

City of Colorado Springs
Planning Department
Attn: Tamara Baxter

On May 15, 2025, the City of Colorado Springs and representatives of The Church of Jesus Christ of Latter-day Saints conducted a neighborhood open house for the proposed temple project at 2396 Veneto Way. Valuable feedback was provided from a wide range of perspectives. This letter outlines detailed responses to the prevailing comments given during the open house and the two-week open comment period. We hope this letter provides clarity for the more pertinent topics raised by the public.

Prominent comments: Gratitude for bringing a temple to Colorado Springs

The majority of comments made were very supportive of the temple and the benefit it would have on the community including providing a beautiful building with manicured landscaping, minimal traffic, and quiet secure grounds. As noted by one citizen: “This new temple will bring both spiritual significance to Church members and elevate the aesthetics and peaceful character of our Flying Horse community.”

Concern: Spire Height

Some residents have expressed concern about the temple’s proposed spire height and asked whether it meets city code.

Response: Colorado Springs’ Unified Development Code includes specific provisions for spires and steeples. According to Table 7.4.2-F, religious institution spires may exceed maximum zone district height so long as the spire’s largest horizontal cross-section is less than 5% of the primary structure’s footprint. The temple’s steeple is well within this limit and will have a cross-section that’s approximately 3%, which will be fully compliant with the regulation. It is also important to note that the remaining structure is a single-story building.

Concern: Potential Light Pollution and Dark Sky Impact

Neighbors have also shared concerns about nighttime lighting and its potential effect on the area’s dark sky character.

Response: While Colorado Springs does not have an official “Dark Sky” ordinance, it does prescribe strict lighting standards. Section 7.4.12 of the UDC outlines requirements for fully cut-off fixtures that shield at least 90% of downward light. The steeple lighting design has integrated these requirements: low-powered spotlights with a narrow 8-degree distribution, aimed no higher than 27 degrees above horizontal. Fixtures will be equipped with anti-glare visors to minimize light spill and maintain neighborhood character. The proposed lighting of the building and spire meets the lighting standards for Colorado Springs. In addition to meeting the city code, the Colorado Springs Temple is also required to meet the requirements in the Flying Horse Covenant, which contains provisions restricting excessive light, noise and vibration.

Concern: Increased Traffic During Events

Some residents are concerned about possible traffic congestion during temple events such as open houses or weddings.

Response: The Church’s consultants have modeled traffic impacts assuming a simultaneous temple event and meetinghouse services, which is highly unlikely as the temple will be closed on Sundays and Mondays when the meetinghouse usage is highest. Our analysis indicated that traffic will be inconsequential. The temple is located at the intersection of two collector roads—Barossa Valley Road and Flying Horse Club Drive—which are designed to manage such traffic. Additionally, the expected traffic routes avoid neighborhood streets and do not pass directly by residential frontages.

Concern: Impact on Air Force Academy Training Flights

Several community members have asked whether the steeple could interfere with Air Force Academy flight paths.

Response: We met with USAFA representatives early in the design process and submitted the necessary application for FAA review and approval. This ongoing coordination ensures that all requirements will be fully addressed. The design is well below the 200’ threshold of concern codified by FAA.

Concern: Compatibility with HOA Design Standards

Some feedback mentioned a desire to ensure the temple's design aligns with the aesthetics of the Flying Horse community.

Response: We have reviewed the HOA design standards and held an initial meeting with Flying Horse leadership. Based on those discussions, we are confident the temple's design fully complies with the community's HOA design standard requirements.

Key benefits we anticipate as property owners of Flying Horse:

Traffic management: Temple attendance follows a steady, dispersed pattern throughout the day with no peak-hour surges or large group events that would impact neighborhood traffic flow.

Reduced weekend activity: The temple does not operate on Sundays and Mondays, helping to ensure the neighborhood's quiet residential atmosphere is maintained.

Thoughtful lighting design: All exterior lighting will be carefully controlled and directed only to the temple and parking areas in full compliance with the city code, with no spillover affecting nearby homes.

Peaceful environment: As a place of sacred, individual worship, the temple generates no amplified sounds, announcements, or social events that could disturb the neighborhood. The temple grounds are open during normal operation hours and the public is welcome to experience the peaceful contemplation and reflection of this sacred place.

Architectural harmony: While the steeple extends above the building height, it remains modest in scale and proportionally graceful. The steeple's symbolic element reflects the peaceful purpose of the structure.

Community benefit: Having a local temple eliminates the need for many patrons, both young and old, to travel to Denver to participate in religious ordinances, providing both spiritual and practical value to the community.

We hope these responses provide additional clarity for the public and the comments shared by the public. We are committed to being good neighbors in the Colorado Springs community and welcome continued dialogue.

September 22, 2025

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Re: Colorado Springs Temple, 2396 Veneto Way, Application # DEPN-25-0056, Applicable Legal Issues

Dear Tamara and Trevor:

As you know, I am local land use counsel for the Church of Jesus Christ of Latter-day Saints related to its pending application for a Development Plan for a new temple at the above listed address.

We appreciate the hard work of City staff in reviewing this application and working with the team through the process.

In order to ensure that the City's records are complete, we are providing the attached document, summarizing some of the commonly asked questions about the function and purpose of this temple, as well as the law governing religious uses.

Please include this information in the file for this application, and don't hesitate to contact me with any questions or concerns.

Thank you,

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 
Carolynne C. White

cc: Marc Smith, Interim City Attorney (via email Marc.Smith@ColoradoSprings.gov)

Enclosure: Colorado Springs Temple, RLUIPA Overview

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

COLORADO SPRINGS TEMPLE



[Rendering of the Colorado Springs Temple]

This document explains why temples are so important to The Church of Jesus Christ of Latter-day Saints and its members, how temple sites are chosen, and the importance and religious symbolism of temple architecture. It then explains that the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) supports the Church’s right to build a temple at the Church’s selected location in Colorado Springs.

The Church hopes for a cooperative process where any concerns can be addressed. The Church’s temples are attractive buildings, with beautiful landscaping that provides a peaceful environment for all to enjoy.

Why are temples so important to Latter-day Saints?

Members of The Church of Jesus Christ of Latter-day Saints worship in two different types of buildings: chapels and temples. Sunday worship occurs in chapels and is open to the public. Temples are different. Following a brief public open house, a temple is dedicated to God and then only Church members who have demonstrated faithfulness to God’s commandments can enter. The Church has 208 dedicated temples, with 174 more under construction or announced.¹

In temples, Church members participate in sacred ordinances and make covenants with God. Church members perform these rituals for themselves and vicariously on behalf of their ancestors. The Holy Bible teaches that those who believe in Jesus Christ and are baptized will be “saved” while those who do not believe and are not baptized will be “damned.” (Mark 16:16.) But what about people who die without that opportunity? How can they be saved? In temples, a living person is

¹ See Temples of The Church of Jesus Christ of Latter-day Saints, <https://churchofjesuschristtemples.org/>.

baptized as “proxy” for a deceased ancestor.² (This is one reason genealogy is so important to Latter-day Saints.) Thus, in temples, baptism and other saving ordinances are made available to all of God’s children. This is proof that God loves all His children and wants them all to return to Him. In this way, God’s “work is perfect” and “all his ways are ... just.” (Deuteronomy 32:4.) This is why temples are so important to Church members. They are part of God’s plan for saving His children.

Temples are also where Church members go to feel God’s presence. “It is His house. It is filled with His power,” said Church prophet and president Russell M. Nelson.³ The temple is “the most holy place on earth.”⁴ Entering the temple symbolizes “entering into the presence of God.”⁵



[Aba Nigeria Temple]

How are temple sites chosen?

At a time when the Church had no temples, Brigham Young, the second president of the Church, prophesied: “To accomplish this work there will have to be not only one temple but thousands of them”⁶ One hundred years later, the Church had just eight temples, even though Church membership had grown substantially. But God promised, “I will hasten my work in its time.”⁷ Over the last several decades, the Church has rapidly increased the pace of temple building.

² The Bible refers to this practice. “Else what shall they do which are baptized for the dead, if the dead rise not at all? Why are they then baptized for the dead?” 1 Corinthians 15:29.

³ President Russell M. Nelson, “[Focus on the Temple](#),” October 2022 General Conference.

⁴ Elder Neil L. Andersen, “[Temples, Houses of the Lord Dotting the Earth](#),” April 2024 General Conference.

⁵ President Henry B. Eyring, (quoted in Jason Swensen, “[President Eyring Rededicated Oklahoma City Oklahoma Temple](#),” Church News, May 20, 2019).

⁶ [*Teachings of Presidents of the Church: Brigham Young*](#) (1997), 310.

⁷ Doctrine & Covenants 88:73.

After announcing 17 new temples at the Church's October 2024 General Conference,⁸ President Nelson said, "The Lord is indeed hastening His work."⁹ "Why are we building temples at such an unprecedented pace?" he asked. "Because the Lord has instructed us to do so."¹⁰

"The temple is the gateway to the greatest blessings God has in store for each of us, for the temple is the only place on earth where we may receive all of the blessings promised to Abraham. ***That is why we are doing all within our power, under the direction of the Lord, to make temple blessings more accessible to members of the Church.***"¹¹

Church leaders consider various factors when deciding where to build a temple such as Church membership in the area and the proximity of the nearest temple. Most important, Church leaders pray and seek to know God's will. As one Church leader recently said: "The location of a temple ... comes by revelation from the Lord to His prophet, signifying a great work to be done and acknowledging the righteousness of the Saints who will treasure and care for His house through generations."¹²

This pattern is seen in the Church's history. Shortly after leading the pioneers into the Utah Territory in 1847, Brigham Young had a vision of the Salt Lake Temple. He stuck his walking stick in the ground and said, "Here we will build the temple of our God." At the groundbreaking ceremony, Brigham Young said:

"I scarcely ever say much about revelations, or visions, but suffice it to say, five years ago last July I was here, and saw in the Spirit the Temple.... I have not inquired what kind of a Temple we should build. Why? Because it was represented before me. I have never looked upon that ground, but the vision of it was there."



⁸ General conference is the worldwide gathering of Church members to hear from their leaders, including the prophet.

⁹ President Russell M. Nelson, "[The Lord Jesus Christ Will Come Again](#)," October 2024 General Conference.

¹⁰ [Ibid.](#)

¹¹ President Russell M. Nelson, "[Rejoice in the Gift of Priesthood Keys](#)," April 2024 General Conference.

¹² Elder Neil L. Andersen, "[Thy Kingdom Come](#)," April 2015 General Conference.

[Salt Lake Temple]

In the 1990s, Church president Gordon B. Hinckley traveled to Hong Kong to search for a temple site. As he prayed at a site that “seemed ideal,” he knew it was not the place. He awoke one morning as the Holy Spirit revealed to him the site for the temple. In his mind, he saw what the temple would look like. At the dedication of the Hong Kong Temple President Hinckley said, “If ever in my life I felt the inspiration of the Lord, it was with this building.”¹³



[Hong Kong Temple]

The Colorado Springs Temple

In the October 2023 General Conference of the Church, President Nelson announced the Church’s plans to build a temple in Colorado Springs. In making this announcement, President Nelson shared:

“The ordinances and covenants of the temple are of eternal significance. We continue to build more temples to make these sacred possibilities a reality in each of your lives.... The Lord is directing us to build these temples to help us think celestial.”¹⁴

Plans for the Colorado Springs Temple are for a single-story temple of approximately 45,000 square feet, a meetinghouse, and a grounds maintenance building. It will be constructed on a portion of a 18.6-acre site located at Flying Horse Club Drive and Barossa Valley Road.

¹³ [A New Kind of Temple](#).

¹⁴ President Russell M. Nelson, “[Think Celestial!](#)” October 2023 General Conference.



[Aerial view of the Colorado Springs Temple site]



[Street view of the Colorado Springs Temple site]

Colorado is home to about 150,000 Latter-day Saints in nearly 310 congregations. The first congregation of the Church in Colorado was organized in January 1897. Currently, the Church has two temples in operation in Colorado—the Denver Colorado Temple (50 miles away) and Fort Collins Colorado Temple (114 miles away)—and one just recently constructed and soon to be dedicated—the Grand Junction Colorado Temple (300 miles away). The Colorado Springs Temple will make the blessings of the temple more accessible to members of the Church in Colorado’s second-most populous city.

What will the Colorado Springs Temple look like?

For Church members, “[t]he temple is literally the House of the Lord.”¹⁵ Because of that, temples are designed to revere God.¹⁶ Church president Russell M. Nelson taught, “When you look at the temple, you should realize it is a symbol of Jesus Christ.”¹⁷

The steeple. Like nearly all of the Church’s temples, the Colorado Springs Temple will be adorned by a steeple extending toward heaven. Steeples are a common part of religious buildings.¹⁸ They reflect the “belief of an ascension towards heaven” and by “pointing towards heaven,” they “serve the purpose of lifting ... eyes and thoughts towards heaven.”¹⁹

[C]hurch steeples carry profound meaning within religious communities. They serve as a visible reminder of the presence of God, pointing upwards towards heaven. Moreover, the height of a steeple symbolizes the longing for spiritual growth and pursuit of divine enlightenment. For believers, the steeple acts as a beacon of hope and faith in the midst of a mundane world, inspiring them to strive for higher, nobler aspirations.... Standing tall and majestic, these iconic structures serve as a visual representation of religious faith and a source of inspiration for believers.²⁰

Peace River Baptist Church in Florida lost its steeple during Hurricane Ian. After replacing the steeple, the Church posted the following message to its members:

We are so thankful to God that our steeple stands once again as our representative, pointing constantly to our Most High God.... [T]he greatest significance of the steeple today is to be a visual lesson on the transcendence and glory of God. He is above all. The Bible describes one of the names of God as El Elyon (The Most High God). It is the church’s holy responsibility to point the world to God. Our worship should be directed to the Most High God. Our lives should be lived in obedience to the Most High God. And our witness points others to claim the Most High God as their own.²¹

The Church of Jesus Christ of Latter-day Saints sees the same symbolism in its steeples. The Church fought for several years for the right to put a steeple on its Boston Temple, ultimately prevailing when the Massachusetts Supreme Court rejected the lower court’s conclusion that a steeple was not “necessary” to the temple’s religious purposes. “It is not for judges to determine whether the inclusion of a particular architectural feature is ‘necessary’ for a particular religion,” the court explained. “The

¹⁵ Elder Neil L. Andersen, “[Temples, Houses of the Lord Dotting the Earth](#),” April 2024 General Conference.

¹⁶ See [First Covenant Church of Seattle v. Seattle](#), 840 P.2d 174, 182 (Wash. 1992) (a religious building itself serves as “an expression of Christian belief and message”).

¹⁷ Spiritual Doors will Open: Messages about the Temple from President Nelson, Liahona January 2023.

¹⁸ Steeples are common not only on cathedrals and other Christian churches, but also on the holy buildings of many religious denominations. The tower on a mosque is called a “minaret” which means “lighthouse” or “place of light.” Hindu temples have a tower called a “shikhara” which means “mountain peak.”

¹⁹ [Martin v. The Church of Jesus Christ of Latter-day Saints](#), 747 N.E.2d 131, 137 (Mass. 2001).

²⁰ [The Beauty and Symbolism of Church Steeples](#).

²¹ <https://www.peaceriverbaptistfl.org/post/the-steeple-rises-again>.

record is replete with evidence that the steeple is integral to the specific character of the contemplated use.”²²



[Boston Temple without steeple]



[Boston Temple with steeple]

Additionally, temple architects design each temple following an age-old architectural principle known as the “Golden Ratio” or “Golden Triangle.”²³ Under this principle, each aspect of a temple, including the steeple, is designed to maintain balance and proportionality between a temple’s mass and height.

The exterior lighting. A temple’s exterior lighting also has religious symbolism. Most importantly, it symbolizes Jesus Christ, who is the “light [that] shineth in darkness” and the “true Light, which lighteth every man that cometh into the world.” (John 1:5, 9.) Jesus came to “give light to them that sit in darkness ... to guide our feet into the way of peace.” (Luke 1:79.) Light symbolizes an invitation to enter, like leaving the porch light on.



[Santo Domingo Dominican Republic Temple]

²² Martin, 747 N.E.2d at 137.

²³ The “Golden Ratio” exists in nature and architects have followed this principle in many iconic buildings and structures throughout the world. See “[An introduction to the golden ratio](#)” and “[The Important of Golden Ratio in Architecture](#).”

Like steeples, lighting is a common aspect in religious architecture in many faith traditions.



[Notre Dame Cathedral]

Size. The size of a temple is dictated primarily by worship needs. Each temple has a baptistry, ordinance rooms, sealing rooms, and a celestial room. Temples also have an entryway, a foyer, locker rooms, and other rooms that make temple worship possible. The number and size of these rooms depend on how many Church members the temple will serve.

The temple ceremony culminates in the central room of the temple, the celestial room. Entering this room symbolizes entering God's presence. Celestial rooms have elevated ceilings, another common feature of religious architecture. Vittorio Gallese, professor of physiology at the University of Parma, Italy, explains: "To feel closer to God, you have to create an environment where everything suggests this feeling of elevation."²⁴ Celestial rooms are designed for the very purpose of creating a sense of heaven on earth. High ceilings help create that feeling.



[Celestial Room - Mexico City Temple]

²⁴ Quoted in Meera Senthilingam, "[The mysterious neuroscience of holy buildings](#)," August 29, 2015.

Landscaping. While only Church members may enter a temple, the grounds are open to the public. Every temple is beautifully landscaped. The grounds are used only for quiet meditation and worship.



[Fort Collins Temple]

The architecture, the steeple, the lighting, and the landscaping are all part of what Church members call the “temple experience.” Sacred spaces are designed to help people have sacred experiences. With religious architecture, “the primary relationship being cultivated is that between the individual and the divine, or God. Architects and clerics—sacred space makers—help this happen.”²⁵ The transcendent experience of temple worship requires what some have called “transcending architecture.”²⁶

God himself is the master architect. He designed a world with majestic mountains, vast oceans, rolling plains, forests, deserts, and much more. People do not just visit such places, they *experience* them. “The heavens declare the glory of God; and the firmament showeth his handywork.” (Psalms 19:1.) The Church hopes its temples will also declare the glory of God and help Church members experience the feeling of being in God’s presence.

²⁵ Michael Benedikt, “On Architecture, Divinity, and the Interhuman,” at p.2 *available at* _____.

²⁶ Transcending Architecture: Contemporary Views on Sacred Space, Julio Bermudez (editor) 2015 p. 8.

How will the temple be used?

Temples are open Tuesday through Saturday. They are not megachurches. They do not have large assembly rooms and cannot host large events. Individual Church members decide when to worship in the temple.

Key features of the temple include the baptistry where Church members perform vicarious baptisms. Most temple ordinances are performed only by adults, but youth ages 11 to 18 can perform baptisms for their ancestors. Travel to a temple is more difficult for youth. Thus, proximity is especially important so the Church's can go to the temple often. Also, baptistry appointments fill quickly, leaving many young people without the opportunity to attend as often as they would like.



[Baptistry – Rome Italy Temple]

One of the Church's apostles explained the importance of the temple for young people:

“Do you young people want a sure way to eliminate the influence of the adversary in your life? Immerse yourself in searching for your ancestors, prepare their names for the sacred vicarious ordinances available in the temple, and then go to the temple to stand as proxy for them to receive the ordinances of baptism and the gift of the Holy Ghost. I can think of no greater protection from the influence of the adversary in your life.”²⁷

The temple also has “endowment” rooms where Church members receive religious instruction and covenant to obey God's commandments.

²⁷ Elder Richard G. Scott, “[The Joy of Redeeming the Dead](#),” October 2012 General Conference.



[Endowment Room – Raleigh North Carolina Temple]

At the conclusion of the temple ceremony, participants enter the celestial room. This is a place of quiet prayer and reflection meant to symbolize heaven.



[Celestial Room - Washington D.C. Temple]

Families are central to God’s plan for our happiness. In “sealing rooms” in the temple, husbands and wives are married “for time and all eternity” and children are “sealed” to their parents, creating forever families.



