

United States v. Bensalem Township, Pennsylvania (E.D. PA), 2:14-CV-6955

SETTLEMENT AGREEMENT

BETWEEN THE UNITED STATES OF AMERICA

AND BENSALEM TOWNSHIP

I. INTRODUCTION

1. This Settlement Agreement is made and entered into by and between the United States of America, through the U.S. Department of Justice (“United States”), and Defendant Bensalem Township, Pennsylvania (“Bensalem” or “Township”) (collectively, “the Parties”), through their authorized representatives.

2. This Agreement resolves a Complaint filed by the United States against the Township on July 21, 2016, in the United States District Court for the Eastern District of Pennsylvania, *United States v. Bensalem Township, Pennsylvania*, 2:16-cv-03938 (MMB) (hereinafter “Civil Action”). As set forth in the Complaint, the Civil Action alleges that the Township has violated the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc-5, *et seq.*

3. The Township maintains that it has complied with RLUIPA, and it affirms that it will continue to comply with RLUIPA in the future.

4. Similarly, the Township maintains that it complies with Pennsylvania Municipal Records Act, and it affirms that it will continue to comply with the Municipal Records Act in the future.

5. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation, and in consideration of the mutual promises and obligations, the Parties agree and covenant to the terms and conditions set forth herein.

II. STATEMENT OF CONSIDERATION

6. In consideration of, and consistent with, the terms of this Agreement, within thirty days of the effective date of this Agreement, the Parties shall submit to the Court a signed copy of this Agreement in accordance with the Order entered by the Court on August 9, 2017. The Parties agree and acknowledge that this consideration is adequate and sufficient.

III. TERMS AND CONDITIONS

7. The Bensalem Masjid, Inc. (“Bensalem Masjid”) will be permitted to use the three adjoining properties at 3743, 3805, and 3825 Hulmeville Road (“Subject Property”) as and for a religious institutional use per the terms of the consent order entered in *Bensalem Masjid, Inc. v. Bensalem Township*, 2:14-cv-06955-MMB. Any and all applications, plans and related submittals of and/or by Bensalem Masjid for the construction of a mosque and/or any other

structure on the subject properties shall be processed per the terms of the private consent order cited above.

8. The Township will amend its Zoning Ordinance in a way that, to the satisfaction of the United States, will assure that the Zoning Ordinance is in compliance with the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). In order to accomplish such amendment, the following procedures will be followed by the Parties:

- a. As soon as reasonably possible, but not more than 30 days from the date of this Agreement, the Parties shall agree upon the scope and parameters for a review of the Bensalem Zoning Ordinance and Bensalem Zoning Map by a professional land use planner, with the purpose of such review to be for the planner to identify those parts of the Zoning Ordinance and/or Zoning Map that may not comply with the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) and to recommend possible revisions and amendments to the Zoning Ordinance and/or Zoning Map, that could, in the opinion of the planner, bring the Zoning Ordinance and/or Zoning Map into compliance with RLUIPA. In conjunction with such review, if the Township wishes to do so, it may instruct the Planner to take into consideration the decision of the United States District Court for the Eastern District of Pennsylvania in First Korean Church of New York, Inc. v. Cheltenham Township, No. 05-6389, 2012 WL 645986 (Feb. 29, 2012), *aff’d* 2013 WL 362819 (3d Cir. Jan. 24, 2013).
- b. As soon as reasonably possible, but not more than 120 days from the date of this Agreement, the Township shall hire a land use planner to perform the review of the Bensalem Zoning Ordinance and Bensalem Zoning Map. The Township shall arrange for the land use planner to complete a report as soon as reasonably possible, but not more than 180 days from the date of hire of the land use planner. Upon receipt of the report from the land use planner, the Township will provide the United States with a copy of the report.
- c. As soon as reasonably possible, but not more than 120 days from the date of the Township’s receipt of the report, the Township shall provide to the United States its proposed amendment(s) to the Zoning Ordinance and Zoning Map. Within 45 days of receiving the proposed amendment(s), the United States will advise the Township whether it approves of the proposed amendments, and, if the United States does not approve of the proposed amendments, the United States will provide the Township with comments to the proposed amendment(s), explaining the reasons why the United States withholds approval. Within 45 days of receiving the United States’ reasons for withholding approval, the Township shall inform the United States if it will revise the proposed amendments(s), or shall explain to the United States why it believes that revisions of the original proposed amendment(s) are unnecessary. If the Township will revise the proposed

amendment(s), it shall do so within 45 days of receiving the United States' reasons for withholding approval.

- d. The Township shall amend its Zoning Ordinance and/or Zoning Map within six months of final approval of the proposed amendment(s) by the United States.
- e. The Township shall not adopt or enforce amendment(s) to the Bensalem Zoning Ordinance and/or Zoning Map that are proposed pursuant to and/or in furtherance of this Agreement without the approval of the United States. This provision shall not apply to any amendment(s) to the Bensalem Zoning Ordinance or Zoning Map that are unrelated to this Agreement.

9. The Township shall furnish to all managerial and professional employees, agents, consultants, and contractors of the Township, to the Mayor, to all members of the Township Council and Zoning Hearing Board, to all employees of the Building and Planning Department, excluding clerical staff, and to any other person with any responsibilities related to the implementation and enforcement of all zoning or land use regulations, related policies, or procedures, a copy of the Agreement and copies of the RLUIPA informational documents provided by the Department of Justice from its website, attached hereto as Appendix A. The Township will advise each such person to read the given materials. Within 30 days of the execution of the Agreement, the Township will certify to the United States that it has taken these actions. Within 15 days of request by the United States, the Township will provide the United States with a list of persons to whom the Agreement and the RLUIPA information documents were provided.

