THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS
BAKERSFIELD CALIFORNIA TEMPLE

This statement explains why temples are so important to members of The Church of Jesus Christ of Latter-day Saints and the religious reasons for the design and location of temples. With that background, it explains that the Religious Land Use and Institutionalized Persons Act ("RLUIPA") supports the Church's right to build the Bakersfield Temple in the selected location and with its current design.

Why are temples so important to Latter-day Saints?

Members of The Church of Jesus Christ of Latter-day Saints gather to worship in two types of buildings: chapels and temples. The Church has thousands of chapels throughout the world. Globally, it has only 190 operating temples, with 160 more under construction or in earlier stages of development.

Sunday worship occurs in chapels, which are open to the public. Church members gather to sing hymns, listen to sermons, and participate in cultural activities. Temples are more sacred. Following a brief public open house, a temple is dedicated to the Lord and only Church members who have demonstrated faithfulness to God's commandments can enter. For Church members, a temple is "the house of God" and the "gate of heaven."[1] In temples, Church members participate in sacred ordinances and make covenants with God that Church members believe are necessary for them to return to live with God after this life.

Church members perform these saving temple rituals not only for themselves but also vicariously on behalf of the dead. For example, a living person is baptized as "proxy" for a deceased ancestor. Many people accept the Gospel of Jesus Christ and are baptized in this life. But what about those who die without being baptized or even knowing about Jesus? How can they be saved? In temples, Church members are baptized and confirmed for them. The other temple rituals are also performed on behalf of our ancestors. (This is one reason why genealogy is so important to Latter-day Saints.) These are called *proxy* ordinances. To be clear, this is done as an offering. The Church believes the people for whom these ordinances are performed can accept or reject them.

Thus, in temples, the saving ordinances of the Gospel of Jesus Christ are made available to all of God's children. This is proof that God loves all His children and gives

[1] Genesis 28:17.

everyone the opportunity to return to Him. In this way, God's "work is perfect" and "all his ways are … just."[2] This is primary reason temples are so important to Church members.

Temples are also vitally important to Church members because it is where Church members go to feel God's presence. "It is His house. It is filled with His power," said Church president Russell M. Nelson.[3] Former Church president Thomas S. Monson taught:

> "As we attend the temple, there can come to us a dimension of spirituality and a feeling of peace which will transcend any other feeling which could come into the human heart. We will grasp the true meaning of the words of the Savior when He said: 'Peace I leave with you, my peace I give unto you.… Let not your heart be troubled, neither let it be afraid.'"[4]

To Church members, the temple is "the most holy place on earth."[5] "The temple is the most important destination in life. It represents entering into the presence of God."[6] "The House of the Lord" and "Holiness to the Lord" are inscribed above each temple entrance to remind Church members that they are entering a holy place.

[Entrance to the Barranquilla Colombia Temple]

[2] Deuteronomy 32:4.

[3] President Russell M. Nelson, "Focus on the Temple," October 2022 General Conference.

[4] President Thomas S. Monson, "Blessings of the Temple," Ensign, May 2015.

[5] Elder Neil L. Andersen, "Temples, Houses of the Lord Dotting the Earth," April 2024 General Conference.

[6] President Henry B. Eyring, (quoted in Jason Swensen, "President Eyring Rededicated Oklahoma City Oklahoma Temple," Church News, May 20, 2019.

The Church believes that Jesus Christ will manifest Himself to His people in mercy in the temple.[7] This promise applies to *every* dedicated temple.[8] For this reason, virtually every aspect of the temple is symbolic of Jesus Christ. President Nelson taught, "When you look at the temple, you should realize it is a symbol of Jesus Christ, as He is our Mediator with the Father. Only by Him can we reach our Heavenly Father." [9]

Why a temple in this location?

God's "work and glory is to bring to pass the immortality and eternal life" of His children[10] Temples are essential to that mission. At a time when the Church had just one temple, Brigham Young, the second president of the Church, prophesied: "To accomplish this work there will have to be not only one temple but thousands of them …."[11]

God said, "I will hasten my work in its time."[12] God is hastening the work of salvation by directing the Church to build temples at a faster pace than ever before, and by bringing temples closer and closer to Church members so they can attend more often and perform more saving ordinances. Church President Russell M. Nelson, recently said:

> "The temple is the gateway to the greatest blessings God has in store for each of us, for the temple is the only place on earth where we may receive all of the blessings promised to Abraham. ***That is why we are doing all within our power, under the direction of the Lord, to make the temple blessings more accessible to members of the Church***."[13]

President Nelson also recently taught: "Let us never lose sight of what the Lord is doing for us now. ***He is making His temples more accessible***. He is accelerating the pace at which we are building temples."[14]

The Church's prophet and his counselors, called the "First Presidency" of the Church, decide under God's direction where to build temples.[15] They consider multiple factors when

---

[7] Doctrine & Covenants 110:7.

[8] President Russell M. Nelson, *Rejoice in the Gift of Priesthood Keys*, Apr. 2024.

[9] Spiritual Doors will Open: Messages about the Temple from President Nelson, Liahona January 2023.

[10] Moses 1:39. (The book of Moses is in the Pearl of Great Price, a book of scripture used by members of the Church.)

[11] *Teachings of Presidents of the Church: Brigham Young* (1997), 310.

[12] Doctrine & Covenants 88:73.

[13] President Russell M. Nelson, "Rejoice in the Gift of Priesthood Keys," April 2024 General Conference.

[14] President Russell M. Nelson, "Focus on the Temple," October 2022 General Conference.

[15] The Church's highest leadership consists of 15 apostles. The most senior apostle is the President of the Church. He chooses two counselors. Together, these three form the First Presidency of the Church.

deciding to build a temple in a specific region. These factors include the growth of Church membership, anticipated future growth of Church membership, the faithfulness of those members, and the proximity and capacity of the nearest temples. Throughout this process, Church leaders pray to God and seek to know His will.

Just as God told Jacob where to build an altar, and that is where God appeared to Jacob (Genesis 35:1-11), God still reveals where temples should be built. Elder Neil L. Andersen, one of the Church's twelve apostles, taught: "The location of a temple . . . comes by revelation from the Lord to His prophet, signifying a great work to be done and acknowledging the righteousness of the Saints who will treasure and care for His house through generations."[16]

This pattern is seen in the Church's history. Shortly after leading the pioneers into the Utah Territory in 1847, Brigham Young had a vision of the Salt Lake Temple. He stuck his walking stick in the ground and said, "Here we will build the temple of our God." At the groundbreaking ceremony, Brigham Young said:

> "I scarcely ever say much about revelations, or visions, but suffice it to say, five years ago last July I was here, and saw in the Spirit the Temple…. I have not inquired what kind of a Temple we should build. Why? Because it was represented before me. I have never looked upon that ground, but the vision of it was there. I see it as plainly as if it was in reality before me."

[16] Elder Neil. L. Andersen, "Thy Kingdom Come," April 2015 General Conference.

[Salt Lake Temple]

In the 1990s, Church president Gordon B. Hinckley traveled to Hong Kong to search for a temple site. As he prayed at one site that "seemed ideal," he knew it was not the place. He awoke one morning as the Holy Spirit revealed to him the site for the temple. In his mind, he saw what the temple would look like. At the dedication of the Hong Kong temple President Hinckley said, "If ever in my life I felt the inspiration of the Lord, it was with this building."[17]

[17] A New Kind of Temple.

[Hong Kong Temple]

After seeking God's guidance, in the April 2023 General Conference of the Church,[18] President Nelson announced the Church's plans to build the Bakersfield Temple.[19] In making the announcement, President Nelson also said,

> "Jesus Christ is the reason we build temples. Each is His holy house. Making covenants and receiving essential ordinances in the temple, as well as seeking to draw closer to Him there, will bless your life in ways no other kind of worship can. For this reason, we are doing all within our power to make the blessings of the temple more accessible to our members around the world."[20]

The Church has approximately 730,000 members in California in 1,112 congregations. The Church has just eight temples in California, with two more under construction, and two more announced—including the Bakersfield Temple. On the map below, the red dots are operating temples, the blue dots are temples under construction, and the yellow dots are announced temples. (The purple dot is a temple that is currently closed for renovations.)

[18] General conference is the worldwide gathering of The Church of Jesus Christ of Latter-day Saints. Twice a year, during the first weekend of April and the first weekend of October, Church leaders from around the world share messages or sermons focused on the living Christ and His gospel.

[19] At the same conference, President Nelson announced plans to build temples in 14 other locations across the world.

[20] President Russell M. Nelson, "The Answer is Always Jesus Christ," April 2023 General Conference.

The nearest temples to Bakersfield are in Fresno (109 miles) and Los Angeles (113 miles). Thus, the primary reason for the Bakersfield Temple is proximity to Church members.

Additionally, Church membership has grown substantially in the Bakersfield area. There are more than 21,000 Church members in what will be the Bakersfield Temple district,[21] and Church membership in the area is still growing and is expected to continue to grow. The Bakersfield Temple will make it possible for thousands of Church members to worship in the temple more often.

The specific site for the Bakersfield Temple was approved by the First Presidency. Its proximity to Church members will bless their lives. The lot size accommodates a temple large enough to support current and future Church membership in the area. Several sites were considered, but this site is the only site that meets the Church's needs. The Church believes this is where God wants the temple built.

[21] A "temple district" is the geographic area assigned to the temple. The Bakersfield Temple is being constructed primarily to meet the needs of Church members who live in the immediately surrounding area. It will be used almost exclusively by Church members in that area.

What will the Bakersfield Temple Look like?

"The temple is literally the House of the Lord."[22] Temples are designed to revere God.[23] Temple designs are approved by the First Presidency under God's direction. The approved design includes each temple's capacity, height, mass, steeple, and lighting. Church architects, planners, and designers are given a specific charge to study the surrounding area and culture. They try to incorporate aspects and features of the location in which the temple will be constructed so that the temple reflects the community. Ultimately, the First Presidency has final say over temple design. Here is a rendering of the Bakersfield Temple:

[Bakersfield California Temple]

We will explain some of the key religious features of the exterior of the Temple:

1. The steeple.

Steeples are a common component of many religious buildings.[24] They identify temples as places of worship dedicated to God. A steeple is a nearly-universal feature of religious architecture throughout the world. Steeples, belfries, turrets, and other elevated

[22] Elder Neil L. Andersen, "Temples, Houses of the Lord Dotting the Earth," April 2024 General Conference.

[23] See First Covenant Church of Seattle v. Seattle, 840 P.2d 174, 182 (Wash. 1992) (a religious building itself serves as "an expression of Christian belief and message").

[24] Steeples are common not only on cathedrals and other Christian churches, but also on the holy buildings of many religious denominations. The tower on a mosque is called a "minaret" which means something like "lighthouse" or "place of light." Hindu temples have a tower called a "shikhara" which means something like "mountain peak."

religious structures reflect the "belief of an ascension towards heaven" and by "pointing towards heaven," they "serve the purpose of lifting … eyes and thoughts towards heaven."[25]

> Symbolically, church steeples carry profound meaning within religious communities. They serve as a visible reminder of the presence of God, pointing upwards towards heaven. Moreover, the height of a steeple symbolizes the longing for spiritual growth and pursuit of divine enlightenment. For believers, the steeple acts as a beacon of hope and faith in the midst of a mundane world, inspiring them to strive for higher, nobler aspirations…. Standing tall and majestic, these iconic structures serve as a visual representation of religious faith and a source of inspiration for believers.[26]

Because steeples are important, the Church fought for several years for the right to put a steeple atop its Boston Temple, ultimately prevailing when the Massachusetts Supreme Court rejected the lower court's conclusion that a steeple was not "necessary" to the temple's religious purposes. "It is not for judges to determine whether the inclusion of a particular architectural feature is 'necessary' for a particular religion," the court explained. "The record is replete with evidence that the steeple is integral to the specific character of the contemplated use. . . . There was uncontradicted testimony that the church values an ascendency of space for the religious ceremonies performed in temples."[27]

---

[25] Martin v. Corp. of Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, 747 N.E.2d 131, 137 (Mass. 2001).

[26] The Beauty and Symbolism of Church Steeples, at https://medium.com/@ameliagrandallxpa/the-beauty-and-symbolism-of-church-steeples-58c41d23e230#:~:text=Symbolically%2C%20church%20steeples%20carry%20profound,and%20pursuit%20of%20divine%20enlightenment..

[27] Martin, 747 N.E.2d at 137.

[Boston Temple without steeple]

[Boston Temple with steeple]

Additionally, temple architects design each temple following an age-old architectural principle known as the "Golden Ratio" or "Golden Triangle."[28] Under this principle, each aspect of a temple, including the steeple, is carefully designed to maintain balance and proportionality between a temple's mass and height.

2. The exterior lighting.

Like the steeple, the temple's exterior lighting also has religious symbolism. Light is used symbolically throughout the scriptures. Most importantly, Jesus Christ is the "light [that] shineth in darkness" and the "true Light, which lighteth every man that cometh into the world."[29] Jesus taught, "I am the light of the world: he that followeth me shall not walk in darkness, but shall have the light of life."[30] Jesus came to "give light to them that sit in darkness … to guide our feet into the way of peace."[31] The exterior lighting of the temple symbolizes that Jesus Christ is the light of the world.

Light also symbolizes truth, enlightenment, and purity. Light gives hope to those that are lost in the dark. Light symbolizes an invitation to enter, like leaving the porch light on. Temples are where "God's full presence shines."[32] The temple's exterior lighting provides the assurance that God's light is available to everyone.

---

[28] The "Golden Ratio" exists in nature and architects have followed this design principle in the most iconic buildings and structures found throughout the world. For further reading, please see: "An introduction to the golden ratio." available at https://www.adobe.com/creativecloud/design/discover/golden-ratio.html; "The Important of Golden Ratio in Architecture" available at https://thearchinsider.com/importance-of-golden-ratio-in-architecture/.

[29] John 1:5, 9.

[30] John 8:12.

[31] Luke 1:79.

[32] "How Great the Wisdom and the Love." Hymn 195.

[Santo Domingo Dominican Republic Temple]

3. The size.

The size of a temple is dictated primarily by worship needs as reflected by the essential features of the temple's interior including the baptistry, ordinance rooms, sealing rooms, a celestial room, and essential offices. Temples also must have an entryway, a foyer, locker rooms, a laundry, and other rooms that make temple worship possible. These rooms are all necessary for the temple to fulfil its religious purpose.

The size of these interior rooms is dictated primarily by the number of Church members the temple will serve, both now and in the future. Thus, the size of a temple is almost entirely a matter of religious need. Limiting the size of the temple would limit the size of the interior rooms, which would substantially burden the religious exercise that occurs inside the temple.

The size of interior rooms also serves religious purposes. Elevated ceilings are a common feature of religious architecture because they create a sense of grandeur and awe. Speaking of religious architecture in general, Vittorio Gallese, professor of physiology at the University of Parma, Italy, explains: "To feel closer to God, you have to create an environment

where everything suggests this feeling of elevation."[33] Temple ceremonies culminate in the "celestial room" found in each temple. These rooms, which have high ceilings adorned by a beautiful chandelier, are designed for the very purpose of creating a sense of heaven on earth. High ceilings help create that feeling.

[Celestial Room - Mexico City Temple]

4. The landscaping.

Temple grounds are also places of quiet contemplation and worship. While only members in good standing many enter a temple, a temple's grounds are open to the public. All may come to worship in their own way. For this reason, each temple is beautifully landscaped to create a sense of tranquility and peace. The grounds are used for no other purpose other than quiet meditation and worship.

[33] Quoted in Meera Senthilingam, "The mysterious neuroscience of holy buildings," August 29, 2015, available at https://www.cnn.com/style/article/daniel-libeskind-architecture-neuroscience/index.html.

[Phoenix Arizona Temple]

The proposed Bakersfield Temple will be beautifully landscaped. Over 63% of the total project site will be dedicated as landscaped and/or undeveloped open space.

In the end, each temple's design is unique and varies based on several factors and considerations, including but not limited to, the features of buildings and structures in the surrounding community, the capacity needed for existing and future growth in Church membership, and the inspiration of Church leadership. Every temple design is approved by the Church's highest leaders who seek direction from the Lord. Every design is based on the sincere religious belief that the temple is the House of the Lord.

How will the temple be used?

The Bakersfield Temple will be open Tuesday through Saturday. Group worship services are not held in temples. It is not a "megachurch." Instead, individual members decide when to worship in the temple.

Key features of the temple include the baptistry, where baptisms are performed. While most temple ordinances are reserved for adults, youth ages 11 to 18 are allowed in the baptistry and perform most vicarious baptisms.

[Baptistry – Rome Italy Temple]

Baptistry appointments fill quickly, leaving many young people without the opportunity to attend as often as they like. That is one reason the Bakersfield Temple is so needed. Further, Church youth can begin performing these ordinances during the year in which they turn twelve, and many Church youth like to go to the temple after school. The proximity of a temple is therefore especially important to the Church's youth. One of the Church's apostles explained the importance of the temple for the Church's youth:

> "Do you young people want a sure way to eliminate the influence of the adversary in your life? Immerse yourself in searching for your ancestors, prepare their names for the sacred vicarious ordinances available in the temple, and then go to the temple to stand as proxy for them to receive the ordinances of baptism and the gift of the Holy Ghost. As you grow older, you will be able to participate in receiving the other ordinances as well. I can think of no greater protection from the influence of the adversary in your life."[34]

[34] Elder Richard G. Scott, "The Joy of Redeeming the Dead," October 2012 General Conference.

Worshipers wear all white clothing in the temple to reflect purity and unity. There is no rank or status in the temple. We are "one in Christ" when we enter.[35] The temple has changing rooms with lockers where members put on this white clothing.

The temple has "endowment" rooms where religious instruction is given and Church members make sacred covenants with God. Church members covenant to obey God's commandments, follow Jesus Christ, be morally pure, and dedicate their time and talents to serving God and serving His children.

[Endowment Room – Raleigh North Carolina Temple]

Families are central to God's plan for our happiness. In the temple, husbands and wives are married "for time and all eternity" and children are sealed to their parents, creating forever families.

[35] Galatians 3:28.

[Sealing Room – Fortaleza Brazil Temple]

At the conclusion of the Endowment ordinance, participants enter the celestial room. There are no ceremonies performed in this room. It is a place of quiet prayer and reflection meant to symbolize heaven, where we may live forever with our family in the presence of our Heavenly Father and Jesus Christ.

[Celestial Room - Washington D.C. Temple]

For additional information on temples, why the Church builds temples, and how temples are used, please visit: https://www.churchofjesuschrist.org/temples.

THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT

With this foundation, we turn to the Religious Land Use and Institutionalized Persons Act. We attach three important documents from the United States Department of Justice. First is a recent letter from the DOJ Civil Rights Division to all state, county, and municipal officials reminding them of their obligations under RLUIPA. (Exh. A.) Second is a Q&A document detailing how RLUIPA works. (Exh. B.) Third is the DOJ's Report on the Twentieth Anniversary of RLUIPA. (Exh. C.)

I. RLUIPA Overview

There are three main types of RLUIPA claims: (1) substantial burden, (2) unequal treatment, and (3) religious discrimination.

