

RELIGION LAW

Expert Analysis

How RLUIPA Protects the Right To Use Land for Religious Purposes

Last December, the U.S. Department of Justice filed a lawsuit against the Village of Airmont, in Rockland County, New York, asserting that the village applied the provisions of a new zoning code in a discriminatory manner to make it impossible for Orthodox Jewish residents to win zoning approval for home synagogues and a school; implemented an 18-month village-wide moratorium on development that had no legitimate governmental purpose and instead was used to prevent Orthodox Jewish community members from advancing their religious land use applications; and arbitrarily enforced and interpreted local laws to prevent Orthodox Jews from using their privately owned property in ways consistent with their faith, such as prohibiting homeowners from clearing trees to construct sukkahs (ritual huts required during the festival of Sukkot) or to install mikvahs (ritual baths necessary for



By
**Barry
Black**



And
**Sarah E.
Child**

religious observance). These actions, according to the government, violated the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §2000cc et seq.

Just a short while later, in mid-March, the village settled the suit, consented to the entry of a preliminary injunction, and agreed to cease enforcement of the challenged zoning code provisions. See Press Release, Dep't of Justice, U.S. Attorney's

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Office, Southern District of New York, Village of Airmont Ordered To Cease Enforcement of Zoning Code That Discriminates Against Orthodox Jewish Residents and To Restore Right to Home Worship (March 15, 2021).

The action involving Airmont, together with the quick settlement, illustrates the ability of RLUIPA to protect religious institutions and individuals from discriminatory land use laws and regulations. Indeed, since RLUIPA passed both houses of Congress unanimously and was signed into law on Sept. 22, 2000, it has become perhaps the most significant federal statute protecting religious freedom. As a recent report from the Justice Department makes clear, over the past two decades RLUIPA has helped secure the ability of thousands of individuals and institutions to practice their faiths freely and without discrimination. See Dep't of Justice, "Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act" (Sept. 22, 2020).

The Statute

RLUIPA provides important religious freedom protections in two distinct areas: land use and persons confined to institutions (the latter of which is not addressed here).

RLUIPA's land use section contains five separate provisions that, together, provide comprehensive protection for individuals and religious institutions—including houses

BARRY BLACK is a partner in the religion law firm Nelson Madden Black, which serves the legal needs of religious institutions and individuals. SARAH E. CHILD, an associate at the firm, previously served as an attorney advisor for the U.S. Department of Education in Washington, D.C. They can be reached at bblack@nelsonmaddenblack.com and schild@nelsonmaddenblack.com, respectively.

of worship and religious schools—from zoning and landmarking laws that discriminate based on religion or that unjustifiably infringe on religious freedom. In summary, RLUIPA:

- Prohibits the implementation of any land use regulation (defined as “a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant’s use or development of land”) that imposes a “substantial burden” on the religious exercise of a person, including a religious assembly or institution, unless that law survives strict scrutiny, which requires the government to demonstrate that it is the least restrictive means of furthering a “compelling governmental interest” (42 U.S.C. §2000cc(a));
- Provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions (42 U.S.C. §2000cc(b)(1));
- Prohibits discrimination “against any assembly or institution on the basis of religion or religious denomination” (42 U.S.C. §2000cc(b)(2));
- Provides that governments must not totally exclude religious assemblies from a jurisdiction (42 U.S.C. §2000cc(b)(3)(A)); and
- States that governments must not unreasonably limit “religious assemblies, institutions, or structures within a jurisdiction” (42 U.S.C. §2000cc(b)(3)(B)).

RLUIPA’s nondiscrimination requirement and its provisions barring “totally exclud[ing] religious assemblies from a jurisdiction” or “unreasonably limit[ing] religious assemblies, institutions, or structures within a jurisdiction” have been the subject of few court

decisions. Instead, most RLUIPA cases that reach the courts involve the statute’s “substantial burden” and “equal terms” provisions. Decisions by the U.S. Court of Appeals for the Second Circuit and by district courts in the Second Circuit demonstrate how courts interpret and apply these key RLUIPA sections.

‘Substantial Burden’

Consider the case of *Fortress Bible Church v. Feiner*, 694 F.3d 208 (2d Cir. 2012), concerning a land use dispute between Fortress Bible Church, a Pentecostal church established in the 1940s (the Church), and the Town of Greenburgh, N.Y., over the Church’s plan to build a worship facility and school on land that it owned within the town. To construct its proposed building, the Church required three discretionary land use approvals from the town: site plan approval; a waiver of the landscaped parking island requirement; and a variance to allow the building to be located closer to one side of the property.

The Church’s proposal triggered New York’s State Environmental Quality Review Act (SEQRA). The Church provided the information required by SEQRA, but after a contentious, years-long administrative review process, the Church sued the town, the town board, and several board members in the U.S. District Court for the Southern District of New York, alleging violations of RLUIPA, among other claims.

