STEVEN H. ROSENBAUM
Chief
ERIC TREENE
Special Counsel
HOLLY C. LINCOLN
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. – G St.
Washington, DC 20530
Phone: (202) 514-0553
Fax: (202) 514-1116
Email: holly.lincoln@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CONGREGATION ETZ CHAIM, an unincorporated association and the individual members thereof; CONGREGATION ETZ CHAIM OF HANCOCK PARK, a California non-profit corporation,

Plaintiffs,

v.

CITY OF LOS ANGELES,

Defendant.

CASE NO. CV 10-01587 (CAS) (Ex)

**UNITED STATES OF AMERICA'S STATEMENT OF INTEREST IN OPPOSITION TO THE CITY OF LOS ANGELES' MOTION FOR JUDGMENT ON THE PLEADINGS**

The Hon. Christina A. Snyder
Courtroom: 5
Date: November 15, 2010
Time: 10:00 a.m.

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases:** **Page**

**Cases, cont'd:** **Page**



**Statutes:** **Page**



**Other Authorities:** **Page**

**Other Authorities, cont'd:** **Page**

## I. STATEMENT OF INTEREST OF THE UNITED STATES

The United States respectfully submits this Statement of Interest, pursuant to 28 U.S.C § 517, because this litigation implicates the proper interpretation and application of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et. seq.* ("RLUIPA"). The Department of Justice has authority to enforce RLUIPA and to intervene in any proceeding that involves RLUIPA. § 42 U.S.C. § 2000cc-2(f). The United States thus has a strong interest in the issues raised in this motion, and believes that its participation will aid the court in their resolution.

## II. BACKGROUND

As the previous lawsuit and earlier briefings in the current lawsuit thoroughly state the factual background of this case, and because the motion currently before the court is procedural in nature, the United States will limit its summary of the facts to the following:

This case involves the ongoing efforts of a small Orthodox congregation to hold weekly prayer services in a residential neighborhood of Los Angeles, California, known as Hancock Park. Plaintiffs Congregation of Etz Chaim and Congregation of Etz Chaim of Hancock Park (collectively, "Plaintiffs," "Congregation Etz Chaim," or "Congregation") allege that Defendant City of Los Angeles ("City") violated RLUIPA by denying Plaintiffs' application for a conditional use permit ("CUP") to hold religious worship services at a residential property located at 303 S. Highland Avenue. (Compl., ECF No. 1.)

In light of the Ninth Circuit's 2007 order striking down the settlement between the Congregation and the City, *League of Residential Neighborhood Advocates v. City of Los Angeles*, 498 F.3d 1052 (9th Cir. 2007), the Congregation filed a new CUP application with the City, again seeking to hold religious worship

services at the same property. After holding a public hearing, the City's Zoning Administrator ("ZA") issued a written decision, dated October 8, 2009, denying the CUP. (ZA decision, attached as Ex. 1.) On appeal, the Central Area Planning Commission ("CAPC") held a hearing and issued a one-page decision, dated March 2, 2010, affirming the ZA's denial. (CAPC decision, attached as Ex. 2.) Plaintiffs subsequently filed the instant lawsuit.

In Defendant's Motion for Judgment on the Pleadings, now before the court, the City contends that Plaintiffs' failure to seek state judicial relief of the Zoning Administrator's and Central Area Planning Commission's denials of the CUP application renders those administrative decisions a final state court judgment, which serves to preclude Plaintiffs' RLUIPA claims[1] in federal court under the doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion). (Def.'s Mot. at 2, ECF No. 30.) The City also moves for judicial notice of its administrative record. (Def.'s Req., ECF No. 30-1.) The Congregation has opposed both motions. (Pls.' Opp'n to Def.'s Mot., ECF No. 33; Pls.' Obj. to Def.'s Req., ECF No. 34.)

In the instant Statement of Interest, the United States addresses the limited question of whether an unreviewed city zoning decision precludes a claimant from raising a claim based on a Section 2 RLUIPA violation in federal court.[2] As argued below, the United States asserts that Plaintiffs' RLUIPA claims should not be precluded in this court because: (1) the text of RLUIPA and the statute's purpose and legislative history make clear that Congress intended there to be a

---

[1] Defendant moves for preclusion with regard to "the claims and issues raised in the Complaint." (Def.'s Mot. at 2.) Plaintiffs' Complaint states only claims under RLUIPA. (Compl. ¶¶ 90-101.)

