

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REDWOOD CHRISTIAN SCHOOLS,)
) No. C-01-4282 SC
)
 Plaintiff,)
)
 v.)
)
 COUNTY OF ALAMEDA, et al.,)
)
 Defendants.)
)
 _____)

JURY INSTRUCTIONS

JURY INSTRUCTION NO. 1

DUTY OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult if you find it necessary.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

JURY INSTRUCTION NO. 2

WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which are received into evidence; and
- (3) any facts to which the lawyers have agreed or stipulated.

JURY INSTRUCTION NO. 3

WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

(3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition, some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.

(4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

JURY INSTRUCTION NO. 4

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

JURY INSTRUCTION NO. 5
CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness' memory;
- (3) the witness' manner while testifying;
- (4) the witness' interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness' testimony;
- (6) the reasonableness of the witness' testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

JURY INSTRUCTION NO. 6

CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE

Certain charts and summaries that have not been received in evidence have been shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

JURY INSTRUCTION NO. 7

CHARTS AND SUMMARIES IN EVIDENCE

Certain charts and summaries have been received into evidence to illustrate information brought out in the trial. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

JURY INSTRUCTION NO. 8

BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE

When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true.

You should base your decision on all the evidence, regardless of which party presented it.

JURY INSTRUCTION NO. 9

COMPLETE AFFIRMATIVE DEFENSE

On any claim, if you find that each of the elements on which Redwood has the burden of proof has been proved, your verdict should be for Redwood on that claim, unless you also find that the County has proved each of the elements of an affirmative defense, in which event your verdict should be for the County on that claim.

JURY INSTRUCTION NO. 10

JURY NOT TO CONSIDER THE COURT'S ORDER ON SUPPLEMENTAL FINDINGS

Earlier in this litigation, the Court directed the County to make further findings regarding the alternatives presented at the October 4, 2001 Board of Supervisors hearing on Redwood's CUP application. After the County submitted its additional findings, the Court concluded that the County had satisfied the standards established by California state law—the Board of Supervisors acted within its jurisdiction, held fair hearings, and avoided any abuse of discretion.

You are instructed that the Board of Supervisors was not required to make these supplemental findings at the time of the October 4, 2001 hearing. Instead, the Court's request for additional findings was merely an aid to help the Court to determine whether California law had been satisfied with reference to the procedures conducted at the hearing. Thus, the Court's request for supplemental findings should not be used by the jury or the parties for any purpose.

JURY INSTRUCTION NO. 11

JURY NOT TO CONSIDER WITNESS'S INTERPRETATIONS OF RLUIPA

During this trial, you have heard several witnesses express their views about what they think RLUIPA means or how they think it should be applied. You have also seen that the Administrative Record contains similar opinions and statements about RLUIPA.

I instruct you that you are to disregard all such opinions and statements, with one exception. You may consider testimony by County officials about what they thought RLUIPA meant or required, back when they were considering and deciding on Redwood's CUP application. You may consider this testimony only for the limited purpose of deciding whether those officials acted in good faith, with the intention of following the law.

Aside from that one exception, you must follow the jury instructions that I am about to give you about what RLUPA says and what it means. You must not follow or pay any attention to any other explanations of, or opinions about, RLUIPA.

JURY INSTRUCTION NO. 12

INTRODUCTION—RLUIPA

Redwood has sued the County under the Religious Land Use and Institutionalized Persons Act. The relevant text of the Act states:

(a) Substantial burdens

(1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(b) Discrimination and exclusion

(1) Equal terms

No 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.

JURY INSTRUCTION NO. 13

INTRODUCTION—RLUIPA CLAIMS

Redwood has sued the County under the Religious Land Use and Institutionalized Persons Act, commonly abbreviated as RLUIPA. Redwood makes two separate claims under RLUIPA:

- A “substantial burden” claim.
- An “equal terms” claim.

You must consider each of these RLUIPA claims separately to see whether Redwood has proven that claim by a preponderance of the evidence. There will be separate instructions for each RLUIPA claim.

