

Land Use Decisions

Under the Religious Land Use and Institutionalized Persons Act of 2000



A Guide to RLUIPA

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**LAND USE DECISIONS UNDER THE
RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000
*A Guide to RLUIPA***

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United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 21C. Protection of Religious Exercise in Land Use
and by Institutionalized Persons
§ 2000cc. Protection of land use as religious exercise
(with *emphasis* and *highlights* added)

a) Substantial burdens

(1) General rule

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.

(2) Scope of application

This subsection applies in any case in which--

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) 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.

(2) 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.

(3) Exclusions and limits

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.

RLUIPA Questions and Answers

Q: Are churches and other religious organizations immune from land use regulation under RLUIPA?

A: No.

Land use regulations will still presumably apply to all religious uses. A land use regulation poses a problem under RLUIPA only if it discriminates against religion or places a substantial burden on a sincere religious activity or belief. Even then, a burden placed on religion may be supported by a compelling governmental interest. If the regulations are the least restrictive means of furthering that interest, they will hold up under RLUIPA.

Q: What constitutes a substantial burden on the exercise of religion?

A: “Substantial burden” is not defined in RLUIPA. Courts have defined the term in a variety of ways, most of which are difficult to apply to land use decisions in the real world.

See case law excerpts discussing “substantial burden” on the exercise of religion, attached.

Q: What types of regulations are based on a “compelling governmental interest?”

A: It depends on the circumstances.

Regulations based on legitimate health and safety concerns will most likely be found as furthering a compelling governmental interest. For example, construction within floodway areas is generally prohibited. Few people would argue that this prohibition should not apply to religious facilities in addition to any other types of structures. Similarly, other regulations aimed at structural integrity or fire safety would probably be ruled as in furtherance of compelling governmental interests. Historic preservation and neighborhood compatibility may be less “compelling” reasons for denying the use of property for religious purposes. However, such reasons may be sufficient under some circumstances – for example, when considering a proposal to build a “mega-church” on a small parcel within a residential neighborhood. Several other issues commonly considered when deliberating a site plan, rezoning request, or zoning ordinance amendment may fall within an intermediate category. Such issues may include parking, traffic, noise and environmental concerns. If a proposed use would have a severe impact on traffic, for instance, a compelling interest may be served by denying the proposed use or requiring traffic mitigation measures. In any event, articulated, fact-based reasons are more likely to hold up to challenges, as opposed to vague, generalized concerns. A governmental entity may be particularly vulnerable to challenges if it prohibits religious uses while permitting non-religious uses which would arguably have similar impacts on the surrounding area.

Q: How do we determine the “least restrictive means”?

A: It depends on the circumstances.

Once it is established that a land use regulation or decision is based on a compelling governmental interest, the government still has the burden of showing that it is using the least restrictive means of furthering that interest. In some cases, there is no compromise between allowing property to be put to a certain use and disallowing the use. In other cases, there may be opportunities for persons or organizations to fulfill their religious purposes in ways that still allow communities to preserve neighborhood character and quality of life. For example, some

zoning ordinances allow rezoning to be accompanied by the adoption of restrictions specific to the property. Such restrictions could be aimed at helping a religious use blend into the community, mitigating the impact of the new use on the surrounding area. Additionally, churches and other religious organizations may agree to incorporate lighting restrictions, screening and buffering requirements, architectural design standards and other mitigating features into their site plans.

Q: How should land use decisions involving religious uses be approached in this new environment?

A: With the realization that there is now a heavier burden to justify denial of a religious use or prohibition of a religious activity.

If an RLUIPA challenge is brought, the burden is on the government to prove that the government's action was based on a compelling governmental interest, served by the least restrictive means. Since the passage of RLUIPA, the presumption now is more strongly in favor of allowing a proposed religious use. Before denying a religious use, decision makers should carefully examine their reasons for doing so, and should explore opportunities for allowing the religious use while diminishing any negative effects associated with the use. If a proposed religious use is ultimately denied, or if conditions are attached to its approval, the reasons for the denial or conditions should be clearly articulated.

Q: What local government actions are affected by RLUIPA's land use provisions?

A: Rezoning decisions, site plan reviews, zoning ordinance amendments, zoning variance or exception requests, staff enforcement of the zoning ordinance or any other land use measure that might discriminate against religion or place a burden on the exercise of religion.

Q: In a land use decision, should it make a difference that there may be alternate locations for a church or other religious assembly?

A: It depends on the circumstances, BUT . . .

Some case law suggests the following questions are appropriate:

1. Are there alternative locations in the area that would allow the religious use, consistent with applicable zoning laws?
2. Is there alternative property that is actually available in the area?
3. Would the available property be suitable for the proposed religious use?
4. What would the economic burden be to shift to an alternative location (including the additional expenses involved in starting over with the approval process?)
5. How would the delay in finding and seeking approval for a new site affect the church or other religious assembly?

Q: Why can't our attorney give us a clear answer when we want to know which way to decide a land use issue?

A: There is frequently not a clear answer, since the case law on RLUIPA is still developing.

