

Religious Land Use and Institutionalized Persons Act

Key Land Use Provisions & Case Examples

Michigan Association of Planning
Planning Michigan Conference
September 27, 2024

Shannon Ackenhausen
Assistant U.S. Attorney
Eastern District of Michigan

Abigail Marshak
Trial Attorney
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

*The slides were created by U.S. Department of Justice attorneys for discussion purposes only.
The views expressed therein do not represent the official opinions of the U.S. Department of Justice.*

Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

- Statutory codification of **religious freedoms**
- Protects use of land for religious purposes
- Protects the rights of incarcerated persons to exercise their religion

Why **RLUIPA**?

Congress found:

- “Massive evidence” that local land use officials were **discriminating** and placing **unreasonable restrictions** on religious land use
- Minority religious groups (e.g., Jews, Muslims) were disproportionately affected
- Zoning codes frequently excluded religious uses where they permitted secular places of assembly

Land Use Regulation

Zoning Laws

- Use of property
- Discretionary approvals:
Conditional use permits,
variances, rezonings

Landmarking Laws

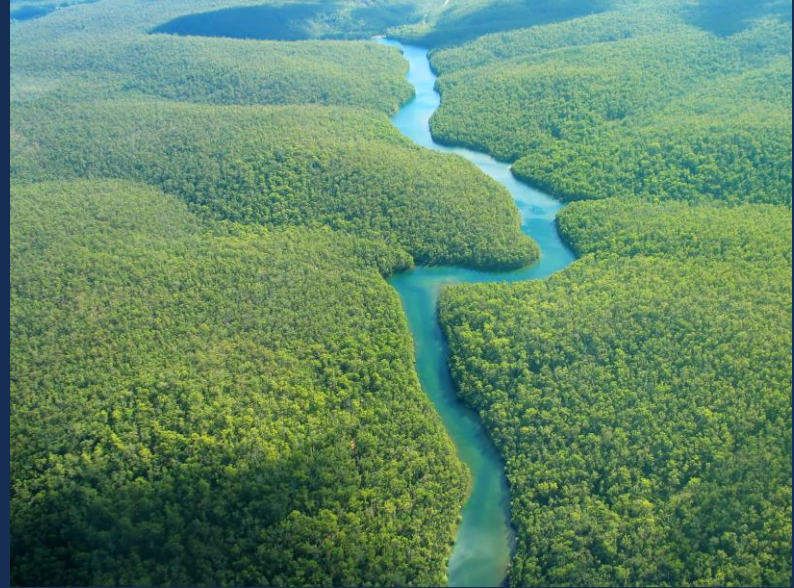
- Historical designations

Not typically fire codes, landlord/tenant laws, accessibility laws

Land Use Regulation

Not all courts agree:

- Environmental Laws
- Eminent Domain
- Fire Codes
- Sewage/Water Service
Decisions & Regulations



Religious Land Use Is **B R O A D**

- **Houses of worship** e.g., churches, synagogues, mosques, temples)
- Religious **educational** facilities
- Faith-based **community services** (e.g., shelters, homeless resource centers, food banks)
- Religious **cemeteries**
- Religious **camps**
- **Home** worship/home religious use

Four Specific Prohibitions



1. **Substantial Burden** on religious exercise

2. **Unequal Treatment**

Religious vs. Nonreligious
Assemblies/Institutions

3. **Discrimination**

4. **Total or Unreasonable
Exclusion**

Equal Terms:

Religious assemblies must be treated as well as comparable nonreligious assemblies

Religious land use:

Churches, mosques, temples,
synagogues, houses of worship

Religious schools

Secular land use:

Clubs, theaters, community centers,
day cares, banquet halls, etc.