[Sealing Room – Fortaleza Brazil Temple]

Worshippers wear white clothing in the temple to reflect purity and unity. There is no rank or status in the temple. We are “one in Christ” when we enter.²⁸ The temple has changing rooms with lockers where members put on this white clothing. For additional information on temples, why the Church builds temples, and how temples are used, please visit:

<https://www.churchofjesuschrist.org/temples>.

THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT

We now turn to the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). We attach three important documents from the United States Department of Justice. First, a letter from the DOJ Civil Rights Division to state and local officials reminding them of their obligations under RLUIPA. (Exhibit A.) Second, a Q&A document on how RLUIPA works. (Exhibit B.) Third, a DOJ Report on the Twentieth Anniversary of RLUIPA. (Exhibit C.)

I. RLUIPA Substantial Burden Provision

There are three main types of RLUIPA claims: (1) substantial burden, (2) unequal treatment, and (3) religious discrimination. We will focus on the substantial burden provision. RLUIPA prohibits any “land use regulation” that imposes a “substantial burden” on “religious exercise” unless the government has a “compelling governmental interest” and uses the “least restrictive means” of

²⁸ Galatians 3:28.

furthering that interest.²⁹ We believe RLUIPA’s substantial-burden provision supports the Church’s right to build the Proposed Temple.

A. RLUIPA grants *preferential* treatment to religious land use.

RLUIPA restored “strict scrutiny” to laws that burden religious exercise, even if the law is neutral and generally applicable.³⁰ “Congress enacted RLUIPA ... to provide very broad protection for religious liberty.”³¹ RLUIPA gives “greater protection for religious exercise than is available under the First Amendment.”³² “By passing RLUIPA, Congress conclusively determined the national public policy that religious land uses are to be guarded from interference by local governments to the maximum extent permitted by the Constitution.”³³

B. RLUIPA’s expansive definition of “religious exercise.”

RLUIPA defines *religious exercise* as “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”³⁴ Congress also “mandated” that courts construe RLUIPA to protect religious practices “to the maximum extent permitted by ... the Constitution.”³⁵

1. Building a temple is “religious exercise.”

RLUIPA specifically protects “[t]he use, building, or conversion of real property” for religious purposes.³⁶ “[A] place of worship ... is at the very core of the free exercise of religion.... The right to build, buy, or rent such a space is ... indispensable” to the right to “assemble for religious purposes.”³⁷ Thus, challenges to land-use decisions are “expressly contemplated” by RLUIPA.³⁸ For the Church, the selection of a temple site is also the exercise of religion. In selecting temple sites, Church leaders seek and pray for God’s direction.

2. The religious architecture of a temple is “religious exercise.”

It is well recognized that “architecture—including a steeple—is religious exercise.”³⁹ Religious architecture reflects religious beliefs and is part of the religious experience. “The relationship between theological doctrine and architectural design is well recognized.”⁴⁰ Such

²⁹ 42 U.S.C. § 2000cc(a).

³⁰ Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 695 (2014).

³¹ Holt v. Hobbs, 574 U.S. 352, 356 (2015).

³² Id. at 357.

³³ Cottonwood Christian Ctr. v. Cypress Redev. Agency, 218 F. Supp. 2d 1203, 1230-31 (C.D. Cal. 2002).

³⁴ 42 U.S.C. § 2000cc-5(7)(A)

³⁵ 42 U.S.C. § 2000cc-3(g).

³⁶ Id.

³⁷ Int’l Church of Foursquare Gospel v. City of San Leandro, 673 F.3d 1059, 1069-70 (9th Cir. 2011) (quotations omitted).

³⁸ Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1226 (11th Cir. 2004). See also Chabad Lubavitch of Litchfield County, Inc. v. Borough of Litchfield, 2016 WL 370696 (D. Conn. 2016); Congregational Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona, 138 F. Supp. 3d 352 (S.D.N.Y. 2015).

³⁹ What Constitutes Religious Exercise Under RLUIPA, Federal Land Use Law & Litigation § 7:33 (2023 ed.)

⁴⁰ First Covenant Church of Seattle v. City of Seattle, 840 P.2d 174 (Wash. 1992).

architecture “is inseparable from its religious meaning and purpose.”⁴¹ Religious architecture tries “to make visible the sacred.”⁴² A steeple, for example, “is a ‘symbol of man’s aspiration to be united with his creator.’”⁴³ Steeples are “perhaps the signature physical characteristic that identif[ies] buildings as places of Christian worship.”⁴⁴ Regulating religious architecture, therefore, is like regulating religious speech.

3. RLUIPA protects religious architecture even if it is not central to or compelled by religious beliefs.

Steeple and other religious architectural features are usually not essential to worship. And a few of the Church’s temples do not have steeples or spires. Under RLUIPA, however, religious architecture need not be “compelled by, or central to, a system of religious belief.”⁴⁵ As the U.S. Department of Justice explains, a municipality “cannot avoid the force of RLUIPA by asserting that a particular religious activity is something that a religious group merely wants to do rather than something that it must do.”⁴⁶

C. The City’s ordinances allow an “individualized assessment,” which triggers RLUIPA’s protections.

RLUIPA applies whenever a substantial burden is imposed in the implementation of land use regulations under which a municipality makes “individualized assessments of the proposed uses for the property involved.”⁴⁷ A municipality makes an individualized assessment any time it “*may* take into account the particular details of an applicant’s proposed use of land when deciding to permit or deny that use.”⁴⁸

D. Denying the Church’s application would impose a “substantial burden” on the Church’s exercise of its religious beliefs.

According to the Supreme Court, a “substantial burden” exists when government action interferes with “the ability of the objecting parties to conduct [themselves] in accordance with their religious beliefs.”⁴⁹ The Tenth Circuit (which covers Colorado) puts it this way—a burden is substantial if it “prevents the plaintiff from participating in an activity motivated by a sincerely held religious belief.”⁵⁰

⁴¹ Angela C. Carmella, *Houses of Worship and Religious Liberty: Constitutional Limits to Landmark Preservation and Architectural Review*, 36 Vill. L. rev. 401, 481 (1991).

⁴² J. Dahinden, *New Trends in Church Architecture* 75 (1967).

⁴³ Thomas Pak, *Free Exercise, Free Expression, and Landmarks Preservation*, 91 Colum. L. Rev. 1813, 1841 (1991) (quoting Paul Clowney & Tessa Clowney, *Exploring Churches* 13 (1982)).

⁴⁴ Lynn Arave, “[Steeped in Symbolism](#),” *Deseret News*, Feb. 17, 2001.

⁴⁵ 42 U.S.C. § 2000cc-5(7)(A)

⁴⁶ Dep’t of Justice, Civil Rights Div., *Statement of the Department of Justice on the Land-Use Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)* (Sept. 22, 2010)

⁴⁷ 42 U.S.C. 2000cc(a)(2).

⁴⁸ *Guru Nanak Sikh Soc. of Yuba City v. Cnty. of Sutter*, 456 F.3d 978, 986 (9th Cir. 2006).

⁴⁹ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014).

⁵⁰ *Yellowbear v. Lambert*, 741 F.3d 48, 54 (10th Cir. 2014). Courts have applied more stringent tests in the “institutionalized persons” context of RLUIPA. But numerous circuit courts have held that it would be improper to apply

In RLUIPA’s land-use context, a substantial burden exists whenever a land-use regulation or decision prevents the owner from using the property in the manner motivated by its religious beliefs, which means not only building a place of religious assembly (such as a temple) adequate for its needs, but also designing that temple in a manner motivated by its religious beliefs. Absolute denial always imposes a substantial burden unless adequate alternative sites are available without substantial cost or delay.⁵¹ But even “a conditional denial may represent a substantial burden if the condition itself is a burden on free exercise”⁵² In other words, “other circumstances may create a substantial burden even where an alternative location is technically available.”⁵³

For Latter-day Saints, the selection of a temple site is an exercise of religion. Church leaders, not real estate agents, pray and seek God’s guidance when choosing temple sites. Under RLUIPA, denial of the Church’s application to build a temple at the selected site would substantially burden this religious practice. This does not end the inquiry, however. “RLUIPA allows a government to impose a limitation—even if it substantially burdens a plaintiff’s religious exercise—so long as the limitation is the least restrictive means of serving a compelling interest.”⁵⁴ RLUIPA says religious freedom prevails only if the municipality does not have a compelling interest.

For Latter-day Saints, the steeple and the lighting of a temple are also religious practices and thus protected by RLUIPA. Some have argued that steeples are not protected by RLUIPA because the Church’s beliefs do not *require* a temple to have a steeple. And, in fact, a few of the Church’s temples do not have a steeple. But a steeple serves a religious purpose and is a religious practice. Under RLUIPA, that is all that matters. “It is not for judges” or city officials “to determine whether the inclusion of a particular architectural feature is ‘necessary’ for a particular religion” or to “determine what is or it not a matter of religious doctrine.”⁵⁵ Courts and cities “lack any license to decide the relative value of a particular exercise to a religion.”⁵⁶ Given the ubiquity of steeples on worship buildings of all faiths, it would be impossible to say that steeples are not a form of sincere religious exercise.

In sum, RLUIPA protects the Church’s right “to conduct [itself] in accordance with [its] religious beliefs” in selecting a temple site and designing a temple.⁵⁷ Accordingly, any land use

that standard “without any modification for the land use context . . .” Bethel World Outreach Ministries v. Montgomery County Council, 706 F.3d 548, 555-56 (4th Cir. 2013).

⁵¹ See Cottonwood Christian Center v. Cypress Redevelopment Agency, 218 F. Supp. 2s 1203, 1226 (C.D. Cal. 2002); Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761–62 (7th Cir.2003); Petra Presbyterian Church v. Vill. of Northbrook, 489 F.3d 846, 850–51 (7th Cir.2007). But see New Harvest Christian Fellowship v. City of Salinas, 29 F.4th 596, 602 (9th Cir. 2022) (“The availability of alternative locations ... does not necessarily foreclose a finding of substantial burden. That is, other circumstances may create a substantial burden even where an alternative location is technically available.”).

⁵² Westchester Day School v. Village of Mamaroneck, 504 F.3d 338, 349 (2d Cir. 2007).

⁵³ New Harvest Christian Fellowship, 29 F.4th at 602.

⁵⁴ City Walk - Urb. Mission Inc. v. Wakulla Cnty. Fla., 471 F. Supp. 3d 1268, 1286 (N.D. Fla. 2020).

⁵⁵ Martin, 747 N.E.2d at 138-40.

⁵⁶ Yellowbear, 741 F.3d at 54.

⁵⁷ Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 724 (2014).

regulation or decision that places a substantial burden on this religious practice must be justified by a compelling governmental interest.

E. RLUIPA also protects the religious exercise of individual Church members.

RLUIPA protects the religious exercise of institutions and individuals.⁵⁸ Thus, any land use regulation or decision that imposes a substantial burden on individual Church members would also have to be justified by a compelling governmental interest.

For Latter-day Saints, worshipping in the temple as often as they can is a critical aspect of their faith. The distance to a temple is often the biggest hurdle Church members face in practicing this part of their religion. This is especially true for the Church's youth. The Church's current prophet and president, Russell M. Nelson, has repeatedly implored Church members to spend "more time in the temple" and explained that the Church is building more temples specifically to make this possible:

- "[E]stablish a pattern of regular temple attendance.... More regular time in the temple will allow the Lord to teach you how to draw upon His ... power"⁵⁹
- "Spending more time in the temple builds faith.... We continue to build more temples to make these sacred possibilities become a reality in each of your lives."⁶⁰
- "Spend more time in the temple, and seek to understand how the temple teaches you to rise above this fallen world."⁶¹
- "Nothing will help you more to hold fast to the [word of God] than worshipping in the temple as regularly as your circumstances permit.... That is why we are doing all within our power, under the direction of the Lord, to make the temple blessings more accessible to members of the Church."⁶²
- "We want to bring temples closer to the expanding membership of the Church.... I bless you to identify those things you can set aside so you can spend more time in the temple."⁶³
- "We know that our time in the temple is crucial to our salvation and exaltation and to that of our families.... Our need to be in the temple on a regular basis has never been greater.... [F]ind a way to make an appointment regularly with the Lord—to be in His holy house—then keep that appointment with exactness and joy."⁶⁴

⁵⁸ 42 U.S.C. §2000cc(a)(1).

⁵⁹ President Russell M. Nelson, "[Sisters' Participation in the Gathering of Israel](#)," October 2018 General Conference.

⁶⁰ President Russell M. Nelson, "[Think Celestial!](#)" October 2023 General Conference.

⁶¹ President Russell M. Nelson, "[Overcome the World and Find Rest](#)," October 2022 General Conference.

⁶² President Russell M. Nelson, "[Rejoice in the Gift of Priesthood Keys](#)," April 2024 General Conference.

⁶³ President Russell M. Nelson, "[Let Us All Press On](#)," April 2018 General Conference.

⁶⁴ President Russell M. Nelson, "[Becoming Exemplary Latter-day Saints](#)," October 2018 General Conference.

- “Let us never lose sight of what the Lord is doing for us now. He is making His temples more accessible. He is accelerating the pace at which we are building temples.... I promise that increased time in the temple will bless your life in ways nothing else can.”⁶⁵

A temple’s proximity is critical to Church members who desire to spend “more time in the temple.” The Church is expending substantial resources to build more temples to bring them closer to Church members. Imagine having to drive an hour or more every time you wanted to go to the grocery store. That would be a substantial burden. Likewise, for Church members in the Colorado Springs area, getting to the temple right now is a substantial burden.⁶⁶

F. Substantial burdens on religious land use must be justified by a compelling governmental interest.

The “RLUIPA analysis proceeds in two sequential steps. First, the plaintiff must demonstrate that a government action has imposed a substantial burden on the plaintiff’s religious exercise. Second, once the plaintiff has shown a substantial burden, the government must show that its action was ‘the least restrictive means’ of ‘further[ing] a compelling governmental interest.’”⁶⁷

A compelling interest is an interest of the “highest order.”⁶⁸ It generally requires some “substantial threat to public safety, peace, or order.”⁶⁹ A city’s general interest in enforcing its zoning regulations is not sufficient. A municipality “must show a compelling interest in imposing the burden on religious exercise in the particular case at hand, not a compelling interest in general.”⁷⁰ The U.S. Supreme Court says, “Rather than rely on broadly formulated interests, courts must scrutinize the asserted harm of granting specific exemptions to particular religious claimants.”⁷¹

As noted, religious architecture, such as a steeple, is “religious exercise” under RLUIPA. Therefore, restrictions on such features must be justified by a compelling interest. Air traffic safety, for example, would be a compelling interest. Concerns about the visual impact of a religious building or its effect on the character of a neighborhood, however, are not compelling.⁷² A municipality, therefore, cannot deny a height variance for a temple or its steeple for purely aesthetic reasons.

⁶⁵ President Russell M. Nelson, “[Focus on the Temple](#),” October 2022 General Conference.

⁶⁶ See *Jesus Christ is the Answer Ministries, Inc. v. Baltimore Cty.*, 915 F.3d 256, 261 (4th Cir. 2019) (observing that a burden is “usually” substantial where “where use of the property would serve an unmet religious need”); *Bethel World Outreach*, 706 F.3d at 558 (finding a substantial burden where insufficient space to accommodate a large congregation caused the church to have multiple, shorter services, thereby interfering with Communion and cutting short the church’s “Altar Call” practice).

⁶⁷ *Int’l Church of Foursquare Gospel*, 673 F.3d at 1066 (quoting 42 U.S.C. § 2000cc(a)(1)).

⁶⁸ *Westchester Day Sch.*, 504 F.3d at 353.

⁶⁹ *Congregational Rabbinical Coll. of Tartikof*, 138 F. Supp. 3d at 456 (S.D.N.Y. 2015).

⁷⁰ *Westchester Day Sch.*, 504 F.3d at 353.

⁷¹ *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1881 (2021).

⁷² See e.g., *Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 554 (S.D.N.Y. 2006) (“[T]he visual impact of the [p]roject does not implicate a compelling government interest.”), *aff’d* 504 F.3d 338 (2d Cir. 2007); *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1227-28 (C.D. Cal. 2002) (aesthetic harm is not a compelling interest).

Even where an interest is compelling, RLUIPA requires that it be pursued through the least restrictive means.⁷³ “[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so.”⁷⁴ “RLUIPA prohibits governments from infringing sincerely held religious beliefs and practices except as a last resort.”⁷⁵ If the temple raises any safety concerns, the Church is happy to work with the City to address those concerns.

CONCLUSION

We recognize that federal civil rights laws and constitutional guarantees rarely impact local land use decisions. We hope this statement provides useful background on how RLUIPA applies here. These laws protect the rights of all religious believers.

⁷³ 42 U.S.C. § 2000cc(a)(1)(b).

⁷⁴ Fulton, 141 S. Ct. at 1881.

⁷⁵ Mast v. Fillmore Cty., 141 S. Ct. 2430, 2433 (2021) (Alito J., concurring).

EXHIBIT A

Letter from the DOJ Civil Rights Division



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 19, 2024

Re: The Religious Land Use and Institutionalized Persons Act

Dear State, County, and Municipal Officials:

I am writing to you today to remind you of the obligation of public officials to comply with the land use provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), and to inform you about documents issued by the Department of Justice (Department) that may be of assistance to you in understanding and applying this important federal civil rights law.

The freedom to practice religion according to the dictates of one's conscience is among our most fundamental rights, written into our Constitution and protected by our laws. In our increasingly diverse nation, and at a time when many faith communities face discrimination, the Department continues to steadfastly defend this basic freedom to ensure that all people may live according to their beliefs, free of discrimination, harassment, or persecution.

Over the years, Congress has passed several laws that protect the religious liberties of those who live in America, including the landmark Civil Rights Act of 1964 and the 1996 Church Arson Prevention Act. In 2000, Congress, by unanimous consent, and with the support of a broad range of civil rights and religious organizations, enacted the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq. Congress determined that there was a need for federal legislation to protect people and religious institutions from unduly burdensome, unreasonable, or discriminatory zoning, landmarking, and other land use regulations.ⁱ It heard testimony that houses of worship, particularly those of minority religions and start-up churches, were disproportionately affected in an adverse way, and in fact were often actively discriminated against by local land use decisions. Congress also found that religious institutions were treated worse than secular places of assembly like community centers, fraternal organizations, and theaters, and that zoning authorities frequently violated the United States Constitution by placing excessive burdens on the ability of congregations to exercise their faiths.

RLUIPA includes a private right of action, which allows individuals to enforce its provisions. Congress also gave the Attorney General the authority to enforce RLUIPA, and the Department of Justice has been active in enforcing this important civil rights law since its enactment. To date, the Department has opened over 155 formal investigations and filed nearly 30 lawsuits related to RLUIPA's land use provisions.ⁱⁱ The Department has also filed 36 "friend-of-the-court" briefs addressing the interpretation and application of RLUIPA in privately-filed lawsuits. Through these efforts, as well as those by private parties, RLUIPA has helped secure for thousands of individuals and institutions the freedom to practice their faiths without discrimination.

Yet, more than twenty-three years after RLUIPA's enactment, far too many people and communities remain unaware of the law, or do not fully understand the scope of its provisions. The Department of Justice implemented its *Place to Worship* Initiative in 2018, through which we continue to work to increase both public awareness and enforcement of RLUIPA's land use provisions.ⁱⁱⁱ As

participants at recent outreach events have indicated, and as the Department's own investigations have revealed, there are still many municipal, county, and other local officials who are insufficiently familiar with the land use provisions of RLUIPA and with their obligations under this important federal civil rights law. The Department has also received reports that religious groups, particularly those from less widely practiced religious traditions, continue to face unlawful barriers in the zoning and building process. Our work in this area suggests that litigation is far less likely if local officials are aware of RLUIPA and consider its protections early in the process of reviewing land use applications from religious organizations.

In light of this, we are sending this letter to you and other officials throughout the country to ensure that you are aware of your obligations under RLUIPA and its key provisions. Ensuring that our constitutional and statutory protections of religious freedom are upheld requires that federal, state, and local officials work together. To that end, we encourage you to share this letter with your colleagues. We hope that you will continue to work with the Department and view us as a partner in ensuring that no individual in this country suffers discrimination or unlawful treatment because of their faith.