Normally, in order to determine how a statute might be interpreted in regard to a particular situation, one would examine court decisions rendered in litigation involving the statute. However, there is not yet a conclusive body of case law interpreting RLUIPA because (1)

RLUIPA, having been in effect since 2000, is still a relatively new statute; (2) there has been an abundance of RLUIPA litigation, but the length of time involved in litigation means the final outcome of many lawsuits takes a number of years; (3) many pending cases have not reached the appellate level, and opinions rendered from the district court level carry less precedent outside of that court's jurisdiction; (4) decisions made thus far, in the state courts, federal district courts and federal appeals courts, have been somewhat conflicting; and (5) many cases have been settled out of court at some point in the litigation. The U.S. Supreme Court has not yet decided an RLUIPA case dealing with land use regulations. There are also no reported land use rulings dealing with RLUIPA from the state courts of Tennessee or the Sixth Circuit Court of Appeals, the federal appellate court circuit which includes Tennessee. Much of the more relevant case law is from state courts in other states or federal district courts in other parts of the country and may not have much precedential value. With these factors in mind, it can be a guessing game to determine what a court might do if a land use decision results in litigation.

Q: What else should land use decision makers know about RLUIPA litigation?

A: See below . . .

- If the plaintiff in an RLUIPA lawsuit prevails, the courts may require the defendant to pay the plaintiff's attorney's fees. (Note: A local government's insurance policies may not provide coverage for payment of an adversary's attorney's fees.)
- The United States Department of Justice may bring RLUIPA lawsuits against a governmental entity, or may join in a lawsuit brought by another party (and has done so.)
- Even when outside counsel is used to defend litigation, the discovery process, trial preparation and participation in the trial itself requires an abundance of staff time and resources. Board members and other decision makers may also be called upon as witnesses in depositions and at trial.

What is a “substantial burden” on the exercise of religion?

From *Murphy v. Zoning Com'n of Town of New Milford*, 148 F.Supp.2d 173 (D.Conn.,2001):

The showing required for a “substantial burden” has not been fully articulated by the courts and has been defined in several ways. . . . Congress [in enacting RLUIPA] expressly defined “religious exercise” to include “any exercise of religion, whether or not compelled by, or central to a system of religious belief.” [42 U.S.C. § 2000cc-5\(7\)\(A\)](#). . . . Thus, by not limiting the scope of the Act's protections to the exercise of religious beliefs compelled by or central to a particular faith, Congress now requires that some of the language used by the Supreme Court in discussing “substantial burden[s]” be applied in a broader context.

“Substantial burden” has been defined or explained in various ways by the courts. See [Thomas v. Review Bd. of the Indiana Employment Sec. Div.](#), 450 U.S. 707, 718, 101 S.Ct. 1425, 1432, 67 L.Ed.2d 624 (1981) (exists where state “put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs”); [Sherbert v. Verner](#), 374 U.S. 398, 404, 83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963) (occurs when a person is required to “choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning the precepts of her religion . . . on the other”); [Bryant v. Gomez](#), 46 F.3d 948, 949 (9th Cir.1995) (state action “prevent[s] him or her from engaging in conduct or having a religious experience that is central to the religious doctrine”); [Reese v. Coughlin](#), 1996 WL 374166, *6 (S.D.N.Y. July 3, 1996), quoting [Davidson v. Davis](#), 1995 WL 60732, *5 (S.D.N.Y. Feb.14, 1995) (same). This burden must be more than an inconvenience to the plaintiffs, but the court's “scrutiny extends only to whether a claimant sincerely holds a particular belief and whether the belief is religious in nature.” [Jolly v. Coughlin](#), 76 F.3d 468, 476 (2d Cir.1996). (Emphasis added.)

From *Westchester Day School v. Village of Mamaroneck*, 280 F.Supp.2d 230 (S.D.N.Y.,2003):

District court cases interpreting RLUIPA since its enactment delineate the difference between a “substantial burden” on religious exercise as opposed to an “inconvenience” on religious exercise. Consistent with the Supreme Court's substantial burden test, district courts have concluded that the regulations must have a “chilling effect” on the exercise of religion to substantially burden religious exercise. (Emphasis added.)

From *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752 (7th Cir., 2003):

[I]n the context of RLUIPA's broad definition of religious exercise, a land-use regulation that imposes a substantial burden on religious exercise is one that **necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise** - including the use of real property for the purpose thereof within the regulated jurisdiction generally - **effectively impracticable**. (Emphasis added.)

From *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir., 2004):

[A] “substantial burden” **must place more than an inconvenience on religious exercise**; a “substantial burden” is **akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly**. Thus, a substantial burden can result from **pressure that tends to force adherents to forego religious precepts** or from **pressure that mandates religious conduct**. (Emphasis added.)

From *Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 326 F.Supp.2d 1140, (E.D.Cal., 2003):

It is easy to identify these general principles, as explained by the appellate courts [in regard to “substantial burden”]; **it is far more difficult to discern what they mean in the real world or apply them to real facts**. . . . To meet the “substantial burden” standard, the governmental conduct being challenged **must actually inhibit religious activity in a concrete way, and cause more than a mere inconvenience**.

Some factors to consider in regard to rezonings and other land use decisions related to religious assemblies:

In deliberating a proposed rezoning or other land use decision for a religious assembly, a number of factors should be considered. Denial of a request to use property for a religious assembly or the placement of conditions of approval may be shown to pose a substantial burden on the exercise of religion under RLUIPA. Such a denial or such conditions should be based on a compelling governmental interest, which should be pursued using the least restrictive means. The list below is not intended to be exhaustive by any means, but is a sampling of the types of factors that might be taken into account.

Existing facilities:

- Does the religious assembly currently have a home?
- Does it meet the assembly's needs?

Alternative sites:

- Are there alternative sites that are available?
- Are these sites more or less likely to meet opposition?
- What advantages or disadvantages would these sites have over the proposed site?
- Is it feasible for the religious assembly to consider locating at any of these sites?