[2] The United States takes no position here as to whether RLUIPA claims based on Section 3 violations, for the benefit of institutionalized persons, are subject to preclusion. *See* 42 U.S.C. § 2000cc-1. Nor does the United States take a position on the Defendant's request for judicial notice of the administrative record.

strong presumption against preclusion of Section 2 RLUIPA claims in federal court; (2) RLUIPA was designed to address discriminatory, arbitrary, and unduly burdensome actions by local governments, including actions by local zoning boards and similar bodies, so it would eviscerate the statute to allow those zoning boards and similar bodies, as a general matter, to bar recourse by asserting preclusion; (3) the City's administrative proceedings were not sufficiently judicial in character to satisfy the fairness standards required for preclusion to apply; (4) the issue litigated in the City's administrative proceedings and in the instant federal action are necessarily distinct and therefore do not satisfy the "identical issue" requirement of collateral estoppel; and (5) the City's administrative proceedings do not constitute a full and fair adjudication of Plaintiffs' RLUIPA claims as required by RLUIPA's Full Faith and Credit provision. Accordingly, the United States urges the Court to find that Plaintiffs' RLUIPA claims are not precluded and deny Defendant's Motion for Judgment on the Pleadings.

## III. THERE IS A STRONG PRESUMPTION AGAINST PRECLUSION OF RLUIPA LAND USE CLAIMS

### A. The Framework and Current State of Preclusion Law

Under the federal Full Faith and Credit statute, a federal court must give the same preclusive effect to a state court judgment as the judgment would be afforded in that state. 28 U.S.C. § 1738. Courts must look to the preclusion law of the state in which the judgment is rendered. *Id.*; see *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S. Ct. 1327, 84 L. Ed. 2d 274 (1985). The federal Full Faith and Credit statute does not apply to administrative proceedings; however, federal common law holds that administrative decisions are entitled to preclusive effect in federal courts, as long as certain fairness requirements are satisfied. *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422, 86 S.

Ct. 1545, 16 L. Ed. 2d 642 (1966); *People v. Sims*, 32 Cal. 3d 468, 479, 186 Cal. Rptr. 77 (1982). Like state administrative hearings, municipal administrative hearings may be entitled to preclusive effect if they contain sufficient judicial safeguards. *Eilrich v. Remas*, 839 F.2d 630, 633 (9th Cir. 1988). The Ninth Circuit has held that both factual and legal determinations by an administrative agency may be afforded preclusive effect, so long as the *Utah Construction* fairness requirements are met. *Miller v. County of Santa Cruz*, 39 F.3d 1030, 1032-33 (9th Cir. 1994) (citations omitted); *Eilrich*, 839 F.2d at 634 n.2.

**B. RLUIPA Specifically Limits the Availability of Preclusion**

In determining whether an unreviewed administrative decision has a preclusive effect on a federal claim, the common law principle of preclusion will apply unless congressional intent demands otherwise. The Supreme Court has stated that "where a common-law principle is well established, as are the rules of preclusion, the courts may take it as given that Congress has legislated with an expectation that the principle will apply except 'when a statutory purpose to the contrary is evident.'" *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108, 111 S. Ct. 2166, 115 L. Ed. 2d 96 (1991) (quoting *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783, 72 S. Ct. 1011, 96 L. Ed. 1294 (1952)); *see Univ. of Tenn. v. Elliott*, 478 U.S. 788, 797, 106 S. Ct. 3220, 92 L. Ed. 2d 635 (1986).

A "statutory purpose" to avoid preclusion can take many forms. The *Astoria* Court emphasized that "[t]his interpretative presumption is not . . . one that entails a requirement of clear statement, to the effect that Congress must state precisely any intention to overcome the presumption's application to a given statutory scheme." 501 U.S. at 108. Thus, where clear congressional intent exists – through the express language of a statute, the statute's purpose, or as indicated by legislative history – for a law to avoid preclusion, courts uphold such congressional intent and refuse to apply preclusion. For example, in the civil rights context, the

Supreme Court has held that Congress intended § 1983 claims to be subject to preclusion (as long as the *Utah Construction* fairness requirements are met), but that Congress did not intend claims brought under Title VII, 42 U.S.C. § 2000e et seq., or the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. ("ADEA"), to be subject to preclusion. *See id.* at 108, 110-11; *Elliott*, 478 U.S. at 795-99.

