

Religious freedom and America's churches are at risk

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By [Randy W. Bright](#)

Periodically I write about RLUIPA (Religious Land Use and Institutionalized Persons Act) because it is so important to the preservation and protection of the rights of churches. As such, it is critical to keep reminding churches as well as government why this law exists, and it should come as no surprise that there are lawyers that specialize in defending government entities from churches. Though there are many cases in which RLUIPA has been used, one in particular stands out – Rocky Mountain Christian Church in Boulder, Colorado.

I will review that case in next week's article, but briefly that case involved a church whose religious rights were under assault by Boulder County, Colorado, when they took Rocky Mountain Christian Church to the Supreme Court of the United States (SCOTUS) in the hope that it would overturn previous court decisions that had held that the church's rights had been violated under the Constitution and RLUIPA.

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 impeded 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 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 found in the 1997 Supreme Court case of *City of Boerne v. Flores* to have "violated the principles of federalism and the separation of powers" (according to Marci Hamilton, the attorney who represented the City of Boerne and who has claimed that RLUIPA is unconstitutional).

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 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 government interest; and (B) is the least restrictive means of furthering that compelling interest."

As such, RLUIPA prohibits a church from receiving less favourable 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 Seventh Circuit and by the 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 purposes. 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 favour of Boulder County instead of the church, I believe it would have significantly weakened RLUIPA if it would not eliminate it completely.

Given the recent furor over Indiana's RFRA law, in which critics essentially forced the state to capitulate to gay activists by redefining its law, it is not unlikely that eventually RLUIPA may come under the similar pressure by those who want to see the end of churches in America.

As for lawyers that specialize in RLUIPA cases, the ruiipa-defense.com website is worth looking at. There are numerous cases listed that this law firm has defended, most of which appear to be in the defense of those being sued under RLUIPA. And while they are not the only one, there are also other attorneys and legal groups that dedicate their practice to defending churches using RLUIPA.

RLUIPA has been attacked since the day it was passed, and it still has not been repealed – but it is not for lack of trying. Battered as it is, it will continue to stand as long as we continue to support it.



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