

# RLUIPA

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# Framing the Problem

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- “Wherever the souls of men are found, there the house of God belongs.”
  - O’Brien v. City of Chicago, 105 N.E. 2<sup>nd</sup> 917, 920 (Ill. App. Ct. 1952)
- Churches in the United States are facing ever-increasing pressure by municipal authorities to limit their physical presence in America's cities and towns. According to zoning boards, mayors, and city planners across the nation, churches may belong neither on Main Street nor in residential neighborhoods. Roman Storzer, Esq.

# Framing the Problem

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- There are elements of RLUIPA that, if interpreted correctly, reflect constitutional principles and therefore are largely unremarkable, 5 but section 2(a) of RLUIPA, which imposes the most searching standard of constitutional review--strict scrutiny--on generally applicable land use laws, is the most reckless federal intervention in local land use law and community decision-making in history.

- Marci Hamilton

# Background

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- In very broad strokes, RLUIPA prohibits zoning and landmarking laws that:
  - (1) treat churches or other religious assemblies or institutions on less than equal terms with nonreligious assemblies or institutions;
  - (2) discriminate against any assemblies or institutions on the basis of religion or religious denomination;
  - (3) totally exclude religious assemblies from a jurisdiction; or
  - (4) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.

# Legislative History

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- RLUIPA is "the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed [**\*\*16**] burden, consistent with [Supreme Court] precedent." *Cutter v. Wilkinson*, 544 U.S. 709, 714, 125 S. Ct. 2113, 161 L. Ed. 2d 1020 (2005)

# Kennedy - Hatch

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— COMPULSING GOVERNMENTAL INTERESTS.

It is important to note that this legislation does not provide a religious assembly with immunity from zoning regulation. If the religious claimant cannot demonstrate that the regulation places a substantial burden on sincere religious exercise, then the claim fails without further consideration. If the claimant is successful in demonstrating a substantial burden, the government will still prevail if it can show that the burden is an unavoidable result of its pursuit of a compelling governmental objective.

# Statutory Structure

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- Equal protection
- Non-discrimination
- Substantial burden

# Statutory Structure

## 42 U.S.C. 2000 cc

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- **Equal protection**
  - Section 2(b)(1) of RLUIPA, known as the "equal terms" provision requires that religious assemblies and institutions be treated at least as well as non religious assemblies and institutions, such fraternal organizations, clubs and community centers.
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- **Non discrimination**
  - Section 2(b)(2) of RLUIPA states that it is unlawful to discriminate against any assembly or institution on the basis of religion, making it illegal to treat zoning applicants differently because of their particular religious identity or beliefs
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- **Substantial burden**
  - Section 2(b)(3) of RLUIPA provides that local governments may not totally exclude religious assemblies from, or unreasonable limit then in, a particular city. This means that if there is nowhere at all in a city to locate a place of worship, or the availability of locations is so limited as to be unreasonable, this provision is violated.



# Statistics

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In enacting RLUIPA, Congress also expressed concern that places of worship were frequently disfavored in zoning treatment relative to nonreligious assemblies.<sup>2</sup> This remains a significant problem. Since 2010, 49% of the RLUIPA investigations handled by the Department have involved disparate treatment between religious and nonreligious assemblies as the principal issue or as a major issue in the case. As the summaries below indicate, these investigations have helped secure the rights of a wide range of religious groups, particularly smaller congregations seeking to rent space to use for worship.

# Local Case Law

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- Inherently beneficial use
- The basic law governing [\*\*\*3] land use variances is codified in *N.J.S.A. 40:55D-70d, amended by L.1991, c. 256*, which states that a board of adjustment may
- [i]n particular cases and for special reasons, grant a variance to allow departure from regulations pursuant to article 8 of this act to permit: (1) a use or principal structure in a district restricted against such use or principal structure

# Specific Cases

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- Long Branch
  - Facts of the case –
    - ✦ The liquor statute
    - ✦ Comparators issue
    - ✦ Booz before God
- Ocean Township
- **The plaintiff wanted to build a yeshiva with a dormitory. Local opposition focused on the dormitory.**
- **Judge Wolfson comment on individualized assessment**

# Specific Cases

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- Bernards Township
  - Facts of the case
    - ✦ 27 hearings
    - ✦ 3 years
    - ✦ The former mayor was head of the Islamic organization
    - ✦ Parking issue
  - Judge Shipp Ruling
    - ✦ Individualized assessment for the Mosque but not other religious institutions (keep this in mind when we discuss Ocean)
    - ✦ Vague definition of church

# Specific Cases

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- Wayne

- Sued by an Islamic organization trying to expand a mosque. The Town took the property through eminent domain. Judge Sheridan denied a summary judgment and held that RLUIPA applies in eminent domain cases. This is a minority position.

