U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, DC 20530*

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Johnson:

On behalf of the Administration, we are pleased to present for congressional consideration four legislative proposals to amend the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)[1], which is intended to protect individuals, houses of worship, and other religious institutions from discrimination in zoning and landmarking laws.

These proposals are intended to address issues identified in the course of the Housing and Civil Enforcement Section's investigation and litigation of RLUIPA land use cases. Primarily, the lack of statutory authority for the United States to seek damages and civil penalties in these cases has created a structure in which a locality can unilaterally revise or amend an offending land use regulation in the middle of litigation, thereby mooting the case and avoiding any sort of court-enforced order or judgment.

In addition, because the United States can only obtain injunctive relief, it cannot take cases where the religious institution no longer has a property interest. This means that, for example, if a land use policy was egregious enough to cause a religious institution to divest its property interest, the United States is unable to seek any recourse through RLUIPA.

The Department looks forward to working with Congress on this legislative action.

Sincerely,

Ronald J. Lampard

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Ronald J. Lampard
Deputy Assistant Attorney General

Enclosure

[1] 42 U.S.C. §§ 2000cc–2000cc-5.

<u>Department of Justice Legislative Proposals</u>
<u>Religious Land Use And Institutionalized Persons Act (RLUIPA)</u>
<u>119th Congress</u>

Introduction:

The Civil Rights Division (CRT) has drafted four (4) legislative proposals to amend the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc–2000cc-5, to strengthen CRT's ability to enforce the statute and protect people and religious institutions from unlawful burdens on the exercise of religion.

These proposals are intended to address issues identified in the course of the Housing and Civil Enforcement (HCE) Section's litigation of RLUIPA land use cases. Primarily, the lack of statutory authority for the United States to seek damages and civil penalties in these cases has created a structure in which a locality can unilaterally revise or amend an offending land use regulation in the middle of litigation, thereby mooting the case and avoiding any sort of court-enforced order or judgment.

In addition, because the United States can only obtain injunctive relief, it cannot take cases where the religious institution no longer has a property interest. This means that, for example, if a land use policy was egregious enough to cause a religious institution to divest its property interest, then there would be no recourse.

A more complete summary of each RLUIPA legislative proposal is included below, followed by the full proposals.

RLUIPA Legislative Proposal Index

Proposal Number	**Statutory Provision and Title**	**Summary**
1	42 U.S.C. § 2000cc-2(f). Authority of the United States to enforce this chapter	This provision authorizes a court, when the United States brings a RLUIPA land use case, to award monetary damages to the aggrieved party and to assess a civil penalty of $123,965 for first violations and $247,939 for subsequent violations. The language is modeled after the Fair Housing Act (42 U.S.C. § 3614(d)) and Servicemembers Civil Relief Act (50 U.S.C. § 4041(b)) provisions that authorize monetary damages and civil penalties in cases brought by the United States. The civil penalty levels are consistent with current fines for Fair Housing Act violations.
2	42 U.S.C. § 2000cc-3(e). Governmental discretion in alleviating burdens on religious exercise	This provision clarifies RLUIPA's safe harbor language so that governments may not avoid monetary damages if they alter the offending land use policy or make accommodations for the religious institution.

		Some courts have ruled that private claims for retroactive monetary damages are barred by RLUIPA's safe harbor if the policy is changed, not just claims for injunctive or declaratory relief. Without Proposal #1 and the ability for the United States to bring RLUIPA claims for monetary damages, this proposal would only affect private claims for monetary damages.
3	42 U.S.C. § 2000cc-5(5). Definitions	This provision adds utility laws to the scope of land use laws covered under RLUIPA. Localities have used such laws (*e.g.*, water and sewer ordinances) to limit religious land use, but courts have inconsistently held whether such laws are covered under the statute.
4	42 U.S.C. § 2000cc-5(5). Definitions	This provision adds RLUIPA protections for claimants that no longer have an interest in the property. This is meant to cover a situation where a claimant suffers a denial that violates RLUIPA and then sells the property or loses their interest.

RLUIPA Legislative Proposal #1

42 U.S.C. § 2000cc-2(f). Authority of the United States to enforce this chapter

Summary: This provision authorizes a court, when the United States brings a RLUIPA land use case, to award monetary damages to the aggrieved party and to assess a civil penalty of $127,983 for first violations and $255,964 for subsequent violations.

