

**FEDERAL REGULATIONS  
GOVERNING CHURCHES**

**by Peter R. Olson  
Jenkins & Olson, P.C.  
Cartersville, Georgia  
(770) 387-1373**

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The last decade has seen significant activity from the Congress and the federal courts regarding land use regulation of churches stemming from the Constitution's protection of free expression of religion. This paper will trace the recent history of laws and cases, and will discuss some of the issues facing local governments in connection with regulation of churches and places of worship.

### **I. FREE EXERCISE CLAUSE**

The basis for disputes over federal regulation of churches is the Free Exercise Clause of the Constitution, which is part of the First Amendment, made applicable to State action by the Fourteenth Amendment. The Clause states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." U.S. Const., Amdt. 1.

The free exercise of religion under the Constitution has been interpreted to mean the right to believe and profess whatever religious doctrine one desires. The government may not compel affirmation of religious beliefs, punish the expression of religious views it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one side of a religious or dogmatic controversy.

However, the exercise of religion involves not only beliefs but the performance of (or abstinence from) physical acts such as eating or singing, assembling for worship,

ministry and outreach, and other singular or group activities. In this way, the free exercise of religion moves into the sphere of government regulation. In the context of this seminar, our focus is zoning ordinances, which would govern the assembly for worship, regulating the location of churches, and regulating the functions churches can perform at those locations, or the uses allowed. Conflict arises when churches begin operation of day care centers, personal care homes, hospices, homeless shelters, soup kitchens, book stores, schools and other uses related to their ministry and outreach objectives. Certainly, some of the increased conflict revolving around regulation of churches resulted from this expansion of activities. However, some Congressional activity was prompted by a perceived threat to free exercise of religion.

## II. OREGON DEPARTMENT OF HUMAN RESOURCES V. SMITH

In 1990, the U.S. Supreme Court decided Employment Div., Oregon Department of Human Resources v. Smith, 494 U.S. 872, 110 S.Ct. 1595 (1990). This case, in part, began the current battle over the Free Exercise Clause and the regulation of churches.

In the Smith case, two employees were fired from their jobs with a private drug rehabilitation organization because they ingested peyote (a drug derived from the mescal cactus plant) for sacramental purposes at a ceremony of the Native American Church. They were fired, and they were denied unemployment benefits because their firing was for "misconduct." They challenged this determination regarding unemployment benefits as violating their rights under the Constitution, specifically the right to free expression of their religion.

When the case eventually reached the Supreme Court under the proper posture for decision, the Court concluded that the law in question, which prohibited ingestion of peyote, was a valid and neutral law of general applicability, and further concluded that an individual's religious beliefs do not excuse a person from obeying such a valid and neutral generally applicable law that is not targeted to the observance of religion, and only incidentally burdens free expression. The Court noted that nowhere in history had it held that a person's beliefs excused him from obeying the law, whether it be a tax, military service or otherwise. The Court recognized the chaos that would ensue if the mere affirmation of religious belief to the contrary excused one from obeying the law, such as an objection to spending tax dollars on war material, or, in this case, use of illegal drugs.

The plaintiffs argued that a balancing test must be applied, that if a governmental action substantially burdens a religious practice, it must be justified by a compelling state interest. The Court rejected this notion, and affirmed the notion that government enforcement of neutral regulations cannot depend on measuring the effect of the regulation of the religious objector's spiritual development, for such a test would make each person a law unto himself.

### III. THE RELIGIOUS FREEDOM RESTORATION ACT OF 1993 (RFRA)

In reaction to the perceived attack on religious freedom from the Smith case, Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb et seq. That Act held that a government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability unless

the government can demonstrate that the rule is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. This is the most rigorous standard of review under constitutional jurisprudence, the so-called "strict scrutiny" test.