In *Elliott*, an administrative law judge (ALJ) found that the discharge of a black employee was not racially motivated. 478 U.S. at 790-91. Without seeking state review of the administrative decision, the employee filed a federal lawsuit alleging Title VII and § 1983 violations, among other claims. *Id.* at 790-92. With regard to the plaintiff's Title VII claim, the Supreme Court found that both the text of Title VII and the legislative history of amendments to Title VII showed Congress's intent to provide federal employees with the right to a trial de novo after completion of an administrative proceeding. *Id.* at 796. With regard to the plaintiff's § 1983 claim, however, the Supreme Court found that nothing in the statute or the legislative history indicated a congressional intent to shield § 1983 claims from preclusion, and so the default of preclusion applied. *Id.* at 796-99.

Similarly, in *Astoria*, the Supreme Court found that, because the ADEA expressly required a claimant to file his or her claim with the state agency prior to filing a claim in federal court, Congress did not intend for an adverse state decision to preclude the claimant from bringing the claim in federal court. 501 U.S. at 111-112. Applying preclusion to the ADEA, the court held, would render that part of the statute meaningless. *Id.* at 112.

Like Title VII and the ADEA, the express language of RLUIPA indicates an intent to override the general presumption of preclusion with regard to claims based on violations of Section 2 of RLUIPA.[3] In RLUIPA's Full Faith and Credit

[3] Section 2 of RLUIPA lays out the statute's substantive land use protections, providing that a local government cannot: substantially burden religious exercise without a compelling justification (section 2a); treat religious assemblies or

provision, the statute provides: "Adjudication of a claim of a violation of section 2 in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum." 42 U.S.C. § 2000cc-2(c). Thus, Congress intentionally limited the rule that prior proceedings receive full faith and credit in federal court (under 28 U.S.C. § 1738) to claims that had been "fully and fairly" adjudicated in a non-federal forum. Stated another way, a Section 2 RLUIPA claim that did not receive a "full and fair" adjudication in a non-federal forum does not receive full faith and credit in the federal forum – that is, the claim is not precluded.

### C. RLUIPA's Legislative History Indicates Congress's Intent to Provide a Federal Remedy for Discriminatory Local Decisions

RLUIPA was designed to address state and local agency decisions that violate free religious exercise. The legislative history indicates that Congress was particularly concerned with the decisions made by local zoning bodies, such as the Zoning Administrator and Central Area Planning Commission in this case, because Congress found that such bodies had frequently violated free exercise rights.

In enacting RLUIPA, Congress recognized the importance of land use to religious exercise:

> Churches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements. The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble

---

institutions worse than comparable secular institutions and uses (section 2(b)(1)); discriminate on the basis of religion or religious denomination (section 2(b)(2)); totally exclude religious uses from a jurisdiction (section 2(b)(3)(A)); or impose unreasonable limits on religious uses in a jurisdiction (section 2(b)(3)(B)). 42 U.S.C. § 2000cc.

for religious purposes.

146 Cong. Rec. S7774 (daily ed. July 27, 2000) (joint statement of Sen. Hatch and Sen. Kennedy). Congress further recognized that religious entities often face arbitrary and discriminatory treatment by local and state agencies, and that this problem required "federal protection of religious freedom." H.R. Rep. 106-219, at 9 (1999).

In particular, Congress found that the individualized discretion common to zoning and land use decisions has led to restrictive or burdensome requirements and discrimination against religious entities. "The hearing record demonstrates a widespread practice of individualized decisions to grant or refuse permission to use property for religious purposes. These individualized assessments readily lend themselves to discrimination, and they also make it difficult to prove discrimination in any individual case." 146 Cong. Rec. S7774. The standards of zoning authorities "are often vague, discretionary, or subjective." Issues Relating to Religious Liberty Protection, and Focusing on the Constitutionality of a Religious Protection Measure Before the S. Comm. on the Judiciary, 106th Cong. 84-85 (1999) ("1999 SJC Hearing") (statement of Prof. Laycock). The individualized nature of zoning decisions that Congress was concerned about specifically includes decisions by zoning boards. The congressional record notes that local zoning codes often "permit churches only with individualized permission from the zoning board, and zoning boards use that authority in discriminatory ways." 146 Cong. Rec. S7774.

