
Recent Developments in RLUIPA and Religious Land Use

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IN 1993, CONGRESS PASSED THE RELIGIOUS FREEDOM RESTORATION ACT (“RFRA”) in an attempt to eradicate discrimination against religious groups in land use and zoning and to preserve individuals’ right to freely exercise their religious beliefs.¹ Four years later, the United States Supreme Court ruled in *City of Boerne v. Flores*² that RFRA was an unconstitutional use of Congress’ enforcement powers under the Fourteenth Amendment.³ In response to *Boerne*, in 2000, Congress passed the Religious Land Use and Institutionalized Persons Act (“RLUIPA”)⁴ to correct the constitutional infirmities of RFRA.

Since its adoption, RLUIPA litigation has been constant yet evolving, and the past year was no exception. Courts scrutinized RLUIPA’s constitutionality, further defined and applied the terms “substantial burden” and “equal terms,” and explored issues regarding modifications of consent judgments, standing, and attorneys’ fees. In the meantime, and although these issues have created splits among the circuits, the Supreme Court continues to deny certiorari in RLUIPA cases. Discussed below are some of the most important and influential recent developments. The circuit splits regarding “substantial burden” claims remain, and each circuit to encounter the issue is now compelled to either adopt an existing standard or, as is often the case, develop its own standard. Additionally, courts continue to develop standards regarding “equal terms” claims and ripeness. Finally, courts are also beginning to slowly develop standards for RLUIPA’s “nondiscrimination” and “exclusions and limits” clauses—clauses which have been seldom-used in RLUIPA’s short history.

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1. 42 U.S.C. § 2000bb (1993).
2. 521 U.S. 507 (1997).
3. *Id.* at 536.
4. 42 U.S.C. § 2000cc-1 (2000).

I. Ripeness

In the continued evolution of RLUIPA jurisprudence, ripeness continues to be a contested issue, with many municipalities seeking to shield themselves by arguing that RLUIPA plaintiffs have not exhausted their remedies before bringing suit. One case to thoroughly discuss the issue of ripeness in the RLUIPA setting was *Roman Catholic Bishop v. City of Springfield*.⁵ In this case, the Roman Catholic Diocese of Springfield (“Diocese” or “RCB”) brought suit against the city of Springfield, Massachusetts (“City”) after the City created a single-parcel historic district around a church owned by the Diocese in order to prevent the Diocese from making changes to the church building.

The church at the center of the case, Our Lady of Hope (“Church”), was built in 1925.⁶ Facing declining numbers of parishioners and clergy, the Diocese elected to close the Church effective January of 2010. Under Diocese rules, when a church is no longer being used for religious purposes, the Bishop is required to protect the religious ornamentation on the building so it is not used for “sordid” purposes.⁷ Some such structures are built into the church itself and are not easily removed. In order to accomplish this, the Bishop must either relocate the objects or destroy them.⁸ Additionally, before a church building is sold to a non-religious third party, the Bishop must first “deconsecrate” the property, which necessitates the removal of all religious symbols.⁹

Upon hearing of the closing of the Church, a number of unhappy parishioners lobbied the City to designate the Church as a historic district so that, among other things, the Church’s notable architecture and design would be preserved.¹⁰ The Diocese opposed this designation because, according to local law, “[o]nce a historic district is approved, ‘no building or structure within [the] district shall be constructed or altered in any way that affects exterior architectural features’” unless the historical commission gives its approval of the changes.¹¹ In other words, the Bishop would be unable to carry out the deconsecration of the building without the approval of the historical commission. Despite vigorous protest from the Diocese, the City Council passed an

5. 724 F.3d 78 (1st Cir. 2013).

6. *Id.* at 84.

7. *Id.*

8. *Id.*

9. *Id.* at 84-85.

10. *Id.* at 86.