10. Within 15 days of a request by the United States, the Township shall provide the United States with the following information, including documents, created since the date of the Agreement or since the date of the United States' last request: all complaints received regarding religious land use; all non-privileged documents related to land use in the Township, including but not limited to any proposed or adopted amendments or modifications to the Zoning Ordinance that affect assembly or religious land use; and all non-privileged documents related to the Bensalem Masjid.

IV. IMPLEMENTATION AND ENFORCEMENT

11. The United States may review compliance with this Agreement at any time. The Township agrees to cooperate with any such review. Upon reasonable notice by the United States to the Township, the Township shall permit representatives of the United States to inspect and copy all non-privileged, pertinent records of the Township, including, but not limited to, those records referenced above in Paragraph 10.

12. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of or compliance with this Agreement prior to initiating court action. If either Party believes that the other, or any of its representatives, has failed to perform in a timely manner any act required by this Agreement, or has otherwise not acted in conformance with any provision thereof, whether intentionally or not, then that Party shall notify the other, in writing,

of its concerns. The Party so notified shall have fifteen (15) days from the date of the written notification to either perform the requested action or to contact the Party that issued the notice to discuss and resolve any questions or issues raised in the written notice.

13. If the Parties are unable to reach a resolution within that fifteen (15) day period, pursuant to Paragraph 12, either Party may move to restore the present Civil Action to the active docket of the U.S. District Court for the Eastern District of Pennsylvania for resolution of the disagreement. If the Court declines to restore the Civil Action to the active docket in response to a Party's motion pursuant to this Paragraph or otherwise declines to exercise jurisdiction to resolve the Parties' disagreement, then either Party may pursue whatever cause of action, if any, that it otherwise would have under federal law to resolve the dispute. In addition, either party may, within ninety (90) days of the entry of the Order of the Court dated August 9, 2017, move to vacate, modify or strike from the record said Order, pursuant to Local Rule 41.1(b) of the Eastern District of Pennsylvania.

14. Appropriate remedies for breach of this agreement may include, but are not limited to, an order mandating specific performance of any term or provision in this Agreement, without regard to whether monetary relief would be adequate. In the event of a breach, defenses under theories of claim preclusion, issue preclusion, statute of limitations, estoppel, laches, or similar defenses shall not be raised.

15. Failure to enforce any provision of this Agreement shall not operate as a waiver of either Party's right or ability to take steps to effectuate any other provision of this Agreement.

V. TERMINATION OF LITIGATION HOLD

16. The Parties agree that, as of the effective date of this Agreement, litigation is not "reasonably foreseeable" concerning the matters described in this Agreement. To the extent that any party has previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, that Party is no longer required to maintain such litigation hold. Nothing in this Paragraph relieves any Party of any other obligations under this Agreement.

VI. DURATION, EXECUTION, AND OTHER TERMS

17. This Agreement is effective on the date of the signature of the last signatory to this Agreement. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

18. The duration of this Agreement shall be for four (4) years from the effective date of the Agreement.

19. Except as stated above in Paragraph 14, above, each Party shall bear its own legal or other costs incurred in connection with this matter, including for the preparation, negotiation and performance of this Agreement.

20. This Agreement constitutes the complete agreement among the Parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.

21. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion. The Parties agree that each Party and its representatives have acted consistent with the duty of good faith and fair dealing.

22. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

23. This Agreement is binding on the Parties and their transferees, successors, heirs and assigns.

24. This Agreement is governed by and shall be interpreted under the laws of the United States. For purposes of construing or interpreting this Agreement, it shall be deemed to have been drafted by all Parties and shall not be construed or interpreted against any Party for that reason in any subsequent dispute.

25. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another Party, the performance of one Party's duties or obligations under this Agreement shall not be discharged or excused by the actual or alleged breach of the duties or obligations by another Party.

26. This Agreement is a public document. The Parties agree and consent to the United States' disclosure of this Agreement and information concerning this Agreement to the public.

27. The Parties agree that they will defend this Agreement against any challenge by any third party. In the event that this Agreement or any of its terms are challenged in a court other than the United States District Court for the Eastern District of Pennsylvania, the Parties agree that they will seek removal and/or transfer to the Eastern District of Pennsylvania.

28. This Agreement may be modified only with the written consent of the Parties. Any modification must be in writing and signed by the Parties through their authorized representatives.

FOR THE PLAINTIFF, UNITED STATES:

DATED: 9-1-17

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Acting Assistant Attorney General
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BENSALEM TOWNSHIP COUNCIL

By: *Ed Kisselback*
Edward Kisselback, President

Dated: 8-29-17

ATTEST:

By: *Tony Belfield*
Tony Belfield, Secretary

Dated: 8-30-17

APPENDIX A



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 15, 2016

Re: The Religious Land Use and Institutionalized Persons Act

Dear State, County, and Municipal Officials:

I am writing to you today to highlight the obligation of public officials to comply with the various provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), and to inform you about documents previously issued by the Department of Justice (Department) that may be of assistance to you in understanding and applying this important Federal civil rights law.

The freedom to practice religion according to the dictates of one's conscience is among our most fundamental rights, written into our Constitution and protected by our laws. In our increasingly diverse nation, the Department continues to steadfastly defend this basic freedom and ensure that all people may live according to their beliefs, free of discrimination, harassment, or persecution.

Over the years Congress has passed a number of laws that protect the religious liberties of those who live in America, including the landmark Civil Rights Act of 1964 and the 1996 Church Arson Prevention Act. In 2000 Congress, by unanimous consent, and with the support of a broad range of civil rights and religious organizations, enacted the Religious Land Use and Institutionalized Persons Act. 42 U.S.C. § 2000cc et seq. In enacting RLUIPA, Congress determined that there was a need for Federal legislation to protect religious individuals and institutions from unduly burdensome, unreasonable or discriminatory zoning, landmarking, and other land use regulations.¹ Congress heard testimony that houses of worship, particularly those of minority religions and start-up churches, were disproportionately affected, and in fact often were actively discriminated against, by local land use decisions. Congress also found that, as a whole, religious institutions were treated worse than secular places of assembly like community centers, fraternal organizations, and movie theaters, and that zoning authorities frequently violated the United States Constitution by placing excessive burdens on the ability of congregations to exercise their faiths.

