

1 STEVEN H. ROSENBAUM  
Chief  
2 ERIC TREENE  
Special Counsel  
3 HOLLY C. LINCOLN  
Trial Attorney  
4 Housing and Civil Enforcement Section  
Civil Rights Division  
5 U.S. Department of Justice  
950 Pennsylvania Avenue, N.W. – G St.  
6 Washington, DC 20530  
Phone: (202) 514-0553  
7 Fax: (202) 514-1116  
Email: holly.lincoln@usdoj.gov  
8  
9 Attorneys for United States of America

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

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

16 Plaintiffs,

17 v.

18 CITY OF LOS ANGELES,  
19  
20 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.

21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

I. STATEMENT OF INTEREST OF THE UNITED STATES..... 1

II. BACKGROUND ..... 1

III. THERE IS A STRONG PRESUMPTION AGAINST  
PRECLUSION OF RLUIPA LAND USE CLAIMS..... 3

    A. The Framework and Current State of Preclusion Law..... 3

    B. RLUIPA Specifically Limits the Availability of Preclusion ..... 4

    C. RLUIPA’s Legislative History Indicates Congress’s Intent to Provide  
    a Federal Remedy for Discriminatory Local Decisions..... 6

    D. RLUIPA Must Be Construed Broadly ..... 11

IV. THE CITY’S ADMINISTRATIVE PROCEEDINGS DO NOT MEET  
THE STANDARDS FOR PRECLUSION..... 11

    A. The City’s Administrative Proceedings Do Not Satisfy the *Utah*  
    *Construction* Requirements..... 12

    B. The Issue Decided in the Administrative and Federal Forums Is Not  
    Identical ..... 15

    C. The City’s Administrative Proceedings Do Not Overcome RLUIPA’s  
    Presumption Against Preclusion ..... 18

V. CONCLUSION ..... 20

**TABLE OF AUTHORITIES**

	<b>Cases:</b>	<b>Page</b>
1		
2		
3		
4	<i>Astoria Fed. Sav. &amp; Loan Ass'n v. Solimino,</i>	
5	501 U.S. 104, 111 S. Ct. 2166, 115 L. Ed. 2d 96 (1991) .....	4, 5, 10, 11
6	<i>Baffert v. Cal. Horse Racing Bd.,</i>	
7	332 F.3d 613 (9th Cir. 2003) .....	15
8	<i>Cadiz Land Co. v. Rail Cycle,</i>	
9	83 Cal. App. 4th 74, 99 Cal. Rptr. 2d 378 (2000) .....	15
10	<i>Eilrich v. Remas,</i>	
11	839 F.2d 630 (9th Cir. 1988) .....	4, 11, 12, 14, 15
12	<i>Goat Hill Tavern v. City of Costa Mesa,</i>	
13	6 Cal. App. 4th 1519, 8 Cal. Rptr. 2d 385 (1992) .....	15
14	<i>Guru Nanak Sikh Soc'y v. County of Sutter,</i>	
15	326 F. Supp. 2d 1128 (E.D. Cal. 2003),	
16	<i>aff'd on other grounds,</i> 456 F.3d 978 (9th Cir. 2006) .....	15, 16, 17
17	<i>Isbrandtsen Co. v. Johnson,</i>	
18	343 U.S. 779, 783, 72 S. Ct. 1011, 96 L. Ed. 1294 (1952) .....	4
19	<i>League of Residential Neighborhood Advocates v. City of Los Angeles,</i>	
20	498 F.3d 1052 (9th Cir. 2007) .....	1
21	<i>Marrese v. Am. Acad. of Orthopaedic Surgeons,</i>	
22	470 U.S. 373, 105 S. Ct. 1327, 84 L. Ed. 2d 274 (1985) .....	3
23	<i>Miller v. County of Santa Cruz,</i>	
24	39 F.3d 1030 (9th Cir. 1994) .....	4, 12, 13, 14, 16
25	<i>North Pacifica, LLC v. City of Pacifica,</i>	
26	366 F. Supp. 2d 927 (N.D. Cal. 2005),	
27	<i>vacated and rev'd on other grounds,</i> 526 F.3d 478 (9th Cir. 2008) .....	14, 18
28	<i>Pacific Lumber Co. v. State Water Res. Control Bd.,</i>	
	37 Cal. 4th 921, 38 Cal. Rptr. 3d 220 (2006) .....	14