11. *Id.* at 85 (quoting MASS GEN. LAWS ch. 40C, § 6 (2014)).

ordinance making the Church a single-parcel historic district.¹² The day after the ordinance went into effect, the Diocese filed suit against the City in state court alleging violations of RLUIPA, the federal and state constitutions, and the Massachusetts Civil Rights Act.¹³ After the City removed the case to federal district court, the district court granted summary judgment in favor of the City after deciding, among other things, that the Diocese's claims were unripe.¹⁴ The Diocese appealed to the First Circuit.

As to whether the Diocese's RLUIPA claims were ripe, the court considered two factors: "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration."¹⁵ The court described the fitness prong as having "both jurisdictional and prudential components," while the hardship component is "wholly prudential."¹⁶

The City argued that since the Diocese had not yet applied for permission from the historical commission to make any changes to the Church, the Diocese could not now bring a claim based on the fact that the commission might not allow the changes to be made.¹⁷ The Diocese argued that no further factual developments would alter the outcome of the case. The Diocese further argued that being required to seek the commission's permission was itself a hardship and any attempts would be futile because the City had already shown considerable hostility to the Church's plan.¹⁸

The court concluded that the Diocese's claim that the enactment of the ordinance itself burdened the Diocese's religious practice was indeed ripe. The court stated that the Article III requirement of a case or controversy was easily met since the City clearly intended to enforce the ordinance and the Diocese had complained of the adverse effects and financial burden of the ordinance.¹⁹ However, the second, or prudential, prong of the fitness test and the prudential hardship prong were much closer questions. The court noted that the Diocese never put forth any actual plan for the sale or deconsecration of the Church, and it did not apply to the historical commission for approval. Therefore, the City

12. *Id.* at 87; *see also* SPRINGFIELD, MASS., CODE § 49-11 (effective Jan. 20, 2010) (establishing the Our Lady of Hope Historic District).

13. *Roman Catholic Bishop*, 724 F.3d at 88.

14. *Id.*

15. *Id.* at 89 (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)).

16. *Id.* at 89-90.

17. *Id.* at 90.

18. *Id.*

19. *Id.* at 90-91.

did not have a chance to show whether it would accommodate any potential plan of the Diocese.²⁰ The Court went on to point out that the Diocese's futility argument was also flawed because it never actually put forth a plan to demolish or alter the Church.²¹

Therefore, the Court concluded that the Diocese's claims, which were premised on its inability to deconsecrate the Church according to Diocesan rules, were not ripe for adjudication.²² However, the court found that the Diocese's claims based on the mere existence of the Ordinance were indeed ripe.²³ In support of this, the court noted that the Diocese had submitted a plausible claim that submitting to the ordinance imposed delay, uncertainty, and expense, "which is sufficient to show present injury."²⁴ The Diocese also argued that subjecting its religious decisions to secular administrators imposed a present burden, and that the Church would be subject to daily fines if it did indeed make any changes.²⁵ Based on the above facts and arguments, the court concluded that the ordinance did "confront [the Diocese] with a 'direct and immediate dilemma,'" and the claims challenging its existence were indeed ripe.²⁶

The United States Court of Appeals for the Eleventh Circuit also dealt with the issue of ripeness in the RLUIPA setting. In *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach*,²⁷ the court found that an Orthodox Jewish temple's challenge to its designation as a historic landmark by a city was ripe for adjudication. In this case, Temple B'Nai Zion ("Temple"), an Orthodox Jewish synagogue located in Sunny Isles Beach Florida ("City"), sought out the assistance of a visiting rabbi when its membership began declining in the early 2000s.²⁸ Among the rabbi's changes to the Temple was a transition from Conservative Judaism to the stricter Orthodox Judaism.²⁹ A number of congregants, including the mayor of Sunny Isles Beach, Norman Edelcup, were angered by the changes to the Temple.³⁰

20. *Id.* at 91.

21. *Id.*

22. *Id.*

23. *Id.* at 92.

24. *Id.* (citing *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 288 (5th Cir. 2012)).

25. *Id.*

26. *Id.* at 92-93 (citing *Sindicato Puertorriqueño de Trabajadores, SEIU Local 1996 v. Fortuño*, 699 F.3d 1, 9 (1st Cir. 2012)).