Character of the neighborhood:

- How are the adjacent and nearby properties used?
- How would the neighborhood be affected by the religious assembly?
- What are the religious assembly's future growth plans?
- How can the impact on the neighborhood be minimized?
- Are there nonreligious uses in the same area that arguably have a similar impact?

Traffic/parking:

- Are there reliable estimates of the traffic that will be generated by the proposed religious use?
- Are the roads that will be used by the proposed religious use sufficient to handle the estimated traffic?
- Can improvements be made to mitigate the effects of the estimated traffic? Are plans already in place to improve area roads in the future?
- Can services and other activities conducted by the religious assembly be timed so as to minimize traffic conflicts?
- Can the site of the proposed use accommodate foreseeable parking needs? If not, is there sufficient off-site parking?
- If the proposed site were used for other purposes consistent with current zoning, what would be the comparative impact on traffic?

SELECTED RLUIPA CASE LAW SUMMARIES

Validity of zoning ordinance:

1. CIVIL LIBERTIES FOR URBAN BELIEVERS V. CITY OF CHICAGO - Association of area churches and five individual churches sued city, challenging ordinance requiring special use approval to operate in commercial and business areas and limiting operation in manufacturing areas. In 2003 decision, 7th Circuit Court of Appeals held ordinance did not impose “substantial burden” on religious exercise within meaning of RLUIPA. Plaintiffs had argued that scarcity of available, affordable land, along with costs, procedural requirements and political aspects imposed a substantial burden. Court found that “these conditions - which are incidental to any high-density urban land use - do not amount to a substantial burden on religious exercise. While they may contribute to the ordinary difficulties associated with location (by any person or entity, religious or nonreligious) in a large city, they do not render impracticable the use of real property in Chicago for religious exercise, much less discourage churches from locating or attempting to locate in Chicago.” Each of the five individual churches had ultimately located elsewhere within Chicago. “That they expended considerable time and money so to do does not entitle them to relief under RLUIPA’s substantial burden provision. . . . Otherwise, compliance with RLUIPA would require municipal governments not merely to treat religious land uses on an equal footing with nonreligious land uses, but rather to favor them in the form of an outright exemption from land-use regulations. Unfortunately for Appellants, no such free pass for religious land uses masquerades among the legitimate protections RLUIPA affords to religious exercise.” 342 F.3d 752, 7th Cir., 2003.
2. VINEYARD CHRISTIAN FELLOWSHIP OF EVANSTON, INC. V. CITY OF EVANSTON – Church congregation rented space from high school for Sunday morning services, and leased other facilities for baptisms, weddings and funerals. Church had made a significant effort to find alternate properties, and in 1997 purchased the subject property, located in an O1 District, despite its knowledge that the use it intended for the property was not permitted under the Evanston, Illinois zoning ordinance. Church used subject property for administrative purposes. City rejected church’s proposal to amend zoning ordinance to allow church to relocate to the property. Federal district court held in 2003 that although the church had undoubtedly suffered hardships, the Evanston ordinance did not constitute a substantial burden on the exercise of religion. (However, court held that ordinance’s prohibition of religious institutions from conducting worship services within district, while allowing cultural and membership organizations to operate in district violated Equal Protection Clause and Illinois State Constitution; and that church congregation’s rights to free speech and assembly rights were violated by zoning ordinance.) 250 F.Supp.2d 961, N.D. Ill., 2003.

Denial of variance/permit/rezoning for church/synagogue/temple

1. DILAURA v. ANN ARBOR CHARTER TOWNSHIP - Representatives of a Catholic lay organization in Michigan were denied a variance they sought to use a large house as a religious retreat. The district court dismissed the subsequent lawsuit, but in 2002 the dismissal was reversed by the Sixth Circuit Court of Appeals, which ruled that the plaintiffs properly stated a claim under RLUIPA because the zoning ordinance prohibited all but residential uses on the property. The case was sent back to the district court for further proceedings. A bed-and breakfast permit was later issued by the township, but

included restrictions which would substantially limit the plaintiff's intended use of the property. On the second appeal, in 2004, the Court of Appeals held that the permit's restrictions violated RLUIPA. (Note: As Tennessee lies within the Sixth Circuit, this case would presumably establish precedence for a case brought in federal court in Tennessee. However, the court has chosen to keep the case from being published and pursuant to rule 28 (g) has limited precedential value) *30 Fed. Appx. 501, 6th Cir., 2002; 112 Fed. Appx. 445, 6th Cir., 2004.*