Substantial burden. RLUIPA prohibits enforcement of any "land use regulation" or decision that imposes a "substantial burden" on the "religious exercise of a person … or institution" unless the government proves that imposing the burden "(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest."[36]

Unequal treatment. RLUIPA prohibits "treat[ing] a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."[37] This provision is violated "whenever religious land uses are treated worse than comparable nonreligious ones, whether or not the discrimination imposes a substantial burden on religious uses."[38]

Religious discrimination. RLUIPA prohibits any land use regulation or decision "that discriminates on the basis of religion or religious denomination."[39]

II. Denying the Church's application to construct the Bakersfield Temple as designed would violate RLUIPA's substantial burden provision.

We believe RLUIPA's substantial burden provision strongly supports the Church's right to build the Bakersfield Temple, as designed, at the chosen location.

---

[36] 42 U.S.C. § 2000cc(a).

[37] Id. § 2000cc(b)(1).

[38] Digrugilliers v. Consol. City of Indianapolis, 506 F.3d 612, 616 (7th Cir. 2007).

[39] 42 U.S.C. § 2000cc(b)(2).

A. RLUIPA's substantial burden provision grants *preferential* treatment to religious land use.

The U.S. Supreme Court says RLUIPA "accord[s] religious exercise ***heightened protection*** from government-imposed burdens …."[40] In fact, one of RLUIPA's primary purposes was to thwart the effects of the Supreme Court's decision in *Employment Div., Dept. of Human Resources of Ore. v. Smith*,[41] which held that the Free Exercise Clause did not exempt religious believers from neutral laws of general applicability. Put bluntly by the Supreme Court, RLUIPA returned to religious believers the "right to ignore neutral laws of general applicability" that are contrary to their religious beliefs unless the government has a compelling interest in enforcing the law.[42] Again from the Supreme Court, "Congress enacted RLUIPA … in order to provide very broad protection for religious liberty."[43] In sum, RLUIPA grants *preferential* treatment to religious land uses.

B. RLUIPA's expansive definition of "religious exercise."

The Supreme Court says RLUIPA gives "greater protection for religious exercise than is available under the First Amendment."[44] "Several provisions of RLUIPA underscore" this "expansive protection."[45] One is the expansive definition of "religious exercise." Congress defined "religious exercise" "capaciously to include 'any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'"[46] Congress also "mandated that this concept 'shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.'"[47]

1. Building a temple is "religious exercise."

RLUIPA removes any doubt about whether constructing houses of worship is religious exercise by declaring: "The use, building, or conversion of real property for the purpose of religious exercise" is protected.[48] Thus, "challenges to zoning ordinances," for example, "are

---

[40] Opulent Life Church v. City of Holly Springs, 697 F.3d 279, 289 (5th Cir. 2012) (quoting Cutter v. Wilkinson, 544 U.S. 709, 714 (2005).

[41] 494 U.S. 872 (1990).

[42] Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 695 (2014).

[43] Holt v. Hobbs, 574 U.S. 352, 356 (2015).

[44] Id. at 357.

[45] Id. at 358.

[46] Id. quoting 42 U.S.C. § 2000cc-5(7)(A)

[47] Id. quoting 42 U.S.C. § 2000cc-3(g).

[48] Id.

expressly contemplated by" RLUIPA.[49] The construction of the Bakersfield Temple is an act of religious devotion. According to the Ninth Circuit: "[A] place of worship … is at the very core of the free exercise of religion…. 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."[50]

The choice of the location of the Bakersfield Temple was also an exercise of religion. The Church believes the site was chosen by God. Whether or not other sites are available that would be adequate from a secular perspective, this specific site has religious significance.

2. The architectural design of a temple is "religious exercise."

Certain aspects of the temple, such as the interior and exterior design, the steeple, and the lighting are also the exercise of religion. "[A]rchitecture—including a steeple—is religious exercise."[51] "The relationship between theological doctrine and architectural design is well recognized."[52] Ecclesiastical architecture reflects "the religious choices of a religious community."[53] Such architecture "is inseparable from its religious meaning and purpose."[54] "[C]hurch architecture always aimed to make visible the sacred."[55] The design "manifests religious expression."[56] "The spire," for example, "is a 'symbol of man's aspiration to be united with his creator."[57] A steeple has been described as "perhaps the signature physical characteristic that identif[ies] buildings as places of Christian worship. . . . [S]teeples are a hallmark of Christian churches."[58] A temple is "literally the House of the Lord."[59] The design of a temple is one way Latter-day Saints worship God. Thus, RLUIPA protects not only the construction of houses of worship, but also every aspect of their design that is motivated by religious belief.

---

[49] Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1226 (11th Cir. 2004). See also Chabad Lubavitch of Litchfield County, Inc. v. Borough of Litchfield, 2016 WL 370696 (D. Conn. 2016); Congregational Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona, 138 F. Supp. 3d 352 (S.D.N.Y. 2015).

[50] Int'l Church of Foursquare Gospel v. City of San Leandro, 673 F.3d 1059, 1069-70 (9th Cir. 2011) (quotations omitted).

[51] What Constitutes Religious Exercise Under RLUIPA, Federal Land Use Law & Litigation § 7:33 (2023 ed.)

[52] First Covenant Church of Seattle v. City of Seattle, 840 P.2d 174, ___ (Wash. 1992).

[53] Angela C. Carmella, *Houses of Worship and Religious Liberty: Constitutional Limits to Landmark Preservation and Architectural Review*, 36 Vill. L. rev. 401, 451 (1991).

[54] Id. at 481.

[55] J. Dahinden, New Trends in Church Architecture 75 (1967).

[56] Carmella, supra at 405.

[57] Thomas Pak, *Free Exercise, Free Expression, and Landmarks Preservation*, 91 Colum. L. Rev. 1813, 1841 (1991) (quoting Paul Clowney & Tessa Clowney, Exploring Churches 13 (1982)).

[58] Lynn Arave, "Steeped in Symbolism," Deseret News, Feb. 17, 2001.

[59] Elder Neil L. Andersen, "Temples, Houses of the Lord Dotting the Earth," April 2024 General Conference.

3. RLUIPA protects acts motivated by religion even if those acts are not central to or compelled by religious beliefs.

Some may object that a temple's size, a steeple, and the height of a steeple, are not *compelled* or dictated by the Church's beliefs. They are matters of religious preference; they are not religious requirements. This doesn't matter. RLUIPA says the religiously motivated conduct in question need not be "compelled by, or central to, a system of religious belief.'"[60] As the U.S. Department of Justice has explained, a 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."[61] The fact that nearly all of the Church's temples have steeples reflects how important steeples are to the Church.

C. The City's ordinances require "individualized assessment," which triggers RLUIPA's protections.

RLUIPA applies whenever a substantial burden is imposed "in the implementation of a land use regulation or system of land use regulations under which a government makes … individualized assessments of the proposed uses for the property involved."[62] The Ninth Circuit has held that a municipality makes an individualized assessment any time it "*may* take into account the particular details of an applicant's proposed use of land when deciding to permit or deny that use."[63]

In International Church of Foursquare Gospel v. City of San Leandro,[64] a church alleged that the City of San Leandro, California violated RLUIPA "by denying a rezoning application" that would have permitted churches on certain industrial land. The church sued the City under RLUIPA. The district court granted summary judgment to the City after concluding that a rezoning application did not require an individualized assessment. The Ninth Circuit reversed, saying "[t]he City's treatment of the Church's applications constitutes an 'individualized assessment.'"[65] The court then also concluded that denial of the rezoning application imposed a substantial burden.[66]

---

[60] 42 U.S.C. § 2000cc-5(7)(A)

[61] Dep't of Justice, Civil Rights Div., Statement of the Department of Justice on the Land-Use Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA) (Sept. 22, 2010), http://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/rluipa_q_a_9-22-10_0.pdf.

[62] 42 U.S.C. 2000cc(a)(2).

[63] Guru Nanak Sikh Soc. of Yuba City v. Cnty. of Sutter, 456 F.3d 978, 986 (9th Cir. 2006).

[64] 673 F.3d 1059 (2011).

[65] Id. at 1066.

[66] Id. at 1067.

Here, the property does not need to be rezoned because, as detailed in the Church's April 23, 2024 letter to the City (a copy of which is attached as Exhibit D):

- The C-O Zone that applies to the Temple site does not limit heights of steeples (*see* BMC § 17.20.060)
- Both State law (California Building Code § 504.3 and California Code of Regulations § 504.3) and the City's own Code (BMC § 15.05.010) expressly exempt from any local height limits steeples made of noncombustible materials, as will be the case for the Bakersfield Temple

Even if, for sake of discussion, State law and the City's Code could be read to require the Church to apply for a zoning change or any other discretionary approval to allow the 124-foot steeple, that application would require an "individualized assessment" and would therefore trigger RLUIPA's protections, since in that event the City would require a site plan as follows:

> No person shall undertake, conduct, use or construct, or cause to be undertaken, conducted, used or constructed, any of the following without first obtaining site plan approval: any change in the actual use of land or improvements thereon, including, but not limited to, the construction of any improvements which require a building permit, enlargement, reconstruction or renovation of improvements.
>
> The applicant would need to provide in connection with a site plan application:
>
> sufficient information to determine whether the proposed project is consistent with the general plan and zoning ordinance as implemented by adopted city regulations and all information necessary to determine if the project is subject to review pursuant to . . . CEQA . . . as determined by the planning director.

In such a detailed, comprehensive individualized assessment, the decisionmakers would thus have to consider whether they have a "compelling interest" in denying the application.

D. Denying the Church's application would impose a "substantial burden" on the Church's exercise of its religious beliefs.

According to the Supreme Court, a "substantial burden" exists when government action interferes with "the ability of the objecting parties to conduct [themselves] in

accordance with their religious beliefs."[67] Simply put, a burden is substantial if it "prevents the plaintiff from participating in an activity motivated by a sincerely held religious belief."[68]

Importantly, RLUIPA applies even to "substantial burdens that are imposed in an incidental manner" as the result of applying a neutral law, such as a height restriction that applies to all buildings.[69] "RLUIPA's substantial burden provision says nothing about targeting."[70] "[T]he substantial burden provision protects against non-discriminatory, as well as discriminatory, conduct that imposes a substantial burden on religion."[71]

Also, the substantiality of the burden does not depend on the centrality of the belief being burdened. A land use ordinance can substantially burden a noncentral belief. "[T]he inquiry … isn't into the merits of the plaintiff's religious beliefs or the relative importance of the religious exercise …."[72] The religious exercise at issue need not be either "compelled by, or central to, a system of religious belief."[73] The inquiry is whether the government action burdens a person's religious exercise "as he understands that exercise and the terms of his faith."[74]

In RLUIPA's land-use context, a substantial burden exists when government action prevents the use of real property in the manner motivated by sincerely held religious beliefs. Absolute denial per se imposes a substantial burden unless adequate alternative sites are available without substantial cost or delay.[75] But even "a conditional denial may represent a substantial burden if the condition itself is a burden on free exercise …."[76] In other words,

---

[67] Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 724 (2014).

[68] Yellowbear v. Lambert, 741 F.3d 48, 54 (10th Cir. 2014). Courts have applied more stringent tests in the "institutionalized persons" context of RLUIPA. But numerous circuit courts have held that it would be improper to apply that standard "without any modification for the land use context . . . ." Bethel World Outreach Ministries v. Montgomery County Council, 706 F.3d 548, 555-56 (4th Cir. 2013).

[69] Smith v. Ozmint, 578 F.3d 246, 251 (4th Cir. 2009).

[70] Bethel World Outreach Ministries, 706 F.3d at 556.

[71] Id. at 557.

[72] Id. at 55.

[73] Midrash Sephardi, 366 F.3d at 1225.

[74] Yellowbear, 741 F.3d at 54.

[75] See Cottonwood Christian Center v. Cypress Redevelopment Agency, 218 F. Supp. 2s 1203, 1226 (C.D. Cal. 2002); Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761–62 (7th Cir.2003); Petra Presbyterian Church v. Vill. of Northbrook, 489 F.3d 846, 850–51 (7th Cir.2007). But see New Harvest Christian Fellowship v. City of Salinas, 29 F.4th 596, 602 (9th Cir. 2022) ("The availability of alternative locations … does not necessarily foreclose a finding of substantial burden. That is, other circumstances may create a substantial burden even where an alternative location is technically available.").

[76] Westchester Day School v. Village of Mamaroneck, 504 F.3d 338, 349 (2d Cir. 2007).

"other circumstances may create a substantial burden even where an alternative location is technically available."[77]

With Latter-day Saint temples, the selection of the location is an exercise of religion. Church leaders, not real estate agents, chose this specific site under the Lord's direction. One municipality called this kind of argument a "trump" card. If the specific site is a matter of religious belief, religious organizations would be able to build wherever they choose. In response, the court explained that if the church's exercise of its religious beliefs "meets the expansive definition of religious exercise under RLUIPA," then the court could not "second-guess" the church's explanation of what its religious beliefs require.[78] A court cannot question the truthfulness or reasonableness of a church's assertion that its religious beliefs require it to build a worship space at a specific location, or design that worship space in a particular way. But this does not "result in [the church] being able to do what it wants, without any reasonable limitation."[79]

> There are two important limitations that Congress and courts have imposed. First, [the City] and the courts may question the sincerity of the plaintiff's religious exercise. Second, RLUIPA allows a government to impose a limitation—even if it substantially burdens a plaintiff's religious exercise—so long as the limitation is the least restrictive means of serving a compelling interest.[80]

In short, a church *never* holds the trump card. The municipality always holds it because no matter how sincere or how important the affected religious exercise is, it can be restricted or even prohibited *if* the municipality has a compelling interest.

The steeple and lighting are also motivated by religious beliefs. "It is not for judges" or city officials "to determine whether the inclusion of a particular architectural feature is 'necessary' for a particular religion" or to "determine what is or it not a matter of religious doctrine."[81] Courts "lack any license to decide the relative value of a particular exercise to a religion."[82] Likewise, "it isn't for judges to decide whether a claimant who seeks to pursue a

---

[77] New Harvest Christian Fellowship, 29 F.4th at 602.

[78] City Walk - Urb. Mission Inc. v. Wakulla Cnty. Fla., 471 F. Supp. 3d 1268, 1286 (N.D. Fla. 2020).

[79] Id.

[80] Id.

[81] Martin, 747 N.E.2d at 138-40.

[82] Yellowbear, 741 F.3d at 54.

particular religious exercise has correctly perceived the commands of his faith or to become arbiters of scriptural interpretation."[83]

Nor can judges or municipal officials challenge the reasonableness or truthfulness of the Church's beliefs. The Ninth Circuit said such an approach would result in the "improper scrutiny of the Church's core religious beliefs."[84] In International Church of the Foursquare Gospel, the church asserted that its "unique core beliefs" required its members to gather in one location to worship. The district court rejected this, concluding that requiring church members to continue to meet at three separate locations did not impose a "substantial burden" on their religious exercise. The Ninth Circuit rebuked the district court for rejecting the church's representations about its beliefs.

> The district court's flat rejection of the Church's characterization of its core beliefs runs counter to the Supreme Court's admonition that while a court can arbiter the sincerity of an individual's religious beliefs, courts should not inquire into the truth or falsity of stated religious beliefs.[85]

The fact that nearly all Latter-day Saint temples have steeples is conclusive evidence that steeples are a sincere exercise of religious belief. Given the ubiquity of steeples on worship buildings of all faiths, we don't see how anyone could contend that they are not a form of sincere religious exercise.

The Church sincerely believes that the temple is "literally the House of the Lord" and that the Lord provides divine guidance about the location and design of temples. Thus, nearly everything about a temple's location and design is motivated by sincere religious belief and is, therefore, a matter of religious exercise. Thus, any land use decision that prohibits the construction of a temple in the chosen location, or the inclusion of a steeple or exterior lighting, would impose a "substantial burden" on this religious exercise. Such a decision would interfere with the Church's ability "to conduct [itself] in accordance with [its] religious beliefs."[86]

An adverse decision would also impose a substantial burden on individual Church members who will worship in the Bakersfield Temple. The Church's current leader, Russell

---

[83] Id. at 54-55 (cleaned up).

[84] Int'l Church of Foursquare Gospel, 673 F.3d at 1069.

[85] Id.

[86] Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 724 (2014).

M. Nelson, has repeatedly implored Church members to spend "more time in the temple." Consider these prophetic exhortations and promises from President Nelson:

- "[E]stablish a pattern of regular temple attendance…. **More regular time in the temple** will allow the Lord to teach you how to draw upon His priesthood power with which you have been endowed in His temple."[87]
- "Spending **more time in the temple** builds faith…. The temple is a place of revelation. There you are shown how to progress toward a celestial life. There you draw closer to the Savior and are given greater access to His power. There you are guided in solving the problems in your life, even your most perplexing problems…. We continue to build more temples to make these sacred possibilities become a reality in each of your lives."[88]
- "Spend **more time in the temple**, and seek to understand how the temple teaches you to rise above this fallen world."[89]
- "**Time in the temple** will help you to *think celestial* and to catch a vision of who you really are, who you can become, and the kind of life you can have forever…. Nothing will help you more to hold fast to the [word of God] than **worshipping in the temple as regularly as your circumstances permit**…. That is why we are doing all within our power, under the direction of the Lord, to make the temple blessings more accessible to members of the Church."[90]
- "We want to bring temples closer to the expanding membership of the Church…. [C]onstruction of these temples may not change your life, but your **time in the temple** surely will. In that spirit, I bless you to identify those things you can set aside so you can spend **more time in the temple**."[91]
- "We know that our **time in the temple** is crucial to our salvation and exaltation and to that of our families…. Our need to be in the temple on a regular basis has never been greater…. If you have reasonable access to a temple, I urge you to

[87] President Russell M. Nelson, "Sisters' Participation in the Gathering of Israel," October 2018 General Conference.

[88] President Russell M. Nelson, "Think Celestial!" October 2023 General Conference.

[89] President Russell M. Nelson, "Overcome the World and Find Rest," October 2022 General Conference.

[90] President Russell M. Nelson, "Rejoice in the Gift of Priesthood Keys," April 2024 General Conference.

[91] President Russell M. Nelson, "Let Us All Press On," April 2018 General Conference.

find a way to **make an appointment regularly with the Lord—to be in His holy house**—then keep that appointment with exactness and joy."[92]

- "Let us never lose sight of what the Lord is doing for us now. He is making His temples more accessible. He is accelerating the pace at which we are building temples…. I promise that **increased time in the temple** will bless your life in ways nothing else can."[93]

Proximity and availability of appointments are critical to Church members who desire to spend "more time in the temple." A long drive or inability to get an appointment at desired times substantially burdens individual temple worship.[94] Additionally, many Church members in the Bakersfield area would like to serve God through regular service in the temple by administering temple rituals to others. Such temple service is substantially burdened by the distance to the nearest temple.

The Church's youth in the area would also like to go to the temple more often to perform proxy baptisms. That is currently difficult because of the required travel.

In sum, temples are the House of the Lord. Temple design and location are determined by the First Presidency of the Church "under the direction of the Lord."[95] The design not only accommodates religious worship but is also itself an act of worship. Attempts by government officials to dictate temple location and design would interfere with the Church's cherished beliefs. That is the very essence of a "substantial burden."