¹ RLUIPA also contains provisions that prohibit regulations that impose a "substantial burden" on the religious exercise of persons residing or confined in an "institution," unless the government can show that the regulation serves a "compelling government interest" and is the least restrictive way for the government to further that interest. 42 U.S.C § 2000cc-1.

RLUIPA includes a private right of action, which allows private individuals to enforce its provisions. Congress also gave the U.S. Attorney General the authority to enforce RLUIPA, and the Department of Justice has been active in enforcing this important civil rights law since its enactment. To date, the Department has opened nearly 100 formal investigations and filed nearly 20 lawsuits related to RLUIPA's land use provisions.² Through these efforts, as well as those by private parties, RLUIPA has helped secure the ability of thousands of individuals and institutions to practice their faiths freely and without discrimination.

Yet, sixteen years after RLUIPA's enactment, far too many people and communities remain unaware of the law, or do not fully understand the scope of its provisions. Earlier this year, the Department's Civil Rights Division launched *Combating Religious Discrimination Today*, an initiative bringing together community leaders around the country to discuss challenges regarding religious discrimination, religion-based hate crimes, and religious freedom, and to discuss possible solutions. One of the issues raised repeatedly from participants was that municipal, county, and other state and local officials are insufficiently familiar with the land use provisions of RLUIPA and their obligations under this Federal civil rights law. Participants also reported that houses of worship, particularly those from less familiar religious traditions, often face unlawful barriers in the zoning and building process. Additionally, participants explained that, in their experience, litigation frequently was avoided when the communities informed local officials of their obligations under RLUIPA early in the process. Participants recommended that the Department take proactive measures to ensure that state and local officials are properly educated about RLUIPA's land use provisions.³

In light of this, we are sending this letter to you and other officials throughout the country to remind you about the key provisions of RLUIPA. Ensuring that our constitutional protections of religious freedom are protected requires that Federal, state, and local officials work together, and to that end, we encourage you to share this letter with your colleagues. We hope that you will continue to work with the Department of Justice going forward and view us as a partner and ally in ensuring that no individuals in this country suffer discrimination or unlawful treatment simply because of their faiths.

² This work is detailed in reports on enforcement issued in September 2010 (available at https://www.justice.gov/crt/rluipa_report_092210.pdf) and July 2016 (available at <https://www.justice.gov/crt/file/877931/download>).

³ The *Combating Religious Discrimination Today* report is available at https://www.justice.gov/Combating_Religious_Discrimination.

1. RLUIPA provides broad protections for religious individuals and institutions.

RLUIPA's land use provisions provide a number of protections for places of worship, faith-based social service providers and religious schools, and individuals using land for religious purposes. Specifically, RLUIPA provides for:

- *Protection against substantial burdens on religious exercise:* Section 2(a) of RLUIPA prohibits the implementation of any land use regulation that imposes a “substantial burden” on the religious exercise of a person or institution except where justified by a “compelling government interest” that the government pursues using the least restrictive means.⁴
- *Protection against unequal treatment for religious assemblies and institutions:* Section 2(b)(1) of RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.
- *Protection against religious or denominational discrimination:* Section 2(b)(2) of RLUIPA prohibits discrimination “against any assembly or institution on the basis of religion or religious denomination.”
- *Protection against total exclusion of religious assemblies:* Section 2(b)(3)(A) of RLUIPA provides that government must not totally exclude religious assemblies from a jurisdiction.
- *Protection against unreasonable limitation of religious assemblies:* Section 2(b)(3)(B) of RLUIPA provides that government must not unreasonably limit “religious assemblies, institutions, or structures within a jurisdiction.”

While the majority of RLUIPA cases involve places of worship such as churches, synagogues, mosques, and temples, the law is written broadly to cover a wide range of religious uses. The “substantial burden” provision in Section 2(a) of the statute applies to burdens on “a person, including a religious assembly or institution.” The remaining provisions apply to any religious “assembly or institution.” Thus, RLUIPA applies widely not only to diverse places of worship, but also to religious schools, religious camps, religious retreat centers, and religious social service facilities such as group homes, homeless shelters, and soup kitchens, as well as to individuals exercising their religion through use of property, such as home prayer gatherings or Bible studies.

To be clear, RLUIPA does not provide a blanket exemption from local zoning or landmarking laws. Rather, it contains a number of safeguards to prevent discriminatory, unreasonable, or unjustifiably burdensome regulations from hindering religious exercise. Ordinarily, before seeking recourse from RLUIPA, those seeking approval for a religious land

⁴ Section 2 of RLUIPA is codified at 42 U.S.C § 2000cc.

use will have to apply for permits or zoning relief according to the regular procedures set forth in the applicable ordinances, unless doing so would be futile, or the regular procedures are discriminatory or create an unjustifiable burden. While zoning is primarily a local matter, where it conflicts with Federal civil rights laws such as the Fair Housing Act or RLUIPA, Federal law takes precedence.