27. 727 F.3d 1349 (11th Cir. 2013).

28. *Id.* at 1351.

29. *Id.*

30. *Id.*

In 2006, the rabbi sought to demolish the Temple and reconstruct it according to Orthodox Jewish beliefs.³¹ The City was opposed to the Temple's plans. In one meeting between the rabbi and the mayor, the mayor called the Temple a "bunch of pigs."³² The mayor also "directed the City's code enforcement officers to inspect the Temple, and between September 2007 and February 2009, the Temple received 12 separate code violation notices from City officials."³³ In 2009, the Temple applied for permits to begin demolition and the following construction. The City denied the permits.³⁴

Following the denial of the permits, the City renewed a previous effort to designate the Temple as a historic site.³⁵ In 2010, the City's Historic Preservation Board voted to make the Temple the City's first and only historic site because of a gathering of Holocaust survivors that had occurred on the grounds approximately six years earlier.³⁶ The Board also issued a resolution that prohibited the Temple from making any changes to the exterior of the building and stated that "no building permits shall be issued to alter and/or demolish the aforementioned portions of the Temple."³⁷ The Temple unsuccessfully appealed the decision to the City Commission. Following the City Commission decision, the Temple filed a federal lawsuit alleging violations of RLUIPA, the Florida Religious Freedom Restoration Act, and the United States Constitution.³⁸

The federal district court dismissed the Temple's claims without prejudice after determining that the suit was not ripe for adjudication.³⁹ The district court reasoned that a challenge to a land use regulation was "not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue."⁴⁰ The court relied on *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*⁴¹ ("Williamson County"). The court said that, in order for its claims to be ripe, the Temple should have

31. *Id.*

32. *Id.* at 1351-52.

33. *Id.* at 1352.

34. *Id.*

35. *Id.* at 1352-53.

36. *Id.* at 1353.

37. *Id.* at 1353-54 (internal quotations omitted).

38. *Id.* at 1355.

39. *Id.*

40. *Id.* (internal quotations omitted).

41. 473 U.S. 172 (1985).

submitted building plans and applied for a variance or waiver from the City.⁴²

On appeal, the Eleventh Circuit stated that the *Williamson County* test was not appropriate where, as here, the plaintiff claimed that the “mere act of designating his or her property historic was motivated by discriminatory animus.”⁴³ The court stated that this was because “the injury is complete upon the municipality’s initial act, and staying our hand would do nothing but perpetuate the plaintiff’s alleged injury.”⁴⁴ The court therefore applied traditional ripeness principles, and not *Williamson County* principles, to the Temple’s claims.

Applying traditional ripeness principles, the Court found that the “issue became as ripe as it will ever be the moment the Temple was initially designated a landmark. No further development [was] necessary.”⁴⁵ This, the court reasoned, was because the Temple was careful to frame its complaint so that the designation itself was the injury complained of.⁴⁶ Finally, the court was careful to note that it made no other determinations about the case other than ripeness. The case was remanded to the district court for further proceedings.⁴⁷

II. Substantial Burden

Courts have also continued to fine-tune their treatment of substantial burden RLUIPA claims. In *Bethel World Outreach Ministries v. Montgomery County Council*⁴⁸ the Fourth Circuit reversed a district court’s summary judgment ruling in favor of the County. In this case, Bethel, a Christian church located in Maryland, sought to expand and build a new building due to severe overcrowding in its existing facilities.⁴⁹ The overcrowding was interfering with Bethel’s altar call, communion, and other activities such as children’s ministry.⁵⁰ To remedy these problems, Bethel purchased a large parcel of land in Montgomery County (“the County”) and intended to build a larger building on the property.⁵¹ The property was located in a “rural density transfer zone,” and a church was a permitted use when Bethel purchased the

42. *Temple B’Nai*, 727 F.3d at 1355.

43. *Id.* at 1357.

44. *Id.*

45. *Id.* at 1358.

46. *Id.*

47. *Id.* at 1359.

48. 706 F.3d 548 (4th Cir. 2013).