1. RLUIPA provides broad protections for religious individuals and institutions.

RLUIPA's land use provisions provide several protections for places of worship, faith-based social service providers, and religious schools, as well as for individuals using land for religious purposes. Specifically, RLUIPA provides for:

- *Protection against substantial burdens on religious exercise:* Section 2(a) of RLUIPA prohibits the implementation of any land use regulation that imposes a "substantial burden" on the religious exercise of a person or institution except where justified by a "compelling government interest" that the government pursues using the least restrictive means.
- *Protection against unequal treatment for religious assemblies and institutions:* Section 2(b)(1) of RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.
- *Protection against religious or denominational discrimination:* Section 2(b)(2) of RLUIPA prohibits discrimination "against any assembly or institution on the basis of religion or religious denomination."
- *Protection against total exclusion of religious assemblies:* Section 2(b)(3)(A) of RLUIPA prohibits governments from imposing or implementing land use regulations that totally exclude religious assemblies from a jurisdiction.
- *Protection against unreasonable limitation of religious assemblies:* Section 2(b)(3)(B) of RLUIPA prohibits governments from imposing or implementing land use regulations that "unreasonably limit" religious assemblies, institutions, or structures within a jurisdiction.

While the majority of RLUIPA cases involve places of worship such as churches, synagogues, mosques, and temples, the law is written broadly to cover a wide range of religious uses and types of religious exercise. The "substantial burden" provision in Section 2(a) of the statute applies to burdens on "a person, including a religious assembly or institution." The remaining provisions apply to any religious "assembly or institution." Thus, RLUIPA applies widely not only to diverse places of worship, but also to religious schools, religious camps, religious retreat centers, religious cemeteries, and religious social service facilities such as group homes, homeless shelters, and soup kitchens, as well as to individuals or families exercising their religion through the use of property, such as home prayer gatherings or Bible studies.^{iv}

To be clear, RLUIPA does not provide a blanket exemption from local zoning or landmarking laws. Rather, it contains a number of safeguards to prevent discriminatory, unreasonable, or unjustifiably burdensome regulations from hindering religious exercise. Ordinarily, before seeking recourse under RLUIPA, those seeking approval for a religious land use will have to apply for permits or zoning relief according to the regular procedures set forth in the applicable ordinances, unless doing so would be futile or the regular procedures are themselves discriminatory or create an unjustifiable burden. While zoning is primarily a local matter, where it conflicts with federal civil rights laws such as the Fair Housing Act or RLUIPA, federal law takes precedence.

Each of RLUIPA's protections mentioned above are discussed in greater detail below.^v

2. RLUIPA protects against unjustified burdens on religious exercise.

Land use regulations frequently can impede the ability of religious institutions to carry out their mission of serving the religious needs of their members. Section 2(a) of RLUIPA bars imposition of land use regulations that create a "substantial burden" on the religious exercise of a person or institution, unless the government can show that it has a "compelling interest" for imposing the regulation and that the regulation is the least restrictive way for the government to further that interest. A mere inconvenience to a person or religious institution is not sufficient to constitute a burden, but a burden that is substantial may violate RLUIPA. For example, in a case in which the United States filed a friend-of-the-court brief in support of a Maryland church's challenge to a zoning amendment that prohibited it from building an expanded church on its property, a federal appeals court ruled that the church has "presented considerable evidence that its current facilities inadequately serve its needs," and that the "delay, uncertainty and expense" caused by the local government's action may create a substantial burden on the church's religious exercise in violation of RLUIPA.^{vi} The court relied on facts showing that the church's current facility was inadequate for its congregation and that it had a reasonable expectation that it could develop its new property. Similarly, the Department of Justice filed suit in a Connecticut federal district court alleging that a city's denial of zoning approval for an Islamic Center to establish a mosque imposed a substantial burden on the congregation.^{vii} The City had required the group to apply for a Special Exception Permit, which it did not require for other types of institutional land uses within the zone, and then denied the permit. The case was resolved by a consent decree in federal court.

If application of a zoning or landmarking law creates a substantial burden on religious exercise, such application is invalid unless it is supported by a compelling governmental interest pursued through the least restrictive means.^{viii} While RLUIPA does not define "compelling interest," the U.S. Supreme Court has explained that compelling interests are only "interests of the highest order."^{ix} Further, local governments cannot rely on generalized, "broadly formulated interests," but instead must "show that the compelling interest test is satisfied through application of the challenged law to . . . the particular claimant whose sincere exercise of religion is being substantially burdened."^x

3. RLUIPA protects equal access for religious institutions and assemblies.

Section 2(b)(1) of RLUIPA, known as the "equal terms" provision, mandates that religious assemblies and institutions be treated at least as well as nonreligious assemblies and institutions. For example, a federal appeals court ruled that zoning provisions that prohibited religious assemblies on the ground floor of buildings on a city's downtown main street but permitted nonreligious uses, such as theaters, on the ground floor of such buildings violated the equal terms provision.^{xi} In 2019, the Department brought suit under RLUIPA's equal terms provision against a city in Michigan for imposing zoning approval requirements on places of worship that it did not impose on comparable nonreligious assembly uses, and then denying zoning approval to a Muslim group seeking to establish the only

permanent place of Islamic worship in the city.^{xii} The court granted summary judgment to the United States, finding that the city had violated RLUIPA's equal terms provision by requiring places of worship to abide by more onerous zoning restrictions than "similarly situated" places of nonreligious assembly.^{xiii}

4. RLUIPA protects against religious discrimination in land use.

Section 2(b)(2) of RLUIPA bars discrimination "against any assembly or institution on the basis of religion or religious denomination." Thus, if an applicant is treated differently in a zoning or landmarking process because of the religion represented (e.g., Christian, Jewish, Muslim), or because of the particular denomination or sect to which the applicant belongs (e.g., Catholic, Orthodox Jewish, or Shia Muslim), then RLUIPA will be violated. The Department of Justice filed suit alleging that a Texas city discriminated against an Islamic association in violation of Section 2(b)(2) when it denied the association permission to build a cemetery due to anti-Muslim sentiment, including opposition by citizens who expressed anti-Muslim bias. The case was resolved when the city relented and granted the association permission to develop the cemetery.^{xiv} Similarly, the Department filed suit to challenge a New Jersey township's adoption and application of discriminatory zoning ordinances that targeted the Orthodox Jewish community by prohibiting religious schools and associated dormitories.^{xv} The case was resolved by consent decree which required that, among other things, the township revise its zoning code.

5. RLUIPA protects against the total or unreasonable exclusion of religious assemblies from a jurisdiction.

Under section 2(b)(3) of RLUIPA, a zoning code may not completely, or unreasonably, limit religious assemblies in a jurisdiction. Thus, if there is no place where houses of worship are permitted to locate, or the zoning regulations, viewed as a whole, deprive religious institutions of reasonable opportunities to build or locate in the jurisdiction, even if they don't completely prevent them from doing so, a jurisdiction may run afoul of this provision. For example, a federal appeals court made clear that government land use restrictions can violate RLUIPA's unreasonable limitations provision even if religious uses are not entirely excluded from the jurisdiction, if the jurisdiction makes it more difficult for houses of worship to locate there.^{xvi} Similarly, the Department of Justice filed suit in New Jersey alleging that a township's revisions to its zoning code that significantly reduced both the number of zoning districts in which houses of worship could be located, and the number of sites available for them, unreasonably limited religious assemblies, institutions, and structures in violation of RLUIPA.^{xvii} The case was resolved by consent decree.

* * * *

The Department of Justice is committed to carrying out Congress's mandate and ensuring that religious assemblies and institutions do not suffer from discriminatory or unduly burdensome land use regulations. We look forward to working collaboratively with you and all other stakeholders on these important issues. If you have questions about the contents of this letter, or other issues related to RLUIPA, I encourage you to contact Noah Sacks, the Civil Rights Division's RLUIPA Coordinator, at 202-598-6366 or noah.sacks@usdoj.gov.

Sincerely,



Kristen Clarke
Assistant Attorney General
Civil Rights Division

ⁱ RLUIPA also contains provisions that prohibit regulations that impose a “substantial burden” on the religious exercise of persons residing or confined in an “institution,” unless the government can show that the regulation serves a “compelling government interest” and is the least restrictive way for the government to further that interest. 42 U.S.C. § 2000cc-1.

ⁱⁱ Much of this work is detailed in DOJ reports on enforcement issued in September 2010 (available at https://www.justice.gov/crt/rluipa_report_092210.pdf), July 2016 (available at <https://www.justice.gov/crt/file/877931/download>) and September 2020 (available at <https://www.justice.gov/media/1096176/dl?inline>).

ⁱⁱⁱ Further information about the Department’s *Place to Worship* Initiative is available at <https://www.justice.gov/crt/place-worship-initiative>.

^{iv} RLUIPA broadly defines religious exercise as “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A). Courts have found that a host of religious activities are protected by RLUIPA, including charitable acts by religious institutions. *See, e.g., Micah’s Way v. City of Santa Ana*, No. 8:23-CV00183, 2023 WL 4680804, at *5 (C.D. Cal. June 8, 2023) (finding that, under RLUIPA, faith-based ministry’s food distribution to those in need was religious exercise).

^v Further information may be found in the *Statement of the Department of Justice on Land Use Provisions of the Religious Land Use and Institutionalized Persons Act* (available at <https://www.justice.gov/crt/page/file/1071251/dl?inline>), and at the Department of Justice Civil Rights Division RLUIPA information page (<https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>).

^{vi} *Bethel Would Outreach v. Montgomery Cnty. Council*, 706 F.3d 548, 557-558 (4th Cir. 2013).

^{vii} *United States v. City of Meriden, Connecticut*, No. 3:20-CV-01669 (D. Conn. filed November 5, 2020).

^{viii} 42 U.S.C. § 2000cc(a)(1).

^{ix} *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

^x *Holt v. Hobbs*, 574 U.S. 352, 363 (2015). When the U.S. Supreme Court later vacated the judgment of the Minnesota Court of Appeals in a different RLUIPA case, which had upheld a County’s requirement that Amish households install modern septic systems despite assertions that their religion forbade the use of such technology, one justice emphasized that “the question in this case ‘is not whether the [County] has a compelling interest in enforcing its [septic system requirement] generally, but whether it has such an interest in denying an exception’ from that requirement to the Swartzentruber Amish specifically.” *Mast v. Fillmore Cnty., Minnesota*, 141 S. Ct. 2430, 2432 (2021) (Gorsuch, J. concurring) (emphasis in original).

^{xi} *New Harvest Christian Fellowship v. City of Salinas*, 29 F. 4th 596, 608 (9th Cir. 2022).

^{xii} *United States v. City of Troy, Michigan* 2:19-CV-12736 (E.D. Mich. filed September 19, 2019).

^{xiii} *United States v. City of Troy, Michigan*, 592 F. Supp. 3d 591, 604 (E.D. Mich. 2022).

^{xiv} *United States v. City of Farmersville, Texas*, 4:19-CV-00285 (E.D. Tex. filed April 16, 2019).

^{xv} *United States v. Township of Jackson*, 3:20-CV-06109 (D. N.J. filed May 20, 2020).

^{xvi} *Rocky Mountain Christian Church v. Board of County Com’rs.*, 613 F.3d 1229, 1238 (10th Cir. 2010).

^{xvii} *United States v. Township of Toms River, NJ*, 3:21-CV-04633 (D. N.J. filed March 10, 2021).

EXHIBIT B

RLUIPA Question & Answers

Statement of the Department of Justice on the Land Use Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc to 2000cc-5, is a civil rights law that protects individuals and religious assemblies and institutions from discriminatory and unduly burdensome land use regulations.¹ After hearings in which Congress heard that religious assemblies and institutions were disproportionately affected, and in fact were often actively discriminated against, in local land use decisions, Congress passed RLUIPA unanimously in 2000. President Clinton signed RLUIPA into law on September 22, 2000.

Congress heard testimony that zoning authorities were frequently placing excessive or unreasonable burdens on the ability of congregations and individuals to exercise their faith with little to no justification and in violation of the Constitution. Congress also heard testimony that religious institutions often faced both subtle and overt discrimination in zoning, particularly if those institutions involved minority, newer, smaller, or unfamiliar religious groups and denominations.²

Congress also heard testimony that, as a whole, religious institutions were treated worse than comparable secular institutions by zoning codes and zoning authorities. As RLUIPA's Senate sponsors, Senator Hatch and the late Senator Kennedy, said in their joint statement issued upon the bill's passage: "Zoning codes frequently exclude churches in places where they permit theaters, meetings halls, and other places where large groups of people assemble for secular purposes. . . . Churches have been denied the right to meet in rented storefronts, in abandoned schools, in converted funeral homes, theaters, and skating rinks—in all sorts of buildings that were permitted when they generated traffic for secular purposes."³

Congress further heard testimony that zoning authorities often placed excessive burdens on the ability of congregations and individuals to exercise their faiths without sufficient justification, in violation of the Constitution.

RLUIPA provides a number of important protections for the religious freedom of persons, places of worship, religious schools, and other religious assemblies and institutions, including:

- *Protection against substantial burdens on religious exercise:* RLUIPA prohibits the implementation of any land use regulation that imposes a "substantial burden"

¹ This Statement deals with RLUIPA's land use provisions. Another section of RLUIPA protects the religious freedom of persons confined to prisons and certain other institutions.

² 146 CONG. REC. S7774 (daily ed. July 27, 2000) (joint statement of Senators Hatch and Kennedy).

³ *Id.* at S7774-75.

on the religious exercise of a person or religious assembly or institution except where justified by a “compelling governmental interest” that the government pursues in the least restrictive way possible.⁴

- *Protection against unequal treatment for religious assemblies and institutions:* RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.⁵
- *Protection against religious or denominational discrimination:* RLUIPA prohibits discrimination “against any assembly or institution on the basis of religion or religious denomination.”⁶
- *Protection against total exclusion of religious assemblies:* RLUIPA provides that governments must not totally exclude religious assemblies from a jurisdiction.⁷
- *Protection against unreasonable limitation of religious assemblies:* RLUIPA states that governments must not unreasonably limit “religious assemblies, institutions, or structures within a jurisdiction.”⁸

RLUIPA’s protections can be enforced by the Department of Justice or by private lawsuits. In the eighteen years since its passage, RLUIPA has been applied in a wide variety of contexts and has been the subject of substantial litigation in the courts. It is a complex statute, with five separate provisions which protect religious exercise in different but sometimes overlapping ways.

In order to assist persons and institutions in understanding their rights under RLUIPA, and to assist municipalities and other government entities in understanding the requirements that RLUIPA imposes, the Department of Justice has created this summary and accompanying questions and answers. This document rescinds and replaces a prior version, released in 2010, which was not fully consistent with the Attorney General’s Memorandum on Guidance Documents of November 16, 2017.⁹ This non-binding guidance document is just that: non-binding guidance to individuals, religious institutions, and local officials about existing law. It is not intended to create any new obligations or requirements, nor establish binding standards by which the Department of Justice will determine compliance with RLUIPA. This document is not intended to compel anyone into taking any action or refraining from taking any action—indeed, the Department will not bring any enforcement actions based on noncompliance with this document.¹⁰ Rather, this document is intended to describe the various provisions of the

⁴ RLUIPA, 42 U.S.C. § 2000cc(a).

⁵ RLUIPA, 42 U.S.C. § 2000cc(b)(1).

⁶ RLUIPA, 42 U.S.C. § 2000cc(b)(2).

⁷ RLUIPA, 42 U.S.C. § 2000cc(b)(3)(A).

⁸ RLUIPA, 42 U.S.C. § 2000cc(b)(3)(B).

⁹ Available at www.justice.gov/opa/press-release/file/1012271/download.

¹⁰ See Memorandum from the Associate Attorney General on Limiting Use of Agency Guidance Documents in Affirmative Civil Rights Cases, available at www.justice.gov/file/1028756/download.

statute in a simple and straightforward manner and to provide examples of how some courts have interpreted and applied the law in various contexts. Such examples are purely illustrative and do not necessarily reflect binding law.

Please note that this guidance document is not a final agency action, has no force or effect of law, and may be rescinded or modified in the Department's complete discretion.

Date: June 13, 2018

Questions and Answers on the Land Use Provisions of RLUIPA

1. Who is protected and what types of activities are covered by RLUIPA?

RLUIPA protects the religious exercise of “persons,” defined to include religious assemblies and institutions in addition to individuals.¹¹ Courts have applied RLUIPA, for example, in cases involving houses of worship,¹² individuals holding prayer meetings in their homes,¹³ religious schools,¹⁴ religious retreat centers,¹⁵ cemeteries,¹⁶ and faith-based social services provided by religious entities.¹⁷

2. What does “religious exercise” include?

RLUIPA provides that “religious exercise” includes any exercise of religion, “whether or not compelled by, or central to, a system of religious belief.”¹⁸ Thus, a county or municipality cannot avoid the force of RLUIPA by asserting that a particular religious activity is something that a religious group merely wants to do rather than something that it must do. For example, a town could not claim that Sunday school classes are not religious exercise because they are less central to a church’s beliefs or less compulsory than worship services.¹⁹

RLUIPA also specifies that “[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise”²⁰ This provision makes clear that religious exercise under RLUIPA includes construction or expansion of places of worship and other properties used for religious exercise.²¹

¹¹ RLUIPA, 42 U.S.C. § 2000cc(a).

¹² See, e.g., *Guru Nanak Sikh Soc’y v. Cty. of Sutter*, 456 F.3d 978, 986-87 (9th Cir. 2006); *Saints Constantine and Helen Greek Orthodox Church v. City of New Berlin*, 396 F.3d 895, 897 (7th Cir. 2005).

¹³ See, e.g., *Konikov v. Orange Cty.*, 410 F.3d 1317, 1320-21 (11th Cir. 2005) (meetings in rabbi’s home).

¹⁴ See *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 344 (2d Cir. 2007).

¹⁵ See *DiLaura v. Twp. of Ann Arbor*, 112 F. App’x 445, 446 (6th Cir. 2004).

¹⁶ See *Roman Catholic Diocese of Rockville Ctr. v. Vill. of Old Westbury*, 128 F. Supp. 3d 566, 571 (E.D.N.Y. 2015).

¹⁷ See, e.g., *Harbor Missionary Church Corp. v. City of San Buenaventura*, 642 F. App’x. 726, 729 (9th Cir. 2016); *Layman Lessons, Inc. v. City of Millersville*, 636 F. Supp. 2d 620, 648-50 (M.D. Tenn. 2008).

¹⁸ RLUIPA, 42 U.S.C. § 2000cc-5(7)(A).

¹⁹ See *Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 545 (S.D.N.Y. 2006) (classes with Jewish content are religious exercise for RLUIPA purposes whether or not they are “core religious practice.”); *Living Water Church of God v. Charter Twp. of Meridian*, 384 F. Supp. 2d 1123, 1130 (W.D. Mich. 2005) (use of church for school and other ministries of the church were religious exercise for purposes of RLUIPA), *rev’d on other grounds*, 258 F. App’x 729 (6th Cir. 2007).

²⁰ RLUIPA, 42 U.S.C. § 2000cc-5(7)(B).

²¹ See, e.g., *Chabad Lubavitch of Litchfield County, Inc. v. Borough of Litchfield*, No. 3:09-cv-1419, 2016 WL 370696, *18 (D. Conn. 2016); *Congregational Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 424 (S.D.N.Y. 2015) (citing *Sherbert v. Verner*, 374 U.S. 398, 403 (1963)).

Courts have held that “religious exercise” covers a wide range of activities, including operation of various faith-based social services facilities;²² accessory uses such as fellowship halls, parish halls and similar buildings or rooms used for meetings, religious education, and similar functions;²³ operation of a religious retreat center in a house;²⁴ religious gatherings in homes;²⁵ and construction or expansion of religiously affiliated schools, even where the facilities would be used for both secular and religious educational activities.²⁶

3. Who is bound by RLUIPA’s requirements?

RLUIPA applies to states (including state departments and agencies) and their subdivisions, such as counties, municipalities, villages, towns, cities, city councils, planning boards, zoning boards, and zoning appeals boards.²⁷

4. Does RLUIPA exempt religious assemblies and institutions from local zoning laws?

No. RLUIPA is not a blanket exemption from zoning laws.²⁸ As a general matter, religious institutions must apply for the same permits, follow the same requirements, and go through the same land use processes as other land users.²⁹ But RLUIPA by its terms prohibits a local government from applying zoning laws or regulations in a way that:

- Substantially burdens religious exercise without a compelling justification pursued through the least restrictive means;
- Treats religious uses less favorably than nonreligious assemblies and institutions;
- Discriminates based on religion or religious denomination; or
- Totally or unreasonably restricts religious uses in the local jurisdiction.