Each of the aforementioned protections in RLUIPA are discussed in greater detail below.⁵

2. RLUIPA protects against unjustified burdens on religious exercise.

Land use regulations frequently can impede the ability of religious institutions to carry out their mission of serving the religious needs of their members. Section 2(a) of RLUIPA bars imposition of land use regulations that create a “substantial burden” on the religious exercise of a person or institution, unless the government can show that it has a “compelling interest” for imposing the regulation and that the regulation is the least restrictive way for the government to further that interest. A mere inconvenience to the person or religious institution is not sufficient, but a burden that is substantial may violate RLUIPA. For example, in a case in which the United States filed a friend-of-the-court brief in support of a Maryland church’s challenge to a rezoning denial, a Federal appeals court ruled that the church had “presented considerable evidence that its current facilities inadequately serve its needs,” and that the “delay, uncertainty and expense” in looking for a different property may create a substantial burden on the church’s religious exercise in violation of RLUIPA.⁶ The court relied on facts including that the church had to hold multiple services, turn away worshipers, and curtail a number of important activities at its current location, and that it had a reasonable expectation that it could develop its new property. Similarly, the Department of Justice filed suit in a California Federal district court alleging that a city’s denial of zoning approval for a mosque to take down the aging and inadequate structures in which it had been worshipping and construct a new facility imposed a substantial burden on the congregation.⁷ The mosque, which was grandfathered for its current use, consisted of a group of repurposed buildings for its various activities and a large tent for overflow from the prayer hall. However, the city prohibited the mosque from replacing the buildings and tent with a single building. The case was resolved by a consent decree in Federal court.

If imposition of a zoning or landmarking law creates a substantial burden on religious exercise, such imposition is invalid unless it is supported by a compelling governmental interest pursued through the least restrictive means. RLUIPA does not define “compelling interest,” but

⁵ Further information may be found in the *Statement of the Department of Justice on Land Use Provisions of the Religious Land Use and Institutionalized Persons Act* (available at https://www.justice.gov/crt/rluipa_q_a_9-22-10.pdf), and at the Department of Justice Civil Rights Division RLUIPA information page (<https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>).

⁶ *Bethel World Outreach v. Montgomery Cnty. Council*, 706 F.3d 548, 557-558 (4th Cir. 2013).

⁷ *United States v. Lomita*, No. 2:13-CV-00707 (E.D. Cal. filed March 3, 2013).

the U.S. Supreme Court has previously explained that compelling interests are “interests of the highest order.”⁸

3. RLUIPA protects equal access for religious institutions and assemblies.

Section 2(b)(1) of RLUIPA – known as the “equal terms” provision – mandates that religious assemblies and institutions be treated at least as well as nonreligious assemblies and institutions. For example, a Federal appeals court ruled that zoning restrictions that a city applied to places of worship but not to lodges, union halls, nightclubs, and other assemblies, violated the equal terms provision.⁹ This included a requirement that places of worship, but not other assembly uses, obtain the permission of 60% of neighbors in a 1,300-foot radius. The Department of Justice filed a friend-of-the-court brief arguing that the distinction violated RLUIPA. Similarly, the Department brought suit under RLUIPA’s equal terms provision against a town in Illinois that permitted clubs, lodges, meeting halls, and theaters in its business districts, but excluded places of worship.¹⁰ The case was prompted after the town served notice of violation on four small churches operating in locations where these nonreligious assembly uses were permitted. The case was resolved by consent decree.

4. RLUIPA protects against religious discrimination in land use.

Section 2(b)(2) of RLUIPA bars discrimination “against any assembly or institution on the basis of religion or religious denomination.” Thus if an applicant is treated differently in a zoning or landmarking process because of the religion represented (e.g., Christian, Jewish, Muslim), or because of the particular denomination or sect to which the applicant belongs (e.g., Catholic, Orthodox Jewish, or Shia Muslim), then RLUIPA will be violated. The Department of Justice filed suit alleging that a mosque in Georgia was discriminated against in violation of Section 2(b)(2), based on statements by city officials indicating bias, evidence that the city sought to appease citizens who had expressed bias, and evidence that the city had previously approved numerous similarly sized and located places of worship of other faiths.¹¹ The case was resolved by consent decree. Similarly, the Department filed suit in order to challenge a zoning change enacted by a New York municipality that prevented the construction of a Hasidic Jewish boarding school.¹² The case was resolved by consent decree.

⁸ *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

⁹ *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279 (5th Cir. 2012).

¹⁰ *United States v. Waukegan*, No. 08-C-1013 (N.D. Ill. filed February 19, 2008).

¹¹ *United States v. City of Lilburn* 1:11-CV-2871 (N.D. Ga. filed August 29, 2011).

¹² *United States v. Village of Airmont*, 05 Civ. 5520 (S.D.N.Y. filed June 10, 2005).

5. RLUIPA protects against the total or unreasonable exclusion of religious assemblies from a jurisdiction.

Under section 2(b)(3) of RLUIPA, a zoning code may not completely, or unreasonably, limit religious assemblies in a jurisdiction. Thus, if there is no place where houses of worship are permitted to locate, or the zoning regulations looked at as a whole deprive religious institutions of reasonable opportunities to build or locate in the jurisdiction, this provision will be violated. For example, a Federal district court in Florida granted summary judgment to a synagogue on its unreasonable limitations claim, holding that RLUIPA was violated where “there was limited availability of property for the location of religious assemblies, religious assemblies were subject to inflated costs in order to locate in the City, and religious assemblies were subject to more stringent requirements than other similar uses.”¹³

* * * *

The Department of Justice is committed to carrying out Congress’s mandate and ensuring that religious assemblies and institutions do not suffer from discriminatory or unduly burdensome land use regulations. We look forward to working collaboratively with you and all other stakeholders on these important issues. Should you have questions about the contents of this letter, or other issues related to RLUIPA, I encourage you to contact Eric Treene, Special Counsel for Religious Discrimination, at 202.514.2228 or Eric.Treene@USDOJ.gov.

Sincerely,



Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division

¹³ *Chabad of Nova, Inc. v. City of Cooper City*, 575 F. Supp. 2d 1280, 1290 (S.D. Fla. 2008).