49. *Id.* at 552.

50. *Id.*

51. *Id.*

property.⁵² However, in order to obtain water and sewer service, Bethel would need to put in a request to the County. The County Council denied Bethel's request and also passed an amendment which prohibited public water and sewer service to private institutional facilities in the rural density transfer zone.⁵³ Sometime later, while another request by Bethel was pending, the County Council passed a zoning amendment that prohibited a landowner from building a private institutional facility on a property subject to a transferable development rights easement, like Bethel's property.⁵⁴ In other words, Bethel would never be able to build a church on the subject property.

Bethel filed an action in district court claiming, among other things, that the County violated its rights under RLUIPA. The federal district court granted summary judgment in favor of the County on all claims.⁵⁵ On appeal, the United States Court of Appeals for the Fourth Circuit noted that the district court had committed two errors. First, the district court erred in applying the RLUIPA institutionalized persons standard to Bethel's land use substantial burden claim.⁵⁶ The court noted that not a single appellate court had applied the institutionalized persons standard to RLUIPA land use claims. Instead, the court said that "every one of our sister circuits to have considered the question has held that, in the land use context, a plaintiff can succeed on a substantial burden claim by establishing that a government regulation puts substantial pressure on it to modify its behavior."⁵⁷

Second, the court found that the district court erred in "requiring Bethel to show that the County 'targeted' it in order to succeed on its substantial burden claim."⁵⁸ The court pointed out that the plain language of RLUIPA's substantial burden provision made no such requirement, and imposing one would be improper.⁵⁹ Therefore, the court found that there is no requirement to show targeting in a substantial burden claim.

Turning to the merits of the substantial burden claim, the court first noted that "[w]hen a religious organization buys property reasonably

52. *Id.* at 552-53.

53. *Id.* at 553.

54. *Id.* at 554.

55. *Id.*

56. *Id.* at 555.

57. *Id.* at 556 (citing *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007)).

58. *Id.*

59. *Id.* at 556-57.

expecting to build a church, governmental action impeding the building of that church may impose a substantial burden.”⁶⁰ The court maintained that this was true even though other properties may be available, since the “‘delay, uncertainty, and expense’ of selling the current property and finding a new one are themselves burdensome.”⁶¹ Applied to the facts of the case, the court noted that Bethel had shown that churches were permitted in the zone and on the property at the time it was purchased by Bethel. Therefore, Bethel had presented sufficient evidence to raise a material question of fact about whether it “had a reasonable expectation of being able to build a church.”⁶² Further, the court counted it significant that the County “prevented Bethel from building any church on its property, rather than simply imposing limitations on a new building.”⁶³

The County attempted to argue that since Bethel already had existing facilities, any burden it might have would not be substantial. However, the court said that Bethel had presented evidence that its existing facilities could not serve its needs, specifically in regard to the altar call, communion, and service times and lengths.⁶⁴ Therefore, there was a material question of fact and the district court erred in granting summary judgment to the County on the substantial burden issue.

Finally, the court stated that while the County had argued that any burden imposed by it on Bethel was in furtherance of its interest in “preserving agricultural land, water quality, and open space and managing traffic and noise in the rural density transfer zone,” the County had failed to present any evidence that its interest could not be accomplished by a less restrictive means.⁶⁵ The court stated that since that requirement of RLUIPA was not satisfied, summary judgment was not proper.⁶⁶ The court reversed the summary judgment of Bethel’s substantial burden claim and remanded the case to the district court.

60. *Id.* at 557 (citing *Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007)).

61. *Id.* (citing *Saints Constantine & Helen Greek Orthodox Church v. City of New Berlin*, 396 F.3d 895, 899-901 (7th Cir. 2005)).

62. *Id.* at 558.

63. *Id.* (citing *Westchester Day Sch.*, 504 F.3d at 352).

64. *Id.*

65. *Id.* at 559.