E. The City does not have a compelling interest in denying any aspect of the Church's applications.

The Ninth Circuit has stated that "RLUIPA analysis proceeds in two sequential steps. First, the plaintiff must demonstrate that a government action has imposed a substantial burden on the plaintiff's religious exercise. Second, once the plaintiff has shown a substantial burden, the government must show that its action was 'the least restrictive means' of 'further[ing] a compelling governmental interest.'"[96]

---

[92] President Russell M. Nelson, "Becoming Exemplary Latter-day Saints," October 2018 General Conference.

[93] President Russell M. Nelson, "Focus on the Temple," October 2022 General Conference.

[94] See Jesus Christ is the Answer Ministries, Inc. v. Baltimore Cty., 915 F.3d 256, 261 (4th Cir. 2019) (observing that a burden is "usually" substantial where "where use of the property would serve an unmet religious need"); Bethel World Outreach, 706 F.3d at 558 (finding a substantial burden where insufficient space to accommodate a large congregation caused the church to have multiple, shorter services, thereby interfering with Communion and cutting short the church's "Altar Call" practice).

[95] President Russell M. Nelson, "Rejoice in the Gift of Priesthood Keys," April 2024 General Conference.

[96] Int'l Church of Foursquare Gospel, 673 F.3d at 1066 (quoting 42 U.S.C. § 2000cc(a)(1)).

A compelling interest is an interest of the "highest order."[97] It generally requires some "substantial threat to public safety, peace, or order."[98] A city's general interest in "enforcing zoning regulations and ensuring … safety" is not sufficient. The city "must show a compelling interest in imposing the burden on religious exercise in the particular case at hand, not a compelling interest in general."[99] The U.S. Supreme Court says strict scrutiny demands this "more precise analysis."[100] "Rather than rely on broadly formulated interests, courts must scrutinize the asserted harm of granting specific exemptions to particular religious claimants."[101]

The City would not be able to identify a "compelling government interest" that would justify restricting the height of the steeple. By attempting to impose a height limit on the Bakersfield Temple's steeple where no such limit exists under the City's own Code and where State law and the City's own regulations exempt this steeple from any such limit, the City not only would show it has no compelling interest to burden the Church's religious exercise, but the City would also appear to create an impairment to this religious exercise in the absence of a plausible regulatory basis for doing so.

Simply put, the steeple poses no health, fire, safety, or other risk. The steeple will be made entirely of noncombustible materials, which exempts the steeple from any asserted height limits, and all of the Church's building and steeple will be separated by several hundred feet from the nearest neighboring buildings by well-maintained, landscaped grounds.[102]

Even where an interest is compelling, which is not apparent here, RLUIPA requires that it be pursued through the least restrictive means.[103] "[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so."[104] As Justice Gorsuch explains, "RLUIPA prohibits governments from infringing sincerely held religious beliefs and practices except as a last resort."[105] We believe that any safety concerns with the Temple site and Temple design can be dealt with in ways that do not substantially burden the

---

[97] Westchester Day Sch., 504 F.3d at 353.

[98] Congregational Rabbinical Coll. of Tartikov, 138 F. Supp. 3d at 456 (S.D.N.Y. 2015) (citing Sherbert v. Verner, 374 U.S. 398, 403 (1963)).

[99] Westchester Day Sch., 504 F.3d at 353.

[100] Fulton v. City of Philadelphia, 141 S. Ct. 1868, 1881 (2021).

[101] Id. (cleaned up).

[102] To be clear, the temple is in Bakersfield's C-O Zone, which establishes a 60-foot limit for "building height" (BMC § 17.20.060), but this term, as defined by the BMC, only applies to the height of the habitable space, not the steeple's height.

[103] 42 U.S.C. § 2000cc(a)(1)(b).

[104] Fulton, 141 S. Ct. at 1881.

[105] Mast v. Fillmore Cty, 141 S. Ct. 2430, 2433 (2021) (Alito J., concurring).

Church's religious exercise, and look forward to working with the City to achieve this goal in a mutually acceptable manner.

In short, we believe that RLUIPA's substantial-burden standard requires the City to honor and accept the Church's religious exercise as reflected in the Temple as designed, including its steeple.

III. RLUIPA's remedies

Lastly, RLUIPA authorizes any "appropriate relief" a court may award in the event a municipality does not comply with this federal law.[106] Declaratory and injunctive relief are common remedies. The Ninth Circuit has also held that "municipalities are liable for money damages for violations of RLUIPA."[107] RLUIPA also authorizes courts to award attorney's fees to the prevailing party pursuant to the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988(b).[108]

CONCLUSION

We present the remedies available under RLUIPA only to inform the City of the range of essential elements of this law, not as a suggestion or implication that the Church anticipates or desires to pursue such remedies. Indeed, we stand ready and look forward to working with the City in a cooperative, collaborative manner to obtain all needed approvals of the Temple Project consistent with RLUIPA, State law and the City's own standards.

[106] 42 U.S.C. § 2000cc-2.

[107] Centro Familiar Cristiano Buenas Nuevas, 651 F.3d at 1168.

[108] Lighthouse Institute for Evangelism v. Long Branch, 510 F.3d 253 (3d Cir. 2007).

EXHIBIT A

Letter from the DOJ Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

March 19, 2024

Re: The Religious Land Use and Institutionalized Persons Act

Dear State, County, and Municipal Officials:

I am writing to you today to remind you of the obligation of public officials to comply with the land use provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), and to inform you about documents 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, and at a time when many faith communities face discrimination, the Department continues to steadfastly defend this basic freedom to ensure that all people may live according to their beliefs, free of discrimination, harassment, or persecution.

Over the years, Congress has passed several 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. Congress determined that there was a need for federal legislation to protect people and religious institutions from unduly burdensome, unreasonable, or discriminatory zoning, landmarking, and other land use regulations.[i] It heard testimony that houses of worship, particularly those of minority religions and start-up churches, were disproportionately affected in an adverse way, and in fact were often actively discriminated against by local land use decisions. Congress also found that religious institutions were treated worse than secular places of assembly like community centers, fraternal organizations, and theaters, and that zoning authorities frequently violated the United States Constitution by placing excessive burdens on the ability of congregations to exercise their faiths.

RLUIPA includes a private right of action, which allows individuals to enforce its provisions. Congress also gave the 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 over 155 formal investigations and filed nearly 30 lawsuits related to RLUIPA's land use provisions.[ii] The Department has also filed 36 "friend-of-the-court" briefs addressing the interpretation and application of RLUIPA in privately-filed lawsuits. Through these efforts, as well as those by private parties, RLUIPA has helped secure for thousands of individuals and institutions the freedom to practice their faiths without discrimination.

Yet, more than twenty-three 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. The Department of Justice implemented its *Place to Worship* Initiative in 2018, through which we continue to work to increase both public awareness and enforcement of RLUIPA's land use provisions.[iii] As

participants at recent outreach events have indicated, and as the Department's own investigations have revealed, there are still many municipal, county, and other local officials who are insufficiently familiar with the land use provisions of RLUIPA and with their obligations under this important federal civil rights law. The Department has also received reports that religious groups, particularly those from less widely practiced religious traditions, continue to face unlawful barriers in the zoning and building process. Our work in this area suggests that litigation is far less likely if local officials are aware of RLUIPA and consider its protections early in the process of reviewing land use applications from religious organizations.

In light of this, we are sending this letter to you and other officials throughout the country to ensure that you are aware of your obligations under RLUIPA and its key provisions. Ensuring that our constitutional and statutory protections of religious freedom are upheld requires that federal, state, and local officials work together. To that end, we encourage you to share this letter with your colleagues. We hope that you will continue to work with the Department and view us as a partner in ensuring that no individual in this country suffers discrimination or unlawful treatment because of their faith.

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

RLUIPA's land use provisions provide several protections for places of worship, faith-based social service providers, and religious schools, as well as for 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.
- *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 prohibits governments from imposing or implementing land use regulations that totally exclude religious assemblies from a jurisdiction.
- *Protection against unreasonable limitation of religious assemblies:* Section 2(b)(3)(B) of RLUIPA prohibits governments from imposing or implementing land use regulations that "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 and types of religious exercise. 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, religious cemeteries, and religious social service facilities such as group homes, homeless shelters, and soup kitchens, as well as to individuals or families exercising their religion through the use of property, such as home prayer gatherings or Bible studies.[iv]

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 under RLUIPA, those seeking approval for a religious land 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 themselves 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 RLUIPA's protections mentioned above are discussed in greater detail below.[v]

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 a person or religious institution is not sufficient to constitute a burden, 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 zoning amendment that prohibited it from building an expanded church on its property, a federal appeals court ruled that the church has "presented considerable evidence that its current facilities inadequately serve its needs," and that the "delay, uncertainty and expense" caused by the local government's action may create a substantial burden on the church's religious exercise in violation of RLUIPA.[vi] The court relied on facts showing that the church's current facility was inadequate for its congregation and that it had a reasonable expectation that it could develop its new property. Similarly, the Department of Justice filed suit in a Connecticut federal district court alleging that a city's denial of zoning approval for an Islamic Center to establish a mosque imposed a substantial burden on the congregation.[vii] The City had required the group to apply for a Special Exception Permit, which it did not require for other types of institutional land uses within the zone, and then denied the permit. The case was resolved by a consent decree in federal court.

If application of a zoning or landmarking law creates a substantial burden on religious exercise, such application is invalid unless it is supported by a compelling governmental interest pursued through the least restrictive means.[viii] While RLUIPA does not define "compelling interest," the U.S. Supreme Court has explained that compelling interests are only "interests of the highest order."[ix] Further, local governments cannot rely on generalized, "broadly formulated interests," but instead must "show that the compelling interest test is satisfied through application of the challenged law to . . . the particular claimant whose sincere exercise of religion is being substantially burdened."[x]

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 provisions that prohibited religious assemblies on the ground floor of buildings on a city's downtown main street but permitted nonreligious uses, such as theaters, on the ground floor of such buildings violated the equal terms provision.[xi] In 2019, the Department brought suit under RLUIPA's equal terms provision against a city in Michigan for imposing zoning approval requirements on places of worship that it did not impose on comparable nonreligious assembly uses, and then denying zoning approval to a Muslim group seeking to establish the only

permanent place of Islamic worship in the city.[xii] The court granted summary judgment to the United States, finding that the city had violated RLUIPA's equal terms provision by requiring places of worship to abide by more onerous zoning restrictions than "similarly situated" places of nonreligious assembly.[xiii]

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 Texas city discriminated against an Islamic association in violation of Section 2(b)(2) when it denied the association permission to build a cemetery due to anti-Muslim sentiment, including opposition by citizens who expressed anti-Muslim bias. The case was resolved when the city relented and granted the association permission to develop the cemetery.[xiv] Similarly, the Department filed suit to challenge a New Jersey township's adoption and application of discriminatory zoning ordinances that targeted the Orthodox Jewish community by prohibiting religious schools and associated dormitories.[xv] The case was resolved by consent decree which required that, among other things, the township revise its zoning code.

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, viewed as a whole, deprive religious institutions of reasonable opportunities to build or locate in the jurisdiction, even if they don't completely prevent them from doing so, a jurisdiction may run afoul of this provision. For example, a federal appeals court made clear that government land use restrictions can violate RLUIPA's unreasonable limitations provision even if religious uses are not entirely excluded from the jurisdiction, if the jurisdiction makes it more difficult for houses of worship to locate there.[xvi] Similarly, the Department of Justice filed suit in New Jersey alleging that a township's revisions to its zoning code that significantly reduced both the number of zoning districts in which houses of worship could be located, and the number of sites available for them, unreasonably limited religious assemblies, institutions, and structures in violation of RLUIPA.[xvii] The case was resolved by consent decree.

* * * *

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. If you have questions about the contents of this letter, or other issues related to RLUIPA, I encourage you to contact Noah Sacks, the Civil Rights Division's RLUIPA Coordinator, at 202-598-6366 or noah.sacks@usdoj.gov.

Sincerely,

Kristen Clarke
Assistant Attorney General
Civil Rights Division

[i] 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.

[ii] Much of this work is detailed in DOJ reports on enforcement issued in September 2010 (available at https://www.justice.gov/crt/rluipa_report_092210.pdf), July 2016 (available at https://www.justice.gov/crt/file/877931/download) and September 2020 (available at https://www.justice.gov/media/1096176/dl?inline).

[iii] Further information about the Department's *Place to Worship* Initiative is available at https://www.justice.gov/crt/place-worship-initiative.

[iv] RLUIPA broadly defines religious exercise as "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). Courts have found that a host of religious activities are protected by RLUIPA, including charitable acts by religious institutions. *See, e.g.*, *Micah's Way v. City of Santa Ana*, No. 8:23-CV00183, 2023 WL 4680804, at *5 (C.D. Cal. June 8, 2023) (finding that, under RLUIPA, faith-based ministry's food distribution to those in need was religious exercise).

[v] 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/page/file/1071251/dl?inline), and at the Department of Justice Civil Rights Division RLUIPA information page (https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act).

[vi] *Bethel Would Outreach v. Montgomery Cnty. Council*, 706 F.3d 548, 557-558 (4th Cir. 2013).

[vii] *United States v. City of Meriden, Connecticut*, No. 3:20-CV-01669 (D. Conn. filed November 5, 2020).

[viii] 42 U.S.C. § 2000cc(a)(1).

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

[x] *Holt v. Hobbs*, 574 U.S. 352, 363 (2015). When the U.S. Supreme Court later vacated the judgment of the Minnesota Court of Appeals in a different RLUIPA case, which had upheld a County's requirement that Amish households install modern septic systems despite assertions that their religion forbade the use of such technology, one justice emphasized that "the question in this case 'is not whether the [County] has a compelling interest in enforcing its [septic system requirement] *generally*, but whether it has such an interest in denying an exception' from that requirement to the Swartzentruber Amish *specifically*." *Mast v. Fillmore Cnty., Minnesota*, 141 S. Ct. 2430, 2432 (2021) (Gorsuch, J. concurring) (emphasis in original).

[xi] *New Harvest Christian Fellowship v. City of Salinas*, 29 F. 4th 596, 608 (9th Cir. 2022).

[xii] *United States v. City of Troy, Michigan* 2:19-CV-12736 (E.D. Mich. filed September 19, 2019).

[xiii] *United States v. City of Troy*, *Michigan*, 592 F. Supp. 3d 591, 604 (E.D. Mich. 2022).

[xiv] *United States v. City of Farmersville, Texas*, 4:19-CV-00285 (E.D. Tex. filed April 16, 2019).

[xv] *United States v. Township of Jackson,* 3:20-CV-06109 (D. N.J. filed May 20, 2020).

[xvi] *Rocky Mountain Christian Church v. Board of County Com'rs.*, 613 F.3d 1229, 1238 (10th Cir. 2010).

[xvii] *United States v. Township of Toms River*, NJ, 3:21-CV-04633 (D. N.J. filed March 10, 2021).

EXHIBIT B

RLUIPA Question & Answers

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 of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc to 2000cc-5, is a civil rights law that protects individuals and religious assemblies and institutions from discriminatory and unduly burdensome land use regulations.[1] After hearings in which Congress heard that religious assemblies and institutions were disproportionately affected, and in fact were often 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 heard testimony 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 also heard testimony that religious institutions often faced both subtle and overt discrimination in zoning, particularly if those institutions involved minority, newer, smaller, or unfamiliar religious groups and denominations.[2]

Congress also heard testimony 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 heard testimony that zoning authorities often placed excessive burdens on the ability of congregations and individuals to exercise their faiths without sufficient justification, in violation of the Constitution.

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*: RLUIPA prohibits the implementation of any land use regulation that imposes a "substantial burden"

[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.

on the religious exercise of a person or religious assembly or institution except where justified by a "compelling governmental interest" that the government pursues in the least restrictive way possible.[4]

- *Protection against unequal treatment for religious assemblies and institutions*: RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.[5]

- *Protection against religious or denominational discrimination*: RLUIPA prohibits discrimination "against any assembly or institution on the basis of religion or religious denomination."[6]

- *Protection against total exclusion of religious assemblies*: RLUIPA provides that governments must not totally exclude religious assemblies from a jurisdiction.[7]

- *Protection against unreasonable limitation of religious assemblies*: RLUIPA states that governments must not unreasonably limit "religious assemblies, institutions, or structures within a jurisdiction."[8]

RLUIPA's protections can be enforced by the Department of Justice or by private lawsuits. In the eighteen 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 which 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 understanding the requirements that RLUIPA imposes, the Department of Justice has created this summary and accompanying questions and answers. This document rescinds and replaces a prior version, released in 2010, which was not fully consistent with the Attorney General's Memorandum on Guidance Documents of November 16, 2017.[9] This non-binding guidance document is just that: non-binding guidance to individuals, religious institutions, and local officials about existing law. It is not intended to create any new obligations or requirements, nor establish binding standards by which the Department of Justice will determine compliance with RLUIPA. This document is not intended to compel anyone into taking any action or refraining from taking any action—indeed, the Department will not bring any enforcement actions based on noncompliance with this document.[10] Rather, this document is intended to describe the various provisions of the

[4] RLUIPA, 42 U.S.C. § 2000cc(a).
[5] RLUIPA, 42 U.S.C. § 2000cc(b)(1).
[6] RLUIPA, 42 U.S.C. § 2000cc(b)(2).
[7] RLUIPA, 42 U.S.C. § 2000cc(b)(3)(A).
[8] RLUIPA, 42 U.S.C. § 2000cc(b)(3)(B).
[9] Available at www.justice.gov/opa/press-release/file/1012271/download.
[10] See Memorandum from the Associate Attorney General on Limiting Use of Agency Guidance Documents in Affirmative Civil Rights Cases, available at www.justice.gov/file/1028756/download.

statute in a simple and straightforward manner and to provide examples of how some courts have interpreted and applied the law in various contexts. Such examples are purely illustrative and do not necessarily reflect binding law.

Please note that this guidance document is not a final agency action, has no force or effect of law, and may be rescinded or modified in the Department's complete discretion.