The language is modeled after the Fair Housing Act (42 U.S.C. § 3614(d)) and Servicemembers Civil Relief Act (50 U.S.C. § 4041(b)) provisions that authorize monetary damages and civil penalties in cases brought by the United States. The civil penalty levels are consistent with current fines for Fair Housing Act (FHA) violations and should be adjusted for inflation, in accordance with the Bipartisan Budget Act of 2015. The penalties should also be updated in the future to reflect any changes to the FHA.

Redline:

(f) Authority of United States to enforce this chapter

(1) The United States may bring an action for injunctive or declaratory relief to enforce compliance with this chapter.

(2) In a civil action commenced under paragraph (1) to enforce the provisions of section 2000cc of this title, the court--

(A) may award all other appropriate relief, including monetary damages, to any person, assembly, or institution aggrieved by the violation; and

(B) may, to vindicate the public interest, assess a civil penalty against the government--

(i) in an amount not exceeding $127,983, for a first violation; and

(ii) in an amount not exceeding $255,964, for any subsequent violation.

(3) Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

Legislative Language:

Section 2000cc-2(f) of title 42, United States Code, is amended to read as follows:

“(1) The United States may bring an action for injunctive or declaratory relief to enforce compliance with this chapter.

“(2) In a civil action commenced under paragraph (1) to enforce the provisions of section 2000cc of this title, the court--

“(A) may award all other appropriate relief, including monetary damages, to any person, assembly, or institution aggrieved by the violation; and

“(B) may, to vindicate the public interest, assess a civil penalty against the government--

“(i) in an amount not exceeding $127,983, for a first violation; and

“(ii) in an amount not exceeding $255,964, for any subsequent violation.

“(3) Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.”

RLUIPA Legislative Proposal #2

42 U.S.C. § 2000cc-3(e). Governmental discretion in alleviating burdens on religious exercise

Summary: RLUIPA's "safe harbor" provision, 42 U.S.C. § 2000cc-3(e), precludes claims for injunctive relief if the local government alters the offending policy and/or makes accommodations for the religious institution. Some courts, however, have suggested that compliance with RLUIPA's safe harbor provision also bars retroactive monetary damages. *See*, *e.g.*, *Riverside Church v. City of St. Michael*, 205 F. Supp. 3d 1014, 1030-31 (D. Minn. 2016); *Grace Church of Roaring Fork Valley v. Bd. of Cnty. Comm'rs*, 742 F. Supp. 2d 1156, 1160 (D. Colo. 2010). This provision clarifies that RLUIPA's safe harbor language does *not* bar claims for retroactive monetary damages, consistent with the longstanding doctrine that damages claims are not rendered moot by a defendant's subsequent compliance or cessation of illegal conduct.

Note: Without Proposal #1 and the ability for the United States to bring RLUIPA claims for monetary damages, this proposal would only affect private claims for monetary damages. All claims for injunctive relief could be potentially mooted should the municipality take corrective actions.

Redline:

(e) Governmental discretion in alleviating burdens on religious exercise

A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden. This section does not affect the availability of damages for violations under section 2000cc of this title.

Legislative Language:

Section 2000cc-3(e) of title 42, United States Code, is amended to add at the end the following: "This section does not affect the availability of damages for violations under section 2000cc of this title."

RLUIPA Legislative Proposal #3

42 U.S.C. § 2000cc-5(5). Definitions

Summary: This provision clarifies that utility laws are within the scope of land use laws covered under RLUIPA. Localities have used such laws (*e.g.*, water and sewer ordinances) to limit religious land use, but courts have inconsistently held whether such laws are covered under the statute.

Redline:

(5) Land use regulation

The term “land use regulation” means a zoning, utility, or landmarking law, or the application of such a law, that limits or restricts a claimant’s use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

Legislative Language:

Section 2000cc-5(5) of title 42, United States Code, is amended by inserting “, utility,” after “zoning”.