66. *Id.*

III. Equal Terms

In the past year, there have also been cases addressing the “equal terms” provision of RLUIPA. That provision prohibits government from imposing land use regulations on a religious assembly or institution on “less than equal terms with a nonreligious assembly or institution.”⁶⁷ The first case comes from the Seventh Circuit. In *Irshad Learning Center v. County of Dupage*,⁶⁸ the federal district court found that an Islamic learning center had failed to identify suitable secular comparators for its equal terms RLUIPA claim. Irshad Learning Center (“ILC”) was an Islamic religious institution that conducted activities such as prayer services and youth education sessions.⁶⁹ After renting various properties for its activities, ILC sought to purchase property for a permanent facility. ILC found and purchased property in unincorporated Naperville, DuPage County, Illinois (“County”).⁷⁰ The property contained a single-family residence that had been converted into a private school by the previous owner.⁷¹ The property adjoined single-family residences on three sides. The previous owners of the property had been granted a conditional use permit (CUP) to use the property as a private school.⁷² ILC would have been able to use the property under exactly the same conditions as the previous owners had used the property and had been approved by the County Board.⁷³ The zone in which the property was located permitted religious uses if the owner secured a CUP.⁷⁴ In December of 2008, ILC filed an application for a CUP to use the property as a “religious institution.” ILC admitted that its proposed use would be more extensive than that of the previous owner.⁷⁵ At the public zoning board hearing for ILC’s application, several property owners from the area surrounding ILC’s property (“the Objectors”) spoke against ILC’s proposed use. The Objectors disputed ILC’s account of its intended use and argued that ILC actually planned to make much more intensive use of the property than it had stated to the Board.⁷⁶ The zoning board

67. 42 U.S.C. § 2000cc(b)(1) (2012).

68. 937 F. Supp. 2d 910 (N.D. Ill. 2013).

69. *Id.* at 914.

70. *Id.* at 915.

71. *Id.*

72. *Id.*

73. *Id.* at 916.

74. *Id.*

75. *Id.* at 918.

76. *Id.* at 920-21.

continued the hearing several times until it finally recommended denial of ILC's application in June of 2009.⁷⁷

The application was remanded back the Zoning Board by the County Development Committee ("CDC") upon request of ILC.⁷⁸ The zoning board again voted to deny ILC's application.⁷⁹ After several more hearings, application amendments, and despite resistance from the Objectors, ILC finally obtained conditional approval from the CDC and went before the County Board for final approval.⁸⁰ Before the hearing with the County Board, an organization called ACT! For America e-mailed the members of the County Board and claimed that ILC was tied to terrorist organizations and intended to spread "radical-jihadist Islamic ideology."⁸¹ The Board eventually voted to finally deny ILC's application.⁸²

ILC brought suit against the County alleging, among other things, violations of RLUIPA. Both parties brought motions for summary judgment.⁸³ In evaluating ILC's as-applied equal terms RLUIPA claim, the district court stated that ILC must show that religious and secular land uses had not been treated the same from the standpoint of an acceptable zoning criterion.⁸⁴ ILC argued that the County treated it on less than equal terms as compared to secular institutions because the County had granted CUPs freely to secular institutions in similar circumstances as ILC.⁸⁵

First, ILC proposed using the Balkwill School as a comparator. The Balkwill School was the school operated on the property by the previous owners.⁸⁶ ILC claimed that its application had received less favorable treatment than the Balkwill School's application.⁸⁷ The court first noted that a "conditional use application from a religious institution . . . be given the same consideration and undergo the same review and approval process as would a [c]onditional [u]se application from a secular institution . . ." ⁸⁸ The court found, however, that the Balkwill

77. *Id.* at 924-25.

78. *Id.* at 926.

79. *Id.*

80. *Id.* at 930.

81. *Id.*

82. *Id.* at 931.

83. *Id.*

84. *Id.* at 932 (citing *River of Life Kingdom Ministries v. Village of Hazel Crest*, 611 F.3d 367, 373 (7th Cir. 2010)).

85. *Id.* at 933.

