

The Religious Land Use and Institutionalized Persons Act of 2000

Introduction

On numerous occasions over the years, churches and Christian schools have found themselves involved in zoning disputes over the issue of building new facilities or expanding existing ones. These disputes often arise when a local zoning authority denies a ministry's request to alter its facilities, or attempts to place unreasonable conditions on the construction project being proposed.

In September of 2000, religious ministries received some help in this area when the Religious Land Use and Institutionalized Persons Act was signed into law ("RLUA " or the " Act"). This new legislation, which was designed to provide added protections for religious ministries involved in zoning disputes, allows a ministry to sue for damages and attorney's fees when the ministry's religious freedoms have been unfairly "burdened" by the actions of a state or local zoning authority. While most ministries may not be anxious to engage in a lawsuit, the very fact that this new law exists should give ministries an important bargaining tool when dealing with zoning authorities on land use issues.

In this Legal Report, we will provide you with information concerning RLUA and attempt to answer some of the questions you may have concerning the Act. In addition, we will offer some specific examples of situations where this new law may be helpful to your ministry.

Discussion

A. Background concerning RLUA

Prior to 1990, a governmental authority could not impose a "substantial burden" on a person's sincerely-held religious belief unless the government could show a "compelling interest" for regulating the exercise of that belief. In addition, the governmental authority had to show that its regulation of the belief was being accomplished by the "least restrictive means" available. This standard was generally favorable to religious organizations across the United States.

Unfortunately, the rules changed in 1990. In the case of Employment Division v. Smith, the United States Supreme Court held that the government was no longer required to show a "compelling interest" in cases involving the free exercise of religion, if the government regulation was a "neutral law of general applicability." The Smith case was decided by a vote of 5 to 4. The ruling in Smith made it more difficult for an individual or religious organization to win a case that involved governmental regulation of a sincerely-held religious belief.

In 1993, Congress responded to the Smith case by passing the Religious Freedom Restoration Act ("RFRA"). It is interesting to note that RFRA was passed by a unanimous vote of both the Senate and the House. The purpose of RFRA was "to restore

the compelling interest test...and to guarantee its application in all cases where free exercise of religion is burdened." In short, RFRA attempted to reestablish the law in free exercise cases to the same status it enjoyed prior to the Supreme Court's decision in Employment Division v. Smith.

As you might imagine, the Supreme Court took exception to the passage of RFRA. In City of Boerne v. Flores, decided in 1997, the Supreme Court ruled that RFRA was unconstitutional because Congress did not have the authority to enact this statute. In ruling that RFRA was unconstitutional, the Supreme Court confirmed the authority and validity of its earlier ruling in Employment Division v. Smith. (Please note, however, that since the City of Boerne case was decided, several lower courts have held that the City of Boerne case only invalidated RFRA as it pertains to state and local governments. In these decisions, the lower courts have held that RFRA remains a viable limitation on attempts by the federal government to restrict the free exercise of religion.)

In response to the City of Boerne case, Congress passed the Religious Land Use and Institutionalized Persons Act of 2000. This Act differs from RFRA in that it is more narrowly focused on zoning and land use regulations. Although the Religious Land Use and Institutionalized Persons Act of 2000 has not yet been challenged in the Supreme Court, many legal scholars believe that it will be upheld as constitutional, in part because of its more narrow focus.¹

B. A brief overview of RLUA

RLUA restores the "compelling interest" test to disputes involving zoning and land use laws. In particular, the Act specifies that a state or local government cannot subject an individual or religious organization to a zoning or land use law that imposes a "substantial burden" on the exercise of a sincerely-held religious belief, unless the law or regulation is supported by a "compelling governmental interest."

In addition to restoring the "compelling interest" test to claims involving zoning and land use laws, RLUA requires state and local governments to treat a religious ministry on "equal terms" with a nonreligious assembly or institution. The Act further provides that a state or local government may not implement a zoning, or land use regulation that, (1) totally excludes religious assemblies from a jurisdiction, or (2) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

As noted above, the very existence of this new law should provide significant leverage to individuals and religious organizations that are attempting to obtain zoning approval for a structure or activity that is religious in nature. If the state or local zoning body continues to act unlawfully, then the individual or religious ministry can file a lawsuit asserting, among other claims, a claim under RLUA. As noted above, the Act allows the individual or religious ministry to seek damages and attorney's fees in connection with the lawsuit.

In passing RLUA, Congress did include certain conditions that must be met before a suit can be brought under the Act. Nevertheless, these conditions are not overly

restrictive, and in the majority of cases, they will not prevent an individual or religious ministry from asserting a claim under RLUA. Your local attorney can provide you with additional information about these requirements, if you believe you have a legitimate claim under the Act.

C. Specific examples involving a potential claim under RLUA

1. Example #1 - A city ordinance prohibits religious schools from operating in residential areas without obtaining a special use permit. A religious school applies for a special use permit so that it can relocate its school to a neighborhood within the city limits. The local zoning authority denies the permit on the grounds that school children will flood the neighborhood with requests to purchase products for fundraisers. The religious school may have a valid and winnable claim under both RLUA and the first amendment free exercise of religion clause.
2. Example #2 - Same facts as above except that the city ordinance prohibits all schools from operating in residential areas without obtaining a special use permit. The religious school may still have a valid and winnable claim under RLUA, if it can show that the school will be operated primarily for religious purposes.
3. Example #3 - A religious school plans to add a new gymnasium to its existing facility. To do so, the school must have 10 acres of its property rezoned from agricultural to institutional. The local zoning authority denies the school's request to rezone the property on the grounds that the gymnasium will cause property values to decline in the adjacent neighborhood. The school may have a valid and winnable claim under RLUA.
4. Example #4 - In an effort to "clean up and restore" the downtown area, the city council passes an ordinance prohibiting the operation of all homeless shelters within a several block area in the downtown business district. A church is operating a homeless shelter within the restricted area and applies for a "variance" that would allow it to continue operating the shelter. The variance is denied on the grounds that the church shelter will hinder the city's efforts to "restore" the downtown area. The church may have a valid and winnable claim under RLUA.
5. Example #5 - A state legislature passes a law requiring teachers at all public, private, and religious schools to be "certified" by the state. A church school challenges this law on the grounds that state certification violates the school's sincerely-held religious beliefs. Unfortunately, RLUA does not apply to this case since it is limited to zoning and land use laws that burden the free exercise of religion. Therefore, in this example, the school would not be able to assert a claim under RLUA.

Conclusion

The Religious Land Use and Institutionalized Persons Act of 2000 provides added protections for individuals and religious ministries in the area of zoning and land use laws. The Act specifies that a state or local governmental entity cannot impose zoning

and land use regulations that unfairly "burden" the free exercise of religion without supporting the regulation with a "compelling governmental interest." Relevant case law indicates that state and local governments have a difficult time proving that a "compelling governmental interest" should override the right of an individual or ministry to practice its sincerely-held religious beliefs. For this reason, the Act should provide significant help for individuals and ministries that are involved in zoning and land use disputes.

The purpose of this Legal Report is to alert you to RLUA. Of course, if you believe that you have a valid claim under this Act, seek the counsel of your local attorney to determine whether you should pursue your claim.

¹ The Act also provides added religious protections to persons who are "institutionalized" in prisons, hospitals, and retirement homes. In this Legal Report, however, we address only that part of the Act that applies to individuals and religious organizations whose religious rights have been unfairly "burdened " by zoning and land use regulations.