RLUIPA Legislative Proposal #4

42 U.S.C. § 2000cc-5(5). Definitions

Summary: This provision adds RLUIPA protections for claimants that no longer have an interest in the property at the time of enforcement. Because Proposal 3 also amends the same statutory subsection to include utility laws, this version offers two alternatives:

- **Proposal 4(a)** should be used **if Proposal 3 is adopted**, and reflects **both** CRT's proposed addition of "utility" and protection for past property interests.

- **Proposal 4(b)** should be used **if Proposal 3 is not adopted**, and reflects **only** the language protecting claimants who no longer have a property interest.

Proposal 4(a): If Proposal is Adopted

Redline:

(5) Land use regulation

The term "land use regulation" means a zoning, utility, or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has, or had at the time of the limitation or restriction, an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

Legislative Language:

Section 2000cc-5(5) of title 42, United States Code, is amended by inserting ", utility," after "zoning", and by inserting ", or had at the time of the limitation or restriction," before "an ownership".

Proposal 4(b): If Proposal is Not Adopted

Redline:

(5) Land use regulation

The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has, or had at the time of the limitation or restriction, an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

Legislative Language:

Section 2000cc-5(5) of title 42, United States Code, is amended by inserting ", or had at the time of the limitation or restriction," before "an ownership".

Redline:

(5) Land use regulation

The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has, or had at the time of the limitation or restriction, an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

Legislative Language:

Section 2000cc-5(5) of title 42, United States Code, is amended by inserting ", or had at the time of the limitation or restriction," before "an ownership".

Legislative Proposal to Amend the Religious Land Use And Institutionalized Persons Act to Protect People and Religious Institutions from Unlawful Burdens on the Exercise of Religion

SECTION BY SECTION ANALYSIS

This document contains deliberative process and work product privileged information

The Civil Rights Division (CRT) has drafted four (4) legislative proposals to amend the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc–2000cc-5, to strengthen CRT's ability to enforce the statute and protect people and religious institutions from unlawful burdens on the exercise of religion.

These proposals are intended to address issues identified in the course of the Housing and Civil Enforcement (HCE) Section's investigation and litigation of RLUIPA land use cases. Primarily, the lack of statutory authority for the United States to seek damages and civil penalties in these cases has created a structure in which a locality can unilaterally revise or amend an offending land use regulation in the middle of litigation, thereby mooting the case and avoiding any sort of court-enforced order or judgment.

In addition, because the United States can only obtain injunctive relief, it cannot take cases where the religious institution no longer has a property interest. This means that, for example, if a land use policy was egregious enough to cause a religious institution to divest its property interest, the United States is unable to seek any recourse through RLUIPA.

Proposal 1: Authority of the United States to Enforce This Chapter

This section authorizes a court, when the United States brings a RLUIPA land use case, to award monetary damages to the aggrieved party and to assess a civil penalty of up to $123,965 for first violations and $247,939 for subsequent violations.

The language is modeled after the Fair Housing Act (42 U.S.C. § 3614(d)) and Servicemembers Civil Relief Act (50 U.S.C. § 4041(b)) provisions that authorize monetary damages and civil penalties in cases brought by the United States. The civil penalty levels are consistent with current fines for Fair Housing Act violations.

Proposal 2: Governmental Discretion in Alleviating Burdens on Religious Exercise

This section clarifies RLUIPA's safe harbor language so that governments may not avoid monetary damages if they alter the offending land use policy or make accommodations for the religious institution.

Some courts have ruled that private claims for retroactive monetary damages are barred by RLUIPA's safe harbor if the policy is changed, not just claims for injunctive or declaratory relief. Without the change in Section 1 and the ability for the United States to bring RLUIPA claims for monetary damages, this section would only affect private claims for monetary damages.

Proposal 3: Definitions

This section adds utility laws to the scope of land use laws covered under RLUIPA. Localities have used such laws (*e.g.*, water and sewer ordinances) to limit religious land use, but courts have inconsistently held whether such laws are covered under the statute.

Proposal 4: Definitions

This section adds RLUIPA protections for claimants that no longer have an interest in the property. Because the proposal for Section 3 also amends the same statutory subsection to include utility laws, this section offers two alternatives:

Section 4(a) should be used if the proposal for Section 3 is adopted and reflects both CRT's proposed addition of "utility" and protection for past property interests.

Section 4(b) should be used if the proposal for Section 3 is not adopted and reflects only the language protecting claimants who no longer have a property interest.