86. *Id.*

87. *Id.*

88. *Id.*

School was not an adequate comparator for RLUIPA equal terms purposes, pointing out that ILC's proposed use was "substantially different" than the Balkwill School's permitted use.⁸⁹ The court concluded that since ILC's proposed use would be substantially more strenuous on the property than the Balkwill School's use, the two institutions were substantially different in regard to "relevant zoning criteria."⁹⁰ Thus, the Balkwill School was not a valid secular comparator.

Next, ILC proposed New Day Montessori Day Care ("New Day") as a similarly situated comparator.⁹¹ ILC argued that New Day was treated more favorably in regard to its CUP application, which was approved in about two months.⁹² The court stated that, while ILC had shown some differential treatment, it had not shown or made any argument suggesting that New Day was similar to ILC with respect to any relevant zoning criterion.⁹³ The court concluded that, without this showing, the County was entitled to summary judgment on the RLUIPA equal terms claim.

An equal terms case also arose in 2013 in a lower federal court of the Sixth Circuit, which has not yet developed a framework for defining "equal terms" under RLUIPA. In that case, a federal district court in Michigan declined to adopt any particular test when ruling on a motion to dismiss a Muslim organization's complaint. In *Muslim Community Ass'n of Ann Arbor & Vicinity v. Pittsfield Charter Township*,⁹⁴ plaintiff operated a full-time Islamic school known as Michigan Islamic Academy ("MIA") in Ann Arbor, Michigan.⁹⁵ As the local Muslim population continued to grow, MIA's existing facilities were no longer adequate for its needs.⁹⁶ Consequently, MIA purchased property in Pittsfield Township with the intention of building a new school and community center there.⁹⁷ The property was zoned to be "exclusively residential," but schools were a permitted use in such a zone according to the Township Zoning Ordinance.⁹⁸ Additionally, MIA received encouragement from Township officials that there would likely be no problems in obtaining the necessary approval for a school on the

89. *Id.* at 934.

90. *Id.* at 935.

91. *Id.* at 936.

92. *Id.*

93. *Id.*

94. 947 F. Supp. 2d 752 (E.D. Mich. 2013).

95. *Id.* at 757.

96. *Id.*

97. *Id.*

98. *Id.* at 758.

property “if MIA followed the proper procedures to rezone.”⁹⁹ However, MIA experienced opposition from the very beginning when it submitted a petition to rezone its property in order to build its facility.¹⁰⁰ The Township hired an independent outside planner to evaluate MIA’s petition (which it had apparently never done before), required MIA to conduct an intensive and costly traffic study (another unusual requirement), and required MIA to make a number of changes to its original plan.¹⁰¹ After meeting all of the Township’s demands, MIA finally received approval from the outside planner.¹⁰² At several public planning commission meetings regarding MIA’s petition, however, many residents of the surrounding area voiced their disapproval of the plan, some even expressing “animus to the Islamic faith.”¹⁰³ The planning commission ultimately denied MIA’s petition.¹⁰⁴

MIA filed suit in the United States District Court for the Eastern District of Michigan and alleged, among other things, violations of RLUIPA’s equal terms clause. The Township moved to dismiss the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). In evaluating MIA’s equal terms claim, the court noted that the Sixth Circuit has not yet defined “equal terms.”¹⁰⁵ The court then went on to describe the tests used by the Eleventh, Third, and Seventh Circuits.¹⁰⁶ Rather than adopt a particular test, however, the court stated that it did not need to adopt a particular test to rule on the Township’s motion.¹⁰⁷ The court noted that MIA had presented a number of secular and Christian comparators in its pleadings.¹⁰⁸ The only opinion expressed by the court regarding the analysis of the comparators was that it would be a “fact intensive analysis.”¹⁰⁹ Ultimately, the court concluded that MIA had alleged sufficient facts about its proposed comparators to survive a motion to dismiss, and that it was unnecessary, to attempt to “allege every fact relevant to whether the cited comparators are similarly situated in

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* at 766.

106. *Id.*

107. *Id.* at 766-67.

108. *Id.*

109. *Id.*

all relevant respects.”¹¹⁰ Ultimately, the court denied the Township’s motion to dismiss with regard to the RLUIPA equal terms claim.