When there is a conflict between RLUIPA and the zoning code or how it is applied, RLUIPA, as a federal civil rights law, takes precedence.³⁰

²² See notes to Question and Answer 1, above.

²³ See *Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp. 2d 309, 319 (D. Mass. 2006).

²⁴ See *DiLaura*, 112 F. App’x at 446.

²⁵ See *Konikov*, 410 F.3d at 1320-21.

²⁶ See *Westchester Day Sch.*, 504 F.3d at 347.

²⁷ RLUIPA, 42 U.S.C. 2000cc-5(4).

²⁸ See *World Outreach Conference Ctr. v. City of Chicago*, 591 F.3d 531, 539 (7th Cir. 2009); see also 146 CONG. REC. S7776.

²⁹ See, e.g., *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 762 (7th Cir. 2003); *Anselmo v. Cty. of Shasta*, 873 F. Supp. 2d 1247, 1262 (E.D. Cal. 2012).

³⁰ *Holy Ghost Revival Ministries v. City of Marysville*, 98 F. Supp. 3d 1153, 1165 (W.D. Wash. 2015) (zoning laws that conflict with RLUIPA must yield under the Supremacy Clause).

5. Are there occasions when a religious assembly or institution does not have to apply for zoning approval, and appeal any denial, before it has recourse to RLUIPA?

As a practical matter, applying for a zoning permit, special use permit, conditional use permit, special exception, variance, rezoning, or other zoning procedure, and appealing within that system in case of denials, is often the fastest and most efficient way to obtain ultimate approval.

Some courts have held that, in some circumstances, religious institutions need not make an application or appeal before filing a RLUIPA lawsuit. These include settings where further application or appeal would be futile under the circumstances;³¹ there would be excessive delay, uncertainty, or expense;³² or if the application requirements are discriminatory on their face.³³

6. RLUIPA applies to any “land use regulation.” What does that mean?

RLUIPA defines land use regulation as a “zoning or landmarking law, or the application of such a law, that limits or restricts a claimant’s use or development of land.”³⁴ Zoning laws include statutes, ordinances, or codes that determine what type of building or land use can be located in what areas and under what conditions.³⁵ In addition to requests for variances, rezonings, special use permits, conditional use permits, occupancy permits, site plans approvals, and other typical zoning actions, some courts have construed “zoning law” to encompass things such as environmental regulations³⁶ or sewage requirements³⁷ that are integrated into the zoning process. Landmarking laws are restrictions that municipalities place on specific buildings or sites to preserve those that are deemed significant for historical, architectural, or cultural reasons.³⁸

Some courts have held that RLUIPA’s definition of land use regulation, however, does not extend to every type of law involving land, such as fire codes,³⁹ the Americans with

³¹ *World Outreach*, 591 F.3d at 537.

³² *Guru Nanak Sikh Soc’y*, 456 F.3d at 991; *Saints Constantine and Helen Greek Orthodox Church*, 396 F.3d at 901.

³³ See *Digrugilliers v. City of Indianapolis*, 506 F.3d 612, 615 (7th Cir. 2007).

³⁴ RLUIPA, 42 U.S.C. § 2000cc-5(5).

³⁵ See *Martin v. Houston*, 196 F. Supp. 3d 1258, 1264 (M.D. Ala. 2016).

³⁶ *Fortress Bible Church v. Feiner*, 694 F.3d 209, 216 (2d Cir. 2012).

³⁷ *United States v. Cty. of Culpeper*, 245 F. Supp. 3d 758, 766 (W.D. Va. 2017).

³⁸ See *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 129 (1978); *Temple B’Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349, 1353 (11th Cir. 2013).

³⁹ See *Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007); *Lighthouse Cmty. Church of God v. Southfield*, No. 05-40220, 2007 WL 1017004 (E.D. Mich. Apr. 2, 2007); *Affordable Recovery House v. City of Blue Island*, No. 12-CV-4241, 2016 WL 1161271, at *6 (N.D. Ill. Sep. 21, 2016).

Disabilities Act's building accessibility requirements,⁴⁰ an ordinance requiring all land development to tap into municipal sewer connections,⁴¹ or stormwater remediation fees.⁴²

7. Does RLUIPA apply to local governments using eminent domain to take property owned by religious institutions?

"Eminent domain" refers to government taking of private property for public use with just compensation. Some courts have held that, as a general matter, eminent domain is not the application of a zoning or landmarking law, and thus RLUIPA will not apply.⁴³ However, where municipalities have tried to use eminent domain to short-circuit the zoning process for places of worship that have applied for zoning approval, other courts have found that such actions may be covered by RLUIPA.⁴⁴

8. Can places of worship still be landmarked?

Yes, places of worship can be landmarked.⁴⁵ However, like any other land use regulation, landmarking designations that impose a substantial burden on religious exercise must be justified by compelling governmental interests and pursued in the least restrictive ways possible.⁴⁶ Landmarking regulations also must be applied in a nondiscriminatory manner.⁴⁷

9. What kinds of burdens on religious exercise are "substantial burdens" under RLUIPA?

A court's substantial burden inquiry is fact-intensive. Courts look at the degree to which a zoning or landmarking restriction is likely to impair the ability of a person or group to engage in the religious exercise in question.⁴⁸ Whether a particular restriction or set of restrictions will be a substantial burden on a complainant's religious exercise will vary based on the context. Courts have looked at factors such as the size and resources of the burdened party,⁴⁹ the actual religious needs of an individual or religious congregation,⁵⁰ the level of current or

⁴⁰ *Anselmo v. Cty. of Shasta*, 873 F. Supp. 2d 1247, 1256-57 (E.D. Cal. 2012).

⁴¹ *See Baptist Church of Leechburg v. Gilpin Twp.*, 118 F. App'x 615, 617 (3d Cir. 2004).

⁴² *Shaarei Tfiloh Congregation v. Mayor and City Council of Baltimore*, Nos. 2645, 2572, 2018 WL 1989534, at *23 (Md. Ct. Spec. App. Apr. 27, 2018).

⁴³ *See, e.g., St. John's United Church of Christ v. City of Chicago*, 401 F. Supp. 2d 887, 899 (N.D. Ill. 2005)

⁴⁴ *See Albanian Associated Fund v. Twp. of Wayne*, No. 06-cv-3217, 2007 WL 4232966, at *3 (D.N.J. Nov. 29, 2007); *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1230 (C.D. Cal. 2002).

⁴⁵ *See, e.g., Trinity Evangelical Lutheran Church v. City of Peoria*, 591 F.3d 531, 533 (7th Cir. 2009).

⁴⁶ RLUIPA, 42 U.S.C. § 2000cc(a)(1); *see also Trinity Evangelical Lutheran*, 591 F.3d at 533.

⁴⁷ RLUIPA, 42 U.S.C. § 2000cc(b)(2).

⁴⁸ *See World Outreach*, 591 F.3d at 537, 539; *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 1000 (7th Cir. 2006).

⁴⁹ *See World Outreach*, 591 F.3d at 537, 539.

⁵⁰ *See Vision Church*, 468 F.3d at 1000.

imminent space constraints,⁵¹ whether alternative properties are reasonably available,⁵² the history of a complainant's efforts to locate within a community,⁵³ the absence of good faith by the zoning authorities,⁵⁴ and many other factors.

Examples of actions that some courts have found to constitute a substantial burden on religious exercise under RLUIPA include:

- effectively barring use of a particular property for religious activity;⁵⁵
- imposing a significantly great restriction on religious use of a property;⁵⁶ and
- creating significant delay, uncertainty, or expense in constructing or expanding a place of worship, religious school, or other religious facility.⁵⁷

Some courts have, for example, found substantial burdens on religious exercise in a denial of a church construction permit due to onerous off-street parking requirements imposed by a city,⁵⁸ a denial of approval for construction of a parish center,⁵⁹ a denial of expansion plans for a religious school,⁶⁰ and a denial of an application to convert a building's storage space to religious use.⁶¹

Conversely, other courts have found no substantial burden violation when a church was denied the amount of off-street parking it would have preferred when there were reasonable parking alternatives available,⁶² when a religious high school was denied the ability to operate a commercial fitness center and dance studio out of a portion of its building,⁶³ and when a church was barred from demolishing an adjacent landmarked building it had purchased in order to construct a family life center, as there was other space on the church's campus that would be suitable.⁶⁴

⁵¹ See *Rocky Mountain Christian Church v. Bd. of Cty. Comm'rs of Boulder*, 612 F. Supp. 2d 1163, 1172 (D. Colo. 2009), *aff'd*, 613 F.3d 1229, 1236 (10th Cir. 2010).

⁵² See *Petra Presbyterian Church*, 489 F.3d at 851; *World Outreach*, 591 F.3d at 539; *Midrash Sephardi v. Town of Surfside*, 366 F.3d 1214, 1228 (11th Cir. 2004).

⁵³ See *Guru Nanak Sikh Soc'y*, 456 F.3d at 991; *Saints Constantine and Helen Greek Orthodox Church*, 396 F.3d at 901.

⁵⁴ See *Guru Nanak Sikh Soc'y*, 456 F.3d at 991-92; *Saints Constantine and Helen Greek Orthodox Church*, 396 F.3d at 901.

⁵⁵ See *Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App'x. 729, 737 (6th Cir. 2007); *DiLaura*, 112 Fed. App'x. at 446.

⁵⁶ See *Guru Nanak Sikh Soc'y*, 456 F.3d at 988.

⁵⁷ See *Saints Constantine and Helen Greek Orthodox Church*, 396 F.3d at 901; *Guru Nanak Sikh Soc'y*, 456 F.3d at 992; *Westchester Day Sch.*, 504 F.3d at 349.

⁵⁸ See *Lighthouse Cty. Church of God v. City of Southfield*, No. 05-40220, 2007 WL 30280, at *9 (E.D. Mich. Jan 3, 2007).

⁵⁹ See *Mintz*, 424 F. Supp. 2d at 322.

⁶⁰ See *Westchester Day Sch.*, 504 F.3d at 349.

⁶¹ *Castle Hills First Baptist Church v. City of Castle Hills*, No. SA-01-CA-1149-RF, 2004 WL 546792, at *17 (W.D. Tex. Mar. 17, 2004).

⁶² *Id.*

⁶³ See *New Life Worship Ctr. v. Town of Smithfield Zoning Bd. of Review*, No. 09-0924, 2010 WL 2729280 (R.I. Super. Ct. July 7, 2010).

⁶⁴ See *Trinity Evangelical Lutheran Church*, 591 F.3d at 539.

10. RLUIPA contains a complicated description about when the “substantial burden” section will apply. Just when does the “substantial burden” test apply in a particular case?

RLUIPA applies the substantial burden test to zoning or landmarking laws that have procedures in place under which the government makes “individualized assessments of the proposed uses for the property involved.”⁶⁵ Individualized assessments may be present, some courts have held, when the government looks at and considers the particular details of a proposed land use in deciding whether to permit or deny the use.⁶⁶ RLUIPA thus generally may cover applications for variances, special use permits, special exceptions, rezoning requests, conditional use permits, zoning appeals, and similar applications for relief, since these all ordinarily involve reviewing the facts and making discretionary determinations whether to grant or reject an application.⁶⁷ Some courts have held, however, that denial of a building or occupancy permit based *solely* on a mechanical, objective basis with no discretion on the part of the decision maker would not be an individualized assessment.⁶⁸

Even if a zoning or landmarking case does not involve an individualized assessment, the substantial burden test still applies if there is federal funding involved or if the use at issue affects interstate commerce,⁶⁹ as might be the case with some construction or expansion projects.⁷⁰

11. What are examples of compelling interests that will permit local governments to impose substantial burdens on religious exercise?

A government cannot impose a substantial burden on religious exercise unless it can prove both that it is pursuing a compelling governmental interest, and that it is using the means that are the least restrictive of religious freedom.⁷¹ In the RLUIPA context, some courts have interpreted “compelling interest” to mean an interest of the “highest order.”⁷² As one court described it, an interest of the highest order typically involves “some substantial threat to public safety, peace, or order.”⁷³ Some courts have ruled, for

⁶⁵ RLUIPA, 42 U.S.C. § 2000cc (a)(2)(C).

⁶⁶ See *Guru Nanak Sikh Soc’y*, 456 F.3d at 986-87.

⁶⁷ *Id.*; see also *Konikov*, 410 F.3d at 1323; *Freedom Baptist Church of Del. Cty. v. Twp. of Middletown*, 204 F. Supp. 2d 857, 868 (E.D. Pa. 2002) (“[L]and use regulations through zoning codes necessarily involve case-by-case evaluations of the propriety of proposed activity against extant land use regulations.”).

⁶⁸ See, e.g., *Grace United Methodist v. Cheyenne*, 451 F.3d 643, 654 (10th Cir. 2006) (non-discretionary denial of variance not individualized assessment).

⁶⁹ RLUIPA, 42 U.S.C. § 2000cc(a)(2)(b).

⁷⁰ See *Westchester Day Sch.*, 504 F.3d at 354.

⁷¹ RLUIPA, 42 U.S.C. § 2000cc-2(b).

⁷² *Westchester Day Sch.*, 504 F.3d at 353.

⁷³ *Congregational Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 456 (S.D.N.Y. 2015) (citing *Sherbert v. Verner*, 374 U.S. 398, 403 (1963)).

example, that a municipality's asserted interests in revenue generation and economic development⁷⁴ or aesthetics⁷⁵ were not compelling.

While increased traffic can implicate safety concerns, some courts have ruled that a county or municipality cannot simply point to an interest in traffic safety in the abstract as a compelling interest justifying a substantial burden on religious exercise.⁷⁶ Rather, according to these courts, the local government must show that it has a compelling interest in achieving that interest through the particular restriction at issue, such as safety interests in regulating traffic flow on the particular street at issue.⁷⁷

Even where an interest is compelling, RLUIPA requires that it must be pursued through the least restrictive means.⁷⁸ That is, if there is another way that the government could achieve the same compelling interest that would impose a lesser burden on religious exercise, it must choose that way rather than the more burdensome option.⁷⁹

12. What does RLUIPA require of local governments with regard to treating religious assemblies and institutions as favorably as nonreligious assemblies and institutions?

RLUIPA contains a section known as the “equal terms” provision. It provides that “[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.”⁸⁰

This provision was meant to address the problem of zoning codes, either facially or in application, excluding places of worship where secular assemblies are permitted. Senators commented on the problem of houses of worship being excluded from places where theaters, meeting halls, private clubs, and other secular assemblies would be permitted.⁸¹

Determining if a religious assembly is treated on “less than equal terms” than a secular assembly or institution requires a comparison of how the two types of entities are treated on the face of a zoning code or in its application.⁸² Courts have differed regarding how

⁷⁴ See *Cottonwood Christian Ctr.*, 218 F. Supp. 2d at 1228-29.

⁷⁵ See *Westchester Day Sch.*, 504 F.3d at 353.

⁷⁶ See *id.*

⁷⁷ *Id.*

⁷⁸ RLUIPA, 42 U.S.C. § 2000cc(a)(1)(b).

⁷⁹ See, e.g., *Yellowbear v. Lambert*, 741 F.3d 48, 56-57 (10th Cir. 2014).

⁸⁰ RLUIPA, 42 U.S.C. § 2000cc(b)(1).

⁸¹ 146 Cong. Rec. 16698 (daily ed. 2000) (Joint Statement of Senators Hatch and Kennedy).

⁸² See, e.g., *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1173 (9th Cir. 2011); *Third Church of Christ, Scientist, of New York City v. City of New York*, 626 F.3d 667, 669 (2d Cir. 2010).

such a comparison is made, and thus the precise legal test for determining when this provision is violated will vary depending on the judicial circuit in which the case arises.⁸³

Examples of cases in which some courts have found equal terms violations include situations where places of worship were forbidden but private clubs were permitted;⁸⁴ where religious assemblies were prohibited but auditoriums, assembly halls, community centers, senior citizen centers, civic clubs, day care centers, and other assemblies were allowed;⁸⁵ and where places of worship were forbidden but community centers, fraternal associations, and political clubs were permitted.⁸⁶

13. What constitutes discrimination based on religion or religious denomination under RLUIPA?

RLUIPA bars imposition or implementation of a land use regulation that discriminates on the basis of religion or religious denomination.⁸⁷ Courts have held that this bar applies to application of land use regulations that are discriminatory on their face, as well as land use regulations that are facially neutral but applied in a discriminatory manner based on religion or religious denomination.⁸⁸ Thus, if a zoning permit is denied because municipal officials do not like members of a particular religious group, or if for any other reason an applicant is denied a zoning permit it would have granted had it been part of a different religion or religious denomination, RLUIPA has been violated. Because this section applies to discrimination based on either religion *or religious denomination*, it can apply to situations where a city may not be discriminating against all members of a religion, but merely a particular sub-group or sect.

14. What does it mean for a local government to totally exclude religious uses from a jurisdiction?

RLUIPA prohibits local governments from “totally exclud[ing] religious assemblies from a jurisdiction.”⁸⁹ For example, if a city, town, or county had no location where religious uses are permitted, that would be a facial violation of RLUIPA.⁹⁰

⁸³ See, e.g., *River of Life Kingdom Ministries v. Vill. of Hazel Crest*, 611 F.3d 367, 371 (7th Cir. 2010); *Lighthouse Inst. for Evangelism*, 510 F.3d at 269; *Midrash Sephardi*, 366 F.3d at 1232.

⁸⁴ *Midrash Sephardi*, 366 F.3d at 1233; *Vietnamese Buddhism Study Temple in Am. v. City of Garden Grove*, 460 F. Supp. 2d 1165, 1174 (C.D. Cal. 2006).

⁸⁵ *Digrugilliers*, 506 F.3d at 614-15.

⁸⁶ *Petra Presbyterian Church*, 489 F.3d at 846.

⁸⁷ RLUIPA, 42 U.S.C. § 2000cc-2(b)(2).

⁸⁸ See *United States v. Vill. of Airmont*, No. 7:05-cv-5520, at 17-19 (S.D.N.Y. Nov. 12, 2008) (order denying motion to dismiss).

⁸⁹ RLUIPA, 42 U.S.C. § 2000cc-2(b)(3)(A).

⁹⁰ See *Vision Church*, 468 F.3d at 990.

15. What does it mean for a local government to impose unreasonable limitations on a religious assembly, institution, or structure?

RLUIPA prohibits land use regulations that “unreasonably limit[]” religious assemblies, institutions, or structures within a jurisdiction.⁹¹ One court has concluded that a municipality will violate this provision if its land use laws, or their application, deprive religious institutions and assemblies of reasonable opportunities to use and construct buildings within that jurisdiction.⁹² Another court has held that determination of reasonableness depends on a review of all of the facts in a particular jurisdiction, including the availability of land and the economics of religious organizations.⁹³ Some courts have found unreasonable limitations where regulations effectively left few sites for construction of houses of worship, such as through excessive frontage and spacing requirements, or where zoning restrictions imposed steep and questionable expenses on applicants.⁹⁴

16. When must someone file suit under RLUIPA?

RLUIPA lawsuits brought by private plaintiffs must be filed in state or federal court within four years of the alleged RLUIPA violation.⁹⁵

17. What is the Department of Justice’s role in enforcing RLUIPA?

The Department of Justice is authorized to file a lawsuit under RLUIPA for declaratory or injunctive relief, but not for damages.⁹⁶ In a RLUIPA lawsuit, the Department might seek, for example, an order from a court requiring a municipality that has violated RLUIPA to amend its zoning code or grant specific zoning permits to a place of worship, religious school, or other religious use. The Department may not, however, seek monetary awards on behalf of persons or institutions that have been injured. To recover damages for RLUIPA violations, alleged victims must file private suits.⁹⁷ The Department reviews each case on its merits and the law in the jurisdiction in question. The Department does not base the decision of whether to bring an enforcement action on compliance or noncompliance with this guidance document.