2. HALE O KAULA v. MAUI PLANNING COMMISSION - A congregation affiliated with the Fellowship of the Living Word outgrew the one-half acre site it had occupied since 1960, and bought six acres of agricultural land. The church planned to construct new worship facilities on the land, in addition to using it for agricultural purposes in conjunction with its ministries. The Maui Planning Commission denied the church permission to add a second story to an existing agricultural facility to be used for worship services. In its denial, the Planning Commission declined to consider the implications of RLUIPA on the advice of its attorney. The U. S. Department of Justice filed a separate complaint against Maui County, alleging violations of RLUIPA. After three years of litigation, the parties entered into a settlement in 2004, under which a special use permit was issued to the church with various negotiated conditions. *229 F.Supp.2d 1056, D. Hawaii, 2002.*
3. MIDRASH SEPHARDI, INC. V. TOWN OF SURFSIDE - Two Orthodox Jewish synagogues sued small Miami-area town, alleging that zoning ordinance excluding churches and synagogues from business district, where private clubs and lodges were permitted, violated RLUIPA. Plaintiffs claimed that forcing them to move outside business district would require congregants to walk further, greatly burdening those who were ill, young or very old. (Their religion forbade the use of cars or other transportation during the Sabbath and religious holidays.) 11th Circuit Court of Appeals held in 2004 that there was not a "substantial burden" since the congregations had the alternative of applying for a permit to operate only a few blocks away, outside of the business district. "While walking may be burdensome and 'walking farther' may be even more so, we cannot say that walking a few extra blocks is 'substantial,' as the term is used in RLUIPA." In a footnote, the Court also states: "That the congregations may be unable to find suitable alternative space does not create a substantial burden within the meaning of RLUIPA." However, town's zoning ordinance violated RLUIPA by permitting private clubs and other secular assemblies in the business district, so that religious uses were not on equal footing with non-religious uses. *366 F.3d 1214, 11th Cir., 2004.*
4. THE WILLIAMS ISLAND SYNAGOGUE v. CITY OF AVENTURA - Synagogue claimed that certain problems under Jewish law were caused by its existing location and sought to alleviate these problems by relocating to a party room that was designated as an accessory use to a residential building. The building, however, was located in a zoning district that allowed churches, synagogues, and other houses of worship only by conditional use permit (CUP.) The synagogue sued when the city denied its application for a CUP. The federal district court in Florida found that no reasonable trier of fact could conclude that the problems identified by the synagogue amounted to "substantial burdens" imposed on religious beliefs within the meaning of RLUIPA. The court found that the problems could either be solved at the synagogue's current location or amounted to distractions that were not actionable. The synagogue's disparate treatment claim under RLUIPA failed because it was treated on equal terms with nonreligious institutions which were also required to submit conditional use permit applications before operating in the Multifamily High Density Residential District. The district court's decision was affirmed without issuance of an opinion by the Eleventh Circuit Court of Appeals (144 Fed. Appx. 857, 11th Cir., 2005.) *358 F. Supp. 2d 1207, S.D. Fla., 2005.*

5. VISION CHURCH, UNITED METHODIST v. VILLAGE OF LONG GROVE – A Korean-American congregation of United Methodists sought to build a new church in the northwest suburbs of Chicago. The proposed church site was annexed by Long Grove, which subsequently passed zoning ordinance provisions that would limit the church to 55,000 square feet. The church wanted to build a 99,000 square foot facility. Supporters of the church accused Long Grove of using issues such as traffic and density to justify discrimination against the church. In 2005, the federal district court found that the petitioner, Vision, did not incur a “substantial burden” for purposes of RLUIPA. Under the Village’s Public Assembly Ordinance, Vision would have been able to build a 55,000 square-foot facility on the property. Ultimately, it was the church, not the Village, that made the final determination not to build the church and surrounding buildings. Vision refused to comply with the Village’s zoning standards, and failed to submit an application that complied with the Public Assembly Ordinance. The court held RLUIPA does not guarantee that a religious organization may build a complex as large as that organization desires. A municipality can control growth and expansion within its city limits. Limiting Vision’s development did not “substantially burden” the church in the practice of its religion. It simply placed limitations on the size of a church that could be built on the 27.4 acre parcel. The case is now under appeal at the 7th Circuit Court of Appeals. *397 F. Supp. 2d 917, N.D. Ill., 2005.*
6. STS. CONSTANTINE AND HELEN GREEK ORTHODOX CHURCH, INC. V. CITY OF NEW BERLIN – Greek Orthodox congregation in Wisconsin was denied rezoning to build church on 14 acres of 40 acre tract it owned. In 2005 decision, 7th Circuit Court of Appeals held that church did not have to show that there was no other parcel of land on which it could build. Court ruled that the burden placed on the church was substantial, finding: “The Church could have searched around for other parcels of land (though a lot more effort would have been involved in such a search than, as the City would have it, calling up some real estate agents), or it could have continued filing applications with the City, but in either case there would have been delay, uncertainty, and expense.” The fact that the burden could have been overcome did not mean it was insubstantial. *396 F.3d 895, 7th Cir., 2005.*
7. THE LIGHTHOUSE INSTITUTE FOR EVANGELISM v. CITY OF LONG BRANCH – Petitioner sought a variance to provide social services and conduct worship services in a building within an area of the city that had been zoned for commercial development. A redevelopment plan had been adopted for the area. In 2005, the federal district court in New Jersey found that the city’s denial was not a substantial burden because there were other lots available in 90% of the municipality. Rejecting the lot in question did not amount to a substantial burden under RLUIPA. The case is now on appeal to the Third Circuit Court of Appeals. *406 F. Supp. 2d 507, D. N.J., 2005.*
8. HOUSE OF FIRE CHRISTIAN CHURCH v. ZONING BOARD OF ADJUSTMENT OF THE CITY OF CLIFTON and THE CITY OF CLIFTON – In this New Jersey state court case, the church purchased property located in an area zoned for residential use, but which permitted a house of worship as a conditional use. The church applied to the zoning board seeking variance relief. While the application was being considered, the city amended a zoning ordinance in regard to rear yard setbacks and, as a result, the church’s proposed plan did not meet certain requirements necessary for its approval. Thereafter, the zoning board voted to deny the church’s application. The trial court invalidated the amendment to the zoning ordinance and determined that the city violated RLUIPA. The appellate court found there was a valid reason for amending the ordinance while the church’s application was pending, and said it could not conclude that requiring the church to comply was “anything more than an inconvenience.” The church’s application was to be remanded to the Zoning Board for further consideration, but there