Statement of the Department of Justice on the Land-Use Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)

The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq., is a civil rights law that protects individuals and religious institutions from discriminatory and unduly burdensome land use regulations.¹ After hearings in which Congress found that religious assemblies and institutions were disproportionately affected, and in fact often were actively discriminated against, in local land use decisions, Congress passed RLUIPA unanimously in 2000. President Clinton signed RLUIPA into law on September 22, 2000.

Congress found that zoning authorities were frequently placing excessive or unreasonable burdens on the ability of congregations and individuals to exercise their faith with little to no justification and in violation of the Constitution. Congress further found that religious institutions often faced both subtle and overt discrimination in zoning, particularly minority, newer, smaller, or unfamiliar religious groups and denominations.²

Congress also found that, as a whole, religious institutions were treated worse than comparable secular institutions by zoning codes and zoning authorities. As RLUIPA's Senate sponsors, Senator Hatch and the late Senator Kennedy, said in their joint statement issued upon the bill's passage: "Zoning codes frequently exclude churches in places where they permit theaters, meetings halls, and other places where large groups of people assemble for secular purposes. . . . Churches have been denied the right to meet in rented storefronts, in abandoned schools, in converted funeral homes, theaters, and skating rinks—in all sorts of buildings that were permitted when they generated traffic for secular purposes."³

Congress further found that zoning authorities frequently were placing excessive burdens on the ability of congregations and individuals to exercise their faiths without sufficient justification, in violation of the Constitution.

¹ This Statement deals with RLUIPA's land use provisions. Another section of RLUIPA protects the religious freedom of persons confined to prisons and certain other institutions.

² 146 CONG. REC. S7774 (daily ed. July 27, 2000) (joint statement of Senators Hatch and Kennedy).

³ *Id.* at S7774-75.

RLUIPA provides a number of important protections for the religious freedom of persons, places of worship, religious schools, and other religious assemblies and institutions, including:

- *Protection against substantial burdens on religious exercise:* Section 2(a) of RLUIPA prohibits the implementation of any land use regulation that imposes a “substantial burden” on the religious exercise of a person or institution except where justified by a “compelling governmental interest” that the government pursues in the least restrictive way possible.
- *Protection against unequal treatment for religious assemblies and institutions:* Section 2(b)(1) of RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.
- *Protection against religious or denominational discrimination:* Section 2(b)(2) of RLUIPA prohibits discrimination “against any assembly or institution on the basis of religion or religious denomination.”
- *Protection against total exclusion of religious assemblies:* Section 2(b)(3)(A) of RLUIPA provides that governments must not totally exclude religious assemblies from a jurisdiction.
- *Protection against unreasonable limitation of religious assemblies:* Section 2(b)(3)(B) of RLUIPA provides that government must not unreasonably limit “religious assemblies, institutions, or structures within a jurisdiction.”

RLUIPA’s protections can be enforced by the Department of Justice or by private lawsuits. In the ten years since its passage, RLUIPA has been applied in a wide variety of contexts and has been the subject of substantial litigation in the courts. It is a complex statute, with five separate provisions that protect religious exercise in different but sometimes overlapping ways. In order to assist persons and institutions in understanding their rights under RLUIPA, and to assist municipalities and other government entities in meeting the requirements imposed on them by RLUIPA, the Department of Justice has created this summary and accompanying questions and answers.

Date: September 22, 2010

Questions and Answers on the Land-Use Provisions of RLUIPA

1. Who is protected and what types of activities are covered by RLUIPA?

RLUIPA protects the religious exercise of “persons,” defined to include religious assemblies and institutions in addition to individuals. RLUIPA has been used, for

example, to protect houses of worship, individuals holding prayer meetings in their homes, religious schools, religious retreat centers, faith-based homeless shelters, soup kitchens, group homes, and other social services.

2. What does “religious exercise” include?

RLUIPA provides in Section 8 that “religious exercise” includes any exercise of religion, “whether or not compelled by, or central to, a system of religious belief.” Thus a county or municipality cannot avoid the force of RLUIPA by asserting that a particular religious activity is something that a religious group merely wants to do rather than something that it must do. For example, a town could not claim that Wednesday prayer meetings are not religious exercise because they are less central to a church’s beliefs or less compulsory than Sunday worship services.

RLUIPA also specifies in Section 8 that “[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise . . .” This provision makes clear that construction or expansion of places of worship and other properties used for religious exercise purposes is religious exercise under RLUIPA.

Religious exercise covers a wide range of activities, including operation of homeless shelters, soup kitchens, and other social services; accessory uses such as fellowship halls, parish halls and similar buildings or rooms used for meetings, religious education, and similar functions; operation of a religious retreat center in a house; religious gatherings in homes; and construction or expansion of schools, even where the facilities would be used for both secular and religious educational activities.

3. Who is bound by RLUIPA’s requirements?

RLUIPA applies to states (including state departments and agencies) and their subdivisions such as counties, municipalities, villages, towns, cities, city councils, planning boards, zoning boards and zoning appeals boards. RLUIPA does not cover the actions of private citizens unless acting under color of state law, such as government employees. RLUIPA does not apply to the federal government, though another similar law, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, does.

4. Does RLUIPA exempt religious assemblies and institutions from local zoning laws?

No. RLUIPA is not a blanket exemption from zoning laws. As a general matter, religious institutions must apply for the same permits, follow the same requirements, and go through the same land-use processes as other land users. RLUIPA does not pre-empt or replace the normal zoning code. Rather, it imposes a number of safeguards and

requirements on local governments regarding zoning that impact religious uses by requiring that:

- the zoning law or its application not substantially burden religious exercise without compelling justification pursued through the least restrictive means,
- the zoning law not treat religious uses less favorably than nonreligious assemblies and institutions,
- the law not discriminate based on religion or religious denomination, and
- the jurisdiction not totally or unreasonably restrict religious uses.

When there is a conflict between RLUIPA and the zoning code or how it is applied, RLUIPA, as a federal civil rights law, takes precedence and the zoning law must give way.