This Act applied to all government action, whether by the U.S. Government, the States, or arms of the states, such as counties and cities. This statute resulted in a variety of challenges to local zoning ordinances as restricting exercise of religion without being the least restrictive means to further a compelling government interest. A number of nuisance suits were brought by prisoners claiming that correctional practices relating to clothing, diet, etc. were violations of their religious beliefs. It did not take long for a challenge to the constitutionality of this Act to make its way through the lower court systems and up to the Supreme Court, in the case of Boerne v. Flores, discussed below.

#### IV. CITY OF BOERNE, TEXAS V. FLORES

In this case, the Catholic Archdiocese of San Antonio applied for a building permit from the City of Boerne to enlarge a church dating back to 1923. The city interpreted the church as falling under its Historic Preservation Act and denied the application. The Supreme Court, in City of Boerne v. Flores, 521 U.S. 507, 117 S.Ct. 2157 (1997), conducted an analysis of the Congress' power under the Fourteenth Amendment, which generally applies the Bill of Rights to the States and state action. Section 5 of the Fourteenth Amendment grants the power to enforce the various clauses of the Bill of Rights, including the Free Exercise Clause and the Due Process Clause. The

Supreme Court has repeatedly held that Section 5 only gives the Congress the power to enforce rights that are already enumerated in the Constitution, and not create new rights.

In this case, in a nutshell, the Court determined that the Congress was attempting to create a new right, and that the RFRA exceeded the power given Congress under the Fourteenth Amendment. The Court concluded that, in the absence of evidence of widespread harm, and considering the sweeping nature of the RFRA, it could not be considered remedial. It would bring about enormous enforcement difficulties, it would create practical difficulties, and it would result in the invalidation of innumerable regulations that did not have the intent or purpose of burdening religion. The Court struck down the RFRA, although it indicated that such regulation may be within state power. In response, a number of states including Illinois and Florida, adopted versions of the RFRA.

V. RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000 (RLUIPA)

Congress, however, was not to be deterred. In response to the Boerne v. Flores decision, and in response to the perception that zoning codes were discriminating against churches, for example by imposing regulations on churches that were not imposed on theaters, meeting halls, private clubs and so forth, the Congress enacted the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc et seq. (A copy of this statute is attached as Appendix I).

Actions that were cited in the Congressional record as justifications for this act included:

- ◆ Orthodox Jews in Hancock Park, California could not obtain an exemption from the residential zoning ordinance in order to use a private home as a synagogue, after a homeowner's association objected;
- ◆ A small Christian church was barred from meeting in storefronts in Rolling Hills Estates, California, in areas that had been zoned for commercial activity;
- ◆ A Mormon church in a Boston, Massachusetts suburb could not erect its steeple, which neighbors objected to as out of character for the neighborhood.

In addition, the act provided protection for prisoners and other institutionalized persons, as long as their religious practice did not disrupt security, discipline or order in the institution.

This act is considerably narrower than RFRA because it focuses on land use regulation, whereas RFRA had no limit on what government action it could apply to. It also covers prisoners and institutionalized persons, but that is not relevant to a zoning seminar.

RLUIPA has two general provisions. First, it prohibits the imposition or implementation of a land use regulation in a way that imposes a substantial burden on the religious exercise of a person unless government demonstrates that the imposition of the burden furthers a compelling government interest and is the least restrictive means to further that burden. This can be recognized as the same "strict scrutiny" test discussed above.

However, this time Congress imposed some limits. First, RLUIPA only applies to land use regulation. Second, it only applies if the program or activity imposing the burden

receives federal funds, if the program imposing the burden affects interstate commerce, or if the burden is imposed under a system in which the government makes an individualized assessment of the proposed uses (i.e., a special use permit or conditional use). Hence, it arguably does not apply to simple zoning classifications, unless they can be shown to affect interstate commerce, or unless the zoning ordinance was federally funded.