Secular schools, public schools

Three Kinds of **Equal Terms** Claims

- 1) Truly neutral land use regulation that is ***selectively enforced*** against religious, as opposed to nonreligious, assemblies or institutions
- 2) Land use regulation that ***facially differentiates*** between religious and nonreligious assemblies or institutions
- 3) Facially neutral land use regulation that is "***gerrymandered***" to place a burden solely on religious, as opposed to nonreligious, assemblies or institutions

As Applied Equal Terms

Consider, for instance:

- *An ordinance banning all assembly halls that can hold more than 500 members.*
- *A megachurch with over 500 members applies for a zoning exception, and the city denies the request.*
- *But then an over-sized book club applies for an exception that the city grants.*

This time, the city has “implemented” the ordinance in a way that treats religious assemblies on “less than equal terms” than nonreligious assemblies. The city granted an exception to a nonreligious assembly (the book club) while refusing to do the same for a religious assembly (the church).

“As Applied” Equal Terms Case Example:

Tree of Life Christian Schools v. City of Upper Arlington, 905 F.3d 357 (6th Cir. 2018)

- Tree of Life tried to use an office building to operate a religious school in a zoning district where religious schools were not permitted. The religious school sought to rezone the property, and the City denied the rezoning application.
- When it tried to operate the religious school, secular and religious schools were excluded from the district, but childcare centers were allowed. Tree of Life argued that childcare centers were appropriate, better-treated comparators.
- The Court agreed that revenue generation was a legitimate zoning criteria. It then held that Tree of Life presented no evidence that nonprofit childcare centers, assuming the full use of the property, are similarly situated to its proposed school in their revenue generation capacity using income per square foot calculations.

Facial Equal Terms

Consider another example:

- *Consider an ordinance that permits social clubs but prohibits churches and synagogues.*
- *The nonreligious assemblies get in.*
- *The religious ones do not.*

The ordinance thus facially treats religious assemblies—churches and synagogues—on less than equal terms than nonreligious assemblies—social clubs.

“Facial” Equal Terms Case Example:

United States v. City of Troy, 592 F. Supp. 3d 591 (E.D. Mich. 2022)

District	Minimum Setback Requirements and Parking Restrictions				
	Front	Rear	Sides	Adjacent to Residential	Parking Restrictions in Setback Areas
Community Business	10'	30'	20**	75'	≤ 50% of front; not within 10' of residential or public street
General Business	10'	30'	20**	75'	≤ 50% of front; not within 10' of residential or public street
Integrated Industrial & Business	30'	20'	10'	50'	Not in front; not within 10' of residential or public street
Office	10'	30'	20'	50'	≤ 50% of front; not within 10' of residential or public street
Office Mixed Use	10'	30'	20***	50'	≤ 50% of front; not within 10' of residential or public street
Research Center	30'	20'	20'	50'	Not in front or by public street; not within 10' of residential

**No setbacks are required where the lot abuts a non-residential lot unless the property's related wall has windows; a minimum 10' setback is required where the property's wall has windows or openings.*

***In the Office Mixed Use district, the sum total of both side setbacks must be at least 60 feet*

Religious Gerrymandered Equal Terms

Consider, for instance:

- *A law that bans all steeples on buildings.*
- *On its face, the law looks neutral. No building, religious or secular, can have a steeple.*
- *But if a plaintiff can show that the ban “almost only” targets religious assemblies because only religious buildings have steeples, then the plaintiff has successfully demonstrated that the law treats religious assemblies on “less than equal terms.”*

Substantial Burden

No government shall impose or implement a land use regulation in a manner that imposes a *substantial burden* on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution –

- A. is in furtherance of a *compelling governmental interest*;
and
- B. is the *least restrictive means* of furthering that compelling governmental interest.

Substantial Burden

Highly fact specific inquiry

Religious Group's Burden
(Plaintiff)

∨

Municipality's Burden
(Defendant)

∨

Some degree of
severity

More than a
"mere
inconvenience"

Burden
Shift

Compelling
Interest

Least Restrictive
Means

Substantial Burden Factors

*“Some degree of **severity**”*

*“More than a **mere inconvenience**”*

Factors “that are helpful in determining” whether there is a substantial burden include whether the religious institution:

- Has a feasible **alternative location**
- Suffered substantial delay, uncertainty, and expense
- Has a **reasonable expectation** of using the land

Substantial Burden Case Example:

***Livingston Christian Schools v. Genoa Charter Township*, 858
F.3d 996 (6th Cir. 2017)**

- Livingston Christian Schools (LCS) is a private, nondenominational Christian school with a mission to provide a religious education to students in Livingston County, Michigan.
- LCS entered into a lease agreement for a property in Genoa Township, which required that LCS obtain a special use permit to operate.
- The Township denied the special use permit application.

