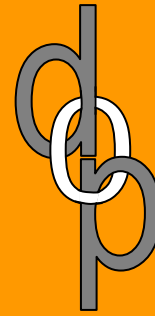


RLUIPA



RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA)

In 2000, the federal government passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) 42 U.S.C. §§2000cc - 2000cc-5. This act prohibits any government agency from imposing “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 government interest; and (B) is the least restrictive means of furthering that compelling government interest.”

The act also prohibits the government from treating a religious assembly or institution on “less than equal terms” than a non-religious assembly, from completely excluding religious assemblies in a jurisdiction, or from placing unreasonable limits on the religious assemblies, institutions or structures within a jurisdiction.

“Churches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation.”

US Congress Hearing Record on RLUIPA
Source: “Westchester Day School v. Village of Mamaroneck” John R. Nolon and Jessica A. Bacher, 2004,
<http://www.law.pace.edu/landuse/DaySchool.html>

CONNECTICUT LAW

At the State level, CT CGS 52-571b, known as the Connecticut Act Concerning Religious Freedom (CACRF), was passed in 1993 and provides similar, if not broader, language to RLUIPA.

While RLUIPA is stated in general terms, its most basic requirement for land use agencies is to assure that religious institutions are not unreasonably limited in where they can be located, especially in comparison to similar non-religious uses (secular assembly halls, schools, etc.)

Case law in Connecticut and elsewhere suggests that denying the land use application of a religious organization because a regulation “applies to everyone else” may not be sufficient justification unless the denial is clearly “in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling public interest.” Therefore, the Commission should be cautious about denying the application of a religious institution on the

basis of sections of the zoning regulations which do not clearly and directly affect public health, safety and welfare.

A local example of a RLUIPA case is *Murphy v. New Milford Zoning Commission* where a federal district court ruled against the Town after a cease and desist order was issued for a family holding large prayer meetings out of their home. *Murphy v. New Milford Zoning Commission*, On appeal, however, this case was overturned due to the fact that the Murphy's claim was not "ripe" for judicial action, since they never exhausted their legal remedies by appealing the ZEO's cease and desist order.

Another relevant case out of New York State is *Westchester Day School v. Village of Mamaroneck* which involved a RLUIPA challenge to the denial of an application by an Orthodox Jewish day school for modification of its special permit to expand its facilities. *Westchester Day Sch. v. Vill. of Mamaroneck*, 280 F. Supp. 2d 230 (S.D.N.Y. 2003). The Village's denial was based mainly on parking and traffic concerns. A Federal District Court overturned the Village's denial by summary judgment and ordered the issuance of the permit stating that "the denial is a substantial burden on WDS's exercise of religion because the modifications WDS seeks will enable it, for well into the foreseeable future, to more efficiently, effectively and, most importantly, safely serve its student population and fulfill its religious and

educational mission." The court went on to state that "nothing was presented to show that lack of parking spaces will result in direct and immediate threat to public, health, safety or welfare." However, the US Court of Appeals for the Second Circuit vacated the grant of summary judgment, concluding that the evidence on the record did not compel judgment in WDS's favor, stating that the "court's judgment depended on findings of fact upon which a factfinder could reasonably disagree." *Westchester Day Sch. v. Vill. of Mamaroneck*, No. 03-9042, 2004 U.S. App. LEXIS 20327 (2d Cir. Sept. 27, 2004).

NOTICE: Staff Commentaries are opinion position papers, and should be considered biased. Updated 10/24/2005

"In passing this law, Congress found that the right to assemble for worship is at the very core of the free exercise of religion. Religious assemblies cannot function without a physical space adequate to their needs and consistent with their theological requirements. The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes. Religious assemblies, especially, new, small, or unfamiliar ones, may be illegally discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation..."

US Department of Justice, Civil Rights Division,
Housing and Civil Enforcement Section, RLUIPA
Summary.
<http://www.usdoj.gov/crt/housing/rluipaexplain.htm>

ON THE WEB

RLUIPA's full text can be found at
http://www.usdoj.gov/crt/housing/housing_rluipa.htm.

RLUIPA Clearinghouse
<http://www.rluipa.com/>