Second, RLUIPA prohibits religious discrimination and exclusions in land use practices. It forbids imposition of a land use regulation in a manner that treats a religious assembly or institution on less than equal terms than a non-religious assembly or institution. It forbids discrimination against a religious assembly or institution on the basis of religion; and it forbids land use regulations that totally exclude religious institutions from a jurisdiction, or unreasonably limit religious assemblies or institutions within a jurisdiction.

Governments may avoid the impact of RLUIPA by changing the policy that provides the impact or burden on religion, providing an exemption from the policy, or by any other means that avoid the negative burden. The Act specifically defines "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," and further states that "the use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose."

## VI. CHALLENGES UNDER RLUIPA

Challenges to zoning actions have been rapidly proliferating under RLUIPA. Some cases have made it to the Circuit Court level (that is, the Federal appeals court level), but mostly on prisoner based RLUIPA claims. What is notable in this regard is that there is developing a split among the circuit as to whether the provisions of RLUIPA applying to prisoners violate the Establishment Clause of the Constitution. That is, some courts such as the Sixth Circuit Court of Appeals, have determined that the provisions of RLUIPA actually endorse and favor religion, and encourage inmates to practice religion, to receive preferential treatment. (Cutter v. Wilkenson, 2003 WL 22513973 (6<sup>th</sup> Cir. Nov. 7, 2003)). However, other circuits, such as the Seventh and Ninth, have upheld these provisions of RLUIPA. (Charles v. Verhagen, 2003 WL 22455960 (7<sup>th</sup> Cir. Oct. 30, 2003); Mayweathers v. Newland, 314 F.3d 1062 (9<sup>th</sup> Cir. 2002)). It is perhaps worth noting as an aside that the Ninth Circuit is reversed more than just about all other circuits combined, and thus it rarely pays to bet on their interpretation of a new statute. District courts around the country have likewise split on the constitutionality of RLUIPA, and the Cutter decision above contains a fairly comprehensive listing of various decisions.

One case that has reached the appellate level regarding zoning is C.L.U.B. v. City of Chicago, 342 F.2d 752 (7<sup>th</sup> Cir. 2003). In this case, a coalition of urban churches sued the City, alleging that the City's zoning scheme violated RLUIPA, and various constitutional prohibitions. Chicago's zoning ordinance allowed churches as of right in residential districts, but within business and some commercial districts, they required a special use permit, and they were completely prohibited from some commercial districts

and all manufacturing districts. The churches objected on the basis that other similar uses such as clubs, lodges, meeting halls, and recreation centers, could operate in business, commercial and manufacturing districts as of right. Prior to the trial of the case, the City amended its ordinance to require that all such uses obtain a special use permit. In evaluating the claim under RLUIPA, the Court therefore found that RLUIPA no longer applied because the ordinance no longer treated churches on less than equal terms than a non-religious assembly. The Court also rejected the notion that the requirement of a special land use permit was an individualized determination requiring strict scrutiny, since that requirement applied generally to all these sorts of uses. This strategy worked and is a good strategy to deal with RLUIPA claims, especially since the Act contains a specific provision on how to avoid the effects of the Act by changing the policy or practice. 42 U.S.C. § 2000cc-3(e).

On the other hand, in Murphy v. Zoning Commission of the Town of New Milford, Conn., 2003 WL 22299219 (D. Conn, Sept. 20, 2003), the District Court found a cease and desist order to be a severe violation of RLUIPA and many other constitutional provisions. In this case, a homeowner in poor health began hosting prayer meetings weekly at his home, which was on a cul-de-sac in a subdivision. At times, forty to sixty people would attend, and the parking situation would get crowded. After complaints, the Town Zoning Enforcement Officer wrote a cease and desist order that told the plaintiff that such large assemblies were not permitted in residential zoning districts. The ordinance did not contain a set number, but required a determination as to what would

negatively impact the neighborhood. A cease-and-desist letter was sent and eventually appealed to the Zoning Commission, who imposed a 25 person maximum.

