

Unfair treatment of churches is a growing US problem

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RLUIPA (Religious Land Use and Institutionalized Persons Act) as a defense for unfair treatment of churches has been very important since its passage in 2000, but I believe that its days are numbered.

Not that it is not still very important, and will be for some time in the future, but its future rests in the hands of our courts, which are growing more liberal and politically charged.

In addition to that are precedents of its failure to protect churches according to its original intent.

A case in point is a recent court decision published on the Law of the Land website entitled Fed. Dist Court in WA Holds Owners Failed to Sufficiently Allege FHA and RLUIPA Substantial Burden Claims but Did Find RLUIPA Equal Terms Claim Can Proceed.

That brief article describes the plight of Holy Ghost Revival Ministries (HGRM), which operated a series of group homes called Mack Houses intended to provide transitional housing for released convicts. These were people who were attempting to recover from drug addiction and abuse, as well as registered sexual offenders.

As a requirement for residency, the residents received “teachings grounded in scripture” and were required to participate in a twelve-step recovery program plus they had to comply with other requirements from the Department of Corrections.

The city shut one of their ten homes down, claiming that it was “an inappropriate residential use and occupancy of a building on a parcel of land zoned for General Commercial use.”

Alleging their rights were violated under RLUIPA, HGRM sued the city.

The result of the suit was that the court dismissed their substantial burden claim, but left open their less than equal claim.

Per the article, “because the complaint alleged that the Mack Houses, which are religious institutions, were singled out by the city for enforcement of the zoning code, the court concluded that the plaintiffs have adequately alleged treatment on a less-than-equal basis with secular comparators, such as other group housing institutions.”

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”.

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 governmental 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.

In this case, HGRM sustained a loss, but also a potential victory, if they choose to pursue it.

The sad thing is that defeating a church that wants to use RLUIPA as a defense is quite easy – if the church does not have the funds or the right counsel available. In addition, there seems to be as many churches that lose their cases as that win, and there is no shortage of attorneys that specialize in defending municipalities against RLUIPA.

In the long term, states need to enact their own versions of RLUIPA, but the effectiveness of this is questionable as long as the federal government has the ability (it does not have the right, just the ability) to override state laws and referendums.

The real solution is for there to be a change of heart and thought in our nation to value our churches again, and perhaps even some courage among our churches to adopt a peaceful “we will not obey” attitude toward actions against them, just as many pastors have already done in their Pledge in Solidarity to Defend marriage (which I would encourage everyone to read and support). The church and its missions are worth fighting for.



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