



# Religious Land Use and Institutionalized Persons Act (RLUIPA)

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June 9, 2016

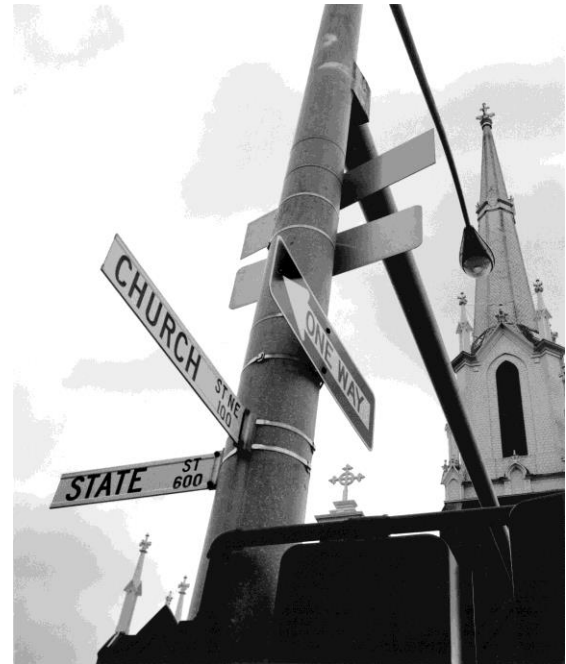


# RLUIPA

RLUIPA is a law designed to protect religious assemblies and institutions from zoning and historic landmark laws that substantially interfere with the assemblies' and institutions' religious exercise. It also protects individuals and religious institutions, including churches, mosques, and synagogues, in their use of land and buildings for religious purposes.

# RLUIPA Claims

- Substantial Burden
- Equal Terms
- Nondiscrimination
- Exclusions and Limitations



# Land Use Regulation

- “[A] zoning or landmarking law, or the application of such a law, that limits or restricts a claimant’s use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.”

# Religious Exercise

- “The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.”

# 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 on that person, assembly, or institution—

**(A)** is in furtherance of a compelling governmental interest;  
and

**(B)** is the least restrictive means of furthering that compelling governmental interest

“Substantial burden” is not defined in the statute or by the United States Supreme Court.

# “Substantial Burden” on Religious Exercise Examples

- A regulation that puts substantial pressure on the religious organization to modify its behavior
- A regulation that places a “significantly great” restriction or onus on the exercise of religion
- An unreasonable delay by a city during the approval process
- Conditions attached to zoning approval
  - City agreed to zoning approval so long as the applicant purchased fire trucks for the city.

# Compelling Government Interest

After the plaintiff establishes that the regulation places a substantial burden on religious exercise, the burden shifts to the governmental entity to show a compelling governmental interest.



# Compelling Governmental Interest Examples

- Plaintiff wanted year-round Bible camp in a residential-zoned district
  - The court held that the county had a compelling interest in preserving the rural and rustic character of the district
- Religious-based homeless shelter. The city modified the zoning to require a CUP to continue, and the city denied the CUP
  - Although the court found substantial burden on the exercise of religion, the court also found a compelling interest in the city promoting public safety and preventing crime

# Equal Terms

- No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.
- Substantial burden is not an element

# Different Tests Applied by Courts to Determine Inequality

- Dictionary Test (11<sup>th</sup> Circuit)
  - The court focused on dictionary definitions of “institution” and “assembly”
  - Broad, church friendly test
- Regulatory Purpose Test (3<sup>rd</sup> Circuit)
  - The court held that the purpose of the regulation must be analyzed to determine if the secular and non-secular uses are sufficiently similar
- Accepted Zoning Criteria Test (7<sup>th</sup> Circuit)
  - There was no equal terms violation when churches were an excluded use from commercial districts, but so were other noncommercial assemblies, such as exhibit halls, clubs, and homeless shelters
  - There was an equal terms violation when churches were excluded from commercial districts but auditoriums, community centers, art galleries, civic centers, libraries and museums were allowed uses

# Nondiscrimination

- “No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.”



# Nondiscrimination

- Little case law
- Elements of a nondiscrimination claim differ little, if at all, from an equal terms claim
- Must present evidence of *intentional or purposeful discrimination* by the City because of Plaintiff's religious denomination
- Motivated by a discriminatory purpose

# Nondiscrimination

- Two Ways to Prove

- 1) **Direct Evidence**

- The rare discriminatory email or remark.
    - “Only the most blatant remarks, the intent of which could be nothing other than to discriminate on the basis of some impermissible factor constitute direct evidence of discrimination.”

- 2) **Circumstantial Evidence**

- Courts consider a variety of factors

# Exclusions and Limits Provision

- No government shall impose or implement a land use regulation that—
  - (A) ***totally excludes*** religious assemblies from a jurisdiction; or
  - (B) ***unreasonably limits*** religious assemblies, institutions, or structures within a jurisdiction.



# Exclusions and Limits Provision

- Prevents government from adopting policies that make it difficult for religious institutions to locate anywhere within the jurisdiction.
- Focus is not on the treatment of a particular landowner, but religious entities in general.
- Two Types:
  - 1) Total Exclusion
  - 2) Unreasonably Limits
    - Government could *reasonably* limit religious organizations in a way that does not run afoul of this provision.
    - Reasonableness is determined “in light of all the facts, including the actual availability of land and the economics of religious organizations.”



# Remedies to Religious Organization

- Allowed “appropriate relief”
  - 1) Damages
    - Against City, not individual city officials
  - 2) Injunctive Relief
  - 3) Declaratory Relief
  - 4) Attorney’s Fees

**QUESTIONS?**