Plaintiff brought suit and the Court ruled very powerfully in favor of the Plaintiff. The Court rejected any Establishment Clause challenge to RLUIPA, and opined that the cease and desist letter was an individualized determination targeted at a particular religious activity, that was not narrowly tailored, and not serving a compelling government interest. The Court's emphasis on the cease and desist order, rather than the requirements of the ordinance, is troubling; any enforcement action is necessarily an individualized determination targeted at a specific religious practice. This court's interpretation would practically prohibit enforcing the zoning ordinance against a church, without a compelling governing interest. This Court also read the notion of substantial burden very broadly, which other courts have refused to do.

Another case reading RLUIPA broadly was Westchester Day School v. Village of Mamaroneck, 280 F. Supp. 230 (S.D. N.Y. 2003). In this case, a religious day school applied for permission to construct new school buildings. The denial of such permits was held to be a substantial burden on religious exercise, not based on a compelling government interest. RLUIPA was also held not to violate the Constitution. The Court here found the limitation of building size to be limiting the religious education, and hence substantially burdening religion. By that argument, preventing the school, or any church, from doing anything it desired to do in pursuit of its religion would be a "substantial burden." Hence, if it was a religious school that taught farming and mining skills, preventing them from providing such classes would, under this Court's reasoning, be

substantially burdening their religious exercise. Since RLUIPA shifts the burden of showing a compelling governmental interest that is narrowly tailored after making this prima facie case, it would become essentially impossible to defeat a RLUIPA challenge, were all courts to read the statute this powerfully.

One Court that has found the zoning provisions of RLUIPA unconstitutional is the Central District Court in California. In Elsinore Christian Center v. City of Lake Elsinore, 2003 WL 22724359 (C.D. Cal. Aug. 21, 2003), a church brought an action challenging the denial of a condition use permit to operate a church on particular property. The Court found the denial to violate RLUIPA, but then found RLUIPA exceeded the Congress' enforcement powers under the Fourteenth Amendment, which is the same basis that the Supreme Court used to invalidate the RFRA.

This small sample of the burgeoning population of RLUIPA cases serves to demonstrate the variety of interpretations it is being found to support. The split in the circuit courts of appeals means that it is inevitable that the Supreme Court will review the constitutionality of the statute within the next several terms. As of late 2003, no district court or appellate court cases could be found in Georgia or the Eleventh Circuit, and so it is impossible to tell how our local courts will interpret the statute, other than to note the Eleventh Circuit is a fairly conservative circuit. But defending a RLUIPA challenge will mean relying on out-of-circuit precedent, and there is plenty of dangerous precedent.

## VII. FREE EXERCISE CHALLENGES UNDER THE CONSTITUTION

In addition to RLUIPA, the Free Exercise Clause is still a potential avenue of challenge to a zoning regulation. This standard is more relaxed than Congress is trying to

impose in RLUIPA, and hence most challenges will travel first under RLUIPA, at least until the constitutionality of that act is decided. Given its similarity to RFRA, the Supreme Court may find it has exceeded Congress' power again, and strike it down.

The Employment Div. v. Smith case, supra, is still valid law regarding Free Exercise challenges. Under that case, if the law is neutral and of general applicability, it need not be justified by a compelling governmental interest even if it has the incidental effect of burdening a particular religious practice. The two-part test is 1) is the law neutral?; and 2) is the law of general applicability?

In applying those tests to a law in Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 113 S.Ct. 2217 (1993), the Supreme Court found that a local law targeting the use of animal sacrifice for religious purposes failed, and therefore violated the Constitution. The law at issue was tailored to try and stop animal sacrifices in connection with the Santeria religion, and the Court found that it was not neutral because the object of the law was to infringe upon or restrict practices because of their religious motivation. The law in that case was poorly drafted, and mentioned "sacrifice" and other things that demonstrated it was intended to stop this particular behavior.