Responsibility for coordinating RLUIPA land use investigations and suits has been assigned to the Housing and Civil Enforcement Section of the Civil Rights Division.

⁹¹ RLUIPA, 42 U.S.C. § 2000cc-2(b)(3)(B).

⁹² *Rocky Mountain Christian Church v. Bd. of Cty. Comm’rs of Boulder*, 613 F.3d 1229, 1238 (10th Cir. 2010).

⁹³ *Vision Church*, 468 F.3d at 990 (citing 146 Cong. Rec. E1563 (daily ed. Sept. 22, 2000) (statement of Rep. Canady)).

⁹⁴ *Rocky Mountain Christian Church*, 613 F.3d at 1238; see also *Chabad of Nova, Inc. v. City of Cooper City*, 575 F. Supp. 2d 1280, 1290-91 (S.D. Fla. 2008) (imposition of “inflated costs” and onerous frontage and spacing requirements on houses of worship constitute unreasonable limitations).

⁹⁵ 28 U.S.C. § 1658; *Al-Amin v. Shear*, 325 F. App’x. 190, 193 (4th Cir. 2009); *Congregation Adas Yereim v. City of New York*, 673 F. Supp. 2d 94, 108 (E.D.N.Y. 2009).

⁹⁶ RLUIPA, 42 U.S.C. § 2000cc-2(f).

⁹⁷ RLUIPA, 42 U.S.C. § 2000cc-2(a).

That Section investigates and brings RLUIPA lawsuits, both on its own and in conjunction with United States Attorney's offices around the country. If you wish to bring a potential case to the attention of the Department of Justice, you should do so as soon as possible to allow adequate time for review.

The Department receives many complaints from individuals whose rights under RLUIPA may have been violated. It cannot open full investigations and bring suit in all cases. The Department generally endeavors to select cases that involve especially important or recurring issues, that will set precedents for future cases, that involve particularly serious violations, or that will otherwise advance the Department of Justice's goals of protecting religious liberty. In addition to opening investigations and filing suits, the Department sometimes files statements of interest and friend-of-the-court briefs in privately filed suits to highlight important issues of law. Individuals and institutions who believe their RLUIPA rights have been violated are encouraged to seek advice from a private attorney to protect their rights, in addition to contacting the Department of Justice.

18. How can someone contact the Department of Justice about a RLUIPA matter?

The Civil Rights Division's Housing and Civil Enforcement Section may be reached by phone at:

(202) 514-4713
(800) 514-1116
(202) 305-1882 (TTY)
(202) 514-1116 (fax).

The mailing address is:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Housing and Civil Enforcement Section, NWB
Washington, D.C. 20530

Email: RLUIPA.complaints@usdoj.gov

More information about RLUIPA is available at www.justice.gov/crt/rluipa

EXHIBIT C

DOJ Report



**Report on the Twentieth Anniversary of the
Religious Land Use and Institutionalized Persons Act**

September 22, 2020



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 22, 2020

I am very pleased, on behalf of the Civil Rights Division of the Department of Justice, to release the enclosed Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act (RLUIPA).

The Civil Rights Division is charged with enforcing many of our nation's most important civil rights laws. From laws barring segregation and discrimination based on race in schools, public accommodations, employment, voting, and other areas that were the chief motivating factors in the creation of the Division and the passage of the landmark Civil Rights Acts of the 1960's, to later laws protecting broad rights such as the rights of persons with disabilities to participate fully in public life or protecting the basic rights of persons confined to institutions, the Division works to protect the civil rights of all Americans. This includes many laws protecting the rights of persons to be free from discrimination and violence based on religion, and upholding their religious liberty.

For more than four centuries, religious people from all over the world have sought refuge here. Often, these people did so to escape persecution by monarchs, dictators, and other despots. Then, when our ancestors established the United States of America, the Founders adopted the First Amendment to the United States Constitution and thereby enacted into law the right of all people to exercise religion. Two decades ago, Congress extended these protections when it passed RLUIPA. RLUIPA law protects religious people and their institutions from unduly burdensome or discriminatory land use regulations, and protects the religious rights of persons confined to institutions.

The United States is, and must always remain, committed to the right of all people to practice their faith and worship together. The enclosed report on RLUIPA shows one of important tools Congress has provided to uphold that commitment, and how the Department of Justice has worked to enforce this important law. The United States Department of Justice will continue to fight against any unlawful deprivation of the right of all people to practice their faith.

Eric S. Dreiband

Eric S. Dreiband
Assistant Attorney General

Introduction

This year marks the 20th anniversary of the passage of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA),¹ a landmark federal law that has helped secure the ability of thousands of individuals and institutions to practice their faiths freely and without discrimination.

RLUIPA provides protection for religious liberty in two very different settings. First, it protects the rights of religious individuals and institutions to use land for religious purposes, such as places of worship and religious schools. Second, it protects the rights of persons confined to institutions, such as prisons or jails, state-run psychiatric hospitals, or nursing homes, to exercise their faiths.

The Department of Justice has a central role in the enforcement of RLUIPA, through litigation, investigations, settlements, court filings, and public education. Over the past twenty years, the Department has protected the religious liberty of people of many different faiths throughout the country through enforcement of RLUIPA, both through action in the courts but also by informing officials of their obligations under RLUIPA, prompting voluntary compliance. The Department's RLUIPA enforcement program is part of the broader effort by the Department of Justice to protect the religious exercise of individuals and communities through enforcement of laws against religious discrimination, laws protecting people from threats and violence based on their faith, and laws protecting religious freedom.

This report chronicles the history and purpose of RLUIPA, describes the law's various provisions and how courts have interpreted them over the first 20 years, and describes the breadth and success of the Department of Justice's enforcement program.

Federal Law Protections for Religious Liberty

RLUIPA is just the most recent example of major federal legislation protecting religious freedom. The freedom to exercise one's faith is among our nation's oldest and most cherished rights. This right is the first freedom enshrined in our Constitution's First Amendment and is protected by a range of federal laws.

¹ 42 U.S.C. §§ 2000cc *et seq.*

Throughout our history, Congress and the federal government have acted to protect individuals and groups facing discrimination based on religion and to protect their rights to practice their faith free from such discrimination. During this time, the Department has fully and vigorously enforced these laws to ensure that the fundamental right to exercise one's religion is a right secured for all Americans.

For example, the landmark Civil Rights Act of 1964 was passed principally to address the legacy and ongoing problem of racial discrimination and to provide nationwide remedies to combat it. Nonetheless, Congress also included religion along with race and color among the categories protected in provisions of the Civil Rights Act barring discrimination in employment, education, public accommodations, and public facilities (national origin discrimination also was included in each of these, and sex discrimination was included in the education and employment provisions). In 1972, Congress amended Title VII of the Civil Rights Act to provide that discrimination based on religion includes failure of employers to reasonably accommodate religious observances and practices of employees, unless it would cause an undue hardship on an employer.

Federal criminal laws against religion-based violence also are an important component of federal laws protecting religious freedom. George Washington noted in his Letter to the Hebrew Congregation in Newport, Rhode Island in 1790 that the "inherent natural rights" of religious freedom included the right to practice one's faith in peace and without fear of

attack, and that "every one shall sit in safety under his own vine and figtree, and there shall be none to make him afraid." In 1968, Congress enacted the first federal hate crimes law covering acts of violence based on religion, recognizing the fundamental right to practice one's faith in peace. This principle also of course includes the right of people to be left in peace when they gather in community at a place of worship. Thus in 1996, Congress responded to a rash of arsons, which targeted many places of worship but particularly African-American churches, by passing the Church Arson Prevention Act, 18 U.S.C. § 247, making it a federal crime to commit arson or vandalism against a church, synagogue, mosque, or other place of worship, or to otherwise violently interfere with one or more person's free exercise of religion.

Recognizing that religious freedom requires not merely protections *from* discrimination and violence, but often requires proactive protection *for* religious exercise that conflicts with various requirements imposed by the government, Congress in 1993 passed the Religious

Religious liberty is a wonderful ideal, but without practical safeguards, zoning laws may be used to suppress religious freedoms. Fortunately, we have RLUIPA which helps protect religious organizations from onerous zoning laws. Today, thanks in large part to RLUIPA, my local church is gathering regularly at our building for public worship.

Jamie Sinclair, pastor of Christian Fellowship Centers, Canton, N.Y.

Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb *et seq.*, which requires that government action that imposes a “substantial burden” on religious exercise must be supported by a “compelling governmental interest” pursued through the least restrictive means necessary. RFRA still applies to the federal government, but in *City of Boerne v. Flores*, 521 U.S. 507 (1997), the Supreme Court held that applying RFRA broadly to state and local governments exceeded Congress’s power. *City of Boerne* involved a land-use dispute between a Catholic Archdiocese that wanted to expand a church in a historic district and local zoning officials who had denied it the necessary permit. That decision limiting the scope of RFRA led directly to the passage of RLUIPA.

The History of RLUIPA

After the Supreme Court invalidated RFRA as applied to state and local governments, Congress began to look at other ways that it could, in a constitutional manner, protect religious liberty from infringement by state and local officials.



Photo: President Bill Clinton signs RLUIPA into law.

Over the course of three years, Congress held nine hearings to examine religious discrimination in land-use decisions. These hearings unearthed “massive evidence” of widespread discrimination by state and local officials in cases involving individuals and institutions seeking

to use land for religious purposes.² Congress found that religious groups often encountered overt and subtle forms of discrimination when seeking zoning approval for places of worship—most often impacting minority faiths and newer, smaller, or unfamiliar denominations.³ Moreover, Congress found that “[r]eligious discrimination is sometimes coupled with racial and ethnic discrimination.”⁴

Congress also learned that, as a whole, religious institutions were often treated worse in zoning decisions than comparable secular institutions. As the bill’s lead sponsors, Senators Edward Kennedy and Orrin Hatch, noted in their joint statement upon the bill’s passage, “Zoning codes frequently exclude churches in places where they permit theaters, meetings halls, and other places where large groups of people assemble for secular purposes. . . . Churches have been denied the right to meet in rented storefronts, in abandoned schools, in converted funeral homes, theaters and skating rinks—in all sorts of buildings that were permitted when they generated traffic for secular purposes.”⁵

Congress also found evidence that zoning ordinances subjected religious assemblies to unbounded and highly discretionary permitting proceedings, often resulting in discrimination or the imposition of significant burdens on religious exercise.⁶

Congress likewise determined that legislation was needed to protect the religious-freedom rights of persons institutionalized in facilities like prisons, jails, juvenile facilities, state-run nursing homes and facilities for people with disabilities. In its fact-finding, Congress noted that “some institutions restrict religious liberty in egregious and unnecessary ways,” and that “prison

Getting RLUIPA across the finish line was a massive bipartisan undertaking, requiring years of hard work, negotiation, and compromise. But in the end, former Senator Ted Kennedy and I were able to pass a bill that united people of all faiths by preventing various forms of religious discrimination. I am grateful to my friends on both sides of the aisle who joined us in protecting religious liberty—our first and most fundamental freedom.

Former Senator Orrin Hatch, Sept. 2020

² See H.R. Rep. No. 106-219, 18-24 (1999); 146 Cong. Rec. 16698 (2000) (Joint Statement of Senators Hatch and Kennedy).

³ *Id.*; H.R. Rep. No. 106-219 at 23-24.

⁴ *Id.* at 24.

⁵ Joint Statement at 16698.

⁶ H.R. Rep. 106-219 at 19-24.

officials sometimes impose frivolous or arbitrary rules.”⁷ The legislative history cited examples such as Jewish prisoners denied matzo bread at Passover, prisoners denied the ability to wear small religious symbols such as crosses that posed no security risk, and a Catholic prisoner whose private confession to a priest was recorded by prison officials.⁸

The bill had sponsors in the House and Senate that were bi-partisan and diverse.⁹ RLUIPA was supported by more than seventy religious and civil rights groups representing a great diversity of religious and ideological viewpoints such as the Leadership Conference on Civil Rights, the American Civil Liberties Union, the Baptist Joint Committee, the American Jewish Committee, the Union of Orthodox Jewish Congregations, and the Christian Legal Society.¹⁰ The Department of Justice strongly supported the bill, and worked closely with House and Senate Judiciary Committee staffs on drafting and refining the bill.¹¹

RLUIPA passed both houses of Congress unanimously and was signed into law on September 22, 2000. President Bill Clinton, upon signing the Act, stated: “Religious liberty is a constitutional value of the highest order, and the Framers of the Constitution included protection for the free exercise of religion in the very first Amendment. This Act recognizes the importance the free exercise of religion plays in our democratic society.”¹²

⁷ Joint Statement at 16699.

⁸ H.R. Rep. 106-219 at 9-10; Joint Statement at 16699.

⁹ The sponsors included, in addition to Senators Hatch and Kennedy, Senators Robert Bennett, Mike Crapo, Tom Daschle, Tim Hutchinson, Joe Lieberman, Charles Schumer, and Gordon Smith, and Representatives Sanford Bishop, Roy Blunt, Charles Canady, Merrill Cook, Chet Edwards, Barney Frank, Jerrold Nadler, Lee Terry, and Robert Wexler.

¹⁰ Joint Statement at 16701-02.

¹¹ 146 Cong. Rec. S7776 (daily ed. July 27, 2000) (letter from Assistant Attorney General Robert Raben).

¹² Presidential Statement on Signing The Religious Land Use and Institutionalized Persons Act of 2000, 36 Comp. Pres. Doc. 2168 (September 22, 2000).

Overview of RLUIPA's Provisions

RLUIPA's land-use sections provide important protections for the religious freedom of persons, places of worship, religious schools, and other religious assemblies and institutions. They codify the constitutional protections for religious freedom and against religious discrimination provided under the Free Exercise Clause, the Free Speech Clause, and the Equal Protection Clause, and provide mechanisms for enforcement of these rights.¹³ The land-use sections contains five separate provisions, which together provide comprehensive protection for individuals and religious institutions from zoning and landmarking laws that discriminate based on religion or unjustifiably infringe on religious freedom:

- Protection against substantial burdens on religious exercise: RLUIPA prohibits the implementation of any land-use regulation that imposes a “substantial burden” on the religious exercise of a person or religious assembly or institution except where justified by a “compelling governmental interest” that the government pursues in the least restrictive way possible. 42 U.S.C. § 2000cc(a).
- Protection against unequal treatment for religious assemblies and institutions: RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions. 42 U.S.C. § 2000cc(b)(1).
- Protection against religious or denominational discrimination: RLUIPA prohibits discrimination “against any assembly or institution on the basis of religion or religious denomination.” 42 U.S.C. § 2000(b)(2).
- Protection against total exclusion of religious assemblies: RLUIPA provides that governments must not totally exclude religious assemblies from a jurisdiction. 42 U.S.C. § 2000cc(b)(3)(A).
- Protection against unreasonable limitation of religious assemblies: RLUIPA states that governments must not unreasonably limit “religious assemblies, institutions, or structures within a jurisdiction.” 42 U.S.C. § 2000cc(b)(3)(B).

¹³ Joint Statement at 16699-7.

RLUIPA's institutionalized-persons section prohibits regulations that impose a "substantial burden" on the religious exercise of persons residing or confined in an "institution," unless the state or local government imposing the burden can show that the regulation serves a "compelling governmental interest" and is the least restrictive way for the government to further that interest. It covers persons in institutions as defined by the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. While most suits filed under RLUIPA address prisons and jails, the definition of "institution" in CRIPA includes state or local government-operated intermediate and long-term care facilities, mental health facilities, correctional facilities, pretrial detention facilities, and juvenile detention facilities, and these facilities also are covered by RLUIPA. Private prisons and jails are generally covered by RLUIPA because they are operated on behalf of states or municipalities. RLUIPA applies when the institution receives federal funding, or when the burden involved affects interstate commerce.

RLUIPA allows aggrieved persons to bring lawsuits under both its land-use provisions and its institutionalized-persons provision. In addition, RLUIPA authorizes the Attorney General to bring suits to enforce it. The Department of Justice may bring suits under RLUIPA for declaratory or injunctive relief, but not for monetary damages.

The text of RLUIPA is linked here:
<https://www.justice.gov/crt/title-42-public-health-and-welfare>.

RLUIPA in the Courts: 2000-2020

The Supreme Court has yet to rule on a case involving the land-use provisions of RLUIPA. The Court has, however, ruled on RLUIPA's institutionalized-persons provision on three occasions.

Institutionalized Persons

The Supreme Court held in *Cutter v. Wilkinson*, 544 U.S. 709 (2005), that the institutionalized-persons section of RLUIPA did not violate the Establishment Clause, finding that it serves to "alleviate[] exceptional government-created burdens on private religious exercise." *Id.* at 720. The Court observed that the institutionalized-persons section of RLUIPA "covers state-run institutions—mental hospitals, prisons, and the like—in which the government exerts a degree of control unparalleled in civilian society and severely disabling to private religious exercise." *Id.* at 720-21. The Court rejected the argument that RLUIPA improperly elevated religious interests above all others in violation of the Establishment Clause, noting that RLUIPA's drafters designed the law, through its compelling-interest test, to give "due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and

The existence of the RLUIPA affirms religious freedom and justice, and its enforcement is indispensable for religious organizations to safely and equally promote their teachings. As a result, the Middle Land Chan Monastery can continuously share the Buddhist teachings of mindfulness, compassion and wisdom to all people.

*Jiangui Shi
Middle Land Chan Monastery*

procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources.” *Id.* at 723 (quoting Joint Statement of Sens. Hatch and Kennedy).

In *Sossamon v. Texas*, 563 U.S. 277 (2011), the Supreme Court held that monetary damages were not available to plaintiffs under the institutionalized-persons section of RLUIPA, because the statutory text did not clearly manifest Congress’s intent to include a damages remedy and thus did not give states sufficient notice that they would waive their sovereign immunity from monetary damages under RLUIPA by accepting federal funds.

The Supreme Court addressed the key substantive issues in institutionalized-persons cases in *Holt v. Hobbs*, 574 U.S. ____ (2015). The petitioner in *Holt* was a Muslim prisoner who challenged the Arkansas Department of Corrections’ grooming policy, which prohibited beards and provided no religion-based exceptions. *Id.* at 860-61. The Supreme Court found that the policy substantially burdened the prisoner’s religious exercise, because it forced him to choose between violating his sincerely held beliefs and risking serious discipline. *Id.* at 857, 862. In *Holt*, the Court held that while security as a general matter is always a compelling governmental interest, RLUIPA, like RFRA, “requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law ‘to the person’—the particular claimant whose sincere religious exercise of religion is being substantially burdened.” *Id.* at 863. The Court held that the grooming policy violated RLUIPA because the defendant failed to prove

that prohibiting beards was the least restrictive means to further its interests in preventing prisoners from hiding contraband and quickly and reliably identifying prisoners. *Id.* at 863-65. The Court found that there were less restrictive means to further these interests, such as searching beards to limit contraband and taking pictures of prisoners with and without beards to enable speedy identification. *Id.* Furthermore, defendant did not show why it needed to take a different course from the many other correctional facilities around the country that permitted beards like the plaintiff’s. *Id.* at 865-67.

Even though communal worship is clearly a part of religious exercise, government officials aren’t always very good about protecting it. RLUIPA offers religious communities the protections they need.

Asma Uddin, Attorney and Author

Land Use

As noted, the Supreme Court has not decided any cases on the land-use sections of RLUIPA, though numerous federal courts of appeals and district courts have ruled on a wide range of issues.

On the question of substantial burden, courts “have coalesced around a totality-of-the-circumstances test, examining whether the government’s actions substantially inhibit religious exercise, rather than merely inconveniencing it.” Brief of the United States as Amicus Curiae,

Thai Meditation Association of Alabama v. City of Mobile, No. 19-12418 (11th Cir. filed Oct. 23, 2019) at 17.¹⁴

Among the factors courts have examined in making this determination are the “actual need of the congregation for new, different or additional space,” *id.* at 17-18; whether a plaintiff exercised due diligence and had a reasonable expectation that the property could be used as intended, *id.* at 20; whether the government action has imposed “delay, uncertainty, and expense” on the plaintiff, *id.* at 19; whether the government acted arbitrarily, *id.*; and whether the government denial was final or whether the plaintiff was given an opportunity to cure concerns. *Id.* at 18.