Date: June 13, 2018

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.[11] Courts have applied RLUIPA, for example, in cases involving houses of worship,[12] individuals holding prayer meetings in their homes,[13] religious schools,[14] religious retreat centers,[15] cemeteries,[16] and faith-based social services provided by religious entities.[17]

2. What does "religious exercise" include?

RLUIPA provides that "religious exercise" includes any exercise of religion, "whether or not compelled by, or central to, a system of religious belief."[18] 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 Sunday school classes are not religious exercise because they are less central to a church's beliefs or less compulsory than worship services.[19]

RLUIPA also specifies that "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise . . . ."[20] This provision makes clear that religious exercise under RLUIPA includes construction or expansion of places of worship and other properties used for religious exercise.[21]

---

[11] RLUIPA, 42 U.S.C. § 2000cc(a).
[12] *See, e.g.*, *Guru Nanak Sikh Soc'y v. Cty. of Sutter*, 456 F.3d 978, 986-87 (9th Cir. 2006); *Saints Constantine and Helen Greek Orthodox Church v. City of New Berlin,* 396 F.3d 895, 897 (7th Cir. 2005).
[13] *See, e.g., Konikov v. Orange Cty.*, 410 F.3d 1317, 1320-21 (11th Cir. 2005) (meetings in rabbi's home).
[14] *See Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 344 (2d Cir. 2007).
[15] *See DiLaura v. Twp. of Ann Arbor*, 112 F. App'x 445, 446 (6th Cir. 2004).
[16] *See Roman Catholic Diocese of Rockville Ctr. v. Vill. of Old Westbury*, 128 F. Supp. 3d 566, 571 (E.D.N.Y. 2015).
[17] *See, e.g., Harbor Missionary Church Corp. v. City of San Buenaventura,* 642 F. App'x. 726, 729 (9th Cir. 2016); *Layman Lessons, Inc. v. City of Millersville*, 636 F. Supp. 2d 620, 648-50 (M.D. Tenn. 2008).
[18] RLUIPA, 42 U.S.C. § 2000cc-5(7)(A).
[19] *See Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 545 (S.D.N.Y. 2006) (classes with Jewish content are religious exercise for RLUIPA purposes whether or not they are "core religious practice."); *Living Water Church of God v. Charter Twp. of Meridian*, 384 F. Supp. 2d 1123, 1130 (W.D. Mich. 2005) (use of church for school and other ministries of the church were religious exercise for purposes of RLUIPA), *rev'd on other grounds*, 258 F. App'x 729 (6th Cir. 2007).
[20] RLUIPA, 42 U.S.C. § 2000cc-5(7)(B).
[21] *See, e.g., Chabad Lubavitch of Litchfield County, Inc. v. Borough of Litchfield*, No. 3:09-cv-1419, 2016 WL 370696, *18 (D. Conn. 2016); *Congregational Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 424 (S.D.N.Y. 2015) (citing *Sherbert v. Verner*, 374 U.S. 398, 403 (1963)).

Courts have held that "religious exercise" covers a wide range of activities, including operation of various faith-based social services facilities;[22] accessory uses such as fellowship halls, parish halls and similar buildings or rooms used for meetings, religious education, and similar functions;[23] operation of a religious retreat center in a house;[24] religious gatherings in homes;[25] and construction or expansion of religiously affiliated schools, even where the facilities would be used for both secular and religious educational activities.[26]

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.[27]

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

No. RLUIPA is not a blanket exemption from zoning laws.[28] 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.[29] But RLUIPA by its terms prohibits a local government from applying zoning laws or regulations in a way that:

- Substantially burdens religious exercise without a compelling justification pursued through the least restrictive means;
- Treats religious uses less favorably than nonreligious assemblies and institutions;
- Discriminates based on religion or religious denomination; or
- Totally or unreasonably restricts religious uses in the local jurisdiction.

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.[30]

---

[22] *See* notes to Question and Answer 1, above.
[23] *See Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp. 2d 309, 319 (D. Mass. 2006).
[24] *See DiLaura*, 112 F. App'x at 446.
[25] *See Konikov,* 410 F.3d at 1320-21.
[26] *See Westchester Day Sch.,* 504 F.3d at 347.
[27] RLUIPA, 42 U.S.C. 2000cc-5(4).
[28] *See World Outreach Conference Ctr. v. City of Chicago,* 591 F.3d 531, 539 (7th Cir. 2009); *see also* 146 CONG. REC. S7776.
[29] *See, e.g.*, *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 762 (7th Cir. 2003); *Anselmo v. Cty. of Shasta,* 873 F. Supp. 2d 1247, 1262 (E.D. Cal. 2012).
[30] *Holy Ghost Revival Ministries v. City of Marysville*, 98 F. Supp. 3d 1153, 1165 (W.D. Wash. 2015) (zoning laws that conflict with RLUIPA must yield under the Supremacy Clause).

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.

Some courts have held that, in some circumstances, 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;[31] there would be excessive delay, uncertainty, or expense;[32] or if the application requirements are discriminatory on their face.[33]

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

RLUIPA defines land use regulation 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."[34] Zoning laws include statutes, ordinances, or codes that determine what type of building or land use can be located in what areas and under what conditions.[35] In addition to requests for variances, rezonings, special use permits, conditional use permits, occupancy permits, site plans approvals, and other typical zoning actions, some courts have construed "zoning law" to encompass things such as environmental regulations[36] or sewage requirements[37] that are integrated into the zoning process. Landmarking laws are restrictions that municipalities place on specific buildings or sites to preserve those that are deemed significant for historical, architectural, or cultural reasons.[38]

Some courts have held that RLUIPA's definition of land use regulation, however, does not extend to every type of law involving land, such as fire codes,[39] the Americans with

---

[31] *World Outreach,* 591 F.3d at 537.
[32] *Guru Nanak Sikh Soc'y,* 456 F.3d at 991; *Saints Constantine and Helen Greek Orthodox Church*, 396 F.3d at 901.
[33] *See Digrugilliers v. City of Indianapolis*, 506 F.3d 612, 615 (7th Cir. 2007).
[34] RLUIPA, 42 U.S.C. § 2000cc-5(5).
[35] *See Martin v. Houston*, 196 F. Supp. 3d 1258, 1264 (M.D. Ala. 2016).
[36] *Fortress Bible Church v. Feiner*, 694 F.3d 209, 216 (2d Cir. 2012).
[37] *United States v. Cty. of Culpeper*, 245 F. Supp. 3d 758, 766 (W.D. Va. 2017).
[38] *See Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 129 (1978); *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349, 1353 (11th Cir. 2013).
[39] *See Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007); *Lighthouse Cmty. Church of God v. Southfield*, No. 05-40220, 2007 WL 1017004 (E D. Mich. Apr. 2, 2007); *Affordable Recovery House v. City of Blue Island,* No. 12-CV-4241, 2016 WL 1161271, at *6 (N.D. Ill. Sep. 21, 2016).

Disabilities Act's building accessibility requirements,[40] an ordinance requiring all land development to tap into municipal sewer connections,[41] or stormwater remediation fees.[42]

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. Some courts have held that, as a general matter, eminent domain is not the application of a zoning or landmarking law, and thus RLUIPA will not apply.[43] 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, other courts have found that such actions may be covered by RLUIPA.[44]

8. Can places of worship still be landmarked?

Yes, places of worship can be landmarked.[45] However, like any other land use regulation, landmarking designations that impose a substantial burden on religious exercise must be justified by compelling governmental interests and pursued in the least restrictive ways possible.[46] Landmarking regulations also must be applied in a nondiscriminatory manner.[47]

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

A court's substantial burden inquiry is fact-intensive. Courts look 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.[48] Whether a particular restriction or set of restrictions will be a substantial burden on a complainant's religious exercise will vary based on the context. Courts have looked at factors such as the size and resources of the burdened party,[49] the actual religious needs of an individual or religious congregation,[50] the level of current or

---

[40] *Anselmo v. Cty. of Shasta*, 873 F. Supp. 2d 1247, 1256-57 (E.D. Cal. 2012).
[41] *See Baptist Church of Leechburg v. Gilpin Twp*., 118 F. App'x 615, 617 (3d Cir. 2004).
[42] *Shaarei Tfiloh Congregation v. Mayor and City Council of Baltimore*, Nos. 2645, 2572, 2018 WL 1989534, at *23 (Md. Ct. Spec. App. Apr. 27, 2018).
[43] *See, e.g., St. John's United Church of Christ v. City of Chicago,* 401 F. Supp. 2d 887, 899 (N.D. Ill. 2005)
[44] *See Albanian Associated Fund v. Twp. of Wayne*, No. 06-cv-3217, 2007 WL 4232966, at *3 (D.N.J. Nov. 29, 2007); *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1230 (C.D. Cal. 2002).
[45] *See, e.g., Trinity Evangelical Lutheran Church v. City of Peoria*, 591 F.3d 531, 533 (7th Cir. 2009).
[46] RLUIPA, 42 U.S.C. § 2000cc(a)(1); *see also Trinity Evangelical Lutheran*, 591 F.3d at 533.
[47] RLUIPA, 42 U.S.C. § 2000cc(b)(2).
[48] *See World Outreach*, 591 F.3d at 537, 539; *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 1000 (7th Cir. 2006).
[49] *See World Outreach*, 591 F.3d at 537, 539.
[50] *See Vision Church,* 468 F.3d at 1000.

imminent space constraints,[51] whether alternative properties are reasonably available,[52] the history of a complainant's efforts to locate within a community,[53] the absence of good faith by the zoning authorities,[54] and many other factors.

Examples of actions that some courts have found to constitute a substantial burden on religious exercise under RLUIPA include:

- effectively barring use of a particular property for religious activity;[55]
- imposing a significantly great restriction on religious use of a property;[56] and
- creating significant delay, uncertainty, or expense in constructing or expanding a place of worship, religious school, or other religious facility.[57]

Some 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,[58] a denial of approval for construction of a parish center,[59] a denial of expansion plans for a religious school,[60] and a denial of an application to convert a building's storage space to religious use.[61]

Conversely, other 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,[62] 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,[63] 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.[64]

---

[51] *See Rocky Mountain Christian Church v. Bd. of Cty. Comm'rs of Boulder*, 612 F. Supp. 2d 1163, 1172 (D. Colo. 2009), *aff'd*, 613 F.3d 1229, 1236 (10th Cir. 2010).
[52] *See Petra Presbyterian Church*, 489 F.3d at 851; *World Outreach*, 591 F.3d at 539; *Midrash Sephardi v. Town of Surfside*, 366 F.3d 1214, 1228 (11th Cir. 2004).
[53] *See Guru Nanak Sikh Soc'y*, 456 F.3d at 991; *Saints Constantine and Helen Greek Orthodox Church*, 396 F.3d at 901.
[54] *See Guru Nanak Sikh Soc'y,* 456 F.3d at 991-92; *Saints Constantine and Helen Greek Orthodox Church*, 396 F.3d at 901.
[55] *See Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App'x. 729, 737 (6th Cir. 2007); *DiLaura*, 112 Fed. App'x. at 446.
[56] *See Guru Nanak Sikh Soc'y*, 456 F.3d at 988.
[57] *See Saints Constantine and Helen Greek Orthodox Church,* 396 F.3d at 901; *Guru Nanak Sikh Soc'y*, 456 F.3d at 992; *Westchester Day Sch.*, 504 F.3d at 349.
[58] *See Lighthouse Cty. Church of God v. City of Southfield*, No. 05-40220, 2007 WL 30280, at *9 (E.D. Mich. Jan 3, 2007).
[59] *See Mintz*, 424 F. Supp. 2d at 322.
[60] *See Westchester Day Sch.*, 504 F.3d at 349.
[61] *Castle Hills First Baptist Church v. City of Castle Hills*, No. SA-01-CA-1149-RF, 2004 WL 546792, at *17 (W.D. Tex. Mar. 17, 2004).
[62] *Id.*
[63] *See New Life Worship Ctr. v. Town of Smithfield Zoning Bd. of Review*, No. 09-0924, 2010 WL 2729280 (R.I. Super. Ct. July 7, 2010).
[64] *See Trinity Evangelical Lutheran Church*, 591 F.3d at 539.

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."[65] Individualized assessments may be present, some courts have held, when the government looks at and considers the particular details of a proposed land use in deciding whether to permit or deny the use.[66] RLUIPA thus generally may cover 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 reviewing the facts and making discretionary determinations whether to grant or reject an application.[67] Some courts have held, however, that 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.[68]

Even if a zoning or landmarking case does not involve an individualized assessment, the substantial burden test still applies if there is federal funding involved or if the use at issue affects interstate commerce,[69] as might be the case with some construction or expansion projects.[70]

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 can prove both that it is pursuing a compelling governmental interest, and that it is using the means that are the least restrictive of religious freedom.[71] In the RLUIPA context, some courts have interpreted "compelling interest" to mean an interest of the "highest order."[72] As one court described it, an interest of the highest order typically involves "some substantial threat to public safety, peace, or order."[73] Some courts have ruled, for

---

[65] RLUIPA, 42 U.S.C. § 2000cc (a)(2)(C).
[66] *See Guru Nanak Sikh Soc'y*, 456 F.3d at 986-87.
[67] *Id.; see also Konikov*, 410 F.3d at 1323; *Freedom Baptist Church of Del. Cty. v. Twp. of Middletown*, 204 F. Supp. 2d 857, 868 (E.D. Pa. 2002) ("[L]and use regulations through zoning codes necessarily involve case-by-case evaluations of the propriety of proposed activity against extant land use regulations.").
[68] *See, e.g.*, *Grace United Methodist v. Cheyenne*, 451 F.3d 643, 654 (10th Cir. 2006) (non-discretionary denial of variance not individualized assessment).
[69] RLUIPA, 42 U.S.C. § 2000cc(a)(2)(b).
[70] *See Westchester Day Sch.,* 504 F.3d at 354.
[71] RLUIPA, 42 U.S.C. § 2000cc-2(b).
[72] *Westchester Day Sch.,* 504 F.3d at 353.
[73] *Congregational Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 456 (S.D.N.Y. 2015) (citing *Sherbert v. Verner*, 374 U.S. 398, 403 (1963)).

example, that a municipality's asserted interests in revenue generation and economic development[74] or aesthetics[75] were not compelling.

While increased traffic can implicate safety concerns, some courts have ruled that 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.[76] Rather, according to these courts, the local 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.[77]

Even where an interest is compelling, RLUIPA requires that it must be pursued through the least restrictive means.[78] That is, 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 option.[79]

12. What does RLUIPA require of local governments with regard to treating religious assemblies and institutions as favorably as nonreligious assemblies and institutions?

RLUIPA contains a section 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."[80]

This provision was meant to address the problem of zoning codes, either facially or in application, excluding places of worship where secular assemblies are permitted. Senators commented on the problem of houses of worship being excluded from places where theaters, meeting halls, private clubs, and other secular assemblies would be permitted.[81]

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 on the face of a zoning code or in its application.[82] Courts have differed regarding how

[74] *See Cottonwood Christian Ctr.*, 218 F. Supp. 2d at 1228-29.
[75] *See Westchester Day Sch.*, 504 F.3d at 353.
[76] *See id*.
[77] *Id.*
[78] RLUIPA, 42 U.S.C. § 2000cc(a)(1)(b).
[79] See, e.g., *Yellowbear v. Lambert*, 741 F.3d 48, 56-57 (10th Cir. 2014).
[80] RLUIPA, 42 U.S.C. § 2000cc(b)(1).
[81] 146 Cong. Rec. 16698 (daily ed. 2000) (Joint Statement of Senators Hatch and Kennedy).
[82] *See, e.g., Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1173 (9th Cir. 2011); *Third Church of Christ, Scientist, of New York City v. City of New York*, 626 F.3d 667, 669 (2d Cir. 2010).

such a comparison is made, and thus the precise legal test for determining when this provision is violated will vary depending on the judicial circuit in which the case arises.[83]

Examples of cases in which some courts have found equal terms violations include situations where places of worship were forbidden but private clubs were permitted;[84] where religious assemblies were prohibited but auditoriums, assembly halls, community centers, senior citizen centers, civic clubs, day care centers, and other assemblies were allowed;[85] and where places of worship were forbidden but community centers, fraternal associations, and political clubs were permitted.[86]

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

RLUIPA bars imposition or implementation of a land use regulation that discriminates on the basis of religion or religious denomination.[87] Courts have held that this bar applies to application of land use regulations that are discriminatory on their face, as well as land use regulations that are facially neutral but applied in a discriminatory manner based on religion or religious denomination.[88] Thus, if a zoning permit is denied because municipal officials do not like members of a particular religious group, or if for any other reason an applicant is denied a zoning permit it would have granted had it been part of a different religion or religious denomination, RLUIPA 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?

RLUIPA prohibits local governments from "totally exclud[ing] religious assemblies from a jurisdiction."[89] For example, if a city, town, or county had no location where religious uses are permitted, that would be a facial violation of RLUIPA.[90]

---

[83] *See, e.g.*, *River of Life Kingdom Ministries v. Vill. of Hazel Crest,* 611 F.3d 367, 371 (7th Cir. 2010); *Lighthouse Inst. for Evangelism*, 510 F.3d at 269; *Midrash Sephardi*, 366 F.3d at 1232.
[84] *Midrash Sephardi*, 366 F.3d at 1233; *Vietnamese Buddhism Study Temple in Am. v. City of Garden Grove*, 460 F. Supp. 2d 1165, 1174 (C.D. Cal. 2006).
[85] *Digrugilliers*, 506 F.3d at 614-15.
[86] *Petra Presbyterian Church,* 489 F.3d at 846.
[87] RLUIPA, 42 U.S.C. § 2000cc-2(b)(2).
[88] *See United States v. Vill. of Airmont,* No. 7:05-cv-5520, at 17-19 (S.D.N.Y. Nov. 12, 2008) (order denying motion to dismiss).
[89] RLUIPA, 42 U.S.C. § 2000cc-2(b)(3)(A).
[90] *See Vision Church*, 468 F.3d at 990.

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

RLUIPA prohibits land use regulations that "unreasonably limit[ ]" religious assemblies, institutions, or structures within a jurisdiction.[91] One court has concluded that a municipality will violate this provision if its land use laws, or their application, deprive religious institutions and assemblies of reasonable opportunities to use and construct buildings within that jurisdiction.[92] Another court has held that 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.[93] Some 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 where zoning restrictions imposed steep and questionable expenses on applicants.[94]

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.[95]

17. 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.[96] In a RLUIPA lawsuit, the Department might seek, for example, an order from a court requiring a municipality that has violated RLUIPA to amend its zoning code or grant specific zoning permits to a place of worship, religious school, or other religious use. The Department may not, however, seek monetary awards on behalf of persons or institutions that have been injured. To recover damages for RLUIPA violations, alleged victims must file private suits.[97] The Department reviews each case on its merits and the law in the jurisdiction in question. The Department does not base the decision of whether to bring an enforcement action on compliance or noncompliance with this guidance document.

Responsibility for coordinating RLUIPA land use investigations and suits has been assigned to the Housing and Civil Enforcement Section of the Civil Rights Division.

---

[91] RLUIPA, 42 U.S.C. § 2000cc-2(b)(3)(B).
[92] *Rocky Mountain Christian Church v. Bd. of Cty. Comm'rs of Boulder*, 613 F.3d 1229, 1238 (10th Cir. 2010).
[93] *Vision Church*, 468 F.3d at 990 (citing 146 Cong. Rec. E1563 (daily ed. Sept. 22, 2000) (statement of Rep. Canady)).
[94] *Rocky Mountain Christian Church*, 613 F.3d at 1238; *see also Chabad of Nova, Inc. v. City of Cooper City*, 575 F. Supp. 2d 1280, 1290-91 (S.D. Fla. 2008) (imposition of "inflated costs" and onerous frontage and spacing requirements on houses of worship constitute unreasonable limitations).
[95] 28 U.S.C. § 1658; *Al-Amin v. Shear,* 325 F. App'x. 190, 193 (4th Cir. 2009); *Congregation Adas Yereim v. City of New York*, 673 F. Supp. 2d 94, 108 (E.D.N.Y. 2009).
[96] RLUIPA, 42 U.S.C. § 2000cc-2(f).
[97] RLUIPA, 42 U.S.C. § 2000cc-2(a).