The evidence also showed that "new, small, or unfamiliar churches" faced more discrimination than larger, well-established churches and that racial or religious animus sometimes appeared in local land use decisions, "especially in cases of black churches and Jewish schuls and synagogues." 146 Cong. Rec. S7774. As with the arbitrary application of standards by zoning boards, the

evidence demonstrated that sometimes "zoning board members . . . explicitly offer race or religion as the reason to exclude a proposed church . . . ." *Id.* Thus zoning boards, in addition to zoning codes on their face and the actions of individual local officials, were of specific concern to Congress.

Nathan J. Diament, a director at the Union of Orthodox Jewish Congregations of America, testified that thriving Orthodox Jewish communities often faced discrimination from zoning boards:

> In recent decades, Orthodox Jewish communities throughout the United States have been flourishing. Long existing communities are growing and new communities are being developed. This wonderful trend often requires the expansion of older synagogues or the construction of new ones. Expansion or construction often requires permits, variances or waivers from zoning boards. Thus, the flourishing of traditional Jewish communities has given rise to another, more unfortunate trend, the use of land use regulations and zoning boards to discriminate against religious communities.
>
> While we, of course, recognize that land use regulation is an important state interest and religious institutions, like other public institutions, must be sensitive to them and cannot automatically override them, it is clearly the case that zoning rules are being used in inappropriate and religiously discriminatory ways.

1999 SJC Hearing 24 (statement of Mr. Diament).

Tellingly, the land use dispute at issue in this case played a visible role in the enactment of RLUIPA. Congregation Etz Chaim's religious leader, Rabbi Chaim Baruch Rubin, provided oral and written testimony before Congress about the City's active opposition to his congregation's place of worship in the Hancock

Park neighborhood. *See* Protecting Religious Freedom after *Boerne v. Flores* (part II) Hearing Before H. Subcomm. on the Constitution, 105th Cong. 58-70, 76-78 (1998) (statement of Rabbi Rubin). Due to the restrictions and burdens that his congregants had faced in trying to practice their faith in the City, Rabbi Rubin concluded that "freedom of religion is threatened in our country today. . . . The religious persecution of today hides behind an overly secularized interpretation of our Constitution." *Id.* at 67.

The Congregation's struggle to secure a place to worship resonated with members of Congress and other witnesses. After questioning Rabbi Rubin about the Congregation's inability to obtain a CUP in the City, Congressman Bob Inglis stated, "help is hopefully on the way." *Id.* at 68 (statement of Rep. Inglis, Member, H. Subcomm. on the Constitution). Rep. Inglis later called Rabbi Rubin's testimony "[o]ne of the most troubling accounts" of religious exercise discrimination offered at the hearing. *Id.* at 127 (letter from Rep. Inglis to Rep. Canady, Chairman of H. Subcomm. on the Constitution). At another congressional hearing, law professor Douglas Laycock discussed the Congregation's land use dispute with the City:

> Rabbi Chaim Rubin described how the City of Los Angeles refused to let fifty elderly Jews meet for prayer in a house in the Hancock Park neighborhood, an area of some six square miles, because Hancock Park had no place of worship and the City did not want to create a precedent for one. That is, the City's express reason for excluding a place of worship was that it wanted to exclude places of worship! Yet the City permitted other places of assembly in Hancock Park, including schools, recreational uses, and embassy parties. Whittier Law School was just down the street from Rabbi Rubin's shul. Eighty-four thousand cars passed the building every day, and

> hundreds of law students came and went to both the day school and the night school. But we are supposed to believe that fifty Jews arriving on foot once a week would irrevocably change the neighborhood.