So long as a municipality applies its codes uniformly and does not impose an unjustified substantial burden on religious exercise, it may apply traditional zoning concerns – such as regulations addressing traffic, hours of use, parking, maximum capacity, intensity of use, setbacks, frontage – to religious uses just as they are applied to any other land uses.

5. Are there occasions when a religious assembly or institution does not have to apply for zoning approval, and appeal any denial, before it has recourse to RLUIPA?

As a practical matter, applying for a zoning permit, special use permit, conditional use permit, special exception, variance, rezoning, or other zoning procedure, and appealing within that system in case of denials, is often the fastest and most efficient way to obtain ultimate approval. Religious institutions and local governments are encouraged to attempt to resolve disputes through established zoning processes.

In some circumstances courts have held that religious institutions need not make an application or appeal before filing a RLUIPA lawsuit. These include settings where further application or appeal would be futile under the circumstances, or there would be excessive delay, uncertainty or expense, or if the application requirements are discriminatory on their face.

6. RLUIPA applies to any “land use regulation.” What does that mean?

RLUIPA defines land use regulation as a “zoning or landmarking law . . . that limits or restricts a claimant’s use or development of land.” Zoning law encompasses laws, ordinances or codes that determine what type of building or land use can be located in what areas and under what conditions. Landmark preservation laws are restrictions that municipalities place on specific buildings or sites to preserve those that are deemed significant for historical, architectural, or cultural reasons. RLUIPA’s definition of land use regulation, however, does not extend to every type of law involving land, such as fire

codes, ordinances requiring use of municipal sewer connections, laws regarding property taxes, most landlord-tenant laws, laws governing trespass, and others.

7. Does RLUIPA apply to local governments using eminent domain to take property owned by religious institutions?

“Eminent domain” refers to government taking of private property for public use with just compensation. As a general matter, it is not a zoning or landmarking law, and thus RLUIPA will not apply. However, where municipalities have tried to use eminent domain to short-circuit the zoning process for places of worship that have applied for zoning approval, courts have found that such actions may be covered by RLUIPA.

8. Can places of worship still be landmarked?

Yes, places of worship can be landmarked. However, like any other land-use regulation, landmarking designations that impose a substantial burden on religious exercise must be justified by compelling government interests and pursued in the least restrictive means. Also, landmarking regulations must not be applied discriminatorily.

9. What kinds of burdens on religious exercise are “substantial burdens” under RLUIPA?

The substantial burden inquiry is fact-intensive, and looks at the degree to which a zoning or landmarking restriction is likely to impair the ability of a person or group to engage in the religious exercise in question. Whether a particular restriction or set of restrictions will be a substantial burden on a complainant’s religious exercise will vary based on context, such as the size and resources of the burdened party, the actual religious needs of an individual or religious congregation, the level of current or imminent space constraints, whether alternative properties are reasonably available, the history of a complainant’s efforts to locate within a community, the absence of good faith by the zoning authorities, and many other factors.

Generally, when a municipality takes one of the following types of actions, it may constitute a substantial burden on religious exercise under RLUIPA:

- effectively barring the use of a particular property for religious activity;
- imposing a significantly great restriction on religious use of a property; or
- creating significant delay, uncertainty, or expense in constructing or expanding a place of worship, religious school, or other religious facility.

Courts have, for example, found substantial burdens on religious exercise in a denial of a church construction permit due to onerous off-street parking requirements imposed by a city, a permit condition requiring a religious retreat center to operate as a bed-and-breakfast, a denial of construction of a parish center, a denial of expansion plans for a religious school, and a denial of the ability to convert a building’s storage space to religious use.

Conversely, courts have found no substantial burden violation when a church was denied the amount of off-street parking it would have preferred when there were reasonable parking alternatives available, when a religious high school was denied the ability to operate a commercial fitness center and dance studio out of a portion of its building, and when a church was barred from demolishing an adjacent landmarked building it had purchased in order to construct a family life center, as there was other space on the church's campus that would be suitable.

10. RLUIPA contains a complicated description about when the “substantial burden” section will apply. Just when does the “substantial burden” test apply in a particular case?

RLUIPA applies the substantial burden test to zoning or landmarking laws that have procedures in place under which the government makes “individualized assessments of the proposed uses for the property involved.” By their nature, zoning or landmarking decisions typically involve such “individualized assessments.” Individualized assessments are present when the government looks at and considers the particular details of a proposed land use in deciding whether to permit or deny the use. It thus will cover most applications for variances, special use permits, special exceptions, rezoning requests, conditional use permits, zoning appeals, and similar applications for relief, since these all ordinarily involve the government reviewing the facts and making discretionary determinations whether to grant or reject an application. A denial of a building or occupancy permit based *solely* on a mechanical, objective basis with no discretion on the part of the decision maker would not be an individualized assessment and thus would not require the application of the substantial burden test. Practically, however, such purely “ministerial” situations are extremely rare in zoning disputes.

Even if a zoning or landmarking case did not involve an individualized assessment, the substantial burden test still applies if the use at issue impacts interstate commerce, such as construction or expansion projects, or if there is federal funding involved.

11. What are examples of compelling interests that will permit local governments to impose substantial burdens on religious exercise?

A government cannot impose a substantial burden on religious exercise *unless* it has a compelling governmental interest for doing so that is pursued through means that are the least restrictive of religious freedom possible. “Compelling interest” is a legal term meaning interests “of the highest order.” Government interests that are merely reasonably or even significantly important are insufficient. Courts have ruled that municipal interests in revenue generation, economic development or eliminating congestion, are not compelling. The burden of proving that an interest is compelling lies squarely on the local government.

Examples of interests that may be compelling are those related to preserving public health and safety. For example, safety concerns relating to traffic can be compelling.