1	<b>Cases, cont'd:</b>	<b>Page</b>
2	<i>People v. Sims</i> ,	
3	32 Cal. 3d 468, 186 Cal. Rptr. 77 (1982) .....	4
4	<i>Plaine v. McCabe</i> ,	
5	797 F.2d 713 (9th Cir. 1986) .....	11, 12, 13, 14
6	<i>United States v. Utah Constr. &amp; Mining Co.</i> ,	
7	384 U.S. 394, 86 S. Ct. 1545, 16 L. Ed. 2d 642 (1966) .....	3, 12
8	<i>Univ. of Tenn. v. Elliott</i> ,	
9	478 U.S. 788, 106 S. Ct. 3220, 92 L. Ed. 2d 635 (1986) .....	4, 5
10	<b>Statutes:</b>	<b>Page</b>
11	28 U.S.C. § 517 .....	1
12		
13	28 U.S.C. § 1738 .....	3, 6
14	42 U.S.C. § 1983 .....	5
15		
16	Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. ....	5
17	Religious Land Use and Institutionalized Persons Act,	
18	42 U.S.C. § 2000cc et seq .....	<i>passim</i>
19	Title VII, 42 U.S.C. § 2000e et seq.....	5, 6
20		
21	<b>Other Authorities:</b>	<b>Page</b>
22	146 Cong. Rec. S7774 (daily ed. July 27, 2000) .....	7, 8, 10
23	H.R. Rep. 106-219 (1999).....	7
24	Issues Relating to Religious Liberty Protection, and Focusing on the	
25	Constitutionality of a Religious Protection Measure Before the S. Comm. on the	
26	Judiciary, 106th Cong. (1999).....	7, 8, 10
27	Protecting Religious Freedom after <i>Boerne v. Flores</i> (part II) Hearing Before	
28	H. Subcomm. on the Constitution, 105th Cong. (1998) .....	9

1	<b>Other Authorities, cont'd:</b>	<b>Page</b>
2	Statement on Signing the Religious Land Use and Institutionalized Persons Act	
3	of 2000, Pub. Papers (Sept. 22, 2000).....	10

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1                   **I. STATEMENT OF INTEREST OF THE UNITED STATES**  
2

3           The United States respectfully submits this Statement of Interest, pursuant to  
4 28 U.S.C § 517, because this litigation implicates the proper interpretation and  
5 application of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C.  
6 § 2000cc *et. seq.* (“RLUIPA”). The Department of Justice has authority to enforce  
7 RLUIPA and to intervene in any proceeding that involves RLUIPA. § 42 U.S.C. §  
8 2000cc-2(f). The United States thus has a strong interest in the issues raised in this  
9 motion, and believes that its participation will aid the court in their resolution.

10  
11                   **II. BACKGROUND**  
12

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

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

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

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

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

17 In the instant Statement of Interest, the United States addresses the limited  
18 question of whether an unreviewed city zoning decision precludes a claimant from  
19 raising a claim based on a Section 2 RLUIPA violation in federal court.<sup>2</sup> As  
20 argued below, the United States asserts that Plaintiffs' RLUIPA claims should not  
21 be precluded in this court because: (1) the text of RLUIPA and the statute's  
22 purpose and legislative history make clear that Congress intended there to be a  
23

---

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

26 <sup>2</sup> The United States takes no position here as to whether RLUIPA claims based on  
27 Section 3 violations, for the benefit of institutionalized persons, are subject to  
28 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.

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

15  
16 **III. THERE IS A STRONG PRESUMPTION AGAINST PRECLUSION**  
17 **OF RLUIPA LAND USE CLAIMS**

18  
19 **A. The Framework and Current State of Preclusion Law**

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



1 Ct. 1545, 16 L. Ed. 2d 642 (1966); *People v. Sims*, 32 Cal. 3d 468, 479, 186 Cal.  
2 Rptr. 77 (1982). Like state administrative hearings, municipal administrative  
3 hearings may be entitled to preclusive effect if they contain sufficient judicial  
4 safeguards. *Eilrich v. Remas*, 839 F.2d 630, 633 (9th Cir. 1988). The Ninth  
5 Circuit has held that both factual and legal determinations by an administrative  
6 agency may be afforded preclusive effect, so long as the *Utah Construction*  
7 fairness requirements are met. *Miller v. County of Santa Cruz*, 39 F.3d 1030,  
8 1032-33 (9th Cir. 1994) (citations omitted); *Eilrich*, 839 F.2d at 634 n.2.

9  
10 **B. RLUIPA Specifically Limits the Availability of Preclusion**

11 In determining whether an unreviewed administrative decision has a  
12 preclusive effect on a federal claim, the common law principle of preclusion will  
13 apply unless congressional intent demands otherwise. The Supreme Court has  
14 stated that “where a common-law principle is well established, as are the rules of  
15 preclusion, the courts may take it as given that Congress has legislated with an  
16 expectation that the principle will apply except ‘when a statutory purpose to the  
17 contrary is evident.’” *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104,  
18 108, 111 S. Ct. 2166, 115 L. Ed. 2d 96 (1991) (quoting *Isbrandtsen Co. v.*  
19 *Johnson*, 343 U.S. 779, 783, 72 S. Ct. 1011, 96 L. Ed. 1294 (1952)); see *Univ. of*  
20 *Tenn. v. Elliott*, 478 U.S. 788, 797, 106 S. Ct. 3220, 92 L. Ed. 2d 635 (1986).