In First Assembly of God of Naples, Fla. v. Collier County, Fla., 20 F.3d 419 (11th Cir. 1994), the Eleventh Circuit considered a Free Exercise challenge brought by a church after the zoning ordinance forced the closure of a homeless shelter. The Court found the regulation of homeless shelters to be a neutral ordinance and that it was generally applicable. It applied to all homeless shelters and did not have the intent of targeting religion. Having crossed those two thresholds, the Court engaged in a

"balancing" test, weighing the impact on the plaintiff with the impact on the government. In this case, the harm to the zoning ordinance was considered a greater burden than the harm to the church in having to move the shelter.

Interestingly, the Court relied upon the prior case of Grosz v. City of Miami Beach, Fla., 721 F.2d 729 (11th Cir. 1983), where the Court applied the same tests to uphold a zoning ordinance that banned a Jewish Rabbi from holding services with up to fifty people in his garage. This decision is contrary to the result reached by the district court in Murphy, supra, on similar facts, demonstrating the power of RLUIPA.

#### VIII. PRACTICAL ISSUES

The challenge for local governments, of course, is to apply all this legal theory to practical problems.

##### A. The Growth of the Church Accessory

One growing problem is posed by the distinction between a church and a church accessory use, such as a school, homeless shelter, day care center, personal care home and similar expansive uses. The important lesson under Free Exercise law is to treat all such uses the same, whether they are being operated by a church or another institution. As can be seen from the above First Assembly v. Collier Co. case, it is possible to show that a church's operation of a homeless shelter is not permitted, without burdening the Free Expression Clause of the Constitution.

It would be more difficult to survive a challenge under RLUIPA. A distinction would arise depending on whether the homeless shelter was permitted under some system of "individualized assessments" such as a special use permit, or whether it was a matter

of permissive use. If the shelter required a special use permit, then the tougher substantial burden/compelling government interest test of RLUIPA would apply. The church would attempt to show that the denial of the permit for a homeless shelter substantially burdened its exercise of religion. That burden would likely be carried, and then the government would have the burden of showing a compelling state interest (which should be easy, as the zoning ordinance serves a compelling state interest) and then the tougher burden of showing that the provision at issue is the least restrictive means to achieve that interest. While it is easy to show that a zoning ordinance generally serves a compelling state interest, it is harder to do so for a particular regulation.

The inquiry would be highly fact-specific, and much would depend on the evolution of the case-law. Courts could take a hard line on what a "substantial" burden must be, but the Murphy court did not, and there is no assurance of different treatment. As a result, strict scrutiny is generally a tough test to satisfy.

On the other hand, if the denial of the homeless shelter or other accessory use is based on a general principle in the ordinance (and not an individualized determination) then the burden is lighter. In this circumstance, a church cannot be treated "on less equal terms" than non-religious institutions. Also, any land use regulation that discriminates against any religious institution on the basis of religion is prohibited, as is any law that would prohibit religious assemblies from a jurisdiction, or unreasonably limit religious assemblies.

Hence, if the ordinance only prohibited homeless shelters associated with churches, but not homeless shelters associated with other institutions, there would be a

problem. But if all homeless shelters were not permitted in the particular district, there would not be a problem.

B. Shopping Centers and Storefronts

A growing number of churches are operating from shopping centers and storefronts, which can create parking problems at the times of worship services. This circumstance might bring to mind the Murphy case above, but the Town's error in that case was basing the ordinance on the number of people, not the number of cars. This type of problem can better be handled by minimum off-street parking requirements for churches. Even better would be a circumstance where the off-street parking requirement was a classification that applied to "theaters, meeting halls, private clubs, churches and similar uses." In that way, the church would not be subject to a specific requirement different from other uses. Since the requirement would apply equally to such uses, it would not be subject to strict scrutiny.