Had it not been for the existence of the federal RLUIPA statute, the Muslim community would not have won approval of its mosque needed to meet its spiritual and religious needs.

*M. Ali Chaudry, President,
Islamic Society of Basking
Ridge, NJ*

RLUIPA’s equal terms provision, barring the treatment of a religious assembly or institution on “less than equal terms with a nonreligious assembly or institution,” has generated numerous decisions in the lower courts, with varying interpretations of how to determine if a religious use is treated unequally. All the courts to some degree focus on the text and underlying purpose of the zoning ordinance in question, and evaluate whether it forbids religious assemblies and institutions that are functionally equivalent to nonreligious entities that are allowed.

For example, in *Elijah Group v. City of Leon Valley*, Texas, 643 F.3d 419, 421-422 (5th Cir. 2011), the Fifth Circuit invalidated the exclusion of a church from a “retail corridor” that despite its name allowed non-retail assemblies such as private clubs and lodges, but not places of worship. The court held that “less than equal terms” is to be measured by examining the ordinance and the criteria it sets forth, and determining if it is applied equally to religious uses. *Id.* at 424. *See also Lighthouse Institute for Evangelism v. City of Long Branch*, 510 F.3d 253, 266 (3d Cir. 2007) (question is whether religious assembly is “similarly situated as to the regulatory purpose” of the challenged ordinance). Taking an approach more focused on generally accepted zoning categories like “commercial” or “industrial” than on the specific intent of the municipality in establishing a particular zone, the Ninth Circuit struck the exclusion of a church from a downtown commercial zone when private clubs and a corrections facility were permitted in the zone. *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163

¹⁴ Citing *Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 95 (1st Cir. 2013); *Bethel World Outreach Ministries v. Montgomery Cty. Council*, 706 F.3d 548, 558 (4th Cir. 2013); *Livingston Christian Sch. v. Genoa Charter Twp.*, 858 F.3d 996, 1003-1004 (6th Cir. 2017); *Chabad Lubavitch of Litchfield Cty., Inc. v. Litchfield Historic Dist. Comm’n*, 768 F.3d 183, 195-196 (2d Cir. 2014); *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 349-351 (2d Cir. 2007); *Guru Nanak Sikh Soc’y of Yuba City v. Cty. of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006); *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 899-901 (7th Cir. 2005).

(9th Cir. 2011); see also *River of Life Kingdom Ministries v. Village of Hazel Crest*, 611 F.3d 367 (7th Cir. 2010) (question is whether “religious and secular land uses are treated the same . . . from the standpoint of an accepted zoning criterion such as ‘commercial district’ or ‘residential

RLUIPA has emerged as one of the most effective measures for safeguarding religious liberty in contemporary America. This is particularly true in regard to the Orthodox Jewish communities, where the statute has not only helped protect religious life, but has also been a powerful asset in fighting discriminatory efforts to prevent their members from moving to towns and localities.

*Abba Cohen, Washington Director,
Agudath Israel of America*

district’ or ‘industrial district.’”). The Eleventh Circuit has taken different approaches in facial and as-applied cases. In cases alleging discrimination on the face of an ordinance, the court looks to whether any secular assemblies or institutions are permitted; if so, a religious assembly must be permitted as well. *Midrash Sephardi v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004). For cases involving how a place of worship is treated in the application of a facially neutral ordinance, the Eleventh Circuit evaluates whether the secular uses “hav[e] comparable community impact” as the proposed religious use. *Konikov v. Orange County*, 410 F.3d 1317 (11th Cir. 2005). The Second Circuit has deliberately avoided adopting a rigid test,

stating that RLUIPA “is less concerned with whether formal difference may be found between religious and non-religious institutions—they almost always can—than with whether, in practical terms, secular and religious institutions are treated equally.” *Third Church of Christ, Scientist v. City of New York*, 626 F.3d 667, 669 (2d Cir. 2010).

Compared to the “substantial burden” and “equal terms” provisions, RLUIPA’s nondiscrimination requirement has generated far fewer court decisions. Courts have held that in bringing a suit under the nondiscrimination provision, “a plaintiff must demonstrate that the government decision was motivated at least in part by discriminatory intent, which is evaluated using the ‘sensitive inquiry’ established in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977).” *Jesus Christ is the Answer Ministries v. Baltimore*, 915 F.3d 256, 263 (4th Cir. 2019); see also *Chabad Lubavitch of Litchfield County, Inc. v. Litchfield Historic Dist. Comm’n*, 768 F.3d 183, 198 (2d Cir. 2014). Under *Arlington Heights*, courts examine all relevant factors that could reveal discriminatory intent, including the impact of the official action and whether it bears more heavily on one group; the historical background of the decision and the specific sequence of events leading up to the challenged decision; departures from the normal procedural sequence and substantive criteria; and the legislative or administrative history, along with contemporary statements by members of the decision-making body. 429 U.S. at 465-67.

RLUIPA’s provisions barring “totally exclude[ing] religious assemblies from a jurisdiction” or “unreasonably limit[ing] religious assemblies, institutions, or structures within a jurisdiction”

have likewise been the subject of few cases. One court held that the unreasonable-limitation provision will be violated if land-use laws have “the effect of depriving . . . religious institutions or assemblies of reasonable opportunities to practice their religion, including the use and construction of structures,” within the jurisdiction. *Rocky Mountain Christian Church v. Bd. of Cty. Comm’rs of Boulder*, 613 F.3d 1229, 1238 (10th Cir. 2010). Another held that “what is reasonable must be determined in light of all the facts, including the actual availability of land and the economics of religious organizations.” *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 990 (7th Cir. 2006). Courts have found unreasonable limitations where regulations left few sites for construction of places of worship, such as through excessive frontage and spacing requirements, or where zoning restrictions imposed steep and questionable expenses on applicants. *Rocky Mountain*, 613 F.3d at 1238; *Chabad of Nova, Inc. v. City of Cooper City*, 575 F. Supp. 2d 1280, 1290-91 (S.D. Fla. 2008).

In the early years after Congress passed RLUIPA, defendants challenged the statute’s constitutionality. Over time, all of these challenges failed and the constitutionality of RLUIPA is no longer an active issue in the courts.

The Department of Justice’s Enforcement of RLUIPA

In the twenty years since its enactment, RLUIPA has had a dramatic impact on protecting individuals and institutions seeking to exercise their religions through construction, expansion, and use of property, and on protecting the religious liberty of institutionalized persons. The Department’s lawsuits and other enforcement actions under RLUIPA have successfully defended the rights of a wide range of religious groups, including Christians, Muslims, Jews, Hindus, Buddhists, Sikhs, and others.

From September 2000 to September 2020, the Department has used the full array of available enforcement tools to ensure the protection of religious freedom in the land-use and institutionalized-persons context, including formal and informal investigations, lawsuits, *amicus* briefs and statements of interest, and intervening in private lawsuits, including:

- Opening 553 RLUIPA preliminary and full investigations into local or state governments’ zoning and land-use practices or accommodation of the religious exercise of institutionalized persons;
- Filing 28 RLUIPA lawsuits on behalf of persons, religious groups, or institutionalized persons;
- Filing 53 *amicus* briefs in courts at every level addressing the interpretation and application of RLUIPA’s provisions. Those briefs have addressed a wide variety of religious land uses, including places of worship, religious cemeteries, prayer meetings and similar activities in private homes, and faith-based social services such as homeless shelters, group homes, and rehabilitation centers; in institutionalized-persons cases, the

Department's briefs have addressed rights relating to religious diet, religious books and other materials, religious clothing, grooming, congregational worship, and other aspects of religious practice; and

- Filing more than 65 briefs as intervenors in private lawsuits to defend the constitutionality of RLUIPA.

The sections below provide details concerning the Department's enforcement of both the land-use and institutionalized-persons provisions of RLUIPA, along with examples and summaries of key investigations, cases, and *amicus* filings under these provisions.

The Department's Enforcement Of RLUIPA's Land-Use Provisions

Since its enactment, the Department has opened 485 RLUIPA land-use matters. Many of these matters developed into formal investigations, lawsuits, or other court filings. In total, the Department:

- Opened 148 RLUIPA formal land-use investigations;
- Filed 25 RLUIPA land-use lawsuits; and
- Filed 29 *amicus* briefs involving RLUIPA's land-use provisions.

The majority of the Department's 148 investigations involved Christian groups (56%). The other significant portion involved Muslim and Jewish groups (comprising 23% and 10% respectively). The remainder involved Buddhist (3%) and Hindu (3%) organizations, and Unitarian, Afro-Caribbean, and Native-American groups (less than 1% for each).

The investigations involving Muslim and Jewish groups have significantly exceeded the percentage of the Muslim and Jewish U.S. population. (See Charts 1, 2, and 3 below). While the percentage of the Jewish and Muslim population in the United States has been approximately 3% combined, according to the Pew Research Center, cases involving these two faith groups have comprised 33% of all investigations.

Investigations involving Buddhist and Hindu groups, while not as high by percentage as those involving Muslim and Jewish groups, also were higher than the overall percentage of the U.S. population for these groups. While Buddhist and Hindu populations make up approximately 1.5% of the U.S. population according to the Pew Research Center, 6.6% of all investigations have involved these groups.

More than two thirds of the Department's investigations have resolved with the local governments modifying their ordinances or taking other corrective action to remedy the RLUIPA issues.

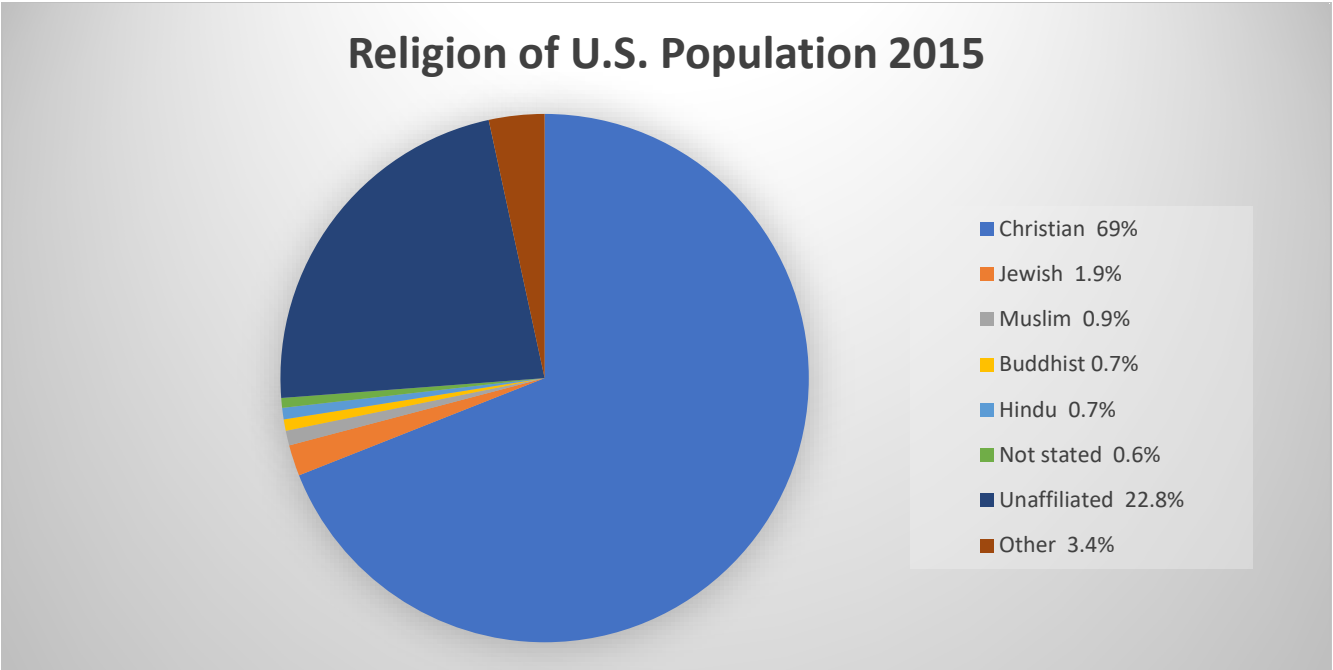


Chart 1: Data from *American's Changing Religious Landscape*, Pew Research Center, May 12, 2015

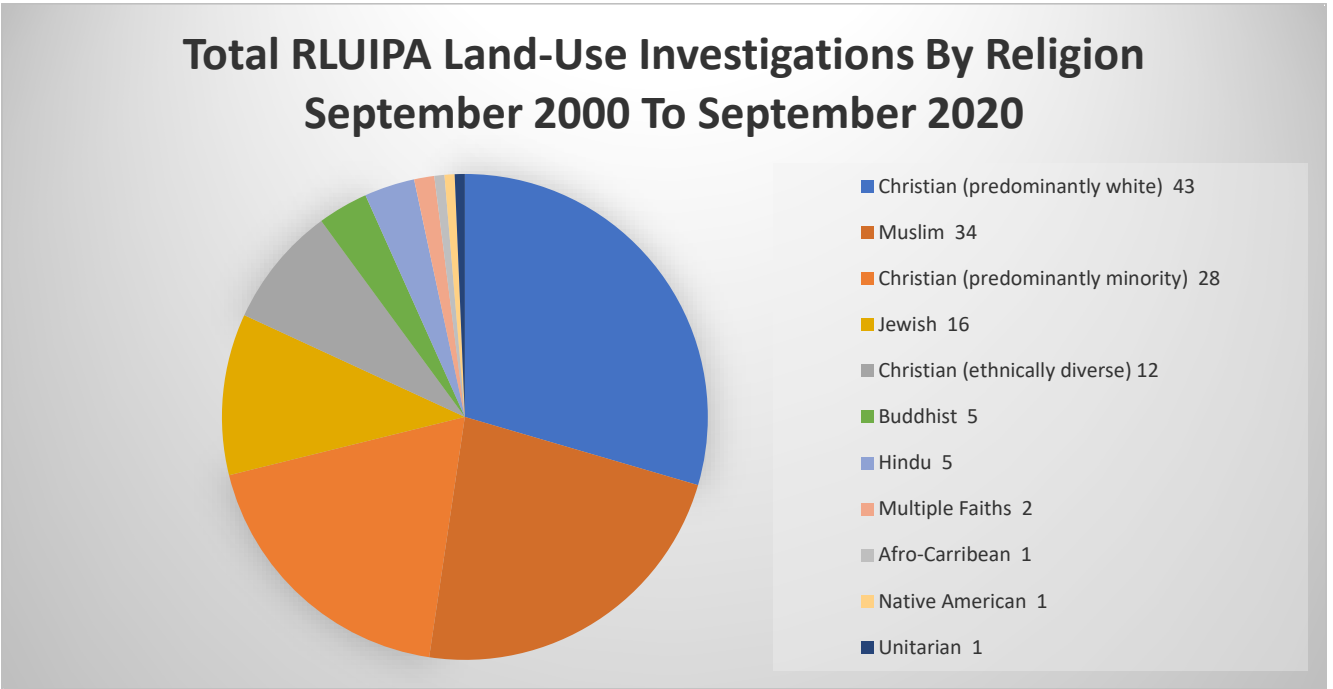


Chart 2: Department of Justice, 2020

The Department filed its combined 54 land-use lawsuits and *amicus* briefs (25 lawsuits and 29 *amicus* briefs) in the U.S. district courts, the U.S. courts of appeals, and in state court. These filings fall into four basic categories: cases involving allegations of religious discrimination (or religion combined with race or ethnicity) by a jurisdiction against a place of worship or religious school; cases in which houses of worship have been barred in zones where secular assemblies such as clubs, lodges, or community centers are permitted; cases where local governments, through their land-use codes, unreasonably limit the locations where religious assemblies and institutions may locate; and cases where local governments have placed substantial burdens on the religious exercise of congregations, religious schools, or faith-based social service providers.

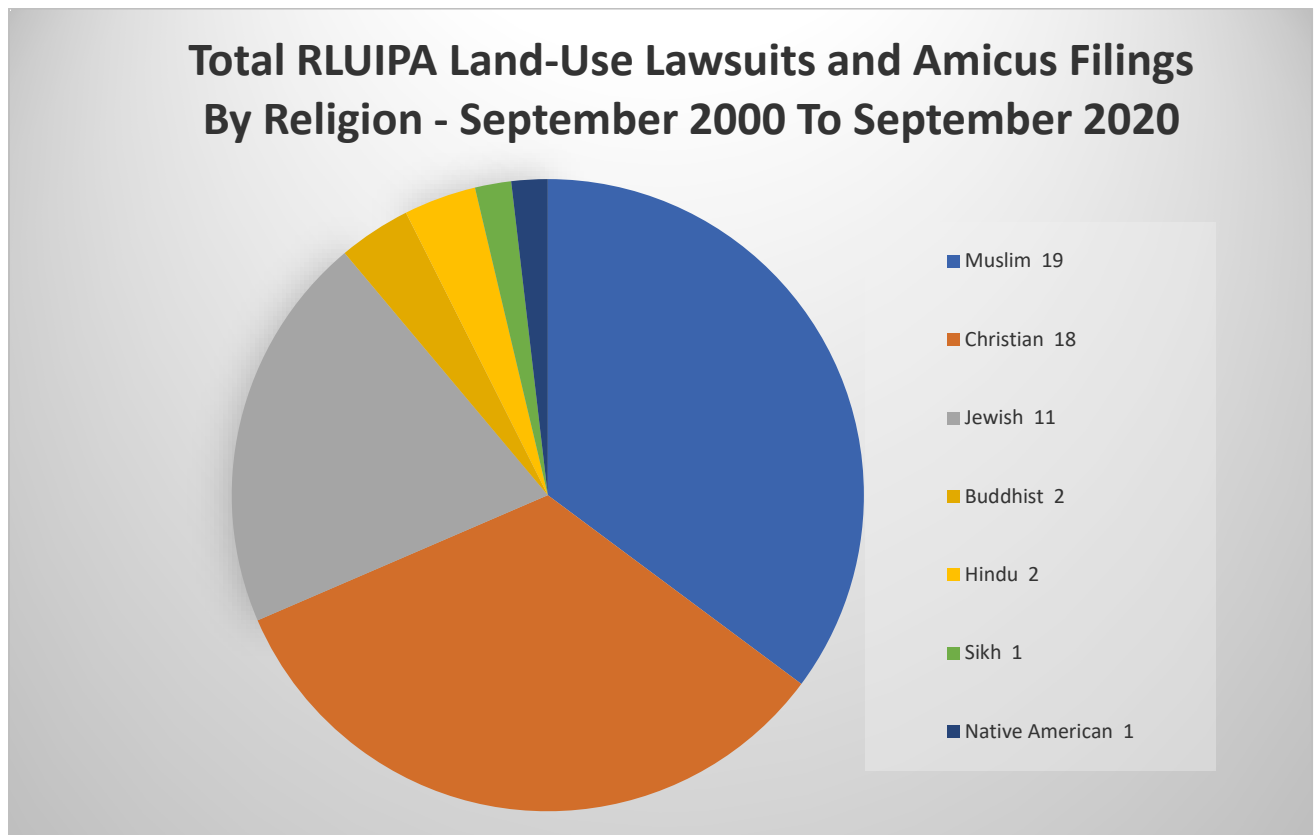


Chart 3: Department of Justice, 2020

The largest number of filings involved Islamic mosques and schools, and Christian churches, schools, and other institutions, with each representing approximately 35%. Jewish synagogues, schools, and institutions were the next group, representing 20%. Other filings have involved Hindu and Buddhist groups, each representing 4%, and one filing each on behalf of Sikh and Native American groups.

Like its investigations, the percentage of the Department's lawsuits and *amicus* filings involving Jewish and Islamic groups have been higher than the percentage of the U.S. adult population for these groups, comprising 55% of all filings. Court action by the Department on behalf of these Jewish and Islamic groups has often been necessitated by an unwillingness by local governments to take voluntary corrective action, and these cases have been more likely to involve allegations of discriminatory animus.