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

1 Supreme Court has held that Congress intended § 1983 claims to be subject to  
2 preclusion (as long as the *Utah Construction* fairness requirements are met), but  
3 that Congress did not intend claims brought under Title VII, 42 U.S.C. § 2000e et  
4 seq., or the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq.  
5 (“ADEA”), to be subject to preclusion. *See id.* at 108, 110-11; *Elliott*, 478 U.S. at  
6 795-99.

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

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

24 Like Title VII and the ADEA, the express language of RLUIPA indicates an  
25 intent to override the general presumption of preclusion with regard to claims  
26 based on violations of Section 2 of RLUIPA.<sup>3</sup> In RLUIPA’s Full Faith and Credit

27 <sup>3</sup> Section 2 of RLUIPA lays out the statute’s substantive land use protections,  
28 providing that a local government cannot: substantially burden religious exercise  
without a compelling justification (section 2a); treat religious assemblies or

1 provision, the statute provides: “Adjudication of a claim of a violation of section 2  
2 in a non-Federal forum shall not be entitled to full faith and credit in a Federal  
3 court unless the claimant had a full and fair adjudication of that claim in the non-  
4 Federal forum.” 42 U.S.C. § 2000cc-2(c). Thus, Congress intentionally limited  
5 the rule that prior proceedings receive full faith and credit in federal court (under  
6 28 U.S.C. § 1738) to claims that had been “fully and fairly” adjudicated in a non-  
7 federal forum. Stated another way, a Section 2 RLUIPA claim that did not receive  
8 a “full and fair” adjudication in a non-federal forum does not receive full faith and  
9 credit in the federal forum – that is, the claim is not precluded.

10  
11 **C. RLUIPA’s Legislative History Indicates Congress’s Intent to**  
12 **Provide a Federal Remedy for Discriminatory Local Decisions**

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

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

20  
21 Churches and synagogues cannot function without a physical space  
22 adequate to their needs and consistent with their theological  
23 requirements. The right to build, buy, or rent such a space is an  
24 indispensable adjunct of the core First Amendment right to assemble

25  
26 institutions worse than comparable secular institutions and uses (section 2(b)(1));  
27 discriminate on the basis of religion or religious denomination (section 2(b)(2));  
28 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.

1 for religious purposes.

2  
3 146 Cong. Rec. S7774 (daily ed. July 27, 2000) (joint statement of Sen. Hatch and  
4 Sen. Kennedy). Congress further recognized that religious entities often face  
5 arbitrary and discriminatory treatment by local and state agencies, and that this  
6 problem required “federal protection of religious freedom.” H.R. Rep. 106-219, at  
7 9 (1999).

8 In particular, Congress found that the individualized discretion common to  
9 zoning and land use decisions has led to restrictive or burdensome requirements  
10 and discrimination against religious entities. “The hearing record demonstrates a  
11 widespread practice of individualized decisions to grant or refuse permission to use  
12 property for religious purposes. These individualized assessments readily lend  
13 themselves to discrimination, and they also make it difficult to prove  
14 discrimination in any individual case.” 146 Cong. Rec. S7774. The standards of  
15 zoning authorities “are often vague, discretionary, or subjective.” Issues Relating  
16 to Religious Liberty Protection, and Focusing on the Constitutionality of a  
17 Religious Protection Measure Before the S. Comm. on the Judiciary, 106th Cong.  
18 84-85 (1999) (“1999 SJC Hearing”) (statement of Prof. Laycock). The  
19 individualized nature of zoning decisions that Congress was concerned about  
20 specifically includes decisions by zoning boards. The congressional record notes  
21 that local zoning codes often “permit churches only with individualized permission  
22 from the zoning board, and zoning boards use that authority in discriminatory  
23 ways.” 146 Cong. Rec. S7774.

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

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

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

8  
9 In recent decades, Orthodox Jewish communities throughout the  
10 United States have been flourishing. Long existing communities are  
11 growing and new communities are being developed. This wonderful  
12 trend often requires the expansion of older synagogues or the  
13 construction of new ones. Expansion or construction often requires  
14 permits, variances or waivers from zoning boards. Thus, the  
15 flourishing of traditional Jewish communities has given rise to  
16 another, more unfortunate trend, the use of land use regulations and  
17 zoning boards to discriminate against religious communities.