C. Historic Preservation Ordinances

Historic Preservation Ordinances can conflict with religious uses by preventing churches from using their structures as they desire. Especially in a circumstance where a church would like to tear down a dilapidated old structure, but the historic preservation commission will not give permission, and instead requires repair of the structure. That in effect is forcing the church to expend funds, and would impose a substantial burden. A case on this issue is in court in Alabama at this time. Since a historic preservation certificate of appropriateness is an individualized determination, it would fall under the tougher strict scrutiny standard, and would be difficult to defend.

D. Severe Restrictions on Church Locations

While this is less prevalent in Georgia, some communities in Florida and elsewhere adopted ordinances that severely limit the location of churches. If, for example, churches were only allowed in the R-1 district, and that constituted hardly any land in the jurisdiction, the church would be able to claim that the regulation "unreasonably limits" religious institutions. However, banning churches from some districts would be permissible, as the prohibition is against totally excluding or "unreasonably limiting" churches. A ban on churches in industrial districts, for example, would not be an unreasonable limit in most cases. This type of inquiry is fact-specific.

E. Proximity to Alcohol Sales and Adult Entertainment

Many ordinances prohibit alcohol sales or adult entertainment within a certain distance of a church. Such minimum distance regulations have been upheld as reasonable. This scenario further usually involves the alcohol license, and licensing is handled differently than zoning. A licensing ordinance must have objective criteria governing the issuance of the license. Furthermore, the license does not become a vested right.

Changing conditions can lead to the failure to renew the license, which is permissible. A license once granted does not have to be renewed as of right. For example, when a business owner sought a new alcohol license for a new store across the street from her old store, it could be lawfully denied, even if conditions were the same as they were for the last nine years she held the old license, since a new school was being constructed. Chu v. Auszusta-Richmond Co., 269 Ga. 822, 504 S.E.2d 693 (1998). Similarly, when a person purchased a store that had held an alcohol license for 30 years,

he could be denied a license based on the conditions surrounding the store. Dickerson v. Augusta-Richmond Co. Commission, 271 Ga. 612, 523 S.E.2d 310 (1999). In both cases, it was important that the denial was according to the approved and objective standards in the Augusta-Richmond Co. ordinance.

A more difficult situation would arise where a church desired to locate within the prohibited distance from the alcohol-selling establishment. In that case, there may be no prohibition. What would result when the license came up for renewal? It would depend on if the ordinance granted any property right or grandfather right to the alcohol seller. That is, if the ordinance stated that the license could not be revoked or not renewed unless the seller violated some ordinance or other provision, he could arguably have a vested right in the license. However, the case is not so clear when the ordinance states that the license renews yearly, depending on the current conditions. The cases discussed above suggest that the jurisdiction could deny the renewal, citing changing conditions. That of course seems highly unfair, and the safe bet would be to have a grandfather provision, making the recipient of an alcohol license exempt from the distance requirements if he has previously received a license for that location. Otherwise the jurisdiction would face an equal protection and due process challenge from the applicant on some tough facts.

## IX. SUGGESTIONS FOR HANDLING RELIGIOUS USES

### A. Beware of special use permits, special exceptions and conditional uses.

These require the strict scrutiny standard be applied. Churches can be instead made permitted uses. Accessory uses such as schools, homeless shelters, day care centers and

so forth can simply be prohibited, rather than allowed as a special exception. If the jurisdiction desires to allow churches in some districts only by special exception or conditions use, make sure that all similar uses require the same standard, such as meeting halls, clubs, theaters, and other uses that generate high traffic on infrequent occasions. The application of necessarily fact-specific ordinances such as historic preservation ordinances will remain problematic, and defense would rest on showing that the ordinance does not substantially burden the exercise of religion. That concept is not well defined at this point.

