

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.

This guidance document is designed to be accessible to the non-attorney. A version of this document including footnotes to court decisions and other legal authorities is available [here](#).

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, individuals holding prayer meetings in their homes, religious schools, religious retreat centers, cemeteries, and faith-based social services provided by religious entities.

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.”¹² 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.

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”¹³ This provision makes clear that religious exercise under RLUIPA includes construction or expansion of places of worship and other properties used for religious exercise.

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

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.¹⁴

¹¹ RLUIPA, 42 U.S.C. § 2000cc(a).

¹² RLUIPA, 42 U.S.C. § 2000cc-5(7)(A).

¹³ RLUIPA, 42 U.S.C. § 2000cc-5(7)(B).

¹⁴ RLUIPA, 42 U.S.C. 2000cc-5(4).

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

No. RLUIPA is not a blanket exemption from zoning laws. 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. 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.

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; there would be excessive delay, uncertainty, or expense; or if the application requirements are discriminatory on their face.

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.”¹⁵ 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. 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 regulations or sewage requirements 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.

¹⁵ RLUIPA, 42 U.S.C. § 2000cc-5(5).

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, the Americans with Disabilities Act’s building accessibility requirements, an ordinance requiring all land development to tap into municipal sewer connections, or stormwater remediation fees.

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. 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.

8. Can places of worship still be landmarked?

Yes, places of worship can be landmarked. 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. Landmarking regulations also must be applied in a nondiscriminatory manner.

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. 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, the actual religious needs of an individual or religious congregation, the level of current or imminent space constraints, whether alternative properties are reasonably available, the history of a complainant’s efforts to locate within a community, the absence of good faith by the zoning authorities, 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;
- imposing a significantly great restriction on religious use of a property; and
- creating significant delay, uncertainty, or expense in constructing or expanding a place of worship, religious school, or other religious facility.

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, a denial of approval for construction of a parish center, a denial of expansion plans for a

religious school, and a denial of an application to convert a building's storage space to religious use.

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, 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, 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.

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.”¹⁶ 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. 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. 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.

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,¹⁷ as might be the case with some construction or expansion projects.

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.¹⁸ In the RLUIPA context, some courts have interpreted “compelling interest” to mean an interest of the “highest order.” As one court described it, an interest of the highest order typically involves “some substantial threat to public safety, peace, or order.”¹⁹ Some courts have ruled, for

¹⁶ RLUIPA, 42 U.S.C. § 2000cc(a)(2)(C).

¹⁷ RLUIPA, 42 U.S.C. § 2000cc(a)(2)(b).

¹⁸ RLUIPA, 42 U.S.C. § 2000cc-2(b).

¹⁹ *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 development or aesthetics 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. 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.

Even where an interest is compelling, RLUIPA requires that it must be pursued through the least restrictive means.²⁰ 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.

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."²¹

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.²²

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. Courts have differed regarding how 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.

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; where religious assemblies were prohibited but auditoriums, assembly halls, community centers, senior citizen centers, civic clubs, day care centers, and other assemblies were allowed; and where places of worship were forbidden but community centers, fraternal associations, and political clubs were permitted.

²⁰ RLUIPA, 42 U.S.C. § 2000cc(a)(1)(b).

²¹ RLUIPA, 42 U.S.C. § 2000cc(b)(1).

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

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.²³ 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. 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.”²⁴ For example, if a city, town, or county had no location where religious uses are permitted, that would be a facial violation of RLUIPA.

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.²⁵ 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. 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. 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.

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.

²³ RLUIPA, 42 U.S.C. § 2000cc-2(b)(2).

²⁴ RLUIPA, 42 U.S.C. § 2000cc-2(b)(3)(A).

²⁵ RLUIPA, 42 U.S.C. § 2000cc-2(b)(3)(B).

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. 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. 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. 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).

Email: RLUIPA.complaints@usdoj.gov

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

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