The district court conducted a bench trial and issued a lengthy opinion. It found that the town had acted in bad faith and had used the SEQRA review process illegitimately to block the Church’s proposal. It concluded that the town had substantially

burdened the Church by preventing it from moving to an adequate facility, resulting in a violation of RLUIPA.

The district court ordered the Church’s site plan approved for SEQRA purposes; ordered that the Church be granted a waiver from the landscaped parking island requirement; ordered that the Church be granted a variance permitting a side building location; ordered the issuance of a building permit; and enjoined the town from taking any action that unreasonably interfered with the Church’s project.

The town appealed to the Second Circuit. The town argued that RLUIPA was inapplicable because SEQRA was not a land use regulation within the meaning of RLUIPA. It also contended that the Church had not been substantially burdened within the meaning of RLUIPA because the Church had alternative means of building a new facility and that the only harm the Church suffered was an inability to build the exact structure it desired, which did not rise to the level of a substantial burden.

In its decision, the Second Circuit first conceded that SEQRA was not a zoning or landmarking law for purposes of RLUIPA, but it held that “when a government uses a statutory environmental review process as the primary vehicle for making zoning decisions, those decisions constitute the application of a zoning law and are within the purview of RLUIPA.” The Second Circuit reasoned that to hold RLUIPA inapplicable to what amounted to zoning actions taken in the context of a statutorily mandated environmental quality review “would allow towns to insulate zoning decisions from RLUIPA review.”

The Second Circuit next rejected the town’s argument that the

Church had not been substantially burdened.

According to the circuit court, a town's denial of a religious institution's building application likely was not a substantial burden if it left open the possibility of modification and resubmission. However, it added, if the town's stated willingness to consider another proposal was "disingenuous," a conditional denial could rise to the level of a substantial burden.

The Second Circuit found sufficient evidence in the record to support the district court's conclusions that the Church's existing facilities were inadequate to accommodate its religious practice and that the town was acting in bad faith and in hostility to the Church's proposed project such that it would not have allowed the Church to build any worship facility and school on the property it owned. In affirming the district court's decision, the circuit court upheld the district court's conclusion that the burden on the Church was more than minimal and that there was a close nexus between the town's denial of the project and the Church's inability to construct an adequate facility.

'Equal Terms'

RLUIPA's equal terms requirement was enforced recently by the U.S. District Court for the Northern District of New York in *Christian Fellowship Centers of New York v. Village of Canton*, 377 F. Supp. 3d 146 (N.D.N.Y. 2019).

This case arose after the Christian Fellowship Centers of New York (the Fellowship) purchased property in downtown Canton, N.Y., intending to use it as a church. However, Canton's village code prohibited houses of worship from operating

in the downtown zone even though it permitted not-for-profit organizations to use nearby properties to meet for secular purposes. The Fellowship filed suit, claiming that the code provision violated RLUIPA. In a motion for a preliminary injunction, it asked the court to enjoin the village from enforcing the code.

The court decided that the code treated religious assemblies worse than secular assemblies that had equivalent impacts on the code's purposes; that the "formal differences" relied on by the village did not trump the "practical" similarities between churches and the secular organizations the code treated more favorably; and that no compelling

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interest justified the unequal treatment (it is worth noting that only the U.S. Court of Appeals for the Eleventh Circuit—which the court relied on for this point—has engaged in a strict scrutiny analysis for RLUIPA equal terms claims).

The court was not persuaded by the village's argument that the Fellowship's suit should be rejected because it had known that there were no churches operating in the downtown district before it purchased the property, and that it "would almost certainly" have been allowed to locate and operate a church in the business or residential districts. The court declared that the existence of alternative sites for a church was relevant only when a zoning ordinance was challenged as imposing

a "substantial burden" on religious uses of land; RLUIPA's equal terms section was violated whenever religious land uses were treated worse than comparable nonreligious ones, whether or not the discrimination imposed a substantial burden on the religious uses.

Finding that the Fellowship would likely succeed on the merits of its RLUIPA equal terms challenge, that it would be irreparably harmed if the code remained in force against it, and that the balance of hardships and the public interest resolved in its favor, the court concluded that the Fellowship was entitled to a preliminary injunction.

Conclusion

By now it is well established that RLUIPA protects people and religious institutions of all faiths in their right to exercise their religion. The law is clear: Zoning and land use planning laws may not totally exclude religious assemblies and institutions from a jurisdiction or place unreasonable limits on where they may locate, may not substantially burden religious exercise, may not discriminate against religious institutions on the basis of religion or religious denomination, and may not treat religious assemblies and institutions on less than equal terms with nonreligious assemblies and institutions.