That Section investigates and brings RLUIPA lawsuits, both on its own and in conjunction with United States Attorney's offices around the country. If you wish to bring a potential case to the attention of the Department of Justice, you should do so as soon as possible to allow adequate time for review.

The Department receives many complaints from individuals whose rights under RLUIPA may have been violated. It cannot open full investigations and bring suit in all cases. The Department generally endeavors to select cases that involve especially important or recurring issues, that will set precedents for future cases, that involve particularly serious violations, or that will otherwise advance the Department of Justice's goals of protecting religious liberty. In addition to opening investigations and filing suits, the Department sometimes files statements of interest and friend-of-the-court briefs in privately filed suits to highlight important issues of law. Individuals and institutions who believe their RLUIPA rights have been violated are encouraged to seek advice from a private attorney to protect their rights, in addition to contacting the Department of Justice.

18. 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

Email: RLUIPA.complaints@usdoj.gov

More information about RLUIPA is available at www.justice.gov/crt/rluipa

EXHIBIT C

DOJ Report

Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act

September 22, 2020

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

September 22, 2020

I am very pleased, on behalf of the Civil Rights Division of the Department of Justice, to release the enclosed Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act (RLUIPA).

The Civil Rights Division is charged with enforcing many of our nation's most important civil rights laws. From laws barring segregation and discrimination based on race in schools, public accommodations, employment, voting, and other areas that were the chief motivating factors in the creation of the Division and the passage of the landmark Civil Rights Acts of the 1960's, to later laws protecting broad rights such as the rights of persons with disabilities to participate fully in public life or protecting the basic rights of persons confined to institutions, the Division works to protect the civil rights of all Americans. This includes many laws protecting the rights of persons to be free from discrimination and violence based on religion, and upholding their religious liberty.

For more than four centuries, religious people from all over the world have sought refuge here. Often, these people did so to escape persecution by monarchs, dictators, and other despots. Then, when our ancestors established the United States of America, the Founders adopted the First Amendment to the United States Constitution and thereby enacted into law the right of all people to exercise religion. Two decades ago, Congress extended these protections when it passed RLUIPA. RLUIPA law protects religious people and their institutions from unduly burdensome or discriminatory land use regulations, and protects the religious rights of persons confined to institutions.

The United States is, and must always remain, committed to the right of all people to practice their faith and worship together. The enclosed report on RLUIPA shows one of important tools Congress has provided to uphold that commitment, and how the Department of Justice has worked to enforce this important law. The United States Department of Justice will continue to fight against any unlawful deprivation of the right of all people to practice their faith.

Eric S. Dreiband

Eric S. Dreiband
Assistant Attorney General

Introduction

This year marks the 20th anniversary of the passage of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA),[1] a landmark federal law that has helped secure the ability of thousands of individuals and institutions to practice their faiths freely and without discrimination.

RLUIPA provides protection for religious liberty in two very different settings. First, it protects the rights of religious individuals and institutions to use land for religious purposes, such as places of worship and religious schools. Second, it protects the rights of persons confined to institutions, such as prisons or jails, state-run psychiatric hospitals, or nursing homes, to exercise their faiths.

The Department of Justice has a central role in the enforcement of RLUIPA, through litigation, investigations, settlements, court filings, and public education. Over the past twenty years, the Department has protected the religious liberty of people of many different faiths throughout the country through enforcement of RLUIPA, both through action in the courts but also by informing officials of their obligations under RLUIPA, prompting voluntary compliance. The Department's RLUIPA enforcement program is part of the broader effort by the Department of Justice to protect the religious exercise of individuals and communities through enforcement of laws against religious discrimination, laws protecting people from threats and violence based on their faith, and laws protecting religious freedom.

This report chronicles the history and purpose of RLUIPA, describes the law's various provisions and how courts have interpreted them over the first 20 years, and describes the breadth and success of the Department of Justice's enforcement program.

Federal Law Protections for Religious Liberty

RLUIPA is just the most recent example of major federal legislation protecting religious freedom. The freedom to exercise one's faith is among our nation's oldest and most cherished rights. This right is the first freedom enshrined in our Constitution's First Amendment and is protected by a range of federal laws.

[1] 42 U.S.C. §§ 2000cc *et seq.*

Throughout our history, Congress and the federal government have acted to protect individuals and groups facing discrimination based on religion and to protect their rights to practice their faith free from such discrimination. During this time, the Department has fully and vigorously enforced these laws to ensure that the fundamental right to exercise one's religion is a right secured for all Americans.

For example, the landmark Civil Rights Act of 1964 was passed principally to address the legacy and ongoing problem of racial discrimination and to provide nationwide remedies to combat it. Nonetheless, Congress also included religion along with race and color among the categories protected in provisions of the Civil Rights Act barring discrimination in employment, education, public accommodations, and public facilities (national origin discrimination also was included in each of these, and sex discrimination was included in the education and employment provisions). In 1972, Congress amended Title VII of the Civil Rights Act to provide that discrimination based on religion includes failure of employers to reasonably accommodate religious observances and practices of employees, unless it would cause an undue hardship on an employer.

> *Religious liberty is a wonderful ideal, but without practical safeguards, zoning laws may be used to suppress religious freedoms. Fortunately, we have RLUIPA which helps protect religious organizations from onerous zoning laws. Today, thanks in large part to RLUIPA, my local church is gathering regularly at our building for public worship.*
>
> ***Jamie Sinclair, pastor of Christian Fellowship Centers, Canton, N.Y.***

Federal criminal laws against religion-based violence also are an important component of federal laws protecting religious freedom. George Washington noted in his Letter to the Hebrew Congregation in Newport, Rhode Island in 1790 that the "inherent natural rights" of religious freedom included the right to practice one's faith in peace and without fear of attack, and that "every one shall sit in safety under his own vine and figtree, and there shall be none to make him afraid." In 1968, Congress enacted the first federal hate crimes law covering acts of violence based on religion, recognizing the fundamental right to practice one's faith in peace. This principle also of course includes the right of people to be left in peace when they gather in community at a place of worship. Thus in 1996, Congress responded to a rash of arsons, which targeted many places of worship but particularly African-American churches, by passing the Church Arson Prevention Act, 18 U.S.C. § 247, making it a federal crime to commit arson or vandalism against a church, synagogue, mosque, or other place of worship, or to otherwise violently interfere with one or more person's free exercise of religion.

Recognizing that religious freedom requires not merely protections *from* discrimination and violence, but often requires proactive protection *for* religious exercise that conflicts with various requirements imposed by the government, Congress in 1993 passed the Religious

Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb *et seq.*, which requires that government action that imposes a "substantial burden" on religious exercise must be supported by a "compelling governmental interest" pursued through the least restrictive means necessary. RFRA still applies to the federal government, but in *City of Boerne v. Flores*, 521 U.S. 507 (1997), the Supreme Court held that applying RFRA broadly to state and local governments exceeded Congress's power. *City of Boerne* involved a land-use dispute between a Catholic Archdiocese that wanted to expand a church in a historic district and local zoning officials who had denied it the necessary permit. That decision limiting the scope of RFRA led directly to the passage of RLUIPA.

The History of RLUIPA

After the Supreme Court invalidated RFRA as applied to state and local governments, Congress began to look at other ways that it could, in a constitutional manner, protect religious liberty from infringement by state and local officials.

Photo: President Bill Clinton signs RLUIPA into law.

Over the course of three years, Congress held nine hearings to examine religious discrimination in land-use decisions. These hearings unearthed "massive evidence" of widespread discrimination by state and local officials in cases involving individuals and institutions seeking

to use land for religious purposes.[2] Congress found that religious groups often encountered overt and subtle forms of discrimination when seeking zoning approval for places of worship—most often impacting minority faiths and newer, smaller, or unfamiliar denominations.[3] Moreover, Congress found that "[r]eligious discrimination is sometimes coupled with racial and ethnic discrimination."[4]

> *Getting RLUIPA across the finish line was a massive bipartisan undertaking, requiring years of hard work, negotiation, and compromise. But in the end, former Senator Ted Kennedy and I were able to pass a bill that united people of all faiths by preventing various forms of religious discrimination. I am grateful to my friends on both sides of the aisle who joined us in protecting religious liberty our first and most fundamental freedom.*
>
> ***Former Senator Orrin Hatch, Sept. 2020***

Congress also learned that, as a whole, religious institutions were often treated worse in zoning decisions than comparable secular institutions. As the bill's lead sponsors, Senators Edward Kennedy and Orrin Hatch, noted in their joint statement 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."[5]

Congress also found evidence that zoning ordinances subjected religious assemblies to unbounded and highly discretionary permitting proceedings, often resulting in discrimination or the imposition of significant burdens on religious exercise.[6]

Congress likewise determined that legislation was needed to protect the religious-freedom rights of persons institutionalized in facilities like prisons, jails, juvenile facilities, state-run nursing homes and facilities for people with disabilities. In its fact-finding, Congress noted that "some institutions restrict religious liberty in egregious and unnecessary ways," and that "prison

---

[2] *See* H.R. Rep. No. 106-219, 18-24 (1999); 146 Cong. Rec. 16698 (2000) (Joint Statement of Senators Hatch and Kennedy).

[3] *Id.*; H.R. Rep. No. 106-219 at 23-24.

[4] *Id.* at 24.

[5] Joint Statement at 16698.

[6] H.R. Rep. 106-219 at 19-24.

officials sometimes impose frivolous or arbitrary rules." [7] The legislative history cited examples such as Jewish prisoners denied matzo bread at Passover, prisoners denied the ability to wear small religious symbols such as crosses that posed no security risk, and a Catholic prisoner whose private confession to a priest was recorded by prison officials.[8]

The bill had sponsors in the House and Senate that were bi-partisan and diverse.[9] RLUIPA was supported by more than seventy religious and civil rights groups representing a great diversity of religious and ideological viewpoints such as the Leadership Conference on Civil Rights, the American Civil Liberties Union, the Baptist Joint Committee, the American Jewish Committee, the Union of Orthodox Jewish Congregations, and the Christian Legal Society.[10] The Department of Justice strongly supported the bill, and worked closely with House and Senate Judiciary Committee staffs on drafting and refining the bill.[11]

RLUIPA passed both houses of Congress unanimously and was signed into law on September 22, 2000. President Bill Clinton, upon signing the Act, stated: "Religious liberty is a constitutional value of the highest order, and the Framers of the Constitution included protection for the free exercise of religion in the very first Amendment. This Act recognizes the importance the free exercise of religion plays in our democratic society."[12]

[7] Joint Statement at 16699.

[8] H.R. Rep. 106-219 at 9-10; Joint Statement at 16699.

[9] The sponsors included, in addition to Senators Hatch and Kennedy, Senators Robert Bennett, Mike Crapo, Tom Daschle, Tim Hutchinson, Joe Lieberman, Charles Schumer, and Gordon Smith, and Representatives Sanford Bishop, Roy Blunt, Charles Canady, Merrill Cook, Chet Edwards, Barney Frank, Jerrold Nadler, Lee Terry, and Robert Wexler.

[10] Joint Statement at 16701-02.

[11] 146 Cong. Rec. S7776 (daily ed. July 27, 2000) (letter from Assistant Attorney General Robert Raben).

[12] Presidential Statement on Signing The Religious Land Use and Institutionalized Persons Act of 2000, 36 Comp. Pres. Doc. 2168 (September 22, 2000).

Overview of RLUIPA's Provisions

RLUIPA's land-use sections provide important protections for the religious freedom of persons, places of worship, religious schools, and other religious assemblies and institutions. They codify the constitutional protections for religious freedom and against religious discrimination provided under the Free Exercise Clause, the Free Speech Clause, and the Equal Protection Clause, and provide mechanisms for enforcement of these rights.[13] The land-use sections contains five separate provisions, which together provide comprehensive protection for individuals and religious institutions from zoning and landmarking laws that discriminate based on religion or unjustifiably infringe on religious freedom:

- Protection against substantial burdens on religious exercise: RLUIPA prohibits the implementation of any land-use regulation that imposes a "substantial burden" on the religious exercise of a person or religious assembly or institution except where justified by a "compelling governmental interest" that the government pursues in the least restrictive way possible. 42 U.S.C. § 2000cc(a).

- Protection against unequal treatment for religious assemblies and institutions: RLUIPA 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).

- Protection against religious or denominational discrimination: RLUIPA prohibits discrimination "against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. § 2000(b)(2).

- Protection against total exclusion of religious assemblies: RLUIPA provides that governments must not totally exclude religious assemblies from a jurisdiction. 42 U.S.C. § 2000cc(b)(3)(A).

- Protection against unreasonable limitation of religious assemblies: RLUIPA states that governments must not unreasonably limit "religious assemblies, institutions, or structures within a jurisdiction." 42 U.S.C. § 2000cc(b)(3)(B).

[13] Joint Statement at 16699-7.

RLUIPA's institutionalized-persons section prohibits regulations that impose a "substantial burden" on the religious exercise of persons residing or confined in an "institution," unless the state or local government imposing the burden can show that the regulation serves a "compelling governmental interest" and is the least restrictive way for the government to further that interest. It covers persons in institutions as defined by the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. While most suits filed under RLUIPA address prisons and jails, the definition of "institution" in CRIPA includes state or local government-operated intermediate and long-term care facilities, mental health facilities, correctional facilities, pretrial detention facilities, and juvenile detention facilities, and these facilities also are covered by RLUIPA. Private prisons and jails are generally covered by RLUIPA because they are operated on behalf of states or municipalities. RLUIPA applies when the institution receives federal funding, or when the burden involved affects interstate commerce.

RLUIPA allows aggrieved persons to bring lawsuits under both its land-use provisions and its institutionalized-persons provision. In addition, RLUIPA authorizes the Attorney General to bring suits to enforce it. The Department of Justice may bring suits under RLUIPA for declaratory or injunctive relief, but not for monetary damages.

The text of RLUIPA is linked here: https://www.justice.gov/crt/title-42-public-health-and-welfare.

The existence of the RLUIPA affirms religious freedom and justice, and its enforcement is indispensable for religious organizations to safely and equally promote their teachings. As a result, the Middle Land Chan Monastery can continuously share the Buddhist teachings of mindfulness, compassion and wisdom to all people.

Jiangui Shi
Middle Land Chan Monastery

RLUIPA in the Courts: 2000-2020

The Supreme Court has yet to rule on a case involving the land-use provisions of RLUIPA. The Court has, however, ruled on RLUIPA's institutionalized-persons provision on three occasions.

Institutionalized Persons

The Supreme Court held in *Cutter v. Wilkinson*, 544 U.S. 709 (2005), that the institutionalized-persons section of RLUIPA did not violate the Establishment Clause, finding that it serves to "alleviate[ ] exceptional government-created burdens on private religious exercise." *Id.* at 720. The Court observed that the institutionalized-persons section of RLUIPA "covers state-run institutions—mental hospitals, prisons, and the like—in which the government exerts a degree of control unparalleled in civilian society and severely disabling to private religious exercise." *Id.* at 720-21. The Court rejected the argument that RLUIPA improperly elevated religious interests above all others in violation of the Establishment Clause, noting that RLUIPA's drafters designed the law, through its compelling-interest test, to give "due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and

procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources." *Id.* at 723 (quoting Joint Statement of Sens. Hatch and Kennedy).

In *Sossamon v. Texas*, 563 U.S. 277 (2011), the Supreme Court held that monetary damages were not available to plaintiffs under the institutionalized-persons section of RLUIPA, because the statutory text did not clearly manifest Congress's intent to include a damages remedy and thus did not give states sufficient notice that they would waive their sovereign immunity from monetary damages under RLUIPA by accepting federal funds.

The Supreme Court addressed the key substantive issues in institutionalized-persons cases in *Holt v. Hobbs,* 574 U.S. ___ (2015). The petitioner in *Holt* was a Muslim prisoner who challenged the Arkansas Department of Corrections' grooming policy, which prohibited beards and provided no religion-based exceptions. *Id.* at 860-61. The Supreme Court found that the policy substantially burdened the prisoner's religious exercise, because it forced him to choose between violating his sincerely held beliefs and risking serious discipline. *Id.* at 857, 862. In *Holt*, the Court held that while security as a general matter is always a compelling governmental interest, RLUIPA, like RFRA, "requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere religious exercise of religion is being substantially burdened." *Id.* at 863. The Court held that the grooming policy violated RLUIPA because the defendant failed to prove that prohibiting beards was the least restrictive means to further its interests in preventing prisoners from hiding contraband and quickly and reliably identifying prisoners. *Id.* at 863-65. The Court found that there were less restrictive means to further these interests, such as searching beards to limit contraband and taking pictures of prisoners with and without beards to enable speedy identification. *Id.* Furthermore, defendant did not show why it needed to take a different course from the many other correctional facilities around the country that permitted beards like the plaintiff's. *Id.* at 865-67.

Even though communal worship is clearly a part of religious exercise, government officials aren't always very good about protecting it. RLUIPA offers religious communities the protections they need.

Asma Uddin, Attorney and Author

Land Use

As noted, the Supreme Court has not decided any cases on the land-use sections of RLUIPA, though numerous federal courts of appeals and district courts have ruled on a wide range of issues.

On the question of substantial burden, courts "have coalesced around a totality-of-the-circumstances test, examining whether the government's actions substantially inhibit religious exercise, rather than merely inconveniencing it." Brief of the United States as Amicus Curiae,

Thai Meditation Association of Alabama v. City of Mobile, No. 19-12418 (11th Cir. filed Oct. 23, 2019) at 17.[14]

Among the factors courts have examined in making this determination are the "actual need of the congregation for new, different or additional space," *id*. at 17-18; whether a plaintiff exercised due diligence and had a reasonable expectation that the property could be used as intended, *id.* at 20; whether the government action has imposed "delay, uncertainty, and expense" on the plaintiff, *id.* at 19; whether the government acted arbitrarily, *id.*; and whether the government denial was final or whether the plaintiff was given an opportunity to cure concerns. *Id.* at 18.

> *Had it not been for the existence of the federal RLUIPA statute, the Muslim community would not have won approval of its mosque needed to meet its spiritual and religious needs.*
>
> ***M. Ali Chaudry, President, Islamic Society of Basking Ridge, NJ***

RLUIPA's equal terms provision, barring the treatment of a religious assembly or institution on "less than equal terms with a nonreligious assembly or institution," has generated numerous decisions in the lower courts, with varying interpretations of how to determine if a religious use is treated unequally. All the courts to some degree focus on the text and underlying purpose of the zoning ordinance in question, and evaluate whether it forbids religious assemblies and institutions that are functionally equivalent to nonreligious entities that are allowed.