1999 SJC Hearing 87-88 (statement of Prof. Laycock).

After holding nine congressional hearings over three years, and gathering "massive evidence" of discretionary decisions made by local and state governments that violated the right to free exercise, 146 Cong. Rec. S7774, Congress passed RLUIPA, which President Clinton signed into law on September 22, 2000. Statement on Signing the Religious Land Use and Institutionalized Persons Act of 2000, Pub. Papers 2168 (Sept. 22, 2000).

Thus, the legislative history demonstrates that Congress enacted RLUIPA to serve as a federal statutory solution to religious discrimination and violation of the free exercise of religion by state and local entities, including zoning boards, planning commissions, and their respective agencies of appeal. This congressional purpose would be thwarted if zoning boards are able to insulate actions that would violate RLUIPA by making a ruling purportedly under RLUIPA and then arguing that a claimant is precluded from challenging the ruling. Therefore, there should be, at a minimum, a strong presumption against finding preclusion, to ensure that Congress's intent to provide an enforcement mechanism for discrimination and violation of the free exercise of religion is not undermined.

Courts "construe statutes, where possible, so as to avoid rendering superfluous any parts thereof." *Astoria*, 501 U.S. at 112. As demonstrated by the statute's text and legislative history, the purpose of RLUIPA is to provide a federal cause of action where a state or local agency decision violates its land use provisions. If a violative local agency decision itself precludes a plaintiff from challenging that decision in federal court, then the land use protections in section 2

of RLUIPA are rendered meaningless. As the *Astoria* Court noted, "such federal proceedings would be strictly *pro forma* if state administrative findings were given preclusive effect." *Id.* at 111. Such a result would contradict congressional intent as well as basic common sense.

### D. RLUIPA Must Be Construed Broadly

Finally, Congress expressly provided that RLUIPA should be broadly interpreted to protect religious exercise to the fullest extent allowed by law. Section 5 of RLUIPA states, "This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution." 42 U.S.C. § 2000cc-3(g). Taken together, RLUIPA's Full Faith and Credit provision and the legislative history demonstrating Congress's concern with RLUIPA violations by zoning boards themselves, as well as this provision mandating broad protection of religious exercise, confirm that Congress intended for the preclusion of RLUIPA claims to be available in only the rarest of circumstances.

## IV. THE CITY'S ADMINISTRATIVE PROCEEDINGS DO NOT MEET THE STANDARDS FOR PRECLUSION

Temporarily setting aside the issue of the text and purpose of RLUIPA, there is a more elementary reason that the City's administrative proceedings cannot preclude the Congregation's RLUIPA claims in this case: baseline common law preclusion requirements have not been met. Under California law, determining whether an administrative decision is entitled to preclusive effect is a two-part analysis. *Eilrich*, 839 F.2d at 633. First, the agency decision must meet the fairness requirements set forth in *Utah Construction*, which California has adopted as its own state standard. *Id.*; *see Plaine v. McCabe*, 797 F.2d 713, 719 n.13 (9th

Cir. 1986). Second, the agency decision must meet "traditional collateral estoppel criteria." *Eilrich*, 839 F.2d at 633 (citations omitted). As discussed below, the City's administrative proceedings fail both parts of this analysis and are therefore not entitled to preclusive effect.

### A. The City's Administrative Proceedings Do Not Satisfy the *Utah Construction* Requirements

The City's administrative proceedings regarding Plaintiffs' CUP application were not sufficiently judicial in character to satisfy the *Utah Construction* requirements of fairness. Under *Utah Construction*, preclusion is available only if: (1) the administrative agency acts in a judicial capacity, (2) the administrative agency resolves disputed issues of fact properly before it, and (3) the parties have an adequate opportunity to litigate. 384 U.S. at 422; *see Miller*, 39 F.3d at 1032-33. These standards ensure that preclusion is applied only where "the state administrative proceeding was conducted with sufficient safeguards to be equated with a state court judgment." *Plaine*, 797 F.2d at 719.

Courts have found administrative proceedings to meet the *Utah Construction* fairness standards where the proceedings contain numerous judicial aspects. For example, the Ninth Circuit found that fairness standards were met where the 14-day administrative proceeding "resembl[ed] a trial," at which

> both sides were entitled to call, examine and cross-examine witnesses under oath or affirmation . . . . , both parties were represented by counsel, twenty-one sworn witnesses testified, subpoenas were issued, and both parties presented oral argument and written memoranda.

