

Americans need to know that churches are under attack

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by [Randy Bright](#)



Last week I wrote about the pending seizure of another church using eminent domain, or at least the threat of eminent domain. It is fairly certain that, barring a miracle or some smart legal gymnastics, the city of Orlando is going to take the church building and property that belongs to Faith Deliverance Temple.

I have written numerous times about the Religious Land Use and Institutionalized Persons Act (RLIUPA), because it is so important to the preservation and protection of churches that might otherwise be taken with even more ease than it is already. As such, it is critical to keep reminding churches as well as governments why this law exists.

Several years ago, religious rights were under assault by Boulder County, Colorado, when they took Rocky Mountain Christian Church to the US Supreme Court, hoping that the Court would overturn every previous court that had held that the church's rights had been violated under the Constitution and RLUIPA, the Religious Land Use and Institutionalized Persons Act.

Fortunately, the Court refused to hear the case. I say fortunately because I believe that there would have been a good chance that it could have led to RLUIPA's demise, given the increasing population of liberal judges on the bench.

RLUIPA has been instrumental in protecting the rights of numerous churches since its passage in 2000. Its main purpose was to protect churches from abuse by municipalities that used zoning codes and procedures to impede or prevent churches from exercising their rights to use their property, including the construction of new facilities.

RLUIPA is not a term that the general public hears every day, and comparatively few people even know of its existence. That's unfortunate, given that it is the most important law (aside from the Constitution itself) that churches can rely upon to protect themselves from cities or counties that use zoning as a weapon against them.

RLUIPA was enacted after an earlier law, the Religious Freedom Restoration Act (RFRA) of 1993, was declared unconstitutional in the 1997 Supreme Court case of *City of Boerne v. Flores*.

In that case, a city had refused a permit for the expansion of a church in an historic district, and the Court ruled Congress was only empowered to enforce the Fourteenth Amendment (due process and equal protection of the law), and that specific treatment of religion had not been identified in the RFRA.

RLUIPA was more specific, stating that “no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the 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 government interest; and (B) is the least restrictive means of furthering that compelling interest.”

As such, RLUIPA prohibits a church from receiving less favorable treatment than other institutions.

It also prohibits banning churches from any jurisdiction, or from imposing unreasonable requirements on churches.

The constitutionality of the land use portion of the RLUIPA has still not been confirmed by the Supreme Court, but it has been upheld by the U.S. Court of Appeals for the Seventh Circuit and by majority of the lower district courts.

Passage of RLUIPA was timely because only a few years later the Supreme Court essentially gave carte blanche to municipalities to take property, using eminent domain, that it deemed necessary for economic purpose. Since then, churches have come under increased risk for taking because of their tax-exempt status. Had the Court taken the Rocky Mountain Christian Church case, and had they ruled in favor of Boulder County instead of the church, I believe it would have significantly weakened RLUIPA if it would not eliminate it completely.

I am not a lawyer, but it certainly seems to me that the City of Orlando, in its unconstitutional procedures against Faith Deliverance Temple, is ripe to be at the receiving end of a lawsuit using RLUIPA.

We are in very dangerous territory if a city can simply declare that a church’s property, or anyone’s property for that matter, must be taken for what the city defines is for the “public good”. There is little doubt that the soccer stadium will bring economic good to the community, but in this case the city should make the church a deal, not steal their property.

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