. Wilkinson* (544 U.S. 709, 2005)

Arguments used Against Religious Land Use Applicants

- No requirement to pay property taxes.
- Churches deplete public resources.
- Churches take up valuable space of prime real estate.
- Prejudice against religious denominations.



Arguments used For Religious Land Use Applicants

- Religion provided moral foundation for success of self-government.
- American experiment would not succeed without the moral training by churches.



Summary of Social Benefits



- **Diverse positive impacts on communities:**
 - increased trust
 - improved mental and physical health
 - decreased crime
 - enhanced levels of volunteering and community outreach
- **These attributes build norms and values that encourage political stability and economic performance in the community.**

Why is RLUIPA needed?

- **Levels the playing field**
- **Imparts judicial deference to local land use regulators whose highly discretionary decisions compel review.**
- **Religious discrimination in local land use decision-making is real, prevalent and needs to be addressed.**



Nine Years After RLUIPA

- Floodgates have opened on litigation
- Local governments find that religious institutions are challenging zoning laws
- Help from well-funded allies

What is Next with Religious Land Use?

- Constantly Defining “substantial burden”
- Understanding the remedy: What kind? Who pays?
- Pursuing RLUIPA cases:
 - Determination of new administration’s focus
 - Involvement of the Department of Justice