For example, in *Elijah Group v. City of Leon Valley*, Texas, 643 F.3d 419, 421-422 (5th Cir. 2011), the Fifth Circuit invalidated the exclusion of a church from a "retail corridor" that despite its name allowed non-retail assemblies such as private clubs and lodges, but not places of worship. The court held that "less than equal terms" is to be measured by examining the ordinance and the criteria it sets forth, and determining if it is applied equally to religious uses. *Id.* at 424. *See also Lighthouse Institute for Evangelism v. City of Long Branch*, 510 F.3d 253, 266 (3d Cir. 2007) (question is whether religious assembly is "similarly situated as to the regulatory purpose" of the challenged ordinance). Taking an approach more focused on generally accepted zoning categories like "commercial" or "industrial" than on the specific intent of the municipality in establishing a particular zone, the Ninth Circuit struck the exclusion of a church from a downtown commercial zone when private clubs and a corrections facility were permitted in the zone. *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163

[14] Citing *Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 95 (1st Cir. 2013); *Bethel World Outreach Ministries v. Montgomery Cty. Council*, 706 F.3d 548, 558 (4th Cir. 2013); *Livingston Christian Sch. v. Genoa Charter Twp.*, 858 F.3d 996, 1003-1004 (6th Cir. 2017); *Chabad Lubavitch of Litchfield Cty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 195-196 (2d Cir. 2014); *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 349-351 (2d Cir. 2007); *Guru Nanak Sikh Soc'y of Yuba City v. Cty. of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006); *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 899-901 (7th Cir. 2005).

(9th Cir. 2011); *see also River of Life Kingdom Ministries v. Village of Hazel Crest*, 611 F.3d 367 (7th Cir. 2010) (question is whether "religious and secular land uses are treated the same . . . from the standpoint of an accepted zoning criterion such as 'commercial district' or 'residential district' or 'industrial district.'"). The Eleventh Circuit has taken different approaches in facial and as-applied cases. In cases alleging discrimination on the face of an ordinance, the court looks to whether any secular assemblies or institutions are permitted; if so, a religious assembly must be permitted as well. *Midrash Sephardi v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004). For cases involving how a place of worship is treated in the application of a facially neutral ordinance, the Eleventh Circuit evaluates whether the secular uses "hav[e] comparable community impact" as the proposed religious use. *Konikov v. Orange County*, 410 F.3d 1317 (11th Cir. 2005). The Second Circuit has deliberately avoided adopting a rigid test, stating that RLUIPA "is less concerned with whether formal difference may be found between religious and non-religious institutions—they almost always can—than with whether, in practical terms, secular and religious institutions are treated equally." *Third Church of Christ, Scientist v. City of New York*, 626 F.3d 667, 669 (2d Cir. 2010).

> *RLUIPA has emerged as one of the most effective measures for safeguarding religious liberty in contemporary America. This is particularly true in regard to the Orthodox Jewish communities, where the statute has not only helped protect religious life, but has also been a powerful asset in fighting discriminatory efforts to prevent their members from moving to towns and localities.*
>
> ***Abba Cohen, Washington Director, Agudath Israel of America***

Compared to the "substantial burden" and "equal terms" provisions, RLUIPA's nondiscrimination requirement has generated far fewer court decisions. Courts have held that in bringing a suit under the nondiscrimination provision, "a plaintiff must demonstrate that the government decision was motivated at least in part by discriminatory intent, which is evaluated using the 'sensitive inquiry' established in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977)." *Jesus Christ is the Answer Ministries v. Baltimore*, 915 F.3d 256, 263 (4th Cir. 2019); *see also Chabad Lubavitch of Litchfield County, Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 198 (2d Cir. 2014). Under *Arlington Heights*, courts examine all relevant factors that could reveal discriminatory intent, including the impact of the official action and whether it bears more heavily on one group; the historical background of the decision and the specific sequence of events leading up to the challenged decision; departures from the normal procedural sequence and substantive criteria; and the legislative or administrative history, along with contemporary statements by members of the decision-making body. 429 U.S. at 465-67.

RLUIPA's provisions barring "totally exclude[ing] religious assemblies from a jurisdiction" or "unreasonably limit[ing] religious assemblies, institutions, or structures within a jurisdiction"

have likewise been the subject of few cases. One court held that the unreasonable-limitation provision will be violated if land-use laws have "the effect of depriving . . . religious institutions or assemblies of reasonable opportunities to practice their religion, including the use and construction of structures," within the jurisdiction. *Rocky Mountain Christian Church v. Bd. of Cty. Comm'rs of Boulder*, 613 F.3d 1229, 1238 (10th Cir. 2010). Another held that "what is reasonable must be determined in light of all the facts, including the actual availability of land and the economics of religious organizations." *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 990 (7th Cir. 2006). Courts have found unreasonable limitations where regulations left few sites for construction of places of worship, such as through excessive frontage and spacing requirements, or where zoning restrictions imposed steep and questionable expenses on applicants. *Rocky Mountain*, 613 F.3d at 1238; *Chabad of Nova, Inc. v. City of Cooper City*, 575 F. Supp. 2d 1280, 1290-91 (S.D. Fla. 2008).

In the early years after Congress passed RLUIPA, defendants challenged the statute's constitutionality. Over time, all of these challenges failed and the constitutionality of RLUIPA is no longer an active issue in the courts.

The Department of Justice's Enforcement of RLUIPA

In the twenty years since its enactment, RLUIPA has had a dramatic impact on protecting individuals and institutions seeking to exercise their religions through construction, expansion, and use of property, and on protecting the religious liberty of institutionalized persons. The Department's lawsuits and other enforcement actions under RLUIPA have successfully defended the rights of a wide range of religious groups, including Christians, Muslims, Jews, Hindus, Buddhists, Sikhs, and others.

From September 2000 to September 2020, the Department has used the full array of available enforcement tools to ensure the protection of religious freedom in the land-use and institutionalized-persons context, including formal and informal investigations, lawsuits, *amicus* briefs and statements of interest, and intervening in private lawsuits, including:

- Opening 553 RLUIPA preliminary and full investigations into local or state governments' zoning and land-use practices or accommodation of the religious exercise of institutionalized persons;

- Filing 28 RLUIPA lawsuits on behalf of persons, religious groups, or institutionalized persons;

- Filing 53 *amicus* briefs in courts at every level addressing the interpretation and application of RLUIPA's provisions. Those briefs have addressed a wide variety of religious land uses, including places of worship, religious cemeteries, prayer meetings and similar activities in private homes, and faith-based social services such as homeless shelters, group homes, and rehabilitation centers; in institutionalized-persons cases, the

Department's briefs have addressed rights relating to religious diet, religious books and other materials, religious clothing, grooming, congregate worship, and other aspects of religious practice; and

- Filing more than 65 briefs as intervenors in private lawsuits to defend the constitutionality of RLUIPA.

The sections below provide details concerning the Department's enforcement of both the land-use and institutionalized-persons provisions of RLUIPA, along with examples and summaries of key investigations, cases, and *amicus* filings under these provisions.

The Department's Enforcement Of RLUIPA's Land-Use Provisions

Since its enactment, the Department has opened 485 RLUIPA land-use matters. Many of these matters developed into formal investigations, lawsuits, or other court filings. In total, the Department:

- Opened 148 RLUIPA formal land-use investigations;
- Filed 25 RLUIPA land-use lawsuits; and
- Filed 29 *amicus* briefs involving RLUIPA's land-use provisions.

The majority of the Department's 148 investigations involved Christian groups (56%). The other significant portion involved Muslim and Jewish groups (comprising 23% and 10% respectively). The remainder involved Buddhist (3%) and Hindu (3%) organizations, and Unitarian, Afro-Caribbean, and Native-American groups (less than 1% for each).

The investigations involving Muslim and Jewish groups have significantly exceeded the percentage of the Muslim and Jewish U.S. population. (See Charts 1, 2, and 3 below). While the percentage of the Jewish and Muslim population in the United States has been approximately 3% combined, according to the Pew Research Center, cases involving these two faith groups have comprised 33% of all investigations.

Investigations involving Buddhist and Hindu groups, while not as high by percentage as those involving Muslim and Jewish groups, also were higher than the overall percentage of the U.S. population for these groups. While Buddhist and Hindu populations make up approximately 1.5% of the U.S. population according to the Pew Research Center, 6.6% of all investigations have involved these groups.

More than two thirds of the Department's investigations have resolved with the local governments modifying their ordinances or taking other corrective action to remedy the RLUIPA issues.

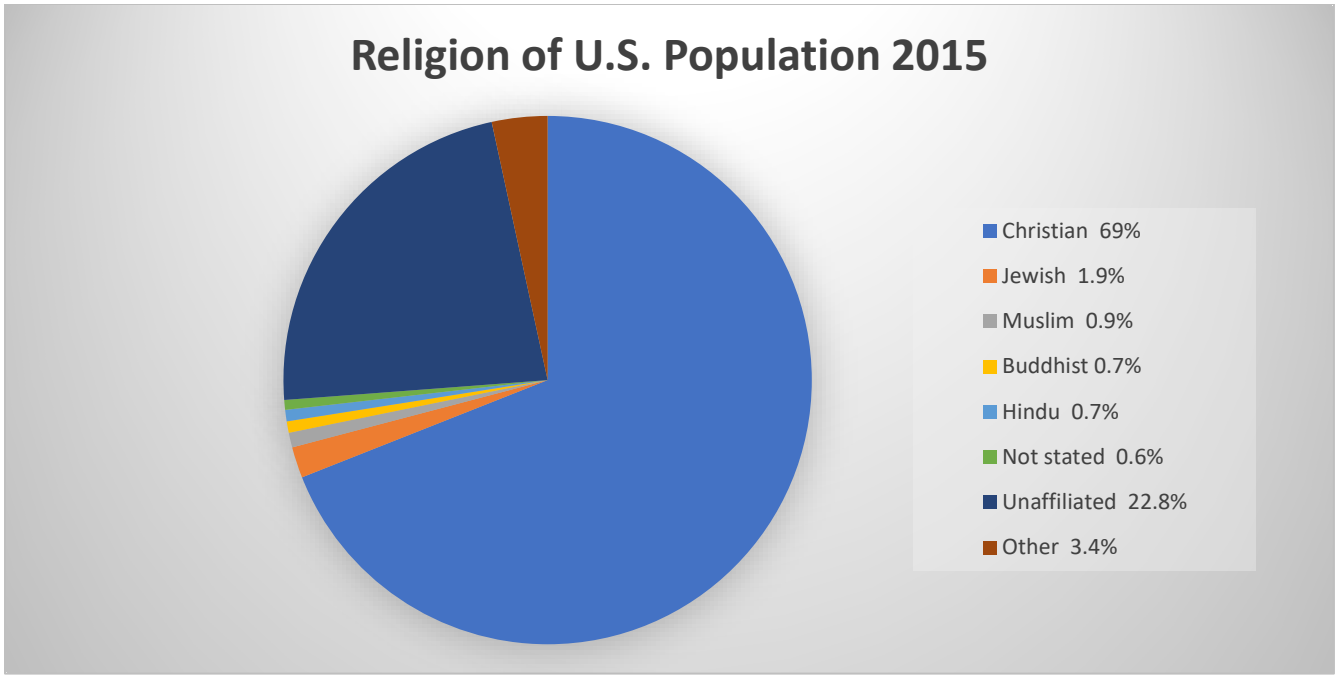


Chart 1: Data from *American's Changing Religious Landscape, Pew Research Center,* May 12, 2015

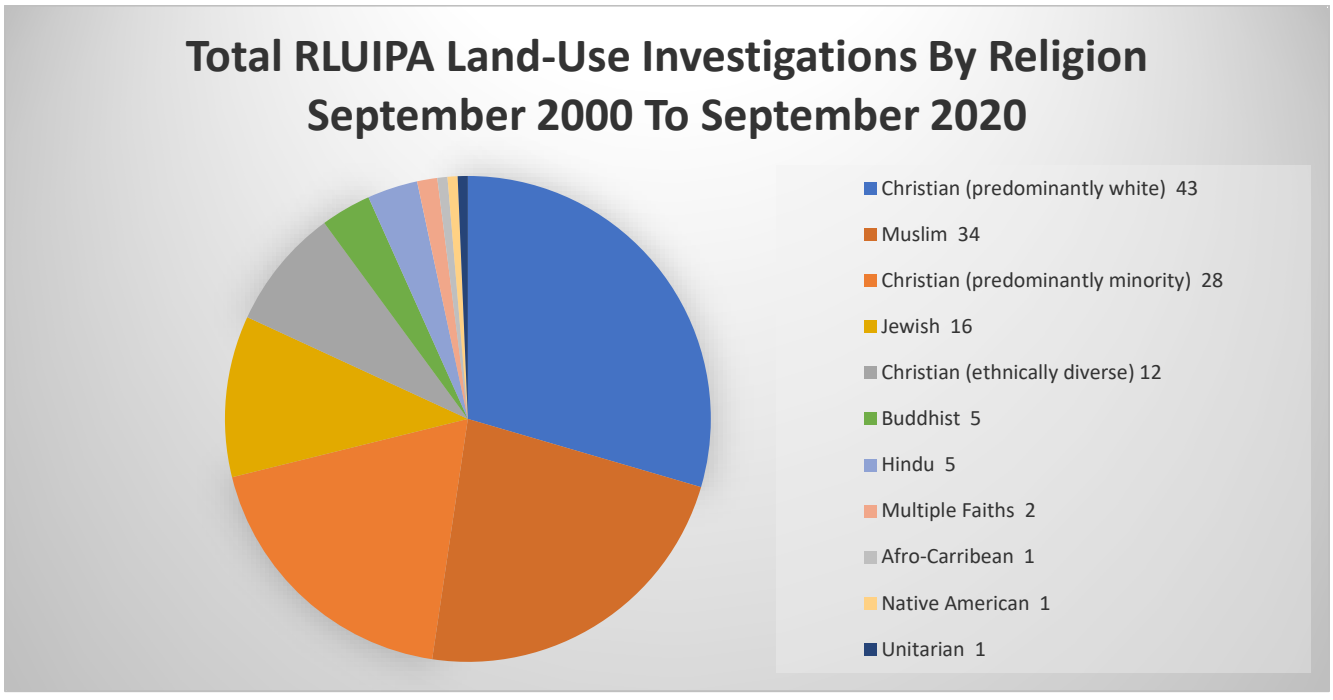


Chart 2: Department of Justice, 2020

The Department filed its combined 54 land-use lawsuits and *amicus* briefs (25 lawsuits and 29 *amicus* briefs) in the U.S. district courts, the U.S. courts of appeals, and in state court. These fillings fall into four basic categories: cases involving allegations of religious discrimination (or religion combined with race or ethnicity) by a jurisdiction against a place of worship or religious school; cases in which houses of worship have been barred in zones where secular assemblies such as clubs, lodges, or community centers are permitted; cases where local governments, through their land-use codes, unreasonably limit the locations where religious assemblies and institutions may locate; and cases where local governments have placed substantial burdens on the religious exercise of congregations, religious schools, or faith-based social service providers.

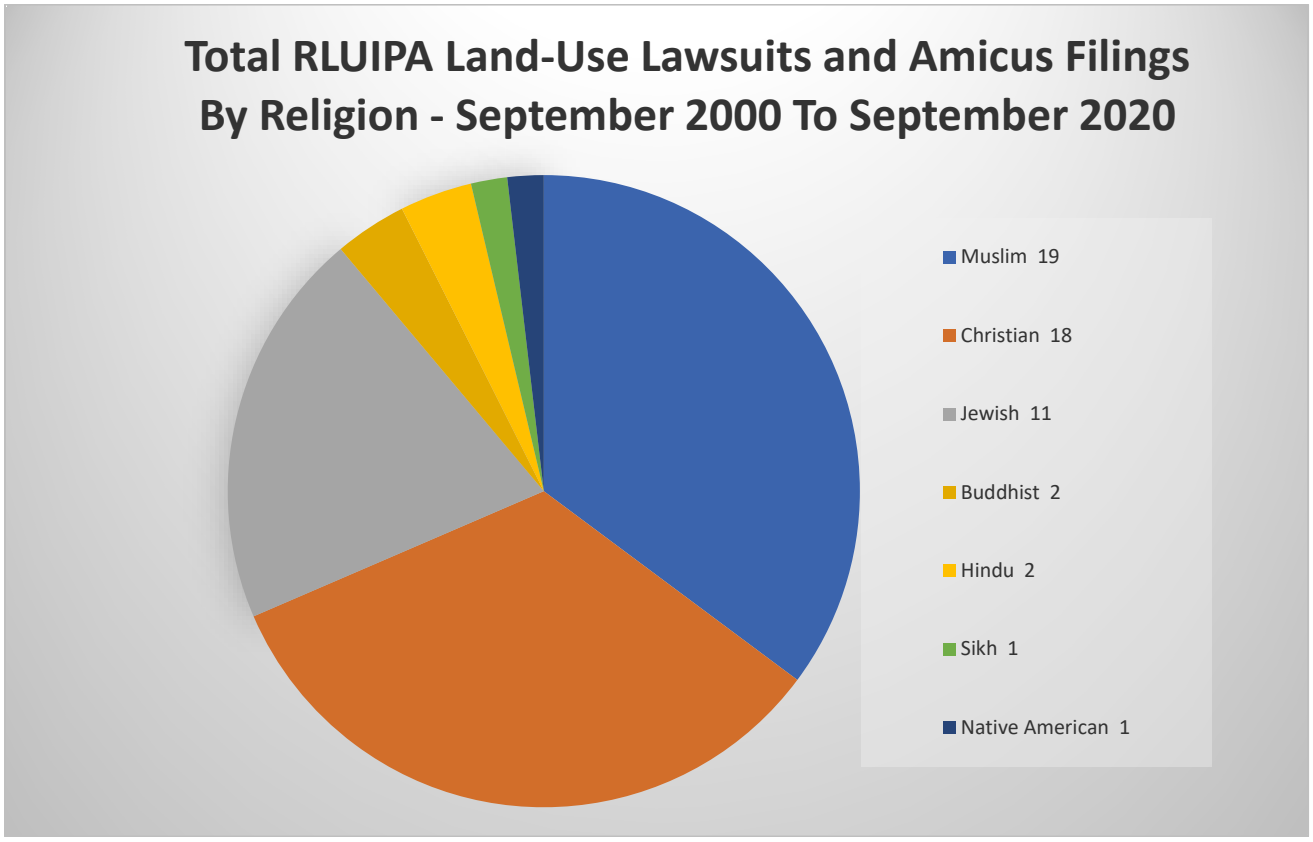


Chart 3: Department of Justice, 2020

The largest number of filings involved Islamic mosques and schools, and Christian churches, schools, and other institutions, with each representing approximately 35%. Jewish synagogues, schools, and institutions were the next group, representing 20%. Other filings have involved Hindu and Buddhist groups, each representing 4%, and one filing each on behalf of Sikh and Native American groups.

Like its investigations, the percentage of the Department's lawsuits and *amicus* filings involving Jewish and Islamic groups have been higher than the percentage of the U.S. adult population for these groups, comprising 55% of all filings. Court action by the Department on behalf of these Jewish and Islamic groups has often been necessitated by an unwillingness by local governments to take voluntary corrective action, and these cases have been more likely to involve allegations of discriminatory animus.

Below are examples and summaries of investigations and lawsuits brought by the Department of Justice and cases in which the Department has filed *amicus* briefs.