Below are examples and summaries of investigations and lawsuits brought by the Department of Justice and cases in which the Department has filed *amicus* briefs.

Examples of Land-Use Cases and Investigations:

Examples of the Department's land-use RLUIPA investigations, lawsuits, and *amicus* filings from September 2000 to September 2020 include¹⁵:

- ***United States v. Maui County*** (D. Haw.): In July 2003, the Department filed suit against the county of Maui for denying permission to Hale O Kuaia, a small, nondenominational Christian church, to build a house of worship on 5.85 acres of land in an agricultural district. The church, which had held services on Maui since 1960, encouraged practitioners to grow food in accordance with Biblical principles and live in harmony with the land. Being in an agricultural district was integral to its worship needs. The county permitted various secular assemblies in the district, including rodeo facilities, petting zoos, and sports fields. The county subsequently settled with the church, permitting it to build its house of worship and paying it damages and attorney's fees.
- ***Guru Nanak Sikh Society v. County of Sutter*** (9th Cir.): In May 2004, the United States, participating as *amicus*, argued that a Sikh congregation's rights under RLUIPA had been violated, and the court of appeals agreed. The case involved a congregation in a California county seeking to build a gurdwara, a Sikh place of worship. The county only permitted houses

¹⁵ A complete list of the Department's court filings, and more detailed information, is available at the Civil Rights Division's Housing and Civil Enforcement Section RLUIPA case page, <https://www.justice.gov/crt/housing-and-civil-enforcement-section-cases-1#rluipa> and at the Civil Rights Division's Appellate Section case page, <https://www.justice.gov/crt/appellate-briefs-and-opinions-11>.

of worship in residential and agricultural districts. The congregation first purchased land in a residential district, was denied a permit, and then purchased land in an agricultural district, only to be denied a permit there as well.



Photo: Victory Family Life Church, Douglas, GA.

- ***Douglas County, GA:*** In January 2005, the Department opened an investigation of Douglas County after it denied Victory Family Life Church the ability to build a new sanctuary on land it had occupied for 20 years. The church's property was 2.8 acres, just below the new 3-acre minimum imposed on churches but not on comparable nonreligious assemblies. The County amended its code to treat churches equally, and the Department closed its investigation.

● ***United States v. City of Hollywood*** (S.D. Fla.): In April 2005, the Department filed suit against the City of Hollywood, Florida, after it denied a permit to an Orthodox Jewish synagogue located in a residential neighborhood, a permit that the suit alleged was routinely granted to other houses of worship. The Department alleged that the denial and subsequent enforcement actions taken by the city against the synagogue were a result of discrimination toward Orthodox Jews. In July 2006, the Department reached a consent decree with the city that permitted the synagogue to continue operating at its location and to expand in the neighborhood in the future.



Photo: Location of Synagogue in Hollywood, FL.

● ***United States v. Village of Suffern*** (S.D.N.Y.): In September 2006, the Department filed suit against the Village of Suffern alleging violations of RLUIPA’s substantial burden provision after the village denied a zoning variance to a Jewish group to operate a “Shabbos House” near a hospital. The Shabbos House provides food and lodging to Sabbath-observant Jews to enable them to visit sick relatives at the hospital on the Sabbath. In June 2010, the Department obtained a consent decree permitting the continued operation of the Shabbos House.



Photo: Location of Shabbos house (left) in Suffern, NY.

● ***Albanian Associated Fund v. Township of Wayne*** (D. N.J.): In July 2007, the Department filed a statement of interest contending that a plaintiff Islamic group had produced sufficient evidence to show that the Township deliberately thwarted its application for a conditional use permit to build a mosque. The Township allegedly delayed the group’s mosque building application for more than three years, then tried to stop the project by seizing the property under eminent domain. The court agreed with the Department that the use of eminent domain power to bypass zoning regulations could violate RLUIPA.

● ***United States v. City of Waukegan*** (N.D. Ill.): In February 2008, the Department filed suit against the City of Waukegan over its exclusion of places of worship in districts that permitted clubs, lodges, meeting halls, and theaters, and its imposition of notices of violation to several small churches operating in these districts. The Department reached a consent decree with the city in February 2008 requiring it to treat places of worship equally with other assemblies.

● ***United States v. Metropolitan Government of Davidson County and Nashville*** (M.D. Tenn.): In September 2008, the Department filed suit alleging that defendants amended their zoning code to keep a Christian group, Teen Challenge, from building a residential substance abuse center on land it had purchased. In January 2009, the Department reached a settlement under RLUIPA and the Fair Housing Act, permitting Teen Challenge to move forward with its plans to build its residential treatment center.

● ***United States v. City of Walnut*** (C.D. Cal.): In September 2010, the Department filed suit against the City of Walnut challenging its denial of a conditional use permit to the Chung Tai Zen Center to allow it to build a Buddhist house of worship. In August 2011, the Department settled its claim with an agreed order prohibiting the city from imposing different zoning or building requirements on houses of worship. The agreement also required city officials to obtain training on RLUIPA and to report periodically to the Department.



Photo: Buddhist monastery in Walnut, CA

- ***United States v. City of Lilburn*** (N.D. Ga.): In August 2011, the Department filed suit and reached a settlement allowing Dar-E-Abbas, a Shia Muslim community, to build a new mosque at its current location. The suit included allegations that the city's denial of approval was the result of bias against Muslims and that the city had permitted other similarly sized and situated places of worship. A federal court entered a consent decree requiring the city to allow the group to construct the mosque, as well as conduct RLUIPA training and reporting to the Department on future land-use applications by places of worship.



Photo: *United States v. City of Lilburn*: Opposition to Dar-E-Abbas' zoning request

- ***United States v. Rutherford County*** (M.D. Tenn.): In July 2012, the Department filed suit under RLUIPA and won a temporary restraining order in federal court allowing the Islamic Center of Murfreesboro to move into a mosque it built on land where places of worship are allowed as of right. The Department filed the suit in response to a state Chancery Court order blocking the county from issuing a certificate of occupancy in a suit brought by county residents who cited fears of terrorism and related concerns.

● ***United States v. City of St. Anthony Village*** (D. Minn.): In August 2014, the Department filed suit in federal court alleging that the city violated RLUIPA by denying approval for the Abu-Huraira Islamic Center to open a prayer center in the basement of an office building in a light industrial zone. The suit alleged that the denial imposed a substantial burden on the Center, and that allowing “assemblies, meeting lodges, and convention halls,” but not religious assemblies in the zoning district, violated RLUIPA’s equal terms provision. In January 2015, a federal court in Minneapolis entered a consent order that permitted the Center to use the building as a place of worship.



Photo: *United States v. St. Anthony Village*: City officials and religious leaders at settlement press conference.

● ***James City County, VA***: In June 2015, the Department closed its investigation of the county after it rezoned Peninsula Pentecostal Church’s 40-acre site to permit its use for a place of worship. The county’s zoning code had permitted places of worship when the church purchased the property, but the county had subsequently changed its ordinance to bar places of worship within the zone.

● ***United States v. Bernards Township*** (D. N.J.): In November 2016, the Department filed a lawsuit against Bernards Township alleging violations of RLUIPA’s substantial burden, equal terms, discrimination, and unreasonable limitations provisions relating to the denial of approval for a mosque sought by a Muslim congregation on land it owned in the Township. In May 2017, the Department entered into an agreement with the Township that required it to approve the mosque and to modify its zoning code to increase the availability of land for places of worship.



Photo: Mohammad Ali Chaudry, president of Islamic Society of Basking Ridge

● ***Garden State Islamic Center v. City of Vineland*** (D. N.J.): In September 2017, the Department filed a statement of interest in federal court challenging the city’s assertion that a Muslim congregation’s RLUIPA lawsuit should be dismissed because it believed a sewage regulation used to deny a certificate of occupancy for a place of worship was not a “land-use regulation” and therefore not covered by RLUIPA. In December 2018, the court issued an opinion denying the city’s motion to dismiss and finding that the application of the sewage regulation fell within RLUIPA.

- ***United States v. Borough of Woodcliff Lake*** (D. N.J.): In June 2018, the Department filed a complaint against the borough alleging a violation of the substantial burden provision of RLUIPA when it denied a variance application to allow a Jewish organization to construct a synagogue on property it owned in the borough. The case was resolved in a settlement announced September 14, 2020.
- ***Ramapough Mountain Indians, Inc. v. Township of Mahwah, NJ*** (D. N.J.): In March 2019, the Department filed a statement of interest arguing that the plaintiff, the Ramapough Mountain Indians, a Native American tribe, had asserted meritorious RLUIPA claims when the township denied the tribe's ability to worship communally and erect religious structures, including a sweat lodge and prayer circle, on its land. The Department argued that the facts alleged by the Ramapough established violations of RLUIPA's substantial burden and equal terms provisions and that the township's conduct significantly impeded the tribe's ability to worship on its land.



Photo: *Ramapough Mountain Indians v. Township of Mahwah*: Religious structure on tribal land.

- ***Christian Fellowship Centers of NY, Inc. v. Village of Canton*** (N.D.N.Y.): In March 2019, the United States filed a statement of interest arguing that the lawsuit brought by the Christian Fellowship Centers of New York, should proceed under RLUIPA's equal terms provision. The brief challenged the village's exclusion of churches from its C-1 zoning district, even though that district allowed similarly situated nonreligious assemblies such as municipal buildings,

charitable and social clubs, and theaters. On March 29, 2019, the court agreed with the Department and entered an order enjoining the village from excluding churches from the district.



Photo: Jamie Sinclair, pastor of Christian Fellowship Centers at location of new church in Canton, N.Y.

- ***United States v. City of Farmersville*** (E.D. Tex.): In April 2019, the Department filed suit alleging that the city violated RLUIPA's substantial burden and nondiscrimination provisions by denying zoning approval for a Muslim congregation to construct a religious cemetery. The parties entered into a settlement agreement requiring the city to approve the cemetery, to provide RLUIPA training to its employees and officials, and to notify the public of its compliance with RLUIPA in its land use actions.
- ***Salik, LLC v. Forsyth County*** (N.D. Ga.): In January 2020, the Department filed a statement of interest arguing that a Hindu congregation's private suit should proceed and that the congregation had standing to raise RLUIPA claims. On March 25, 2020, the court rejected the county's arguments and refused to dismiss the congregation's lawsuit.
- ***United States v. Village of Walthill*** (D. Neb.): In February 2020, the Department filed suit alleging that the village violated the substantial burden and equal terms provisions of RLUIPA by denying permission to a Christian congregation to construct a church in the village. The case is pending.
- ***United States v. Stafford County*** (E.D. Va.): In June 2020, the Department filed a lawsuit alleging that Stafford County violated RLUIPA by enacting overly restrictive zoning regulations prohibiting an Islamic organization from developing a religious cemetery after the Islamic group

purchased a 27-acre tract of land in the county for that purpose. The case is pending.

- ***United States v. Jackson Township*** (D. N.J.): In May 2020, the Department filed suit against the township and its planning board, alleging that they violated RLUIPA and the Fair Housing Act by targeting the Orthodox Jewish community through zoning ordinances restricting religious schools and barring religious boarding schools. The case is pending.

The Department's Enforcement Of RLUIPA's Institutionalized Persons Provisions

Over the last twenty years, the Department has conducted investigations, filed lawsuits, reached settlements, and filed statements of interest and *amicus* briefs to protect the rights of institutionalized people to practice their faiths. The Department has found that some institutions continue to restrict practices in ways that impose substantial burdens on religious exercise, and thus must be accommodated unless the institutions can demonstrate compelling governmental interests, pursued through the means that are least restrictive on religious exercise.

The Department has conducted 68 formal or informal investigations, initiated three lawsuits, and filed eight statements of interest and 13 *amicus* briefs involving RLUIPA and institutionalized

Over the last decade, I have seen firsthand the concrete impact RLUIPA has made to the lives of inmates all across the country. RLUIPA provides incarcerated men and women the ability to exercise their essential and inborn right to practice their faith even while in prison.

*Rabbi Jacob Weis, Executive Director,
Tzedek Association*

persons. Through its engagement in these matters, the Department has been able to reach voluntary compliance or court-ordered resolution in cases related to religious diet, access to religious texts and articles, opportunity to participate in religious group meetings, religious headwear, and accommodation of religious grooming practices. Through these enforcement actions, the Department has achieved statewide relief in many cases, providing access to religious accommodations for prisoners in some of the country's largest correctional systems, including Florida and California, which each confine around 100,000 prisoners. The institutional policy changes that the Department has achieved through its

enforcement actions often benefit not only the prisoner whose claims initially came to its attention or those of the same religion, but also prisoners of other religious faiths whose beliefs require similar accommodation. For example, policy changes permitting a Sikh prisoner to maintain untrimmed hair or a beard also benefits those of other religions requiring accommodation of grooming practices, such as Muslim or Native American prisoners.

The Department's work has supported the religious exercise of people practicing a wide range of religions, including Jews, Muslims, Sikhs, Christians, and Native Americans. While any

religious group may be affected by policies that prohibit religious exercise, RLUIPA claims in institutional settings are most often raised by people who practice minority faiths. The Department's enforcement efforts reflect this unsurprising reality, with the majority of the cases the Department has pursued involving religions other than Christianity.

Institutionalized-Persons Cases and Investigations

Below are examples of the Department's RLUIPA institutionalized-persons cases, investigations, statements of interest, and *amicus* briefs. More detailed information is available at the Civil Rights Division's Special Litigation Section RLUIPA case page, <https://www.justice.gov/crt/special-litigation-section-cases-and-matters0#rluipa> and on the Civil Rights Division's Appellate Section case page, <https://www.justice.gov/crt/appellate-briefs-and-opinions-11>.

- ***Taylor Care Center*** (Westchester, N.Y.): The Department received allegations that staff members at Taylor Care Center, a nursing home, failed to accommodate a Sikh resident's religious practices, resulting in the resident being fed an inappropriate diet and his hair being trimmed, both in violation of his religious beliefs. The resident's family had filed a private suit against the facility, and shortly after the Department initiated its investigation, the family was able to obtain a settlement that required the distribution of guidelines and training on religious accommodations. The Department in 2009 reached an agreement with the facility that ensured that the settlement agreement with the family would be honored.
- ***Khatib v. County of Orange*** (9th Cir.): In 2010, the Department filed an *amicus* brief arguing that a pre-trial detention facility is an "institution" as defined by RLUIPA, and therefore RLUIPA's heightened standards protecting religious freedom applied. A panel of the Ninth Circuit rejected this position, but that decision was overturned by the Ninth Circuit after *en banc* review in an opinion that was consistent with the Department's position.
- ***Basra v. Cate*** (C.D. Ca.): The Department intervened in a case brought on behalf of Sukhjinder Basra seeking an accommodation to enable him to wear his hair unshorn in accordance with his Sikh faith. The California Department of Corrections and Mr. Basra entered into a settlement agreement in 2011 that permitted Mr. Basra, and all prisoners confined by the state, to wear their hair unshorn for religious reasons.
- ***Prison Legal News v. Berkeley*** (D .S.C.): The Department intervened in a lawsuit against the Berkeley County Sheriff's Office alleging that the Office violated RLUIPA and the First Amendment by restricting access to religious texts. The parties ultimately entered into a court enforceable agreement in 2012 that ensured access to religious texts consistent with RLUIPA and the Constitution.
- ***Native American Council of Tribes v. Weber*** (D. S.D. and 8th Cir.): The Department filed a statement of interest in the district court in support of the plaintiffs' position that a jurisdiction cannot deny an accommodation on the basis of its assessment that the requested practice is not compelled by or central to a particular religion. The plaintiffs in the case sought to use tobacco

in their Native American religious practice and were prohibited from doing so in part on the basis of the South Dakota State Penitentiary's determination that tobacco use was not "traditional." In 2013, the Department also filed a brief in the appellate court on this issue, and the case was ultimately decided in the plaintiffs' favor.

- ***United States v. Florida Department of Corrections*** (S.D. Fla. and 11th Cir.): The Department filed litigation alleging that the Florida Department of Corrections violated RLUIPA by failing to provide a kosher diet to prisoners with a sincere religious need for one. The district court issued a permanent injunction in 2015 requiring the Department of Corrections to offer a kosher diet accommodation, and the kosher diet has now been implemented statewide. The Eleventh Circuit upheld the injunction, and the district court later terminated it after the State demonstrated more than two years of compliance.

- ***Ali v. Quarterman*** (E.D. Tex.; 5th Cir.): The Department filed a statement of interest in district court and an *amicus* brief in the court of appeals in support of the plaintiff, a Muslim man in the custody of the Texas Department of Corrections (TDOC) who sought to maintain a beard in conformity with his religious practice. The Department argued that TDOC's ban on religious beards was not the least restrictive means to further a compelling government interest. In 2016, the Fifth Circuit affirmed the district court's decision that the policy was not, in fact, the least restrictive means to further government interests.

- ***Cherokee County Detention Center*** (N.D. Ga): The Department investigated a Georgia detention facility's policies regarding head coverings, access to religious materials such as books, and access to religious diets. In 2018, the Department closed its investigation after officials at the facility promptly instituted several changes addressing the potential RLUIPA violations identified by the Department.

- ***Virginia Department of Corrections*** (Richmond, Va.): In September 2019, the Department reached an agreement with the Commonwealth of Virginia to resolve the Department's investigation of the Virginia Department of Corrections (VDOC). The agreement addressed the State's: (1) five-person minimum for group worship and religious activities; (2) policy of preventing prisoners from attending religious services if they had missed services in the past; and (3) policy of removing prisoners from religious diets for failing to pick up a minimum number of trays per month from the special food line for religious accommodations. During the course of the investigation, VDOC made policy changes that addressed these issues and which protect prisoners' rights to engage in religious practices.

RLUIPA is a powerful source of protection for vulnerable people of all faiths from the prisoner praying behind bars, to the halfway house helping the hungry, to the house of worship trapped in a maze of red tape. Every American enjoys more religious freedom because of this landmark legislation.

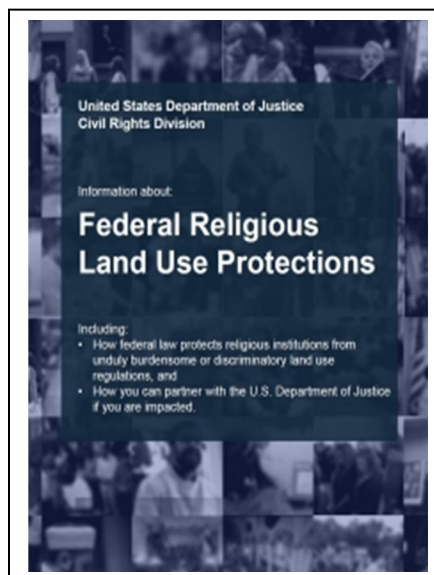
Luke Goodrich, Vice President & Senior Counsel, The Becket Fund for Religious Liberty

● **McGill v. Clements** (M.D. Pa.): In April 2020, the Department filed a statement of interest in support of a pretrial detainee who alleged he was being held in solitary confinement because he refused to cut his dreadlocks, which he wore as part of his religious practice as a Rastafarian. The Department argued that, in considering the plaintiff’s motion for a preliminary injunction, the court should find that he was likely to succeed on the merits of his claim, because officials had not shown that the burden on his religious exercise was the least restrictive means of achieving its compelling interests. The facility has since changed its policy to permit religious exemptions to the grooming policy.

● **Holt v. Kelley** (E.D. Ark.): In June 2020, the Department filed a statement of interest in a RLUIPA case addressing the meaning of “program or activity” receiving federal financial assistance for purposes of RLUIPA coverage. The Department argued that RLUIPA’s scope covers an entire agency even if only a sub-agency receives federal financial assistance. This is consistent with interpretations of the same language in Title VI of the Civil Rights Act of 1964.

Education and Outreach

An important part of the Department’s RLUIPA enforcement program is education and outreach. Affected individuals and communities often are not aware of RLUIPA, do not fully understand its provisions, or do not know about the assistance the Department can offer in many cases. Local officials also are often not aware of the law and what it requires. Thus, public education and outreach about the law is critical to its success.