However, a county or municipality cannot simply point to an interest in traffic safety in the abstract as a compelling interest justifying a substantial burden on religious exercise. Rather, the government must show that it has a compelling interest in achieving that interest through the particular restriction at issue, such as safety interests in regulating traffic flow on the particular street at issue.

Even where an interest is compelling, it must be pursued through the least restrictive means. If there is another way that the government could achieve the same compelling interest that would impose a lesser burden on religious exercise, it must choose that way rather than the more burdensome way.

12. What does RLUIPA require of government with regard to the treatment of religious assemblies and institutions as well as nonreligious assemblies and institutions?

Section 2(b)(1) of RLUIPA contains a provision, known as the “equal terms provision.” It provides that “[n]o 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.” This section extends to ordinances that on their face treat religious assemblies or institutions on less than equal terms, as well as ordinances that, although facially neutral, are applied in a manner that treat religious assemblies or institutions on less than equal terms than nonreligious assemblies or institutions.

Congress enacted this provision to address the problem of zoning codes, either facially or in application, excluding places of worship where secular assemblies are permitted. The legislative history points to the problem of houses of worship being excluded where theaters, meeting halls, private clubs, and other secular assembly places are permitted.

Determining if a religious assembly is treated on “less than equal terms” than a secular assembly or institution requires a comparison of how the two types of entities are treated in a zoning code. Courts have differed regarding how such a comparison is made, and thus the precise legal test for determining when this section is violated will vary depending on the judicial circuit in which the case arises.

Courts have found the equal terms section violated in situations where places of worship were forbidden but private clubs were permitted, where religious assemblies were forbidden but auditoriums, assembly halls, community centers, senior citizen centers, civic clubs, day care centers, and other assemblies were permitted, and where places of worship were forbidden but community centers, fraternal associations, and political clubs were permitted.

Regardless of the legal test employed in a particular jurisdiction, however, local governments can avoid violating this section of RLUIPA by ensuring that their regulations focus on external factors such as size, impact on traffic and parking, intensity

of use, hours of operation, noise, and similar objective criteria in regulating land uses, rather than focusing on the content of the speech and assembly activities being regulated.

13. What constitutes discrimination based on religion or religious denomination under RLUIPA?

Section 2(b)(2) of RLUIPA bars implementation of a land use regulation that discriminates on the basis of religion or religious denomination. This bar applies to application of land use regulations that facially discriminate, as well as applications of land use regulation that are facially neutral but which in fact discriminate based on religion or religious denomination. Thus if a zoning permit is denied because town officials do not like members of a particular religious group, or if for any other reason an applicant is denied a zoning permit that would have been given to it had it been part of a different religion or religious denomination, Section 2(b)(2) has been violated. Because this section applies to discrimination based on either religion *or religious denomination*, it can apply to situations where a city may not be discriminating against all members of a religion, but merely a particular sub-group or sect.

14. What does it mean for a local government to totally exclude religious uses from a jurisdiction?

Section 2(b)(3)(A) prohibits local governments from “totally exclud[ing] religious assemblies from a jurisdiction.” If a city, town or county had no location where religious uses are permitted, that would be a facial violation of Section 2(b)(3).

15. What does it mean for a local government to impose unreasonable limitations on a religious assembly, institution, or structure?

Section 2(b)(3)(B) prohibits land use regulations that “unreasonably limit[]” religious assemblies, institutions, or structures within a jurisdiction. This provision is violated if a municipality’s land use laws, or their application, deprive religious institutions and assemblies of reasonable opportunities to use and construct structures within that jurisdiction. A determination of reasonableness depends on a review of all of the facts in a particular jurisdiction, including the availability of land and the economics of religious organizations. Courts have found unreasonable limitations where regulations effectively left few sites for construction of houses of worship, such as through excessive frontage and spacing requirements, or have imposed steep and questionable expenses on applicants.

16. When must someone file suit under RLUIPA?

RLUIPA lawsuits brought by private plaintiffs must be filed in state or federal court within four years of the alleged RLUIPA violation.

17. What can a local government do to avoid liability under RLUIPA?

RLUIPA contains a “safe harbor” provision that protects a local government from application of RLUIPA’s enforcement provisions if it takes steps to ameliorate the violation. Section 4(e) provides that a local government can avoid the force of RLUIPA’s provisions by:

- changing the policy or practice that results in a substantial burden on religious exercise;
- retaining the policy or practice and exempting the substantially burdened religious exercise;
- providing exemptions from the policy or practice for applications that substantially burden religious exercise; or
- any other means that eliminates the substantial burden.

18. What is the Department of Justice’s role in enforcing RLUIPA?

The Department of Justice is authorized to file a lawsuit under RLUIPA for declaratory or injunctive relief, but not for damages. For example, the Department may bring suit seeking an order from a court requiring a municipality that has violated RLUIPA to amend its discriminatory zoning codes or grant specific zoning permits to a place of worship, religious school, or other religious use. However, the Department may not seek monetary awards on behalf of persons or institutions that have been injured. Those who have suffered monetary damages from RLUIPA violations must file individual suits.

The Housing and Civil Enforcement Section of the Civil Rights Division has the delegated authority within the Department to investigate and bring RLUIPA lawsuits, both on its own and in conjunction with United States Attorney’s offices around the country. If you believe you have a potential RLUIPA violation case, you should bring it to the attention of the Department of Justice as soon as possible to allow adequate time for review.

The Department receives many complaints from individuals and groups whose rights under RLUIPA may have been violated. While it cannot bring suit in all cases, the Department may take a number of actions in addition to filing suit to resolve RLUIPA matters. The Department may involve the Community Relations Service (CRS) to address community unrest or discord. It may contact the municipality to educate it regarding its obligations under RLUIPA. It may file an amicus brief to weigh in on an important point of law. In deciding whether to file suit, the Department considers a number of factors including whether a case involves important or recurring issues, particularly serious violations of law, or if it is a case that will set precedent for future cases. Many of the Department’s cases have been resolved by negotiating consent decrees that lay out a municipality’s specific obligations to comply with the law. Aggrieved individuals and institutions are encouraged to seek private counsel to protect their rights, in addition to contacting the Department of Justice.