- was not sufficient justification to conclude that the City violated RLUIPA. 379 N.J. Super. 526; 879 A.2d 1212, 2005.
9. CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS v. CITY OF WEST LINN - The church sought to build a meetinghouse on a tract that was zoned residential. The city commission denied the application for a permit, stating that the application did not satisfy City's Community Development Code. The issue was whether the denial of the permit constituted a substantial burden on religious exercise. The Oregon Supreme Court held that while the denial had several adverse consequences for the effort to build a meetinghouse, any hardships did not constitute "substantial burdens" under the RLUIPA. The church had indicated that it could acquire more land and the expenses associated with submitting a new application to address the City's concerns did not constitute a substantial burden. There was no evidence in the record to suggest that the crowded conditions at the meetinghouse had forced the church to turn away anyone who wished to attend church or to eliminate or reduce church activities. Nor was there any evidence in the record to suggest that the city's denial was motivated by religious animus. Court concluded that "a government regulation imposes a substantial burden on religious exercise only if it 'pressures' or 'forces' a choice between following religious precepts and forfeiting certain benefits, on the one hand, and abandoning one or more of those precepts in order to obtain the benefits." In short, nothing in the record suggested that requiring the church to submit a new application would pressure the church to forgo or modify the expression of a religious belief. 338 Ore. 453, 111 P.3d 1123, 2005.
 10. PETRA PRESBYTERIAN CHURCH v. VILLAGE OF NORTHBROOK – The church bought land in an industrial park for the purpose of conducting its services and other activities. The industrial park, however, was zoned for industrial uses and not for any religious uses. The church sought to change the zoning, but the only change that was eventually made was to restrict all membership organizations, including those affiliated with businesses as well as churches. The church claimed that the village's zoning code violated its First Amendment rights. However, its claims were all based on the zoning regulation before it was changed, and therefore any injunctive relief was moot. As to the church's RLUIPA claims, the federal district court held that the church failed to show that the zoning laws created any substantial burden. There was other land available in the municipality where a church could be built. Moreover, the village corrected any problems in the earlier zoning laws that treated religious assemblies less favorably. 409 F. Supp. 2d 1001, N.D. Ill., 2006.
 11. PRIMERA IGLESIA BAUTISTA HISPANA OF BOCA RATON, INC. V. BROWARD COUNTY – Primera, a Hispanic congregation affiliated with Southern Baptist Convention, purchased property in A-1 Agricultural Estate district. Churches were allowed in district, subject to 1,000 foot separation requirement between nonagricultural, nonresidential uses. Property purchased by Primera did not meet this requirement, and County denied variance requests, finding variance would not be in harmony with the community and would create traffic to the detriment of the public welfare. Primera alleged that it was treated on "less than equal terms with a nonreligious assembly or institution" in violation of RLUIPA, because the County had rezoned nearby property for a private secular school. Court of Appeals held that rezoning granted to school and variance sought by church were two separate types of zoning decisions, and there was no basis for comparison or allegation that Primera received less than equal treatment. "The bottom line . . . is that RLUIPA's Equal Terms provision requires equal treatment, not special treatment." 450 F.3d 1295, 11th Cir., 2006.
 12. HOLLYWOOD COMMUNITY SYNAGOGUE V. CITY OF HOLLYWOOD, FLA. – U.S. District Court for the Southern District of Florida ruled against City of Hollywood, Florida

for its decision to shut down small Orthodox synagogue in a residential area. One of the reasons given by the City Commission for denying an extension of a special exception which had allowed the synagogue to operate was that the synagogue was too “controversial.” Court found that City's zoning ordinance conferred “unbridled discretion” on City officials in violation of the Free Speech Clause of the First Amendment. Court ordered that synagogue be granted a permanent special exception to remain in its residential location, and also ordered City to enact a new special exception ordinance with “narrow, objective and definite standards.” (Court did not reach the synagogue's RLUIPA claims.) Court's opinion concludes as follows: “[T]he Court recognizes that the City of Hollywood has a substantial interest in preserving the quality of urban life in its neighborhoods. Moreover, the Court accords great respect for the City's interest in protecting the character and nature of neighborhoods in which single-family, detached dwellings predominate and in furthering the ability of its residents to engage in the quiet and peaceful enjoyment of their property. However, the City of Hollywood, through its officials, is also charged with the protection of the religious freedoms that are found in the First Amendment and that form the cornerstone of American democracy. Zoning regulations that affect those freedoms must therefore be precise and objective in both their terms and their application. Our Constitution and our love of liberty demand no less.” *436 F. Supp. 2d 1325, 2006 WL 1825004, S.D. Fla., 2006.*

13. GURU NANAK SIKH SOCIETY OF YUBA CITY V. COUNTY OF SUTTER – Plaintiffs were denied conditional use permit to build Sikh temple (which would hold ceremonies for no more than 75 people at a time), first on 1.9 acres site zoned for large lot residential use, then a second time on 28+ acre agriculturally zoned site. Staff report had recommended approval, subject to various mitigating conditions, but both permits were denied amidst neighborhood concerns. Plaintiffs had agreed to all conditions, but County, “without explanation, found such cooperation insufficient.” Stated reasons for first denial included traffic and noise concerns, while reasons given for second denial included a desire to avoid “leapfrog development.” Federal district court in California held in 2003 that County’s actions had an inhibiting effect on Plaintiff’s ability to practice its religion and constituted a “substantial burden.” Court of Appeals affirmed in 2006, viewing the two permit denials together, and finding history behind the two applications, along with the reasons given for denial, significantly lessened the possibility that any future applications would be successful. RLUIPA was violated, as no compelling interest was established by County. Court also holds “RLUIPA is constitutional because it addresses documented, unconstitutional government actions in a proportional manner.” *456 F.3d 978, 2006 WL2129737, 9th Cir., 2006.*