In June 2018, the Attorney General announced the Place to Worship Initiative, which seeks to increase the Department’s enforcement of RLUIPA’s land-use provisions and to educate religious leaders, county and municipal officials, and the general public about the statute’s requirements. As part of the Place to Worship Initiative, the Department created and maintains a website, provides informational materials for religious leaders and municipal officials, and conducted 15 community outreach and training events in FY19 to raise awareness about RLUIPA. Since the start of the initiative, the Department has filed six lawsuits and eight amicus briefs, a rate double the average for Department RLUIPA filings, and opened 23 formal investigations, a 60% increase over the average.

In conjunction with the launch of the Place to Worship Initiative, the Department updated its *Statement on the Land-Use Provisions of RLUIPA*, consisting of Questions and

Answers about the law's various provisions and requirements, and issued a *Federal Religious Land Use Protections* information booklet. This statement and information booklet, along with other materials about RLUIPA, are available at the homepage for the Place to Worship Initiative at <https://www.justice.gov/crt/placetoworship>.

Department of Justice officials, including the Assistant Attorney General and U.S. Attorneys, have participated in more than 70 events to educate religious leaders, local officials, and the public about RLUIPA's land-use provisions. Nearly half the RLUIPA land-use matters opened by the Department have involved referrals from community-based organizations, religious leaders, or attorneys for religious organizations.

Education and outreach also are critical to the Department's program for enforcing RLUIPA's institutionalized-persons provisions. Although many state and local corrections officials are aware of RLUIPA, some affected institutions are unfamiliar with the requirements that the statute places on them, do not fully understand how to provide adequate religious accommodations, and do not know about the guidance that the Department offers. Similarly, many institutionalized persons, or their families or representatives, along with groups that advocate on behalf of institutionalized people or religious groups, are unaware of the protections that RLUIPA provides. Through publications and outreach, the Department educates these individuals and groups around the country about these protections. The Department's Civil Rights Division also coordinates internally with other entities of the federal government, such as the Federal Bureau of Prisons and the U.S. Marshals Service, which have obligations to the people they confine similar to those imposed by RLUIPA. As opportunities arise, the Department is also available to provide outreach and education presentations on RLUIPA's institutionalized-persons requirements.



Photo: RLUIPA training in Pittsburgh, PA

On the Tenth Anniversary of RLUIPA's passage in 2010, the Department issued a Statement on the Institutionalized Persons Provisions of RLUIPA, consisting of Questions and Answers about the rights and obligations under the statute. This Statement has been updated in the intervening years. The Questions and Answers and other materials related to the Department's enforcement efforts are available at the Civil Rights Division Special Litigation Section RLUIPA page, <https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act-0>.

RLUIPA's Third Decade and Beyond

Over the past 20 years, RLUIPA has served as a valuable tool for protecting the fundamental right of religious freedom and preventing religious discrimination. During the third decade and beyond, the Department of Justice will remain vigilant in its efforts to protect the rights of individuals and communities to practice their faiths free from discrimination and unjustified government infringement.

The Department of Justice will continue to fulfill an important role in enforcing RLUIPA, investigating potential violations, bringing lawsuits, participating as *amicus* in significant cases, providing technical assistance, and educating the public and government officials. While acknowledging the tremendous impact RLUIPA has had on protecting and defending religious liberty, the Department also acknowledges the challenges that remain, including the need to educate and inform officials of their obligations under the law to combat discrimination in their communities and to protect the religious exercise of their citizens.

RLUIPA's passage 20 years ago and its specific protections for religious assemblies and prisoners demonstrate the very best of our country's commitment to religious liberty. RLUIPA remains an essential aspect of our country's religious liberty law, particularly for religious minorities.

*Holly Hollman, General Counsel,
Baptist Joint Committee for Religious
Liberty*

The freedom to exercise one's religious is foundational to our nation and is among its most basic civil rights. The Department of Justice will continue to use RLUIPA, and all our national civil rights laws, to defend religious liberty for all.

October 22, 2025

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Re: Response to Public Comment Regarding the Proposed Temple at 2396 Veneto Way, DEPN-25-0056

Dear Ms. Baxter and Mr. Gloss,

On behalf of our client, The Church of Jesus Christ of Latter-day Saints (“the Church”), we respectfully submit the following response to the public comment submitted by Mrs. Jennifer T. Kuhn regarding the proposed temple spire.

1. Compliance with UDC § 7.4.203(B)(2) – Screening Requirements for Building Features Exceeding Maximum Height.

Mrs. Kuhn asserts that the proposed 140½-foot spire violates the screening requirements of the Colorado Springs Unified Development Code (UDC) § 7.4.203(B)(2). We respectfully disagree and offer the following clarifications:

- a. **Architectural and Religious Significance:** The spire is a traditional architectural feature of religious buildings and is explicitly permitted under Table 7.4.2-F of the UDC, which allows “spires and towers” for religious institutions. As described in more detail in our letter of September 22, 2025, church steeples carry profound religious meanings within religious communities, and serve as a visible reminder of the presence of God. Courts have found that it is not for judges to determine whether the inclusion of a visible and highlighted steeple is integral to a temple’s religious purposes. *Martin v. The Church of Jesus Christ of Latter-day*

Saints, 747 N.E.2d 131, 137 (Mass. 2001). The spire is not a mechanical or utilitarian structure, and therefore should not be treated as analogous to rooftop HVAC equipment or similar installations.

Additionally, it should be noted that no zoning changes have been proposed for either the Church property or the surrounding properties. Thus, purchasers of residences in the surrounding neighborhood have been on notice that this property would be used for religious purposes – which commonly includes architectural features such as spires or steeples for many years.

- b. **Interpretation of “Screening:** Although it is true that UDC § 7.4.203(B)(2) requires that features exceeding height limits be “designed or screened to minimize visibility” from certain residential zones, the code does not mandate physical screening (e.g., parapets or landscaping) for architectural features such as spires. The operative word in this code provision is “or.” The term “screened” applies to elements that can and are traditionally screened such as rooftop HVAC and mechanical equipment. But features and elements like steeples and towers are not intended to be screened (because it would defeat the intent of each), and therefore fall under the “designed” approach, with the goal of minimizing visibility.

Thus, the UDC it allows for design-based mitigation, which the project has incorporated through:

- Context-sensitive design: The spire’s slender profile and elegant proportions, designed to the “Golden Ratio,”¹ are intended to harmonize with the surrounding landscape and skyline;
- Lighting compliance: The illumination proposed is soft and non-intrusive, consistent with UDC § 7.4.1203. In prior usage, it has been demonstrated that the lighting source used to illuminate the spire is low output, projecting soft-diffused illumination utilizing a very narrow beam specifically engineered to not spill beyond the footprint of the spire. It is not intended to be a beacon, but rather a respectful enhancement of the temple’s sacred character; and
- Material selection: The spire’s finish will be carefully chosen to avoid excessive reflectivity. While renderings may depict a gold tone, final materials will be matte or low-glare, in keeping with the goal of minimizing visual impact.

¹ The “Golden Ratio” exists in nature and architects have followed this principle in many iconic buildings and structures throughout the world. See [“An introduction to the golden ratio”](#) and [“The Important of Golden Ratio in Architecture.”](#)

- c. **Legal and Planning Precedent:** Numerous religious structures in Colorado Springs and other municipalities feature illuminated spires or towers without physical screening. The City has historically interpreted the UDC to allow such features when thoughtfully designed, and we believe the proposed temple spire meets this standard.
- d. **UDC v. FAA Requirements.** Finally, the proposed design strikes a balance between what the UDC requires, and what the Federal Aviation Administration (FAA) requires. These regulations have somewhat competing goals, to minimize visibility from surrounding residential areas, while highlighting tall architectural features to aircraft. The Temple has been carefully designed to balance these important but competing public policies.

2. Traffic Concerns.

Mrs. Kuhn also raises several concerns about traffic. Before explaining how these concerns are addressed through the traffic study and improvements proposed as part of the project, it is worth reiterating how a temple such as this functions within the Church community. Temples are open Tuesday through Saturday. They are not megachurches. They do not have large assembly rooms and cannot host large events. Rather, individual Church members decide when to worship in the temple. Thus, the Temple will have a diversified trip distribution, in contrast to the large Sunday worship service profile of many typical religious institutions. Thus, for example, the suggestion that measures such as “staggered ingress/egress times” should be implemented is wholly irrelevant.

Each of the traffic-related suggestions is addressed in more detail below:

- Provide secondary or alternative access points to disperse traffic and reduce congestion

The site plan currently provides three access points off Veneto Way, which, combined with the interconnection within the site, provides for functional and distributed traffic flow both within and to and from the site. This will prevent excessive stacking on neighborhood streets, even during peak usage of the facilities.

- Submit a comprehensive traffic impact study addressing peak hours, residential street impacts, emergency access, and pedestrian safety.

A comprehensive traffic impact study (TIS) was prepared by Fellsburg, Holt and Ullevig, dated August 2025, with the most current version having been submitted to the City on September 24, 2025. City staff have reviewed and concluded that the traffic study meets the city's requirements. The study addresses traffic impacts at the study intersections related to the proposed development and to assess key external roadway needs.

If implemented as approved, the TIS concludes that no additional roadway improvements are required to accommodate the traffic generated by the proposed project, and that all affected intersections will operate acceptably.

In reaching this conclusion, the report analyzed current traffic conditions, vehicle trips associated with the planned development, total traffic volume projections, and recommendations on future roadway needs. Coordination with City and Colorado Department of Transportation (CDOT) staff occurred prior to the preparation of this study to determine key concerns and outline methodologies and assumptions for the study. The study is based on conservative estimates of traffic generation at peak hours customized to this use.

The study includes weekday PM, and Saturday midday peak-hour analysis using May 2025 counts and trip generation rates based on the 12th Edition of the International Traffic Engineers Trip Generation Manual (see page 15 of TIS). Figure 7 and Figure 8 within the traffic impact study show the levels of service following construction of the project. All levels of service are projected to be B or better, a condition deemed acceptable under City of Colorado Springs criteria. Existing counts indicated very limited pedestrian activity in the area.

Nonetheless, as part of the improvements associated with the project, the applicants will construct sidewalks along Flying Horse Club Drive, Barossa Valley Road, and Veneto Way to enhance pedestrian connectivity. Additionally, lane widths internal to the site were set with conformance with the fire department requirements as well as including Knox boxes at gates in the event of an emergency.

- Incorporate traffic mitigation measures, including turn lanes, signalization, staggered ingress/egress times, and signage to ensure neighborhood safety.

The question of whether to implement traffic mitigation measures, and what measures are required, is driven by the traffic study. As explained above, if implemented as approved, the traffic study demonstrates that the traffic generated by the proposed use and site plan is within the capacity of the existing roadway, and additional improvements are not required to accommodate it safely.

The traffic impact study has identified an existing need to extend turn lanes on CO 83 at CO 83 and Flying Horse Club Drive, based on existing conditions, which will be completed with the implementation of the approved project. Also, as noted above, the traffic analysis reflects the anticipated activities and schedules of the Meeting House and Temple. The Meeting House and Temple will have separate peaks, as they serve different purposes in the Church, however the study has evaluated a conservative scenario where both the Temple and Meeting House are operating at the same time during the busiest peak hours for local traffic. The unique operating conditions of the Meeting House and staggered congregations have been included in the

analysis. For the Meeting House, activity is shaped by multiple congregations using the facility over the course of a typical Sunday; each congregation meets at a scheduled time and follows the same 2-hour format.

The TIS concluded that no traffic mitigation measures are necessary at the entrances to the site.

- Implement community-informed traffic management strategies to minimize the Project's impact on residential streets.

It is not clear what specific strategies are being suggested here, but, as noted above, traffic improvements are driven by the technical conclusions in the traffic study, which in this case, demonstrates that additional improvements are not required to safely accommodate the project traffic.

It should be noted, however that the project includes additional parking spaces, above and beyond code requirements, to ensure that parking will not impact neighborhood streets. The UDC requires 1 space per 6 seats in the main assembly area for religious institutions. The Meeting House has a more traditional seating area that was used to determine the required parking spaces for the site. The main seating area of the Meeting House can hold approximately 260 people, requiring 44 parking spaces. However, the site includes 444 standard parking stalls, exceeding the UDC requirements. Temples are open Tuesday through Saturday where the Meeting House will primarily be utilized on Sundays. The peak traffic anticipated will for both buildings will occur at different times.

We are committed to ensuring that the temple integrates harmoniously into the neighborhood and complies fully with all applicable codes and standards.

Thank you for your work in reviewing this application and please don't hesitate to reach out if we can provide additional information.

Sincerely,

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 
Carolynne C. White

November 6, 2025

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Re: Response to Public Comment Letter Dated October 25, 2025

Dear Ms. Baxter and Mr. Gloss,

This letter responds to the public comment letter dated October 25, 2025. In particular, that letter states “Applicant has made no comparable effort here,” referring to a situation in another state in which the Church voluntarily lowered its steeple height in response to complaints by nearby residential neighbors. We would like to highlight two key items in response to that allegation.

1. The Church changed its architecture and design to accommodate neighborhood concerns.

The Church made several significant changes to its standard temple design in anticipation of the types of concerns raised in the October 25, 2025 letter before the concept plan was submitted to the City or presented to the neighborhood at a community meeting. First, the traditional temple architecture calls for a two-story design. However, out of sensitivity to the views enjoyed by the adjacent residential neighborhood, and the dimensions of the residential structures, the Church submitted a design for this site that includes only one story. Second, the Church is proposing to use glass fiber reinforced concrete (GFRC) instead of the granite traditionally selected for temple architecture. One of the advantages of this material is that its matte and sand texture absorb light, and is not reflective. Third, the steeple material itself will have a matte finish, rather than shiny gold.

Thus the statement that the Applicant has made no comparable effort here is simply not correct. To the contrary, from the very beginning, the Church modified its traditional temple requirements and design in consideration of potential neighborhood concerns.

2. The *Martin* case supports the Church's position that additional screening is not required.

Unlike the church in the *Martin* case, the proposed structure and steeple in this case is within the allowed height and the Church is not seeking any variances or exceptions. It is true, as noted by Mr. Kuhn, that the court in the *Martin* case affirmed the appropriateness of the local board's consideration of whether a reduced steeple height would meet its needs, because that proposed steeple required a deviation from the neutral and objective height requirement. The consideration of a lower steeple was allowed in the context of determining whether to grant a variance. Nor did the local board **require** a reduced steeple height; rather the church in that case voluntarily submitted a design with a reduced height. It bears repeating that in this case, the proposed steeple is within the allowed height and does not require and is not seeking any variances or exceptions, and that the Church modified its design to accommodate neighborhood concerns before even submitting the application.

Imposing additional requirements for physical screening of the proposed steeple in this case would impose an unnecessary aesthetic burden on a religious structure; interfere with religious expression, because the steeple is meant to be visible and symbolic; and fail to advance any critical municipal interest, particularly given that the steeple is within the permitted height and use standards, all in contravention of federal law, as discussed below. The *Martin* case affirms that religious structures are entitled to protection from zoning regulations that unreasonably burden religious expression, even when those regulations are facially neutral. If a Massachusetts court found it unreasonable to restrict a steeple that exceeded the height limits, it is even more compelling that a steeple which is within permitted limits, and designed to minimize reflectivity should not be subject to additional screening requirements that could diminish its visibility or symbolic impact.

Please Note Some Additional Background Regarding RLUIPA Below.

3. RLUIPA protects the Church's right to build the steeple as proposed because the use of a steeple is a religious exercise.

Requiring the Church to meet design and screening requirements for the temple's steeple beyond the accommodations it has already proactively made, violates the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) by imposing a "substantial burden" on the Church's exercise of its religious beliefs. Zoning conditions that create additional cost or cause mere inconvenience can sometimes survive scrutiny under RLUIPA. But conditions that directly interfere with religious

practices, such as limitations on religious architecture, do not merely pose an inconvenience or additional cost, they directly regulate religious worship and thus cannot survive RLUIPA. Such conditions are akin to dictating how long a sermon can last, or what the preacher can say. Likewise, conditions on the symbolic speech behind religious architecture plainly violate RLUIPA.

“Congress enacted RLUIPA . . . to provide very broad protection for religious liberty.” *Holt v. Hobbs*, 574 U.S. 352, 356 (2015). The Act “sets up a strict scrutiny standard for the implementation of land use regulations. In essence, a land use regulation cannot ‘substantially burden’ ‘religious exercise’ unless the government can show the regulation furthers a compelling governmental interest and is the least restrictive means of furthering that interest.” *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 661 (10th Cir. 2006) (quoting 42 U.S.C. § 2000cc–1(a)).

RLUIPA defines “religious exercise” as “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C.A. § 2000cc-5(7)(A). This includes “[t]he use, building, or conversion of real property” for religious purposes. *Id.* § 2000cc-5(7)(B). And it is well recognized that “architecture—including a steeple” is “religious exercise.” What Constitutes Religious Exercise Under RLUIPA, Federal Land Use Law & Litigation § 7:33 (2023 ed.). In short, putting a steeple on top of a temple is plainly “religious exercise” under RLUIPA. That has never been disputed.

The question thus becomes whether the proposed conditions would impose a “substantial burden” on that religious exercise. They plainly would. A substantial burden exists when government action interferes with a party’s “ability to [act] in accordance with their religious beliefs.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 686 (2014). The word “substantial” refers to the degree of interference with the religious practice, not the relative importance of the religious practice. “[T]he inquiry here isn’t into the merit of the plaintiff’s religious beliefs or the relative importance of the religious exercise” *Yellowbear v. Lambert*, 741 F.3d 48, 55 (10th Cir. 2014). The force of RLUIPA cannot be avoided “by asserting that a particular religious activity is something that a religious group merely wants to do rather than something that it must do.” DOJ Letter. The inquiry is whether the government action burdens a person’s religious exercise “as he understands that exercise and the terms of his faith.” *Id.* at 54. Thus, although some have tried to argue that steeples are not essential to what occurs inside temples, government officials “lack any license to decide the relative value of a particular exercise to a religion.” *Id.*

For the Church, the steeple reflects “the belief of an ascension towards heaven . . . by pointing toward heaven” and lifting members “eyes and thoughts towards heaven.” *Martin*, 747 N.E.2d at 137 (Mass. 2001). The lighting of that steeple symbolizes the welcoming light of Jesus Christ. See John 1:5, 9. The steeple and exterior lighting of the temple are thus religious practices, and that is all that matters under RLUIPA. Having demonstrated that any additional design and screening requirements would impose a substantial burden on the Church’s religious exercise, it would be

Trevor D. Gloss
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the government's burden to show that such requirements were the "least restrictive means" of furthering a "compelling government interest." 42 U.S.C. § 2000cc-1(a). The city could never do so here. "Compelling state interests are 'interests of the highest order.'" *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 353 (2d Cir. 2007). Courts have repeatedly held that aesthetic concerns do not justify restrictions on religious exercise. See *Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 554 (S.D.N.Y. 2006), *aff'd*, 504 F.3d 338 (2d Cir. 2007) ("[T]he visual impact of the Project does not implicate a compelling government interest."); *Whitton v. City of Gladstone, Mo.*, 54 F.3d 1400, 1408 (8th Cir. 1995) ("[A] municipality's asserted interests in traffic safety and aesthetics, while significant, have never been held to be compelling."); *Marks v. City of Chesapeake, Va.*, 883 F.2d 308, 311 (4th Cir. 1989) ("[G]overnment officials simply cannot act solely in reliance on public distaste for certain activities, instead of on legislative determinations concerning public health and safety").

The proposed steeple's height and lighting do not implicate public health or safety. Thus, the proposed restrictions could never survive strict scrutiny under RLUIPA.

Ad hoc restrictions on religious architecture also violate the First Amendment's Free Exercise Clause. The Supreme Court recently clarified that "[a] law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021) (citations omitted). If such a law "burden[s]" religious exercise, it must be justified by strict scrutiny or invalidated. *Id.* at 532-33. Strict scrutiny is strict in theory, but almost always fatal in fact. For the same reasons, we believe any restriction on the steeple would therefore violate the First Amendment.

Thank you for your review of this information. Please do not hesitate to reach out if we can provide additional information.

Sincerely,

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 
Carolynne C. White