Substantial Burden Case Example:

Cath. Healthcare Int'l, Inc. v. Genoa Charter Township,
82 F.4th 442, 444 (6th Cir. 2023)

- Catholic Healthcare, Inc. is a religious organization whose mission furthers the work of St. Padre Pio—patron saint of healing.
- In 2020, it obtained 40 acres of undeveloped, wooded property in a rural area of Genoa Township.
- In an email exchange that July, Catholic Healthcare informed the Township of their plans to create a prayer trail with the Stations of the Cross and a stone mural.
- The Township treated the trail as the zoning equivalent of a church building that needed a special land use permit.

Substantial Burden Case Example:

St. Timothy's Church v. City of Brookings (D. Or. 2024)

- Church serves meals to homeless 4 days per week.
- City issues cease and desist order.
- City then makes “benevolent meal service” a conditional use, limited to 2 days per week.
- Church files lawsuit.
- United States files statement of interest.

Discrimination

- Prohibits intentional religious **discrimination**, including **discrimination** based upon religious denomination.
- Does not require a comparison to another assembly or institution.



Discriminatory Intent Factors

- ❖ **Impact of the official action**
- ❖ **Historical background of the decision**
- ❖ **Procedural departures**
- ❖ **Substantive departures**
- ❖ **Statements by decision-makers and community members**

Discrimination Case Example:

United States v. Sterling Heights, MI (E.D. Mich. 2016)

33. The August 13 Report stated that the Application met all of the specific standards for residential zones and all of the general standards for Special Approval Land Use, outlined in § 3.02(A) and § 25.02 of the Zoning Ordinance, respectively. The August 13 Report recommended approval of the Application.

And then came the August 13, 2015, planning commission meeting . . .

Unreasonable or Total Exclusion

Prohibits a land use regulation that:

- **Totally excludes**; or
- **Unreasonably limits** religious assemblies or institutions from a jurisdiction.

Unreasonable Limitation Case Example:

United States v. Toms River (D.N.J. 2020)

- Beginning in 2009 Toms River increased minimum acreage requirements for places of worship from **2 acres** to **10 acres**.
- Before 2009, **400+** parcels qualified. In 2018, only **74** parcels qualified.
- United States filed a complaint alleging that through these reductions, Toms River **unreasonably limited** opportunities for religious worship, particularly to Orthodox Jewish community.
- Case resolved with Consent Order that required Toms River to **roll back its zoning code**.

DOJ RLUIPA Enforcement

Lawsuits

- Injunctive relief only
- Revise zoning ordinance, grant permits
- Cannot seek damages
- Since 2000, DOJ has filed **28 enforcement** lawsuits

Statements of Interest

- DOJ can file friend of the court briefs
- Explain DOJ's view on RLUIPA
- Since 2000, DOJ has filed **38 statements** of interest regarding RLUIPA's land use provisions

Online Resources

DOJ Place to Worship Initiative

www.justice.gov/crt/place-worship-initiative

DOJ RLUIPA Website

<https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>

DOJ RLUIPA Letter to State, County, and Municipal Officials

https://www.justice.gov/d9/2024-03/2024_doj_letter_-_rluipa-final.pdf

Questions?

Abigail Marshak

Senior Trial Attorney, Housing and Civil Enforcement Section
Civil Rights Division
Abigail.Marshak@usdoj.gov

Shannon Ackenhausen

Acting Chief, Civil Rights Unit
U.S. Attorney's Office for Eastern District of Michigan
Shannon.Ackenhausen@usdoj.gov