Examples of Land-Use Cases and Investigations:

Examples of the Department's land-use RLUIPA investigations, lawsuits, and *amicus* filings from September 2000 to September 2020 include[15]:

● ***United States v. Maui County*** (D. Haw.): In July 2003, the Department filed suit against the county of Maui for denying permission to Hale O Kuala, a small, nondenominational Christian church, to build a house of worship on 5.85 acres of land in an agricultural district. The church, which had held services on Maui since 1960, encouraged practitioners to grow food in accordance with Biblical principles and live in harmony with the land. Being in an agricultural district was integral to its worship needs. The county permitted various secular assemblies in the district, including rodeo facilities, petting zoos, and sports fields. The county subsequently settled with the church, permitting it to build its house of worship and paying it damages and attorney's fees.

● ***Guru Nanak Sikh Society v. County of Sutter*** (9th Cir.): In May 2004, the United States, participating as *amicus*, argued that a Sikh congregation's rights under RLUIPA had been violated, and the court of appeals agreed. The case involved a congregation in a California county seeking to build a gurdwara, a Sikh place of worship. The county only permitted houses

[15] A complete list of the Department's court filings, and more detailed information, is available at the Civil Rights Division's Housing and Civil Enforcement Section RLUIPA case page, https://www.justice.gov/crt/housing-and-civil-enforcement-section-cases-1#rluipa and at the Civil Rights Division's Appellate Section case page, https://www.justice.gov/crt/appellate-briefs-and-opinions-11.

of worship in residential and agricultural districts. The congregation first purchased land in a residential district, was denied a permit, and then purchased land in an agricultural district, only to be denied a permit there as well.

Photo: Victory Family Life Church, Douglas, GA.

● ***Douglas County, GA*:** In January 2005, the Department opened an investigation of Douglas County after it denied Victory Family Life Church the ability to build a new sanctuary on land it had occupied for 20 years. The church's property was 2.8 acres, just below the new 3-acre minimum imposed on churches but not on comparable nonreligious assemblies. The County amended its code to treat churches equally, and the Department closed its investigation.

● ***United States v. City of Hollywood*** (S.D. Fla.): In April 2005, the Department filed suit against the City of Hollywood, Florida, after it denied a permit to an Orthodox Jewish synagogue located in a residential neighborhood, a permit that the suit alleged was routinely granted to other houses of worship. The Department alleged that the denial and subsequent enforcement actions taken by the city against the synagogue were a result of discrimination toward Orthodox Jews. In July 2006, the Department reached a consent decree with the city that permitted the synagogue to continue operating at its location and to expand in the neighborhood in the future.

Photo: Location of Synagogue in Hollywood, FL.

● ***United States v. Village of Suffern*** (S.D.N.Y.)*:* In September 2006, the Department filed suit against the Village of Suffern alleging violations of RLUIPA's substantial burden provision after the village denied a zoning variance to a Jewish group to operate a "Shabbos House" near a hospital. The Shabbos House provides food and lodging to Sabbath-observant Jews to enable them to visit sick relatives at the hospital on the Sabbath. In June 2010, the Department obtained a consent decree permitting the continued operation of the Shabbos House.

Photo: Location of Shabbos house (left) in Suffern, NY.

● ***Albanian Associated Fund v. Township of Wayne*** (D. N.J.): In July 2007, the Department filed a statement of interest contending that a plaintiff Islamic group had produced sufficient evidence to show that the Township deliberately thwarted its application for a conditional use permit to build a mosque. The Township allegedly delayed the group's mosque building application for more than three years, then tried to stop the project by seizing the property under eminent domain. The court agreed with the Department that the use of eminent domain power to bypass zoning regulations could violate RLUIPA.

● ***United States v. City of Waukegan*** (N.D. Ill.)*:* In February 2008, the Department filed suit against the City of Waukegan over its exclusion of places of worship in districts that permitted clubs, lodges, meeting halls, and theaters, and its imposition of notices of violation to several small churches operating in these districts. The Department reached a consent decree with the city in February 2008 requiring it to treat places of worship equally with other assemblies.

● ***United States v. Metropolitan Government of Davidson County and Nashville*** (M.D. Tenn.): In September 2008, the Department filed suit alleging that defendants amended their zoning code to keep a Christian group, Teen Challenge, from building a residential substance abuse center on land it had purchased. In January 2009, the Department reached a settlement under RLUIPA and the Fair Housing Act, permitting Teen Challenge to move forward with its plans to build its residential treatment center.

● ***United States v. City of Walnut*** (C.D. Cal.)*:* In September 2010, the Department filed suit against the City of Walnut challenging its denial of a conditional use permit to the Chung Tai Zen Center to allow it to build a Buddhist house of worship. In August 2011, the Department settled its claim with an agreed order prohibiting the city from imposing different zoning or building requirements on houses of worship. The agreement also required city officials to obtain training on RLUIPA and to report periodically to the Department.

Photo: Buddhist monastery in Walnut, CA

● ***United States v. City of Lilburn*** (N.D. Ga.): In August 2011, the Department filed suit and reached a settlement allowing Dar-E-Abbas, a Shia Muslim community, to build a new mosque at its current location. The suit included allegations that the city's denial of approval was the result of bias against Muslims and that the city had permitted other similarly sized and situated places of worship. A federal court entered a consent decree requiring the city to allow the group to construct the mosque, as well as conduct RLUIPA training and reporting to the Department on future land-use applications by places of worship.

Photo: *United States v. City of Lilburn:* Opposition to Dar-E-Abbas' zoning request

● ***United States v. Rutherford County*** (M.D. Tenn.): In July 2012, the Department filed suit under RLUIPA and won a temporary restraining order in federal court allowing the Islamic Center of Murfreesboro to move into a mosque it built on land where places of worship are allowed as of right. The Department filed the suit in response to a state Chancery Court order blocking the county from issuing a certificate of occupancy in a suit brought by county residents who cited fears of terrorism and related concerns.

● ***United States v. City of St. Anthony Village*** (D. Minn.): In August 2014, the Department filed suit in federal court alleging that the city violated RLUIPA by denying approval for the Abu-Huraira Islamic Center to open a prayer center in the basement of an office building in a light industrial zone. The suit alleged that the denial imposed a substantial burden on the Center, and that allowing "assemblies, meeting lodges, and convention halls," but not religious assemblies in the zoning district, violated RLUIPA's equal terms provision. In January 2015, a federal court in Minneapolis entered a consent order that permitted the Center to use the building as a place of worship.

Photo: *United States v. St. Anthony Village*: City officials and religious leaders at settlement press conference.

● ***James City County, VA***: In June 2015, the Department closed its investigation of the county after it rezoned Peninsula Pentecostal Church's 40-acre site to permit its use for a place of worship. The county's zoning code had permitted places of worship when the church purchased the property, but the county had subsequently changed its ordinance to bar places of worship within the zone.

● ***United States v. Bernards Township*** (D. N.J.): In November 2016, the Department filed a lawsuit against Bernards Township alleging violations of RLUIPA's substantial burden, equal terms, discrimination, and unreasonable limitations provisions relating to the denial of approval for a mosque sought by a Muslim congregation on land it owned in the Township. In May 2017, the Department entered into an agreement with the Township that required it to approve the mosque and to modify its zoning code to increase the availability of land for places of worship.

Photo: Mohammad Ali Chaudry, president of Islamic Society of Basking Ridge

● ***Garden State Islamic Center v. City of Vineland*** (D. N.J.): In September 2017, the Department filed a statement of interest in federal court challenging the city's assertion that a Muslim congregation's RLUIPA lawsuit should be dismissed because it believed a sewage regulation used to deny a certificate of occupancy for a place of worship was not a "land-use regulation" and therefore not covered by RLUIPA. In December 2018, the court issued an opinion denying the city's motion to dismiss and finding that the application of the sewage regulation fell within RLUIPA.

● ***United States v. Borough of Woodcliff Lake*** (D. N.J.): In June 2018, the Department filed a complaint against the borough alleging a violation of the substantial burden provision of RLUIPA when it denied a variance application to allow a Jewish organization to construct a synagogue on property it owned in the borough. The case was resolved in a settlement announced September 14, 2020.

● ***Ramapough Mountain Indians, Inc. v. Township of Mahwah, NJ*** (D. N.J.): In March 2019, the Department filed a statement of interest arguing that the plaintiff, the Ramapough Mountain Indians, a Native American tribe, had asserted meritorious RLUIPA claims when the township denied the tribe's ability to worship communally and erect religious structures, including a sweat lodge and prayer circle, on its land. The Department argued that the facts alleged by the Ramapough established violations of RLUIPA's substantial burden and equal terms provisions and that the township's conduct significantly impeded the tribe's ability to worship on its land.

Photo: *Ramapough Maintain Indians v. Township of Mahwah:* Religious structure on tribal land.

● ***Christian Fellowship Centers of NY, Inc. v. Village of Canton*** (N.D.N.Y.): In March 2019, the United States filed a statement of interest arguing that the lawsuit brought by the Christian Fellowship Centers of New York, should proceed under RLUIPA's equal terms provision. The brief challenged the village's exclusion of churches from its C-1 zoning district, even though that district allowed similarly situated nonreligious assemblies such as municipal buildings,

charitable and social clubs, and theaters. On March 29, 2019, the court agreed with the Department and entered an order enjoining the village from excluding churches from the district.

Photo: Jamie Sinclair, pastor of Christian Fellowship Centers at location of new church in Canton, N.Y.

● ***United States v. City of Farmersville*** (E.D. Tex.): In April 2019, the Department filed suit alleging that the city violated RLUIPA's substantial burden and nondiscrimination provisions by denying zoning approval for a Muslim congregation to construct a religious cemetery. The parties entered into a settlement agreement requiring the city to approve the cemetery, to provide RLUIPA training to its employees and officials, and to notify the public of its compliance with RLUIPA in its land use actions.

● ***Salik, LLC v. Forsyth County*** (N.D. Ga.): In January 2020, the Department filed a statement of interest arguing that a Hindu congregation's private suit should proceed and that the congregation had standing to raise RLUIPA claims. On March 25, 2020, the court rejected the county's arguments and refused to dismiss the congregation's lawsuit.

● ***United States v. Village of Walthill*** (D. Neb.): In February 2020, the Department filed suit alleging that the village violated the substantial burden and equal terms provisions of RLUIPA by denying permission to a Christian congregation to construct a church in the village. The case is pending.

● ***United States v. Stafford County*** (E.D. Va.): In June 2020, the Department filed a lawsuit alleging that Stafford County violated RLUIPA by enacting overly restrictive zoning regulations prohibiting an Islamic organization from developing a religious cemetery after the Islamic group

purchased a 27-acre tract of land in the county for that purpose. The case is pending.

● ***United States v. Jackson Township*** (D. N.J.): In May 2020, the Department filed suit against the township and its planning board, alleging that they violated RLUIPA and the Fair Housing Act by targeting the Orthodox Jewish community through zoning ordinances restricting religious schools and barring religious boarding schools. The case is pending.

The Department's Enforcement Of RLUIPA's Institutionalized Persons Provisions

Over the last twenty years, the Department has conducted investigations, filed lawsuits, reached settlements, and filed statements of interest and *amicus* briefs to protect the rights of institutionalized people to practice their faiths. The Department has found that some institutions continue to restrict practices in ways that impose substantial burdens on religious exercise, and thus must be accommodated unless the institutions can demonstrate compelling governmental interests, pursued through the means that are least restrictive on religious exercise.

The Department has conducted 68 formal or informal investigations, initiated three lawsuits, and filed eight statements of interest and 13 *amicus* briefs involving RLUIPA and institutionalized persons. Through its engagement in these matters, the Department has been able to reach voluntary compliance or court-ordered resolution in cases related to religious diet, access to religious texts and articles, opportunity to participate in religious group meetings, religious headwear, and accommodation of religious grooming practices. Through these enforcement actions, the Department has achieved statewide relief in many cases, providing access to religious accommodations for prisoners in some of the country's largest correctional systems, including Florida and California, which each confine around 100,000 prisoners. The institutional policy changes that the Department has achieved through its enforcement actions often benefit not only the prisoner whose claims initially came to its attention or those of the same religion, but also prisoners of other religious faiths whose beliefs require similar accommodation. For example, policy changes permitting a Sikh prisoner to maintain untrimmed hair or a beard also benefits those of other religions requiring accommodation of grooming practices, such as Muslim or Native American prisoners.

> *Over the last decade, I have seen firsthand the concrete impact RLUIPA has made to the lives of inmates all across the country. RLUIPA provides incarcerated men and women the ability to exercise their essential and inborn right to practice their faith even while in prison.*
>
> ***Rabbi Jacob Weis, Executive Director, Tzedek Association***

The Department's work has supported the religious exercise of people practicing a wide range of religions, including Jews, Muslims, Sikhs, Christians, and Native Americans. While any

religious group may be affected by policies that prohibit religious exercise, RLUIPA claims in institutional settings are most often raised by people who practice minority faiths. The Department's enforcement efforts reflect this unsurprising reality, with the majority of the cases the Department has pursued involving religions other than Christianity.

Institutionalized-Persons Cases and Investigations

Below are examples of the Department's RLUIPA institutionalized-persons cases, investigations, statements of interest, and *amicus* briefs. More detailed information is available at the Civil Rights Division's Special Litigation Section RLUIPA case page, https://www.justice.gov/crt/special-litigation-section-cases-and-matters0#rluipa and on the Civil Rights Division's Appellate Section case page, https://www.justice.gov/crt/appellate-briefs-and-opinions-11.

● ***Taylor Care Center*** (Westchester, N.Y.): The Department received allegations that staff members at Taylor Care Center, a nursing home, failed to accommodate a Sikh resident's religious practices, resulting in the resident being fed an inappropriate diet and his hair being trimmed, both in violation of his religious beliefs. The resident's family had filed a private suit against the facility, and shortly after the Department initiated its investigation, the family was able to obtain a settlement that required the distribution of guidelines and training on religious accommodations. The Department in 2009 reached an agreement with the facility that ensured that the settlement agreement with the family would be honored.

● ***Khatib v. County of Orange*** (9th Cir.): In 2010, the Department filed an *amicus* brief arguing that a pre-trial detention facility is an "institution" as defined by RLUIPA, and therefore RLUIPA's heightened standards protecting religious freedom applied. A panel of the Ninth Circuit rejected this position, but that decision was overturned by the Ninth Circuit after *en banc* review in an opinion that was consistent with the Department's position.

● ***Basra v. Cate*** (C.D. Ca.): The Department intervened in a case brought on behalf of Sukhjinder Basra seeking an accommodation to enable him to wear his hair unshorn in accordance with his Sikh faith. The California Department of Corrections and Mr. Basra entered into a settlement agreement in 2011 that permitted Mr. Basra, and all prisoners confined by the state, to wear their hair unshorn for religious reasons.

● ***Prison Legal News v. Berkeley*** (D .S.C.): The Department intervened in a lawsuit against the Berkeley County Sheriff's Office alleging that the Office violated RLUIPA and the First Amendment by restricting access to religious texts. The parties ultimately entered into a court enforceable agreement in 2012 that ensured access to religious texts consistent with RLUIPA and the Constitution.

● ***Native American Council of Tribes v. Weber*** (D. S.D. and 8th Cir.): The Department filed a statement of interest in the district court in support of the plaintiffs' position that a jurisdiction cannot deny an accommodation on the basis of its assessment that the requested practice is not compelled by or central to a particular religion. The plaintiffs in the case sought to use tobacco

in their Native American religious practice and were prohibited from doing so in part on the basis of the South Dakota State Penitentiary's determination that tobacco use was not "traditional." In 2013, the Department also filed a brief in the appellate court on this issue, and the case was ultimately decided in the plaintiffs' favor.

● ***United States v. Florida Department of Corrections*** (S.D. Fla. and 11th Cir.): The Department filed litigation alleging that the Florida Department of Corrections violated RLUIPA by failing to provide a kosher diet to prisoners with a sincere religious need for one. The district court issued a permanent injunction in 2015 requiring the Department of Corrections to offer a kosher diet accommodation, and the kosher diet has now been implemented statewide. The Eleventh Circuit upheld the injunction, and the district court later terminated it after the State demonstrated more than two years of compliance.

● ***Ali v. Quarterman*** (E.D. Tex.; 5th Cir.): The Department filed a statement of interest in district court and an *amicus* brief in the court of appeals in support of the plaintiff, a Muslim man in the custody of the Texas Department of Corrections (TDOC) who sought to maintain a beard in conformity with his religious practice. The Department argued that TDOC's ban on religious beards was not the least restrictive means to further a compelling government interest. In 2016, the Fifth Circuit affirmed the district court's decision that the policy was not, in fact, the least restrictive means to further government interests.

● ***Cherokee County Detention Center*** (N.D. Ga): The Department investigated a Georgia detention facility's policies regarding head coverings, access to religious materials such as books, and access to religious diets. In 2018, the Department closed its investigation after officials at the facility promptly instituted several changes addressing the potential RLUIPA violations identified by the Department.

RLUIPA is a powerful source of protection for vulnerable people of all faiths from the prisoner praying behind bars, to the halfway house helping the hungry, to the house of worship trapped in a maze of red tape. Every American enjoys more religious freedom because of this landmark legislation.

Luke Goodrich, Vice President & Senior Counsel, The Becket Fund for Religious Liberty

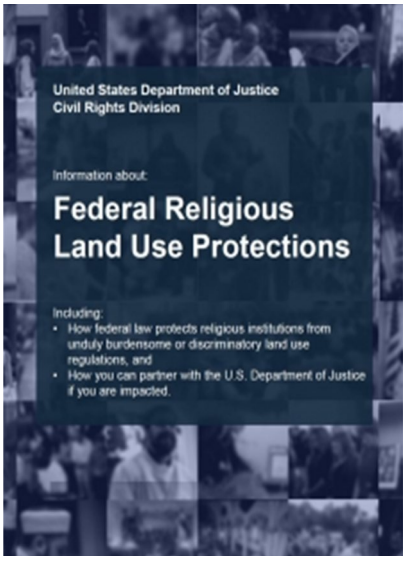
● ***Virginia Department of Corrections*** (Richmond, Va.): In September 2019, the Department reached an agreement with the Commonwealth of Virginia to resolve the Department's investigation of the Virginia Department of Corrections (VDOC). The agreement addressed the State's: (1) five-person minimum for group worship and religious activities; (2) policy of preventing prisoners from attending religious services if they had missed services in the past; and (3) policy of removing prisoners from religious diets for failing to pick up a minimum number of trays per month from the special food line for religious accommodations. During the course of the investigation, VDOC made policy changes that addressed these issues and which protect prisoners' rights to engage in religious practices.

● ***McGill v. Clements*** (M.D. Pa.): In April 2020, the Department filed a statement of interest in support of a pretrial detainee who alleged he was being held in solitary confinement because he refused to cut his dreadlocks, which he wore as part of his religious practice as a Rastafarian. The Department argued that, in considering the plaintiff's motion for a preliminary injunction, the court should find that he was likely to succeed on the merits of his claim, because officials had not shown that the burden on his religious exercise was the least restrictive means of achieving its compelling interests. The facility has since changed its policy to permit religious exemptions to the grooming policy.

● ***Holt v. Kelley*** (E.D. Ark.): In June 2020, the Department filed a statement of interest in a RLUIPA case addressing the meaning of "program or activity" receiving federal financial assistance for purposes of RLUIPA coverage. The Department argued that RLUIPA's scope covers an entire agency even if only a sub-agency receives federal financial assistance. This is consistent with interpretations of the same language in Title VI of the Civil Rights Act of 1964.

