

A church in Ohio is denied the use of its own property

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In Upper Arlington, a suburb of Columbus, Ohio, a vacant 254,000-square-foot building formerly owned by America Online was purchased in 2010 by Tree of Life (TOL) Christian Schools. The school intended to consolidate four of its existing growing campuses into the single facility.

After TOL purchased the 15.8-acre property, it requested that City of Upper Arlington grant a zoning change for the property to allow the school, but the city repeatedly refused.

The city claimed that the existing property could only be used for revenue-generating uses, yet it had granted approval to charitable hospitals and nonprofit offices, as well as other uses that would not generate significant income.

TOL's campus would initially would have served 530 students, with a maximum of 900 students in the future, and it would have generated over 100 jobs.

Despite this, the city continued to refuse to allow the school to operate on their property. Believing that the school was being unfairly discriminated against, TOL filed suit on January 5, 2011. The suit was filed by the Alliance Defending Freedom (ADF) on their behalf.

At the time, Erik Stanley, attorney for ADF, said, "No city should use its zoning code to keep a Christian school's students in inferior and overcrowded facilities. A city's zoning code cannot give preferential treatment to nonreligious institutions that function similarly to a Christian school...The lawsuit is the result of the city's denial of zoning approval for Tree of Life to operate its ministry at its building in Upper Arlington....RLUIPA turned ten years old last year and Tree of Life's case against the City of Upper Arlington demonstrates just how important RLUIPA is to protect the rights of religious institutions."

But in August of 2012, a federal judge sided with the City of Arlington, so the following month ADF filed an appeal. In October of 2013, TOL won its appeal, sending the case back to U.S. District Court. Stanley said that "The case can continue forward and we can get a decision on the merits of the case, which we've been seeking all along."

But once again, a federal judge ruled in favor of the City of Upper Arlington, even though Stanley believed the judicial panel "understood his argument that Tree of Life has been treated unfairly." ADF then appealed to the Sixth Circuit Court of Appeals.

At issue was the city's argument that the city's Master Plan was intended to maximize tax revenues from the properties in the zoning district. According to a post by the Law of the Land website, ADF was successful in alleging that "at least some of these assemblies (day cares, hospitals, outpatient surgery centers, and other institutions) or institutions were situated, relative

to the government's regulatory purpose, similar to TOL Christian Schools, in that they would fail to maximize income-tax revenues”.

ADF had been hopeful for a better outcome. Stanley had expected the court to rule similarly to other rulings it had made on previous RLUIPA cases. He stated, “I would anticipate that if the Sixth Circuit follows those decisions, we would be on the winning side.”

However, in May of this year, the Sixth Circuit ruled against TOL. According to the Law of the Land post, “...the court noted that using eminent domain, Upper Arlington could force TOL Christian Schools to sell the land to the government, and sell the land to a buyer that the government thought offered superior economic benefits; however, it failed to do so in this case.”

Well, at least they haven't done it yet.

ADF's website stated that there were two things that were at stake in this case. First, “The constitutionality of zoning restrictions that limit the ability of religious organizations to use their property for religious purposes”, and second, “Government restrictions that target religious organizations for unfavorable treatment.”

I have argued for some time that RLUIPA has been critical in many instances of protecting the property rights of churches, but that it has not always been successfully used when liberal judges want to restrict the rights of churches.

The last step available, I think, is the U.S. Supreme Court, but recall that it was not long ago that it refused to hear the case of Rocky Mountain Christian Church, and that if it had, it probably would have ruled against the church.

For now, it appears that TOL has been denied the use of its property, a big loss not only for Tree of Life Christian Schools, but also for the citizens of Upper Arlington.



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