IV. Nondiscrimination

RLUIPA’s nondiscrimination provision provides that “[n]o government shall impose or implement a land use regulation that discriminates against any assembly or religious institution on the basis of religious or religious denomination.”¹¹¹ There are very few cases that deal directly with this provision of RLUIPA. In 2013, however, the *Pittsfield* court did address nondiscrimination briefly.

As stated above, *Pittsfield* involved an Islamic religious institution (MIA) which was attempting to build a religious school and community center in Pittsfield Township, Michigan.¹¹² When MIA brought suit after its denial by the Township, it included a claim under RLUIPA’s nondiscrimination provision.¹¹³

In discussing MIA’s nondiscrimination claim, the federal district court first noted that it was not able to locate any Sixth Circuit decisions discussing a claim under the nondiscrimination provision of RLUIPA.¹¹⁴ Significantly, the court stated that what cases it did find suggested that “a nondiscrimination claim under RLUIPA may not necessarily require proof of a similarly situated entity treated differently than the plaintiff.”¹¹⁵ To determine the pleading requirements for MIA’s nondiscrimination claim, the court cited a Supreme Court employment discrimination case and used that authority to conclude that MIA’s complaint did not need to “contain specific facts establishing a prima facie case of discrimination.”¹¹⁶ This was because such a prima facie standard “is an evidentiary standard and not a pleading requirement.”¹¹⁷

For pleading purposes, the court concluded that MIA simply needed to allege facts sufficient to create an inference that the decision to deny its application for rezoning was based on MIA’s religious beliefs.¹¹⁸

110. *Id.*

111. 42 U.S.C. § 2000cc(b)(2) (2012).

112. *See supra* notes 89-99 and accompanying text.

113. *Muslim Cmty. Ass’n of Ann Arbor & Vicinity v. Pittsfield Charter Twp.*, 947 F. Supp. 2d 752, 764 (2013).

114. *Id.* at 765.

115. *Id.* (citing *Church of Scientology of Georgia v. City of Sandy Springs*, 843 F. Supp. 2d 1328, 1371 (N.D. Ga. 2012)).

116. *Id.* (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510 (2002)).

117. *Id.* (citing *Swierkiewicz*, 534 U.S. at 512).

118. *Id.*

The court determined that MIA had done this and thus denied the Township's motion to dismiss MIA's nondiscrimination RLUIPA claim.¹¹⁹

V. Exclusion and Limits

The exclusion and limits portion of RLUIPA is also seldom-addressed by courts. The provision reads: "No government shall impose or implement a land use regulation that (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction."¹²⁰

This portion of RLUIPA was briefly addressed by the Seventh Circuit in *Eagle Cove Camp & Conference Center, Inc. v. Town of Woodboro*.¹²¹ Plaintiff Eagle Cove Camp & Conference Center, Inc. ("Eagle Cove") sought to build a year-round Bible camp in the Town of Woodboro, County of Oneida, Wisconsin.¹²² To that end, Eagle Cove purchased property in Woodboro near Squash Lake. The parcels owned by Eagle Cove were zoned single family residential and residential and farming.¹²³ The zones in which the property was located are the most restrictive zones in the County so as to provide for "quiet seclusion of families."¹²⁴ Several years earlier, in 2001, Woodboro had voluntarily given up its zoning authority to the County when it agreed to adhere to the Oneida County Zoning and Shoreline Protection Ordinance ("OCZSPO").¹²⁵ Therefore, ultimate zoning decisions regarding the property were made by the County rather than the Town.¹²⁶

In order to build the proposed Bible camp, in December 2005, Eagle Cove submitted a petition to rezone its property.¹²⁷ After holding multiple meetings regarding the petition, Woodboro recommended that the County deny Eagle Cove's rezoning petition.¹²⁸ The County denied the petition finding that the Bible camp would "conflict with the majority single-family usage in Squash Lake and land use regulations set forth in the Woodboro Land Use Plan."¹²⁹

119. *Id.* at 765-66.

