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RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT
“RLUIPA”

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The Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. 2000cc was enacted by Congress in 2000. Although not well known or understood RLUIPA imposes new federal standards that can expose local governments to serious liability should they run afoul of these standards.

That portion of RLUIPA that regulates the protection of land use as religious exercise states:

“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.”

The above restriction applies in the following situations:

- 1) the “substantial burden” is imposed in a program or activity that receives federal financial assistance;
- 2) the “substantial burden” effects interstate commerce; or
- 3) the “substantial burden” is imposed through individualized land use regulations instead of by way of a general rule.

Land use regulations which impose a “substantial burden” that are of general applicability and do not facially discriminate against religious institutions are not likely to

violate RLUIPA. However, if such general applicability regulations receive federal financial assistance or effect interstate commerce, a violation of RLUIPA may be found if they inspire “substantial burden.”

Land use ordinances that are of general applicability, that are likely to be permissible despite imposing a “substantial burden”, would include set-back rules. The majority of cases decided under RLUIPA to date have found land use regulation to be not of general applicability but individual assessments and thus, if imposing a substantial burden as described above, will be found in violation of RLUIPA, unless the local government shows a compelling governmental interest.

A party alleging a violation of RLUIPA must set forth prima facie evidence of a violation, at which point the local government will bear the burden of persuasion on any element of the claim. The party alleging the violation however, bears the burden of persuasion of whether the land-use regulation “substantial[ly] burdens” his or her exercise of religion. In bringing suit against municipalities and local officials, such parties may seek injunctive relief, monetary damages and attorney fees.

RLUIPA, being a fairly recent law, has a limited number of cases interpreting its meaning.

In the case of Murphy v. Zoning Comm’n of Town of New Milford, 148 F.Supp.2d 173 (D.Conn. 2001), the town’s cease and desist order prohibiting weekly prayer group meetings of more than 25 people in a residential zone was found to be a “substantial burden” on religious activity and was not the least restrictive means of addressing the issue. Although the Court found traffic and parking to be a compelling interest, because the cease and desist order was not the least restrictive means, the court granted a preliminary injunction against the town’s cease and desist order.

In the case of C.L.U.B. v. City of Chicago, 157 F.Supp.2d 903 (N.D.Ill. 2001), the plaintiff brought an action against the City claiming the City’s zoning ordinance discriminated against churches in violation of RLUIPA. The District Court found that the City’s amendment of the ordinance to bring restrictions on locations for clubs, lodges, theaters and similar activities more in line with those imposed on churches, precluded plaintiff from claiming such discrimination in violation of RLUIPA.

Although, RLUIPA defines several key terms itself, few cases have yet to offer further guidance. “Land Use Regulation” has been defined by RLUIPA to mean a zoning or landmarking law that limits one’s use or development of land or affixed structure to the land. “Religious exercise” has been defined to include any exercise of religion whether or not compelled by, or central to, a system of religious belief. Religious exercise is defined to include the use, building or conversion of real property for the purpose of religious exercise.

Local governments must realize that this act covers much more than churches, mosques, synagogues or other houses of worship. The broad definition set forth in

RLUIPA of religious exercise allows for not just a house of worship, but also church operated or religiously oriented, gyms, teen centers, or day care centers to fall within the scope of the act. Any land use application by a religious organization could trigger RLUIPA's protection.

Local governments must carefully review applications of religious groups and weigh the considerations laid out above; specifically, whether a substantial burden has been imposed, and if so, is it in furtherance of a compelling governmental interest which is the least restrictive means of furthering that interest. In such decisions, local governments should establish clear records supported by evidence. As importantly, local governments and their legal and planning staffs are also well advised to review present ordinances to see if houses of worship are restricted to particular zoning districts and treated differently than other similar uses.

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