Church operated day care:

1. GRACE UNITED METHODIST CHURCH v. CITY OF CHEYENNE - In 2003, a jury in Wyoming found for the City of Cheyenne and its codefendants in this RLUIPA lawsuit. The church had planned to build a day care center, with a component of religious instruction, in a low-density residential neighborhood. The zoning for the property allowed churches, but not day care facilities. The jury ruled in favor of the City in regard to the church’s RLUIPA claims and the court found the church failed to show that its “operation of a day care center was a sincere exercise of religion.” The church was permanently enjoined from using its property as a day care center. On appeal in 2005, the U.S. Court of Appeals for the Tenth Circuit affirmed the lower court decision. In June, 2006, after the church petitioned for a rehearing, the Court of Appeals vacated its original opinion, and issued a revised opinion with minor changes. The jury verdict on

the church's RLUIPA claims was still affirmed in the 2006 opinion. *427 F.3d 775, 10th Cir., 2005.*

Religious schools:

1. LIVING WATER CHURCH OF GOD v. CHARTER TOWNSHIP OF MERIDIAN – The plaintiff sought to build an addition to a church to accommodate a school that was currently in another location. The township would allow an addition of 14,000 square feet but not the requested 35,000 square feet. Other than the requested zoning exception, the facility complied with all city ordinances (including safety regulations, setbacks, etc). In 2005, the federal court for the Western District of Michigan found that: (1) the church's operation of the proposed facility for a religious oriented school and for other ministries of the church constituted the “exercise of religion” protected by RLUIPA; (2) the denial of church's application imposed a substantial burden on the church's religious exercise; and (3) the denial of the church's application did not further a compelling township governmental interest and was not the least restrictive means of achieving any interest the township did have. Church was a small church with limited funds, and would incur delay, expense and uncertainty if it was required to reapply or search for another site. This case is now on appeal to the Sixth Circuit Court of Appeals, and could form the basis for the Sixth Circuit's adoption of a definition of “substantial burden.” *384 F. Supp. 2d 1123, W.D. Mich., 2005.*
2. WESTCHESTER DAY SCHOOL v. VILLAGE OF MAMARONECK - Orthodox Jewish school claimed that village's denial of permit to construct new building and renovate existing buildings on its campus violated RLUIPA by restricting school's exercise of religion. Plaintiff claimed that the purpose of a new school, to pursue prayer and Jewish studies, was “religious exercise” protected by RLUIPA. Plaintiff alleged that existing facilities were inadequate and therefore RLUIPA mandated that permit denial is a “substantial burden”. In September, 2004, Second Circuit Court of Appeals overturned summary judgment for school granted by district court and found that village's action implied that it "did not purport to pronounce the death knell of the School's proposed renovations in their entirety, but rather to deny only the application submitted, leaving open the possibility that a modification of the proposal, coupled with the submission of satisfactory data found to have been lacking in the earlier proceedings, would result in approval." Furthermore, “rejection of a submitted plan, while leaving open the possibility of approval of a resubmission with modifications designed to address the cited problems, is less likely to constitute a “substantial burden” than definitive rejection of the same plan.” Because a finding of complete denial by village was essential to proving “substantial burden,” Court of Appeals reversed the lower court's summary judgment and remanded case to district court. *386 F.3d 183, 2nd Cir., 2004.*
3. WESTCHESTER DAY SCHOOL v. VILLAGE OF MAMARONECK – Same facts as above; on remand federal district court held trial and ruled in school's favor in March, 2006, allowing school the right to expand its campus as proposed. Court held Village's denial of permit special permit "substantially burdened" the school's religious exercise without proving "a compelling government interest." Opinion stated zoning board was "under intense and unrelenting pressure from politically well-connected neighboring residents," when it voted 3-2 to deny the school a building permit. School subsequently announced it would seek more than \$5 million in damages for attorney's fees and construction delays. District court reserved decision on awarding damages and attorney's fees, pending further appeal to the Second Circuit Court of Appeals. *417 F. Supp. 2d 477, S.D. N.Y., 2006.*

Hospitals/assisted living centers:

1. SISTERS OF ST. FRANCIS HEALTH SERVICES v. MORGAN COUNTY, INDIANA - Private hospital operated by a religious order in furtherance of its mission to heal the sick brought facial challenge to county ordinance imposing first a limited moratorium and then a county approval requirement on hospital construction in the county. The petitioners in this case failed to petition for an exception to the moratorium or approval of a post-moratorium expansion. The federal court for the Southern District of Indiana found in 2005 that the county had not placed a substantial burden on the hospital by requiring it to apply for an exception or a post-moratorium approval. RLUIPA does not grant churches a blanket exemption from zoning laws. The court did not reach the question of whether the hospital expansion would amount to a “religious exercise” under RLUIPA. *397 F. Supp. 2d 1032, S.D., Ind., 2005.*
2. THE GREATER BIBLE WAY TEMPLE OF JACKSON v CITY OF JACKSON, JACKSON PLANNING COMMISSION, and JACKSON CITY COUNCIL – This is a state court of appeals case in Michigan. Plaintiff temple was denied rezoning of its land for purposes of constructing an assisted living center for elderly and disabled people. The trial court entered a judgment for the temple. On appeal, the defendants argued that RLUIPA did not apply because an assisted living complex was not an exercise of religion. The court of appeals disagreed, finding that the assisted living complex constituted an exercise of religion for purposes of RLUIPA because the pastor and founder of the temple averred that providing housing to the elderly and disabled was central to the temple's ministry. The refusal to rezone was a substantial burden on that exercise and was not justified by a compelling governmental interest with regard to safety through traffic regulation, blight prevention, or urban sprawl prevention. Enforcing RLUIPA in this context did not violate the 14th Amendment or the Establishment Clause of the U.S. Constitution. Case is under appeal to the Michigan Supreme Court. *268 Mich. App. 673; 708 N.W.2d 756, 2005.*

Campground/hiking trails:

1. CITY OF HOPE v. SADSBURY TOWNSHIP ZONING HEARING BOARD AND SADSBURY TOWNSHIP – In a state court case from Pennsylvania, church bought property to build a worship center and sought zoning approval for various accessory uses. Board approved all proposed uses except a campground and hiking trails. Trial court affirmed board's ruling, and church appealed. It argued several state law issues and that church had rights under RLUIPA. The court found that board's refusal to approve a campground and hiking trails was not a substantial burden on church's exercise of religion, so RLUIPA did not apply. Neither church nor its visitors would be required to forego or modify the exercise of their religion. Other campsites nearby were available for use by church's visitors. *890 A.2d 1137, Pa. Cmwlth., 2006.*

Religious assemblies in homes:

1. MURPHY v. ZONING COMMISSION OF THE TOWN OF NEW MILFORD – In 1994, the Murphys began holding weekly prayer meetings at their home in Connecticut after Mr. Murphy became ill. The size of the meetings varied, but there were never less than 10 to 12 attendees. Eventually, neighbors complained about traffic and parking concerns. In December, 2000, the town government issued a cease and desist order charging the Murphys with violations of zoning regulations governing the single-family district. The federal district court barred the town from enforcing its cease and desist order, and

found that the application of the zoning ordinance to prohibit the Murphys' prayer meetings violated RLUIPA. The court held in 2001 that the protection of aesthetics and traffic safety was a compelling governmental interest, but that the town failed to show that its enforcement action was the least restrictive means for furthering that interest. In subsequent case history (402 F.3d 342), this case was vacated and remanded on procedural grounds in 2005, as the United States Court of Appeals for the Second Circuit found that the issue in the case was never ripe. (Cease and desist order couldn't be enforced through fines/imprisonment until legal proceeding was filed. Appeal of order could have been filed with ZBA to stay its enforcement.) *148 F.Supp.2d 173, D. Conn., 2001*

2. KONIKOV V. ORANGE COUNTY, FLA. – Rabbi who held two to three weekly meetings of a religious nature in his home was prosecuted by codes officers and fined for violating code provisions which prohibited “religious organizations” in homes unless a special exception was applied for and granted. Court of Appeals noted that other groups could meet with the same frequency (such as cub scouts, for example) and would not violate the County Code, as long as religion was not discussed. By treating religious assemblies on less than equal terms than nonreligious assemblies, the County violated RLUIPA. *410 F.3d 1317, 11th Cir., 2005.*

Validity of parking regulations under RLUIPA:

1. TOWN OF FOXFIELD V. ARCHDIOCESE OF DENVER - Church rectory and a small chapel were on a 2.5 acre lot in Colorado, adjacent to a 28.3 site which held the sanctuary and other buildings. Rectory was used for religious instruction and other gatherings. Town passed parking ordinance which prohibited parking more than five vehicles for more than 15 minutes within 1,000 feet of residential property on more than two occasions during any 30 day period. Ordinance was enforceable only if at least three persons from separate households within 1,500 feet complained. Church argued that parking ordinance violated RLUIPA. Trial court held RLUIPA did not apply, but state appeals court reversed and remanded case to trial court for further determination as to whether the ordinance violated RLUIPA. Court also found that enforcement of the parking ordinance was left to the whim of the Town's citizens, and that there was ample evidence to suggest the ordinance was passed specifically to target parking on the rectory's property. Accordingly, the ordinance should have been reviewed by the trial court with strict scrutiny to determine if it was constitutional. --- *P.3d ---, 2006 WL 2291160, Colo. App., 2006.*

Eminent domain/street construction:

1. FAITH TEMPLE CHURCH v. TOWN OF BRIGHTON - Religious congregation in New York brought action against town, seeking to enjoin town from obtaining adjacent parcel of land through eminent domain. Town moved for partial summary judgment. The federal district court held in 2005 that town's eminent domain proceedings did not constitute “land use regulation” for purposes of RLUIPA. *405 F.Supp.2d 250, W.D.N.Y., 2005.*
2. PRATER V. CITY OF BURNSIDE, KY. – Church owned two lots. Long before church's ownership, right-of-way had been dedicated for extension of city street between the two lots. After church acquired the lots, City's plans to extend street interfered with church's plans to build on the two lots. Sixth Circuit Court of Appeals held that City's actions were not a land use regulation under RLUIPA. *289 F.3d 417, 6th Cir., 2002.*