*Eilrich*, 839 F.2d at 634. The Ninth Circuit has similarly found the *Utah Construction* standards met where

> [t]he fairness hearing was conducted similarly to a court proceeding. It was an adversary proceeding in which opposing parties were present and represented by counsel and were allowed to call, examine, cross-examine, and subpoena witnesses. . . . testimony was to be submitted under oath or affirmation and a verbatim transcript was required. The parties received a written decision setting forth the Commissioner's reasons for allowing the merger.

*Plaine*, 797 F.2d at 720. Similarly, in *Miller*, the Ninth Circuit found that the administrative proceeding met fairness standards where the administrative commission "held a public evidentiary hearing at which Miller was represented by counsel and was permitted to present oral and documentary evidence and to call witnesses." 39 F.3d at 1030.

On the other hand, an administrative proceeding fails to meet the *Utah Construction* fairness standards where it "lacks many of the indicia of proceedings imbued with a judicial character, such as an opportunity to call and cross-examine witnesses." *Pacific Lumber Co. v. State Water Res. Control Bd.*, 37 Cal. 4th 921, 944, 38 Cal. Rptr. 3d 220 (2006). The *Pacific Lumber* court listed numerous "[i]ndicia of proceedings undertaken in a judicial capacity," including:

> a hearing before an impartial decision maker; testimony given under oath or affirmation; a party's ability to subpoena, call, examine, and cross-examine witnesses, to introduce documentary evidence, and to make oral and written argument; the taking of a record of the proceeding; and a written statement of reasons for the decision.

*Id.* (citation omitted). Similarly, a city council hearing failed to meet fairness standards where "nothing in the record establishes that [the plaintiff] could have

presented evidence or subpoena, call, or cross-examine witnesses under oath." *North Pacifica, LLC v. City of Pacifica*, 366 F. Supp. 2d 927, 932 (N.D. Cal. 2005), *vacated and rev'd on other grounds*, 526 F.3d 478 (9th Cir. 2008).

Like the proceedings in *Pacific Lumber* and *North Pacifica*, and unlike those in *Eilrich*, *Plaine*, and *Miller*, the City's administrative proceedings were not judicial in character. For example, the ZA and CAPC decisions were made by city officials rather than a neutral decision-maker. (*See* ZA decision; CAPC decision.) In addition, the people who spoke in support of and in opposition to the CUP application at the ZA level did not testify under oath, nor were they cross-examined. (*See* ZA decision at 14-27; Pls.' Opp'n at 11, 20-21.) Similarly, those who submitted written statements of support or opposition were not required to do so under the penalties of perjury. (*See* Pls.' Opp'n at 11, 20.) The parties were not able to issue subpoenas. (*See id.*) Although the Zoning Administrator did provide a written decision explaining his reasons for denying the CUP (ZA decision), the CAPC issued a one-page decision stating, without explanation or discussion, that the planning commission had voted to deny the appeal and sustain the Zoning Administrator's decision to deny the CUP application, and then simply attached the Zoning Administrator's decision. (CAPC decision.) Nor does the fact that a transcript was made of the ZA public hearing (ZA decision at 14) suffice to characterize this proceeding as judicial, where the proceeding did not include other judicial indicia.

Furthermore, Defendant's contention that courts have described other municipal CUP proceedings as "quasi-judicial" is not dispositive as to the CUP proceedings in this case. As described above, determining whether a proceeding is sufficiently judicial in character to warrant preclusion requires a case-by-case analysis. *See Miller*, 39 F.3d at 1033 (analyzing an administrative proceeding for fairness standards "requires careful review of the administrative record"). Moreover, the cases that Defendant cites do not involve issue or claim preclusion,

making them entirely inapposite. *See Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613 (9th Cir. 2003) (abstention doctrine); *Cadiz Land Co. v. Rail Cycle*, 83 Cal. App. 4th 74, 99 Cal. Rptr. 2d 378 (2000) (adequacy of an environmental impact report); *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519, 8 Cal. Rptr. 2d 385 (1992) (standard of review for a writ of administrative mandamus).