JURY INSTRUCTION NO. 14

RLUIPA—SUBSTANTIAL BURDEN CLAIM

INTRODUCTION

To win on its RLUIPA “substantial burden” claim, Redwood must prove by a preponderance of the evidence that the County’s decision to deny Redwood’s CUP application imposes a substantial burden on Redwood’s religious exercise.

To decide whether Redwood has met this burden, you need to apply the proper definitions of “religious exercise,” and “substantial burden.” The next two instructions will define those terms, in that order.

JURY INSTRUCTION NO. 15

RLUIPA—SUBSTANTIAL BURDEN CLAIM

DEFINITION OF “RELIGIOUS EXERCISE”

“Religious exercise” includes any exercise of religion, whether or not it is required by, or central to, a system of religious belief. Using land, building on land, or intending to do so for the purpose of religious exercise is considered to be religious exercise.

However, not every activity carried out by a religious entity or individual constitutes “religious exercise.” In many cases, real property is used by religious institutions for purposes that are comparable to those carried out by other institutions. For example, a burden on a commercial building, which is connected to religious exercise primarily by the fact that the proceeds from the building’s operation would be used to support religious exercise, is not a substantial burden on “religious exercise.”

JURY INSTRUCTION NO. 16

**RLUIPA—SUBSTANTIAL BURDEN CLAIM—
DEFINITION OF “SUBSTANTIAL BURDEN”**

For a land use regulation to impose a “substantial burden” on a party’s religious exercise it must be oppressive to a significantly great extent. That is, a substantial burden on religious exercise imposes a significantly great restriction on a party’s exercise of religion.

Stated another way, a “substantial burden” has the tendency to coerce individuals into acting contrary to their religious beliefs. A substantial burden must place more than an inconvenience on religious exercise because RLUIPA does not give religious organizations an exemption from land use regulations that apply to others.

JURY INSTRUCTION NO. 17

RLUIPA—SUBSTANTIAL BURDEN CLAIM

REDWOOD’S *PRIMA FACIE* CASE

If you apply the standards in Instructions 14-16 and find that Redwood has failed to prove by a preponderance of the evidence that the County’s CUP denial imposed a substantial burden on Redwood’s religious exercise, then Redwood fails on its “substantial burden” claim under RLUIPA. In that case, you must skip the rest of the instructions about this claim and skip to Instruction No. 20 on the “equal terms” claim.

JURY INSTRUCTION NO. 18

**RLUIPA—SUBSTANTIAL BURDEN CLAIM—
“COMPELLING GOVERNMENTAL INTEREST”**

If Redwood proves that the County’s CUP denial imposed a substantial burden on Redwood’s religious exercise, the County can defeat Redwood’s “substantial burden” claim by proving that the County’s actions were justified. This is an affirmative defense.

To win on the affirmative defense that its actions were justified, the County must prove by a preponderance of the evidence that its decision to deny the CUP was the “least restrictive means” of furthering a “compelling governmental interest.”

Compelling interests are those of the highest order.

If you find that denying the CUP did further one of the County’s compelling governmental interests, you must then decide whether the County used the “least restrictive means” of furthering those interests. That is the subject of the next instruction.

JURY INSTRUCTION NO. 19

RLUIPA—SUBSTANTIAL BURDEN CLAIM—

“LEAST RESTRICTIVE MEANS”

For the County to prove that it used the “least restrictive means,” it must prove by a preponderance of the evidence that when denying Redwood’s CUP application it considered and rejected less restrictive measures in furtherance of a compelling governmental interest. During your analysis, you must consider the evidence in the context of Redwood’s CUP application and the rules of Alameda County’s Board of Supervisors.

JURY INSTRUCTION NO. 20
RLUIPA—EQUAL TERMS CLAIM

INTRODUCTION

Redwood’s second RLUIPA claim is its “equal terms” claim. To win on this claim, Redwood must first prove by a preponderance of the evidence that, when denying Redwood’s CUP application, the County treated Redwood on less than equal terms with a similarly situated nonreligious assembly or institution.

Redwood cannot prevail if they simply prove that they were treated worse than a similarly situated nonreligious assembly or institution, they must also prove that the County’s reasons for treating them worse were irrational or lacked any relationship to the County’s interests in denying the CUP.