Education and Outreach

An important part of the Department's RLUIPA enforcement program is education and outreach. Affected individuals and communities often are not aware of RLUIPA, do not fully understand its provisions, or do not know about the assistance the Department can offer in many cases. Local officials also are often not aware of the law and what it requires. Thus, public education and outreach about the law is critical to its success.



In June 2018, the Attorney General announced the Place to Worship Initiative, which seeks to increase the Department's enforcement of RLUIPA's land-use provisions and to educate religious leaders, county and municipal officials, and the general public about the statute's requirements. As part of the Place to Worship Initiative, the Department created and maintains a website, provides informational materials for religious leaders and municipal officials, and conducted 15 community outreach and training events in FY19 to raise awareness about RLUIPA. Since the start of the initiative, the Department has filed six lawsuits and eight amicus briefs, a rate double the average for Department RLUIPA filings, and opened 23 formal investigation, a 60% increase over the average.

In conjunction with the launch of the Place to Worship Initiative, the Department updated its *Statement on the Land-Use Provisions of RLUIPA*, consisting of Questions and

Answers about the law's various provisions and requirements, and issued a *Federal Religious Land Use Protections* information booklet. This statement and information booklet, along with other materials about RLUIPA, are available at the homepage for the Place to Worship Initiative at https://www.justice.gov/crt/placetoworship.

Department of Justice officials, including the Assistant Attorney General and U.S. Attorneys, have participated in more than 70 events to educate religious leaders, local officials, and the public about RLUIPA's land-use provisions. Nearly half the RLUIPA land-use matters opened by the Department have involved referrals from community-based organizations, religious leaders, or attorneys for religious organizations.

Education and outreach also are critical to the Department's program for enforcing RLUIPA's institutionalized-persons provisions. Although many state and local corrections officials are aware of RLUIPA, some affected institutions are unfamiliar with the requirements that the statute places on them, do not fully understand how to provide adequate religious accommodations, and do not know about the guidance that the Department offers. Similarly, many institutionalized persons, or their families or representatives, along with groups that advocate on behalf of institutionalized people or religious groups, are unaware of the protections that RLUIPA provides. Through publications and outreach, the Department educates these individuals and groups around the country about these protections. The Department's Civil Rights Division also coordinates internally with other entities of the federal government, such as the Federal Bureau of Prisons and the U.S. Marshals Service, which have obligations to the people they confine similar to those imposed by RLUIPA. As opportunities arise, the Department is also available to provide outreach and education presentations on RLUIPA's institutionalized-persons requirements.

Photo: RLUIPA training in Pittsburgh, PA

On the Tenth Anniversary of RLUIPA's passage in 2010, the Department issued a Statement on the Institutionalized Persons Provisions of RLUIPA, consisting of Questions and Answers about the rights and obligations under the statute. This Statement has been updated in the intervening years. The Questions and Answers and other materials related to the Department's enforcement efforts are available at the Civil Rights Division Special Litigation Section RLUIPA page, https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act-0.

RLUIPA's Third Decade and Beyond

Over the past 20 years, RLUIPA has served as a valuable tool for protecting the fundamental right of religious freedom and preventing religious discrimination. During the third decade and beyond, the Department of Justice will remain vigilant in its efforts to protect the rights of individuals and communities to practice their faiths free from discrimination and unjustified government infringement.

The Department of Justice will continue to fulfill an important role in enforcing RLUIPA, investigating potential violations, bringing lawsuits, participating as *amicus* in significant cases, providing technical assistance, and educating the public and government officials. While acknowledging the tremendous impact RLUIPA has had on protecting and defending religious liberty, the Department also acknowledges the challenges that remain, including the need to educate and inform officials of their obligations under the law to combat discrimination in their communities and to protect the religious exercise of their citizens.

> *RLUIPA's passage 20 years ago and its specific protections for religious assemblies and prisoners demonstrate the very best of our country's commitment to religious liberty. RLUIPA remains an essential aspect of our country's religious liberty law, particularly for religious minorities.*
>
> ***Holly Hollman, General Counsel, Baptist Joint Committee for Religious Liberty***

The freedom to exercise one's religious is foundational to our nation and is among its most basic civil rights. The Department of Justice will continue to use RLUIPA, and all our national civil rights laws, to defend religious liberty for all.

EXHIBIT D

April 23, 2024 Letter to the City

manatt

Fernando Villa
Manatt, Phelps & Phillips, LLP
Direct Dial: (310) 312-4389
FVilla@manatt.com

April 23, 2024

Client-Matter: 70581-033

VIA E-MAIL

Viridiana Gallardo-King, Esq.
Deputy City Attorney II
City of Bakersfield
1600 Truxtun Avenue, 4th Floor
Bakersfield, CA 93301

Re: The Church of Jesus Christ of Latter-Day Saints - Temple Project at 12310 Stockdale Highway (the "Project" or the "Temple")

Dear Ms. Gallardo-King:

Thank you again for discussing the Project with me. As shared with you, my firm represents The Church of Jesus Christ of Latter-Day Saints (the "Church") in their efforts to construct the Project. The Church has engaged the architecture firm HKS Architects, Inc. ("HKS") to prepare a design for the Project and HKS has submitted a proposed design to the City of Bakersfield (the "City"), attached again here for ease of reference.

In a letter dated March 11, 2024 (attached), the City's Planning Director, Paul Johnson, indicated to HKS that he believes the Project's proposed steeple exceeds the height allowed on the Project's parcel, stating the parcel's location in a C-O Zone (*see* Bakersfield Municipal Code ("BMC") §§ 17.23.010-110) limits the Project to a height of 60 feet. His letter added that the Project as designed would require the Church to apply for and receive a zoning modification from the City to allow for a 124-foot steeple.

Respectfully, we disagree on both counts. Federal law does not permit the City to impose this height limitation on the Temple because it would substantially burden its members' exercise of their religious rights without having a compelling interest to do so, especially since the BMC imposes no such height limit. Even if the BMC had such a limit, the BMC's own terms and State law expressly exempt the steeple from any height limit since it is noncombustible, and State law would preempt such a limitation in any case.

1. **Federal Law Prohibits Bakersfield from Imposing a Height Limit on the Project's Steeple**

Congress passed the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") (42 U.S.C. § 2000cc) without a single dissenting vote, and the courts have uniformly upheld its constitutionality. Among other things, RLUIPA establishes that any land-use regulation " 'that imposes a substantial burden on the religious exercise of a ... religious assembly or institution' is unlawful 'unless the government demonstrates that imposition of the burden ... is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.' " (*Int'l Church of Foursquare Gospel v. City of San Leandro* (9th Cir. 2011) 673 F.3d 1059, 1066 (quoting 42 U.S.C. § 2000cc(a)(1)) ("*San Leandro*").) The Ninth Circuit has stated that "RLUIPA analysis proceeds in two sequential steps. First, the plaintiff must demonstrate that a government action has imposed a substantial burden on the plaintiff's religious exercise. Second, once the plaintiff has shown a substantial burden, the government must show that its action was 'the least restrictive means' of 'further[ing] a compelling governmental interest.' " (*Id.* (quoting 42 U.S.C. § 2000cc(a)(1)).)

Numerous courts and the United States Congress have noted that,

> a place of worship ... is at the very core of the free exercise of religion ... [and that] [c]hurches and synagogues 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.

(*San Leandro, supra*, 673 F.3d at 1069–70 (quoting *Vietnamese Buddhism Study Temple in Am. v. City of Garden Grove* (C.D.Cal.2006) 460 F.Supp.2d 1165, 1171; 146 Cong. Rec. S7774–01, Exhibit 1 (daily ed. July 27, 2000) (joint statement of Senator Hatch and Senator Kennedy on RLUIPA of 2000)).)

The Temple, as a house of worship whose steeple embodies a core tenet of the Church's faith, would unquestionably satisfy the first prong of the required RLUIPA analysis. The Temple is designed as a tribute to the Church's specific vision of God and as a visual beacon of light and hope to all those who look upon it. A steeple has been described as "perhaps the signature physical characteristic that identif[ies] buildings as places of Christian worship. … [S]teeples are a hallmark of Christian churches." (Arave, Lynn. "Steeped in Symbolism." Deseret News, 17 Feb. 2001, https://www.deseret.com/2001/2/17/19569894/steeped-in-symbolism/. Accessed 19 Apr. 2024.) In addition to identifying a building as a Christian house of worship, "steeples, by pointing toward heaven, serve the purpose of lifting [the viewer's] eyes and thoughts towards heaven." (*Martin v. Corp. of Presiding Bishop of Church of Jesus Christ of*

Latter-Day Saints (Mass. 2001) 434 Mass. 141, 148 (internal quotations omitted).) This aesthetic value is especially important for those Church members who are visiting the Temple to partake in sacred rites. Furthermore, courts have specifically noted that "it is clearly part of [the Church's] theology to reflect, in their buildings, the belief of an ascension towards heaven," including through the use of steeples. (*Id.*) To limit or eliminate the Temple's steeple would strip from it the symbolic value of clearly identifying it as a Christian house of worship and would deny the Church and its members the value of turning the viewer's eyes and mind heavenward. Such a limitation would not just substantially burden, but indeed eliminate a foundational element of the Church's religious practice.

As for the second element of a RLIUPA review, the City would not be able to identify a "compelling government interest" that would justify restricting the height of the Project's steeple, much less that such a restriction is "narrowly tailored." The steeple poses no health, fire, safety or other risk associated with structures that building codes typically address – the only fathomable interest, compelling or otherwise, the City could plausibly have in placing a height limit that does not anywhere exist in its Code. The steeple will be made entirely of noncombustible materials and all of the Church building and steeple will be separated by several hundred feet from the nearest neighboring buildings by well-maintained, landscaped grounds. As such, since the City has no discernible interest in arbitrarily capping the height of the Church's steeple that poses no hazard to public safety or welfare, it cannot regulate the steeple's height under RLIUPA, and must allow the City to apply for building and other ministerial permits for its Project.

As should be apparent, the City's attempt to limit the height of the Project's steeple would, if successful, substantially burden the Church's religious exercise and has no compelling government interest to warrant this intrusion into its members' First Amendment right to religious assembly. As such, RLUIPA prohibits the imposition of this height limit.

2. <u>The Project Site is Not in a Zone that Limits Steeple Height</u>

The Project is in Bakersfield's C-O Zone,[1] which expressly permits religious facilities and has no height limit for a steeple. The C-O Zone establishes a 60-foot limit for "building height," (BMC § 17.20.060) but this term, as defined by the BMC, only applies to the height of the habitable space of the Project, not to the height of the steeple. Within the BMC, "building height" means the distance from the adjacent ground elevation up to "the highest point of the coping of a flat roof, to the deckline of a mansard roof, or to average height of the highest gable of a pitched or hipped roof, whichever is applicable. The height of a stepped or terraced building is the maximum height of any segment of the building." (BMC § 17.04.09.) The Project's proposed steeple does not contain a flat roof, a mansard roof, a pitched roof, nor a hipped roof;

[1] As defined in BMC §§ 17.23.010-110.

nor is the proposed steeple a segment of a stepped or terraced building. Therefore, the "building height" limit in the C-O Zone applies only to the maximum height of the Project's habitable space, and not to the steeple.[2]

3. <u>The State Building Code and the City's Own Code Expressly Exempt Steeples Made of Noncombustible Materials From Height Limits</u>

Even if the C-O Zone could be construed to include a limit on the height of steeples, which is not plausible or supportable (as noted), such a limit would not apply to the noncombustible steeple proposed as part of the Project.

The BMC explicitly adopts the California Building Code (CBC) in its entirety, with only select modifications, additions, and deletions provided in BMC Chapter 15. (BMC § 15.05.010; emphasis added.) CBC § 504.3 (and therefore BMC § 15.05.010) exempts steeples made of noncombustible materials from any building height restriction: "Towers, spires, steeples and other rooftop structures … ***shall be unlimited in height where of noncombustible materials*** and shall not extend more than 20 feet (6096 mm) above the allowable building height where of combustible materials." (24 CCR § 504.3 (emphasis added).)

As BMC § 15.05.010 explicitly adopts the entirety of the CBC as the City's building code, with alterations only as set forth within BMC Chapter 15, and as none of the changes adopted in BMC Chapter 15 modify the explicit height exception in CBC § 504.3 for steeples made from noncombustible materials, the exception allowing for steeples to be "unlimited in height where of noncombustible materials" applies to the Project.

Mr. Johnson's letter cites BMC § 17.08.110(A), which states that "[n]o penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment; towers, steeples, roof signs or other structures shall exceed the height limit provided in this title," as a basis for limiting the height of the Project's noncombustible steeple. That title, however, ***does not limit the height of steeples in the C-O Zone*** where the Temple will be built, rendering BMC § 17.08.110(A) inapt as any basis for a view that it provides such a limit. Even if, for sake of discussion only, that regulation could be seen as limiting steeple height, it would conflict with the unlimited noncombustible steeple height allowed by BMC § 15.05.010 (which incorporates CBC § 504.3).

[2] By way of comparison, the "Church (CH) Combining Zone," an overlay zone that only applies to R-1, R-2, and R-3 Zones, not the C-O Zone where the Temple is located, provides a limit on steeple height. (BMC § 17.36.030(B).)

California courts have consistently held that, wherever possible, two potentially conflicting laws should be interpreted in such a way as to avoid the potential conflict. (*See, e.g., Gramajo v. Joe's Pizza on Sunset, Inc.* (Cal. Ct. App. Mar. 25, 2024) No. B322697, 2024 WL 1250214, at *3 ("*Gramajo*"); *Chatsky & Associates v. Superior Court* (2004) 117 Cal.App.4th 873, 876 ("*Chatsky*").) Courts are to assume that enacted laws are intended to comprise a consistent body of law, and repeals by implication are disfavored, unless no other resolution to an apparent conflict exists. (*See, e.g., Gramajo, supra*, 2024 WL 1250214, at *3; *Hays v. Wood* (1979) 25 Cal.3d 772, 784; *Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 Cal.3d 408, 419–420.) Courts should further avoid any interpretation that requires one of the laws to be ignored. (*Chatsky, supra*, 117 Cal. App. 4th at 876; *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7.)

BMC § 15.05.010 (as it incorporates CBC § 504.3) and BMC § 17.08.110(A) can be read together as a coherent, consistent whole. As such they must be so read. BMC § 17.08.110(A) limits steeple heights generally, while CBC § 504.3 and BMC § 15.05.010 (as it incorporates CBC § 504.3) expressly exempt steeples made of noncombustible materials from this height limit. When so construed, these regulations are entirely consistent with one another and create no conflict. Were BMC § 17.08.110(A)'s height limit read to apply to the exception established by CBC § 504.3 and BMC § 15.05.010, it would render this exception meaningless. On the other hand, if BMC § 17.08.110(A) were construed to establish the baseline for steeples constructed with any materials, while CBC § 504.3 creates an exception for steeples made only of noncombustible materials, no conflict exists between these provisions and each would have meaning and effect. Such a construction is required under California's rules for statutory and regulatory interpretation.

Since the Project's steeple will be constructed entirely of noncombustible materials which State law and the City's own Code exempt from height limits, it complies with the City's Code and requires no zone change or other discretionary action by the City.

4. <u>If a Conflict Were Deemed to Exist Between State and City Regulations Regarding Steeple Heights, State Law Would Preempt</u>

Even if a conflict were deemed to exist between CBC Section 504.3's height exemption for noncombustible steeples and Chapter 17's height limits for steeples, which is not the case, the state-mandated height exemption would preempt the City's height limit.

Bakersfield is a "charter city," which grants it greater powers than a "general law city," though "as to matters of statewide concern, charter cities remain subject to state law." (*Lippman v. City of Oakland* (2017) 19 Cal. App. 5th 750, 756–57 (internal citations omitted) ("*Lippman*").) Preemption of a charter city ordinance by state law requires analysis of a three-part test: (1) the ordinance must conflict with a state law; (2) the state law must cover a subject

of statewide concern; (3) the state law must be reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance. (See *Cultiva La Salud v. State of California* (2023) 89 Cal. App. 5th 868, 875; *Lippman*, *supra*, 19 Cal. App. 5th at 756–57.)

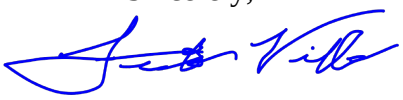
If a conflict were deemed to exist between the State height exemption for noncombustible steeples and the City's height limit for steeples that apply only to non-C-O Zones, which we believe would be unlikely, a court would turn to the second element of the preemption test. As to this second element, courts have held a uniform, statewide building code to be a subject of genuine statewide concern. In *Lippman*, the Court of Appeal addressed the City of Oakland's contention that, under the home rule doctrine, charter cities were permitted to enact municipal ordinances that conflicted with the requirements of the CBC. However, the Court discussed at length the importance that the Legislature placed on having a statewide, uniform building code and how clearly the Legislature communicated its intent to preempt what had earlier been a complex array of divergent county and municipal building codes. The Court thus held that the CBC is a law of statewide concern, that it applies to charter cities, and that deviations from it are only permitted in the limited areas where state law specifically allows for certain local deviations. (*Lippman*, *supra*, 19 Cal. App. 5th at 764.) As is apparent, the State law exemption for non-combustible steeples from height limits reflects an avowed, genuine statewide concern.

The final element of the preemption test is whether the state law is reasonably related to resolution of the subject of statewide concern and narrowly tailored to avoid unnecessary interference in local governance. As regards the CBC, the Legislature was concerned about the health, safety, and enforcement concerns that arose out of the prior system, whereby counties and cities were free to establish wildly divergent building codes, which created a patchwork of dozens of different legal regimes across the state. (*Lippman*, *supra*, 19 Cal. App. 5th at 763-64.) In order to address the difficulties of having such a wide array of different legal regimes, the most reasonable solution is to implement a single, uniform building code that is generally applicable throughout the state, as the Legislature did in enacting the CBC. While this solution is seemingly quite broad, the Legislature has specifically allowed local jurisdictions to enact building code requirements that conflict with the CBC's terms in instances where health and safety or local geographic or climatic conditions may justify a non-uniform regulation. (See *Lippman*, *supra*, 19 Cal. App. 5th at 763-64; Cal. Health & Saf. Code, §§ 17958.5, 17958.7(a), 17922(c), 17951(e)(2).) In allowing various exceptions to the CBC, where local jurisdictions can regulate as necessary for local conditions, the Legislature has showed that the CBC is in fact narrowly tailored to provide a uniform building code throughout the state without unduly impinging on the rights of cities and counties. The narrow, limited exemption from height restrictions that State law affords noncombustible steeples embodies a narrowly tailored enactment that does not unduly affect Bakersfield's rights to regulate building standards. Having met the third element of the preemption test, this state height exemption would thus preempt the City's general height limit for steeples.

As we discussed, I look forward to addressing these matters with after you consult with your client about them. Please let me know proposed times for a virtual meeting or call.

Thank you.

Sincerely,



Fernando Villa

FV

402885210.7