120. 42 U.S.C. § 2000cc(b)(3) (2012).

121. 734 F.3d 673 (7th Cir. 2013).

122. *Id.* at 676.

123. *Id.* at 677.

124. *Id.*

125. *Id.* at 676.

126. *Id.*

127. *Id.* at 677.

128. *Id.*

129. *Id.*

In 2008, Eagle Cove again attempted to obtain approval for its Bible camp, this time bringing an application for a CUP.¹³⁰ Again, Woodboro recommended that the County deny the application for a CUP for much the same reasons that it had recommended denial of the rezoning petition.¹³¹ The application was also denied by the County Zoning Committee and the Oneida County Board of Adjusters.¹³² Eagle Cove subsequently filed suit against the County and Woodboro in the United States District Court for the Western District of Wisconsin alleging, among other things, violations of RLUIPA's exclusion and limits clauses.¹³³

The district court granted summary judgment in favor of the County and Woodboro on all claims.¹³⁴ In particular, the district court found that neither Woodboro nor the County prohibited religious assemblies from their jurisdictions. Additionally, the district court rejected Eagle Cove's unreasonable limitations claim.¹³⁵

On appeal, the Seventh Circuit Court of Appeals court first addressed Eagle Cove's total exclusion claim.¹³⁶ Eagle Grove argued that Woodboro had violated RLUIPA's total exclusion provision since Woodboro did not allow year-round Bible camps within its borders.¹³⁷ The court rejected this argument. First, the court noted that since Woodboro had submitted to the OCZSPO, it no longer had any land use authority over its jurisdiction because all such authority belonged to the County.¹³⁸ Woodboro only served "a limited, consultative role in determining the town's zoning regulations."¹³⁹ Further, the court observed that no total exclusion claim could survive against the County since the County permitted year-round Bible camps in thirty-six percent of the land in Oneida County, just not on Eagle Cove's property.¹⁴⁰ Therefore, neither Woodboro nor the County did, in fact, totally exclude religious assemblies from the jurisdiction.¹⁴¹ The Seventh Circuit accordingly affirmed the district court's summary judgment against Eagle Cove's total exclusion claim.

130. *Id.*

131. *Id.* at 677-78.

132. *Id.* at 678.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.* at 679.

137. *Id.*

138. *Id.* at 679-80.

139. *Id.* at 680.

140. *Id.*

141. *Id.*

The court also affirmed the district court's grant of summary judgment against Eagle Cove's unreasonable limitations claim.¹⁴² Eagle Cove had argued there was "at least a genuine issue of material fact as to whether reasonable opportunities exist to build the proposed Bible camp within the County."¹⁴³ The court first noted that "reasonableness is determined 'in light of all the facts, including the actual availability of land and the economics of religious organizations.'"¹⁴⁴ The court then pointed out that the OCZSPO allowed for religious uses throughout the County and even on Eagle Cove's property.¹⁴⁵ The court said that Eagle Cove could have looked for other property in the County to build its bible camp if it so desired.¹⁴⁶ The court concluded that, if anything, Eagle Cove was the unreasonable party since it insisted on building the Bible camp on a property that did not allow for it when there were other places in the County that would allow for the camp.¹⁴⁷ The court affirmed the summary judgment in favor of County and Woodboro.

VI. Conclusion

As RLUIPA law continues to develop and the Supreme Court continues to deny certiorari, the various circuit courts continue to develop and refine their own interpretations of the law. This has made for an area of the law that is nuanced and, at times, unpredictable. Some parts of RLUIPA, such as the "nondiscrimination" and "exclusion and limits" clauses, are only just beginning to be extensively litigated. This makes the need for specialized RLUIPA attorneys even greater. The future of RLUIPA figures to be exciting, compelling, and fast-changing.

142. *Id.* at 682.

143. *Id.*

144. *Id.* (citing *Vision Church v. Village of Long Grove*, 468 F.3d 975, 989-90 (7th Cir. 2007)).

145. *Id.*

146. *Id.*

147. *Id.*