To decide whether Redwood has met this burden, you need to apply the proper definitions of “less than equal terms,” “nonreligious,” “assembly or institution,” and “similarly situated.” The following instructions will define those terms, in that order.

JURY INSTRUCTION NO. 21

RLUIPA—EQUAL TERMS CLAIM

DEFINITION OF “LESS THAN EQUAL TERMS”

To win on its “equal terms” claim, Redwood must prove that it was treated on “less than equal terms” with a similarly situated nonreligious assembly or institution. To be treated on less than equal terms means to be treated less favorably, unequally, or disparately.

JURY INSTRUCTION NO. 22

RLUIPA—EQUAL TERMS CLAIM

DEFINITION OF “NONRELIGIOUS”

To win on its “equal terms” claim, Redwood must prove that it was treated on less than equal terms with a similarly situated “nonreligious” assembly or institution.

You should give the term “nonreligious” its ordinary and natural meaning. For instance, something that is nonreligious does not manifest devotion to and reflect the nature of the divine.

JURY INSTRUCTION NO. 23

RLUIPA—EQUAL TERMS CLAIM

DEFINITION OF “ASSEMBLY OR INSTITUTION”

To win on its “equal terms” claim, Redwood must prove that it was treated on less than equal terms with a similarly situated nonreligious “assembly or institution.”

An “assembly” is a group of persons organized and united for some common purpose. An “institution” is an established organization, corporation, or foundation, especially of a public character.

JURY INSTRUCTION NO. 24

RLUIPA—EQUAL TERMS CLAIM

DEFINITION OF “SIMILARLY SITUATED”

To win on its “equal terms” claim, Redwood must prove that it was treated on less than equal terms with a nonreligious assembly or institution that is “similarly situated” to Redwood. In your determination of whether a nonreligious assembly or institution is similarly situated, you should consider if the other entity:

1. presents similar community impacts to Redwood;
2. is in the same type of zoning district as Redwood;
3. requested the same type of zoning relief that Redwood does—a conditional use permit;
4. sought to build a place in which groups or individuals dedicated to a common purpose could meet to pursue their interests.

JURY INSTRUCTION NO. 25

RLUIPA—SUMMARY

If you find that Redwood fails on both its “substantial burden” claim and “equal terms” claim, then your verdict must be for the County.

If you find in favor of Redwood on either of its claims, then your verdict must be for Redwood on that claim.

JURY INSTRUCTION NO. 26

RLUIPA—INTENTIONAL VIOLATION

If you find in favor of Redwood on either of its two RLUIPA claims (“substantial burden” or “equal terms”), then you must decide whether the County violated RLUIPA intentionally. An intentional violation may be demonstrated in either one of two ways: intentionally or through deliberate indifference.

In other words, that the County denied Redwood’s CUP application for the purpose of or with deliberate indifference to

1. Imposing a substantial burden on Redwood’s religious exercise, or
2. Treating Redwood on less than equal terms with a similarly situated nonreligious assembly or institution

Intentional describes something done purposely . . . To have in mind as a purpose or plan. Deliberate indifference to the rights of others is the conscious or reckless disregard of the consequences of one’s acts or omissions.

JURY INSTRUCTION NO. 27

JURY NOT TO CONSIDER CUP PROCESS COSTS AND FEES

In this trial, you have heard evidence regarding the fees and costs Redwood paid during the CUP process, including payments made for County staff time and payments made to consultants, technical experts, and architects.

Evidence concerning generally applicable costs that Redwood incurred in pursuing its CUP application cannot be a substantial burden on religious exercise. These are normal costs in the CUP application process that are applicable to all seeking a CUP. Therefore, I instruct you that these costs and fees cannot be considered in deciding Redwood's claims and that these costs and fees bear no relation to whether the County acted properly in its consideration of Redwood's CUP application.

JURY INSTRUCTION NO. 28

DUTY TO DELIBERATE

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

JURY INSTRUCTION NO. 29

USE OF NOTES

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

JURY INSTRUCTION NO. 30
COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the Deputy, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

JURY INSTRUCTION NO. 31

RETURN OF VERDICT

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise the court that you are ready to return to the courtroom.