

U.S. churches are under fire all over

by Randy Bright <http://www.tulsabeacon.com/?p=1166#more-1166>

This week I received a call from an attorney who works for the Department of Justice in Washington, D.C.

She had seen an article I had written in the Tulsa Beacon regarding the Religious Land Use and Institutionalized Persons Act (RLUIPA), and had called to let me know that it was her department's job to enforce cases involving violations of the Act. She also offered any assistance that I might need if I encountered any violations, and asked that I contact her if I became aware of any other cases.

In our conversation I voiced my concern that RLUIPA might not be effective in protecting the rights of churches in areas where new New Urbanism codes created land shortages, and that even though these new codes don't specifically exclude churches, as a practical matter the effect of the codes would.

I asked her about the fact that some judges deem RLUIPA unconstitutional and render decisions that do not favor churches. She said that there was a 99 percent consensus among judges that said that it was in fact constitutional.

I explained that I had written a number of articles regarding churches that had used RLUIPA to defend their rights, and that I had found most of them on the internet. It doesn't take long to find more examples where churches are losing opportunities to grow their facilities due to hostile laws and officials.

In Austin, Texas, the Hope in the City Church made two attempts to obtain city approval to allow them to expand their parking lot. The city denied their requests each time citing an ordinance passed in 1992 called the Save Our Springs Ordinance, which limits the amount of construction in certain areas of the city where stormwater would end up in Barton Creek, a popular swimming hole.

The church sued the city, citing a violation of RLUIPA, but a federal judge ultimately dismissed the case, stating that the ordinance did not impose a substantial burden on the church, and that the church had not exhausted alternatives to a parking lot, such as carpooling or shuttle buses.

In the city of Carlinville, Illinois, population 5,600, the Carlinville Southern Baptist Church purchased a former WalMart store, not realizing that it was located in a commercial zone. Even though Carlinville's zoning code allows churches in commercial zones, the City Council wanted all churches to be placed in an "R" religious zone.

When the church requested that their property be re-zoned, the city denied the request because the property would become tax-exempt. The church sued the city citing a violation of RLUIPA, and eventually the church and the city came to an agreement regarding the use of the property. When the mayor vetoed the agreement, the City Council attempted to override it, but was

unsuccessful. The church is now effectively blocked from using their property and will have to go back to court.

In Muskegon, Michigan, the Celebration Community Church requested permission from the city to allow their church to temporarily meet in a former auto dealership building. The city denied the request on the grounds that the building might eventually become a tax-exempt property. They have filed a lawsuit citing a violation of RLUIPA, as well as the Fourteenth Amendment (due process and equal protection).

In Gloucester, Mass., the Orthodox Congregational Church of Lanesville received permission to build an addition to their existing building without expanding their parking lot, and after they began construction by razing a parish house, the city withdrew their permit. After hearing complaints and concerns by neighbors that the project would make it more difficult to park in on-street parking spaces, the zoning board decided to deny the permit to the church. The church has filed a lawsuit citing violation of constitutional rights and area seeking a court order that would allow them to continue construction and for damages.

I was grateful that someone in the Department of Justice is taking an active interest in protecting the rights of our churches. RLUIPA is an important law that has already protected many churches from abuse. However, I question whether the law in its present form can be effective in New Urbanistic settings. It seems to me that “substantial burden” will be much more difficult to prove under codes that don’t directly discriminate against churches, but do create environments that make it difficult or impossible for churches to grow.

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