B. Add special consideration to such standards for churches.

RLUIPA provides that a jurisdiction can avoid the effect of the Act by "providing exemptions for policies that substantially burden religious exercise." Since special use permits cannot easily be avoided, a second solution is to add language to these sections of the ordinance which provide special consideration. The example that follows relates to conditional use permits for places of worship in certain zones. In addition to applying the general criteria for grant of a conditional use, a church would also be subject to this criteria:

*If the application is for a Place of Worship, and the application does not satisfy the above criteria, the County shall consider*

- a. Whether the regulation imposes a substantial burden on exercise of a religion;*
- b. Whether the regulation serves a compelling government interest; and*
- c. Whether the regulation is the least restrictive means to serve that interest, or whether the request can be granted without harming that interest.*

*If this section is found to impose a substantial burden on the exercise of a religion and does not serve a compelling government interest or is not the least restrictive means to serve that interest, the conditional use shall be granted.*

This is one method of insuring that churches receive additional consideration, and the government has a chance to allow them their use without getting sued.

C. Exemptions of churches.

A third exemption of the ordinance is to keep the policy or practice, but exempt the substantially burdened religious exercise. This in effect would give special preferences to churches. For example, the ordinance could state that a soup kitchen may not be an accessory use, except for a church. The historic preservation ordinance may specifically exempt church-owned property. Of course, this tact may raise equal protection challenges from non-religious organizations.

D. Any other means.

In the short run, prior to any challenge to the constitutionality of the RLUIPA, the best bet may be for the jurisdiction to take the problems on a case-by-case basis. The Act can be avoided "by any other means that eliminates the substantial burden." This means as long as the church that sues gets its way, the policy can stand and there is no violation. In other words, settle if you get sued and the case is hopeless. This may be a poor general policy, but it solves the problem for the short term.

## Appendix I

### **RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000**

#### **42 U.S.C. § 2000cc et seq.**

#### **§ 2000cc. Protection of land use as religious exercise**

##### (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.

###### (2) Scope of application

This subsection applies in any case in which--

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

##### (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.

###### (2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

###### (3) Exclusions and limits

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.

#### **§ 2000cc-1. Protection of religious exercise of institutionalized persons**

##### (a) General rule

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--

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

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

##### (b) Scope of application

This section applies in any case in which--

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

### **§ 2000cc-2. Judicial relief**

#### **(a) Cause of action**

A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under Article III of the Constitution.

#### **(b) Burden of persuasion**

If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

#### **(c) Full faith and credit**

Adjudication of a claim of a violation of section 2000cc of this title in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

#### **(d) Omitted**

#### **(e) Prisoners**

Nothing in this chapter shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

#### **(f) Authority of United States to enforce this chapter**

The United States may bring an action for injunctive or declaratory relief to enforce compliance with this chapter. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

#### **(g) Limitation**

If the only jurisdictional basis for applying a provision of this chapter is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

### **§ 2000cc-3. Rules of construction**

#### **(a) Religious belief unaffected**

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

#### **(b) Religious exercise not regulated**

Nothing in this chapter shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

#### **(c) Claims to funding unaffected**

Nothing in this chapter shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

#### **(d) Other authority to impose conditions on funding unaffected**

Nothing in this chapter shall--

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this chapter.

#### **(e) Governmental discretion in alleviating burdens on religious exercise**

A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and

exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) Effect on other law

With respect to a claim brought under this chapter, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this chapter.

(g) Broad construction

This chapter 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.

(h) No preemption or repeal

Nothing in this chapter shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this chapter.

(i) Severability

If any provision of this chapter or of an amendment made by this chapter, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, the amendments made by this chapter, and the application of the provision to any other person or circumstance shall not be affected.

**§ 2000cc-4. Establishment Clause unaffected**

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. In this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

**§ 2000cc-5. Definitions**

In this chapter:

(1) Claimant

The term "claimant" means a person raising a claim or defense under this chapter.

(2) Demonstrates

The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

(3) Free Exercise Clause

The term "Free Exercise Clause" means that portion of the First Amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government

The term "government"--

(A) means--

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 2000cc-2(b) and 2000cc-3 of this title, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) Land use regulation

The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity

The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d-4a of this title.

(7) Religious exercise

(A) In general

The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) Rule

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.