- Woodcliffe Lake

- Rabbi residential home
- P attempted to buy other properties

# Specific Cases

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- Jackson Township
  - Dormitory issue
- Mahwah
  - Eruv issue – consistency is the key
- Toms River –  
eminent domain issue
- Bridgewater – construction of mosque
- Bayonne – construction of mosque

# The Complaint

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- Individually named defendants
  - Official capacity
  - Personal capacity

# From the Bayonne Complaint

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- “These people do not want peace. Look up your history they have been at war with Christianity and Judaism since the 6th century. Why should bayonne bend over backwards for these warmongers.”
- “This is a damned disgrace! You gotta stop this mosque before we have homegrown terrorists right here in our backyard.”
- “They gave our community the first bombing if [*sic*] the WTC in 1993. Religion of peace? Wake up!”
- “We’re being run out of our homes by these people who have nothing in common with us as a whole. The American people. I think with all the tension surrounding the Islamic culture we have every right to be concerned about the happenings being proposed for this center.”
- “We are at war with Islam. I refuse to coexist with savages who murder human beings . . . . Every mosque on [*sic*] this country should have burned down 14 years ago. When will the final straw break the camel fucker’s back? Are you going to tolerate our worst enemy until we are subjugated and all our women are wearing trash bags? . . . .



# Discovery Issues

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- Discriminatory animus
- Email
  - Personal email
- Electronically stored information
  - Personal computers
  - Vendors
- Social Media

# Examples from Social Media

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- “Look what they did to my hometown of Lakewood. Stop the locusts from spreading throughout the state.”
- “I live in the town and I want the religeous [sic] zealots stopped from bringing in more adult students. They can cgo [sic] to the catskills and build there, or go to Isreal [sic] if they want.”
- “I owned property in Lakewood NJ for 24 years. Orthodox Jewish landlords made life a living hell for me there! I would hate to see this repeated in Ocean!”
- “There are plenty of other places for radical religious schools.”
- “Aside from this being completely ludicrous from a homeowner standpoint, these people don't pay any taxes. They're all "Rabbi's" Don't let the word "yeshiva" fool you.”

# More from Social Media

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- I'm more concerned with Islam's twenty year plan for the current century. As we sit in our homes this morning, people (Muslims, too) are being raped, tortured, and killed in the name of Islam. I

# More from social media recounted in complaints

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- “A Good Move to close off any plans of expansion by the jews next door.....  
I approve of this Expenditure.....  
In an update on the black hats' mission to occupy toms river, Ocean Township (Monmouth county) just shot down the syrian jews' attempt to thwart zoning laws. Those rich dirty jews will now play the race card (just like Lakewood's dirty population doid)”
- “Buy the land keep the Jews out they ruined spring valley monsey and Lakewood keep them out”

# “The Matrix”

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- *“I'd like to share a revelation that I've had during my time here. It came to me when I tried to classify your species and I realized that you're not actually mammals. Every mammal on this planet instinctively develops a natural equilibrium with the surrounding environment but you humans do not. **You move to an area and you multiply and multiply until every natural resource is consumed and the only way you can survive is to spread to another area. There is another organism on this planet that follows the same pattern. Do you know what it is? A virus. Human beings are a disease, a cancer of this planet.**”*

(Agent Smith, "The Matrix")

# Justice Department Involvement

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- Requests for information
- Subpoenas
  - Types of information demanded
- Suits
  - Relief sought
- Coordination with plaintiff

# Damage Exposure

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- Civil rights damages
- Construction delays- increased costs
- Counsel fees
- Punitives
- Equitable relief
  - Can include an order to permit construction of the church, synagogue, mosque, etc.
  - Oversight by the Justice Department
  - Sensitivity training

# Strategies

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- Be consistent
  - In the application of the Zoning Ordinance and Master Plan in regard to all religions
  - In the application of the Zoning Ordinance and Master Plan as to religious and non religious uses

Make sure that the Zoning Ordinance does not totally exclude religious institutions

Do not use personal email accounts to conduct official business

Make clear at Zoning Board hearings that comments will be limited to the merits of the application and that expressions of bigotry and prejudice are not welcome and do not reflect the opinions of local officials



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# Questions?

Thank You!

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