Constitutionality of RLUIPA

1. LIFE TEEN, INC. v. COUNTY OF YAVAPAI - Life Teen, an international Catholic youth ministry, acquired a 160 acre parcel in Arizona for a youth camp. Yavapai County approved Life Teen's plans, subject to several conditions, including making arrangements with the Yavapai Water Improvement Association (YWIA) for adequate water service. The water supply issue became a rallying point for local residents who opposed the project. After initially outlining several major system upgrades that would be needed, YWIA subsequently deferred any further action. In the lawsuit filed by Life Teen against Yavapai County and YWIA, the federal district court upheld RLUIPA's constitutionality and rejected arguments that RLUIPA violates separation of powers principles, or the Establishment Clause of the Constitution. Later in 2003, the district court denied the County's request to allow an interlocutory appeal on the RLUIPA issue until other matters were heard by the district court. (There is no subsequent relevant case history.) *2003 WL 24224618, D. Ariz., 2003.*
2. ELSINORE CHRISTIAN CENTER v. CITY OF LAKE ELSINORE – Church was denied permission to renovate and use former military school for religious services. In June, 2003, the federal district court in California found that while technically the City did violate RLUIPA, Congress acted outside its authority in enacting RLUIPA. The court was disturbed by Congress' redefining of "religious exercise" to include land use, with no reference to whether the land use involves a central tenet of the plaintiff's religious beliefs. This marked the first instance in which a court declared the land use provisions of RLUIPA to be unconstitutional. However, the judge subsequently agreed to reconsider his ruling pending further proceedings. Nonetheless, in August, 2003, the court found that RLUIPA exceeded Congress's enforcement powers and that another provision of RLUIPA is in violation of the Commerce Clause of the Constitution. On appeal at the Ninth Circuit Court of Appeals, the district court's finding of unconstitutionality was reversed, based on that Circuit's decision in *Guru Nanak Sikh Society of Yuba City v. County of Sutter* (see below.) *291 F. Supp. 2d 1083, C.D.Cal., 2003; 2006 WL 2456271.*
3. GURU NANAK SIKH SOCIETY OF YUBA CITY V. COUNTY OF SUTTER - Court held "RLUIPA is constitutional because it addresses documented, unconstitutional government actions in a proportional manner." *456 F.3d 978, 2006 WL2129737, 9th Cir., 2006.* (See further discussion of this case elsewhere in these materials.)

Mamaroneck yeshiva wins federal court OK to expand

By **CANDICE FERRETTE**

THE JOURNAL NEWS

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A federal judge has ruled in favor of a Jewish day school's right to expand its campus in Mamaroneck, trumping the village's zoning board and upholding the constitutionality of a controversial law on religious land use.

Now, village officials must decide whether to appeal what on the surface may seem like a typical suburban zoning battle.

Lawyers for the Westchester Day School, a yeshiva for more than 400 students on tony Orienta Point, were the first in the Southern District of New York to successfully seek protection under the Religious Land Use and Institutionalized Persons Act. The law, enacted during President Clinton's administration, makes it difficult for municipalities to deny the expansion of religious institutions.

"This is a complete victory for the Westchester Day School," said Joel Haimes, attorney at Morrison and Forester LLP.

In 2001, the day school sought permission to build a 44,000-square-foot building on its 26 acres that would house classrooms and small rooms for meetings and prayers.

The case landed in U.S. District Court in White Plains after village hearings, approvals, neighborhood objections, denials, court appeals and settlement attempts.

It could be one of the first cases of its kind to go to the U.S. Supreme Court, should the federal Court of Appeals uphold the decision issued Thursday by U.S. District Judge William Connor.

Connor concluded that the zoning board's denial of a special permit "substantially burdened" the school's religious exercise without proving "a compelling government interest," such as a threat to public safety.

The opinion stated the village zoning board was "under intense and unrelenting pressure from politically well-connected neighboring residents," when it voted 3-2 to deny the school a building permit.

The village's lawyers rejected those claims and said it was "unfortunate" and "erroneous" to say "NIMBYism" may have prevented approval of the building.

"It has been in the Orienta people's backyard for years," said Joseph Messina, a lawyer for the village. "This is not a new school. This school has been there since the '40s."

But John Romans, a resident who lives around the corner from the day school, disagrees. Before and during the federal trial in November, Romans urged officials to drop the case in the interest of saving taxpayers money because, he said, it catered to a small group of neighbors.

"Our trustees should take their heads out of the sand and start acting responsibly. They should do what the trustees of Harrison did in a similar case with the Mormon Church and enter into settlement discussions immediately," said Romans, a Manhattan lawyer not involved with the case.

Kevin Plunkett, the village's lead attorney on the case, said Connor's decision was disappointing but expected.

He also called it "a veiled victory" for the village, because on the last page the opinion cites a statute recognizing the potential for a different opinion.

Plunkett and Messina said they would advise the village to appeal the decision but left open the possibility of a settlement.

"I don't need to stand on legal ceremony if there's something else we can agree on in the mutual interest of the Westchester Day School and the community," Plunkett said yesterday.

The school will seek more than \$5 million in damages for attorney's fees and the four-year delay in construction, said Stan Bernstein, executive vice president of the school and a lawyer on the case.

The U.S. District Court in 2003 ruled summarily, without a trial, in favor of the Westchester Day School. The next day, the village appealed to the 2nd U.S. Circuit Court of Appeals. In September 2004, the appeals court upheld the constitutionality of the law, but sent the case back to the District Court for a trial on the facts.

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