For these reasons, the City's administrative proceedings were not sufficiently judicial in character to satisfy the *Utah Construction* fairness standards. As such, the administrative denial of the Congregation's CUP application has not met the requirements to be afforded preclusive effect over Plaintiffs' RLUIPA claims in this court.

**B. The Issue Decided in the Administrative and Federal Forums Is Not Identical**

Yet another reason preclusion is inapplicable here is that the issue decided in the administrative forum is not identical to the issue before this court. As the Ninth Circuit has held, one of the requirements of collateral estoppel is that "the issue necessarily decided at the previous [proceeding] is identical to the one which is sought to be relitigated." *Eilrich*, 839 F.2d at 633 (citations omitted). In the instant case, the issue before the City administrative agencies was whether the Congregation's use comports with local land use requirements for purposes of a CUP, whereas the issue before this court is whether the City's denial of the CUP violates RLUIPA. Thus, it was the City's denial of the CUP that gave rise to Plaintiffs' RLUIPA claims.

The Eastern District of California has addressed this precise issue. In *Guru Nanak Sikh Soc'y v. County of Sutter*, 326 F. Supp. 2d 1128 (E.D. Cal. 2003), *aff'd on other grounds*, 456 F.3d 978 (9th Cir. 2006), county zoning officials denied a CUP to build a Sikh temple in an agricultural-residential area. *Id.* at 1131. The temple then filed suit in federal court, alleging that the country's decision violated

RLUIPA and the First Amendment. The county moved for judgment on the pleadings, arguing (among other things) that the unreviewed county determination denying the CUP precluded the plaintiff's claims in federal court. *Id.* at 1132-33. The court rejected the county's argument, finding that claim preclusion was

> obviously . . . inapposite because the claims in this lawsuit are entirely different from the claim, or more accurately, the application, that was denied by the Board of Supervisors. Plaintiff's complaint alleges that the Board violated their rights under RLUIPA, the Free Exercise Clause and the Equal Protection Clause. Those claims could not have been before the Board, of course, because it was the Board's ultimate decision to reverse the County Planning Commission, and the allegedly discriminatory nature of that decision, that gave rise to plaintiff's claims.

*Id.* at 1133 (emphasis added). In other words, the issue at the county level was whether the temple's use comported with local land use laws, while the issue in federal court was whether the county's decision violated RLUIPA. Consequently, the court found that the administrative decision gave rise to the federal claims, and thus the issues litigated in each forum are necessarily distinct.[4]

Finding that an administrative decision barred a claimant from challenging that decision in federal court would lead to a nonsensical result, the court noted:

> It would be counterintuitive, to say the least, for a federal court to shield local government officials from scrutiny under the Constitution

[4] The court also distinguished the *Miller* court's finding of preclusion. In *Miller*, the issues litigated in the administrative and federal forums were identical because the *Miller* plaintiff's federal claim was not based on a violation made by the administrative agency. *Guru Nanak*, 326 F. Supp. 2d at 1133-34.

> and federal civil rights laws by giving preclusive effect to their allegedly discriminatory decisions. Federal common law does not command such an abdication of judicial responsibility.

*Id.* at 1134.

The *Guru Nanak* court also found that the defendant had not demonstrated, and the factual record did not suggest, that the administrative proceeding satisfied the *Utah Construction* fairness factors. *Id.* at 1134. For these reasons, the court held that the temple's RLUIPA claims were not precluded by the unreviewed administrative decision. *Id.*

The facts of *Guru Nanak* are exactly on point. The instant case presents the same procedural posture: the City moves for judgment on the pleadings on the ground that Plaintiffs' unreviewed administrative decision bars their federal RLUIPA claims. As in *Guru Nanak*, the Congregation's CUP application was denied at the administrative level and the Congregation then filed in federal court alleging that the administrative decision violates RLUIPA. Most importantly, as in *Guru Nanak*, the Congregation's federal RLUIPA claims necessarily arise out of the administrative decision, and the issues are therefore not identical.