19. How can someone contact the Department of Justice about a RLUIPA matter?

The Civil Rights Division's Housing and Civil Enforcement Section may be reached by phone at:

(202) 514-4713

(800) 514-1116

(202) 305-1882 (TTY)

(202) 514-1116 (fax).

The mailing address is:

U.S. Department of Justice

Civil Rights Division

950 Pennsylvania Avenue, N.W.

Housing and Civil Enforcement Section, NWB

Washington, D.C. 20530



U.S. Department of Justice Civil Rights Division

A Guide To Federal Religious Land Use Protections

The Religious Land Use and Institutionalized Persons Act (RLUIPA) protects religious institutions from unduly burdensome or discriminatory land use regulations. The law was passed unanimously by Congress in 2000, after hearings in which Congress found that houses of worship, particularly those of minority religions and start-up churches, were disproportionately affected, and in fact often were actively discriminated against, by local land use decisions. Congress also found that, as a whole, religious institutions were treated worse than comparable secular institutions. Congress further found that zoning authorities frequently were placing excessive burdens on the ability of congregations to exercise their faiths in violation of the Constitution.

In response, Congress enacted RLUIPA. This new law provides a number of important protections for the religious freedom of persons, houses of worship, and religious schools. The full text of RLUIPA is available at <https://www.justice.gov/crt/title-42-public-health-and-welfare>. Below is a summary of the law's key provisions relating to land use, with illustrations of the types of cases that may violate the law. Information about the institutionalized persons portion of RLUIPA is available at <https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act-0>.

- **RLUIPA prevents infringement of religious exercise.**

Land use regulations frequently can impede the ability of churches or other religious institutions to carry out their mission of serving the religious needs of their members. Section 2(a) of RLUIPA thus bars zoning restrictions that impose a “substantial burden” on the religious exercise of a person or institution, unless the government can show that it has a “compelling interest” for imposing the restriction and that the restriction is the least restrictive way for the government to further that interest.

Minor costs or inconveniences imposed on religious institutions are insufficient to trigger RLUIPA's protections. The burden must be “substantial.” And, likewise, once the institution has shown a substantial burden on its religious exercise, the government must show not merely that it has a rational reason for imposing the restriction, but must show that the reason is “compelling” and the least restrict means of furthering the interest.

A church applies for a variance to build a modest addition to its building for Sunday school classes. Despite the church demonstrating that the addition is critical to carrying out its religious mission, that there is adequate space on the lot, and that there would be a negligible impact on traffic and congestion in the area, the city denies the variance.

A Jewish congregation that has been meeting in various rented spaces that have proven inadequate for the religious needs of its growing membership purchases land and seeks to build a synagogue. The town council denies a special use permit, and the only reason given is “we have enough houses of worship in this town already, and want more businesses.”

Because the religious organizations in these cases have demonstrated a substantial burden on their religious exercise, and the justification offered by the city in both cases is not compelling, these cases likely would be violations of RLUIPA, assuming certain jurisdictional requirements of the statute are met.

- **Religious institutions must be treated as well as comparable secular institutions.**

Section 2(b)(1) of RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions. This is known as the “equal terms” provision of RLUIPA.

A mosque leases space in a storefront, but zoning officials deny an occupancy permit since houses of worship are forbidden in that zone. However, fraternal organizations, meeting halls, and banquet facilities are all permitted as of right in the same zone.

Because the statute on its face favors nonreligious places of assembly over religious assemblies, this example would be a violation of 2(b)(1).

- **RLUIPA bars discrimination among religions.**

Section 2(b)(2) of RLUIPA bars discrimination “against any assembly or institution on the basis of religion or religious denomination.”

A Hindu congregation is denied a building permit despite meeting all of the requirements for height, setback, and parking required by the zoning code. The zoning administrator is overheard making a disparaging remark about Hindus.

If it were proven that the permit was denied because the applicants were Hindu, this would constitute a violation of 2(b)(2).

- **Zoning ordinances may not totally exclude religious assemblies.**

Section 2(b)(3)(A) of RLUIPA provides: “No government shall impose or implement a land use regulation that totally excludes religious assemblies from a jurisdiction.”

A town, seeking to preserve tax revenues, enacts a law that no new churches or other houses of worship will be permitted.

Such total exclusions of religious assemblies are explicitly forbidden by section 2(b)(3)(A).

- **RLUIPA forbids laws that unreasonably limit houses of worship.**

Section 2(b)(3)(B) of RLUIPA provides: “No government shall impose or implement a land use regulation that unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.”

A city has no zones that permit houses of worship. The only way a church may be built is by having an individual parcel rezoned, a process which in that city takes several years and is extremely expensive.

This zoning scheme, if proven to be an unreasonable limitation on houses of worship, would constitute a violation of section 2(b)(3)(B).

Enforcement of RLUIPA Rights

Religious institutions and individuals whose rights under RLUIPA are violated may bring a private civil action for injunctive relief and damages. The Department of Justice also can investigate alleged RLUIPA violations and bring a lawsuit to enforce the statute. The Department can obtain injunctive, but not monetary, relief.

If you believe that your rights under RLUIPA may have been violated and you wish to file a complaint or find out more information about the law, you may write to:

Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

or call the Housing and Civil Enforcement Section at (800) 896-7743. Further information about RLUIPA, including common Questions and Answers, is available at the Section’s RLUIPA page website at <https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>. You also may call the Special Counsel for Religious Discrimination at (202) 353-8622 or write to combatingreligiousdiscrimination@USDOJ.gov.