

Where will American churches be permitted to build?

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RLUIPA, the Religious Land Use and Institutionalized Persons Act, is a federal law that was enacted in 2000 in an effort to protect churches primarily from abuse from local governments that used zoning tactics to prevent them from expansion.

Recently I discovered a series of articles written in 2004 that displayed the absolute rancor that one particular attorney held for the law. Due to the amount of time passed, I am not going to mention the attorney's name, but I would like to comment on some of the accusations and disinformation this attorney was spreading at the time. Fortunately, the arguments that were made against RLUIPA have never gained enough traction to scuttle the law.

One of the first objections made was that it was a federal law that took precedent over states rights. While that might be a point to be made, it is somewhat disingenuous for a liberal to assert that claim, given that federal laws are routinely passed by liberals in Congress over the laws passed in states and liberal federal judges frequently overrule legal state elections that have passed laws liberals don't like.

Another assertion was that RLUIPA thwarted land-use laws - laws that had been in use since the framing of the Constitution. In fact, land-use laws, in the form of zoning codes, did not begin until the early 1900s. Land use laws were not in the Constitution because they were not one of the enumerated powers given to the federal government.

The complaint was made that when Congress held hearings to discuss RLUIPA prior to its passage, many groups were not allowed to testify against it, especially residential homeowners, and only a few Constitutional scholars were allowed to testify.

The attorney held particular disdain toward churches because, according to the attorney, churches were ruining neighborhoods by simply moving into them and making a nuisance of themselves. It is ironic that this attorney claimed that the property rights of homeowners were being violated, when in fact it is not a common practice for churches to move into the middle of existing neighborhoods.

In 2004, it was highly more likely that new churches would have moved to the outskirts of a city where development had not yet occurred. At that time, urban growth boundaries and form-based codes were not so common.

The land shortages that naturally occur when these practices are adopted create situations where churches may have nowhere else to go, but it is much more common that residential neighborhoods are developed around churches, not the other way around. It is also not unusual for homeowners to forget who was there first and to complain about any expansion the church might make on its own property. (I have seen that in my own practice.)

Another complaint the attorney asserted was against a church in a residential neighborhood that sought permission to add a fourth floor to their existing three-story building. This was considered particularly outrageous, as though the church was intentionally disregarding its neighbors by adding height to its building.

I don't know the details of this case, but it could be that the church was landlocked and had nowhere else to grow but up. The hypocrisy is that it is a moral and social wrong for this church to add height to its building, but in contrast, new zoning code models actually encourage or even mandate multi-story, multi-family construction in neighborhoods as a means to densify the city and increase its tax base.

Why is one acceptable and the other is not? A bias against churches and their tax status. In fact, the attorney's argument against this example and other similar examples was that the churches were violating homeowner rights by changing the character and intensity of neighborhoods by expanding their facilities and their services, but no complaint was made about zoning codes that would allow only multi-family, multi-story buildings to be constructed in neighborhoods that had been rezoned without homeowner permission.

The scenario is this in America: if cities establish urban growth boundaries that prohibit churches from building just outside the city limits, as they have done for many decades, and they are not allowed to build in neighborhoods (for reasons stated above) and they are not allowed in commercial areas because they take away land for business, and they are not allowed to build in industrial areas for similar reasons, where are they to go?

I would agree that the protections provided by RLUIPA would be better handled at the state level, but recent history has shown that the federal government has wielded unconstitutional powers negating state laws; so for the time being and until attitudes towards churches change, I'll take that federal law.



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