The City's contention that the Zoning Administrator heard and considered arguments regarding whether denying the CUP would violate RLUIPA, and determined that it would not, is not persuasive. The *Guru Nanak* court recognized the anomalous result that would occur if simply addressing whether its decision would violate federal law served to shield an administrative agency from federal liability: "The acceptance of defendants' argument would, in some circumstances, result in a local body shielding itself from federal court review of an allegedly unconstitutional action simply because that body had been informed that its actions were unconstitutional." *Id.* at 1133 n.2. Furthermore, RLUIPA's legislative history indicates that the very purpose of the statute's land use protections was to

provide an avenue for addressing the discriminatory decisions made by local and state agencies, including zoning boards and planning commissions. *See* section III.C, *supra*.

The fact that the administrative agency considered whether its decision to deny the CUP would violate RLUIPA does not prove that any RLUIPA claim was litigated at that level. In the administrative proceedings, the City determined whether to grant or deny a CUP. In this court, Plaintiffs allege that the City's denial of the CUP violated RLUIPA. Logically, the RLUIPA issue could not have been raised (or litigated) until the City's denial occurred. Consequently, the City could not have determined the RLUIPA issue during the administrative proceedings. Therefore, the issues litigated at the administrative and federal stages are not identical, and Plaintiffs' RLUIPA issues cannot be collaterally estopped.

### C. The City's Administrative Proceedings Do Not Overcome RLUIPA's Presumption Against Preclusion

For the same reasons that the City's zoning proceedings were not sufficiently judicial in character to satisfy the *Utah Construction* fairness standards, the proceedings also do not constitute a "full and fair" adjudication, as required by RLUIPA's Full Faith and Credit provision. (*See* section III.B, *supra*.) In *North Pacifica*, the court held that a city council hearing's "restriction of evidence" and "limited nature" prevented the hearing from constituting a full and fair adjudication of the plaintiff's claim, and used this term to describe why the hearing failed to satisfy *Utah Construction* fairness requirements. 366 F. Supp. 2d at 933. As stated earlier, the City's administrative zoning proceedings did not allow the parties to obtain discovery or issue subpoenas; the witnesses did not provide sworn testimony and were not subject to cross-examination; and the hearings were presided over by city officials rather than by a neutral decision-maker. As such, these hearings fall far short of what could be considered a "full

and fair adjudication" of the Congregation's RLUIPA claims.

Furthermore, in light of RLUIPA's legislative history, which demonstrates Congress's concern about zoning boards violating religious exercise, as well as the statute's provision in Section 5 calling for a "broad protection of religious exercise," this case perfectly exemplifies Congress's intent to provide a federal forum in which to adequately challenge a discriminatory local zoning decision. Therefore, pursuant to the express language of RLUIPA, 42 U.S.C. § 2000cc-2(c), the City's administrative decisions are not entitled to full faith and credit, and the Congregation's RLUIPA claims are thus not precluded in this court.

## V. CONCLUSION

For the foregoing reasons, the Court should find that Plaintiffs' RLUIPA claims are not precluded in this court under either res judicata or collateral estoppel. The court should therefore deny Defendant's Motion for Judgment on the Pleadings.

Dated: November 1, 2010

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

Holly C. Lincoln

STEVEN H. ROSENBAUM
Chief
ERIC TREENE
Special Counsel
HOLLY C. LINCOLN
E-mail: holly.lincoln@usdoj.gov
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. – G St.
Washington, DC 20530
Phone: (202) 514-0553
Fax: (202) 514-1116

Attorneys for the United States of America

## CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2010, I caused to be served a copy of the foregoing document entitled *United States of America's Statement of Interest in Opposition to the City of Los Angeles' Motion for Judgment on the Pleadings*, by both e-mail and overnight mail, upon the following counsel of record:

Carmen A. Trutanic
Tayo A. Popoola
Amy Brothers
701 City Hall East
200 North Main Street
Los Angeles, CA 90012
(213) 978-8202
Tayo.Popoola@lacity.org
Amy.Brothers@lacity.org

Joseph S. Fischbach
Fischbach & Fischbach
8200 Wilshire Blvd.Suite 424
Beverly Hills, CA 90211
(310) 278-4015
Jsf2@fischbachlaw.com

Holly C. Lincoln

HOLLY C. LINCOLN
E-mail: holly.lincoln@usdoj.gov
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. – G St.
Washington, DC 20530
Phone: (202) 514-0553
Fax: (202) 514-1116

Attorney for the United States of America