18 While we, of course, recognize that land use regulation is an  
19 important state interest and religious institutions, like other public  
20 institutions, must be sensitive to them and cannot automatically  
21 override them, it is clearly the case that zoning rules are being used in  
22 inappropriate and religiously discriminatory ways.

23  
24 1999 SJC Hearing 24 (statement of Mr. Diament).

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

1 Park neighborhood. See Protecting Religious Freedom after *Boerne v. Flores* (part  
2 II) Hearing Before H. Subcomm. on the Constitution, 105th Cong. 58-70, 76-78  
3 (1998) (statement of Rabbi Rubin). Due to the restrictions and burdens that his  
4 congregants had faced in trying to practice their faith in the City, Rabbi Rubin  
5 concluded that “freedom of religion is threatened in our country today. . . . The  
6 religious persecution of today hides behind an overly secularized interpretation of  
7 our Constitution.” *Id.* at 67.

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

18  
19 Rabbi Chaim Rubin described how the City of Los Angeles refused to  
20 let fifty elderly Jews meet for prayer in a house in the Hancock Park  
21 neighborhood, an area of some six square miles, because Hancock  
22 Park had no place of worship and the City did not want to create a  
23 precedent for one. That is, the City’s express reason for excluding a  
24 place of worship was that it wanted to exclude places of worship! Yet  
25 the City permitted other places of assembly in Hancock Park,  
26 including schools, recreational uses, and embassy parties. Whittier  
27 Law School was just down the street from Rabbi Rubin’s shul.  
28 Eighty-four thousand cars passed the building every day, and

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

5  
6 1999 SJC Hearing 87-88 (statement of Prof. Laycock).

7 After holding nine congressional hearings over three years, and gathering  
8 “massive evidence” of discretionary decisions made by local and state  
9 governments that violated the right to free exercise, 146 Cong. Rec. S7774,  
10 Congress passed RLUIPA, which President Clinton signed into law on September  
11 22, 2000. Statement on Signing the Religious Land Use and Institutionalized  
12 Persons Act of 2000, Pub. Papers 2168 (Sept. 22, 2000).

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

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

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

5  
6 **D. RLUIPA Must Be Construed Broadly**

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

17  
18 **IV. THE CITY’S ADMINISTRATIVE PROCEEDINGS DO NOT MEET**  
19 **THE STANDARDS FOR PRECLUSION**

20  
21 Temporarily setting aside the issue of the text and purpose of RLUIPA, there  
22 is a more elementary reason that the City’s administrative proceedings cannot  
23 preclude the Congregation’s RLUIPA claims in this case: baseline common law  
24 preclusion requirements have not been met. Under California law, determining  
25 whether an administrative decision is entitled to preclusive effect is a two-part  
26 analysis. *Eilrich*, 839 F.2d at 633. First, the agency decision must meet the  
27 fairness requirements set forth in *Utah Construction*, which California has adopted  
28 as its own state standard. *Id.*; see *Plaine v. McCabe*, 797 F.2d 713, 719 n.13 (9th



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

5  
6 **A. The City’s Administrative Proceedings Do Not Satisfy the *Utah***  
7 ***Construction* Requirements**

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

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

21  
22 both sides were entitled to call, examine and cross-examine witnesses  
23 under oath or affirmation . . . . , both parties were represented by  
24 counsel, twenty-one sworn witnesses testified, subpoenas were issued,  
25 and both parties presented oral argument and written memoranda.

26  
27 *Eilrich*, 839 F.2d at 634. The Ninth Circuit has similarly found the *Utah*  
28 *Construction* standards met where

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

8  
9 *Plaine*, 797 F.2d at 720. Similarly, in *Miller*, the Ninth Circuit found that the  
10 administrative proceeding met fairness standards where the administrative  
11 commission "held a public evidentiary hearing at which Miller was represented by  
12 counsel and was permitted to present oral and documentary evidence and to call  
13 witnesses." 39 F.3d at 1030.

14 On the other hand, an administrative proceeding fails to meet the *Utah*  
15 *Construction* fairness standards where it "lacks many of the indicia of proceedings  
16 imbued with a judicial character, such as an opportunity to call and cross-examine  
17 witnesses." *Pacific Lumber Co. v. State Water Res. Control Bd.*, 37 Cal. 4th 921,  
18 944, 38 Cal. Rptr. 3d 220 (2006). The *Pacific Lumber* court listed numerous  
19 "[i]ndicia of proceedings undertaken in a judicial capacity," including:

20  
21 a hearing before an impartial decision maker; testimony given under  
22 oath or affirmation; a party's ability to subpoena, call, examine, and  
23 cross-examine witnesses, to introduce documentary evidence, and to  
24 make oral and written argument; the taking of a record of the  
25 proceeding; and a written statement of reasons for the decision.

26  
27 *Id.* (citation omitted). Similarly, a city council hearing failed to meet fairness  
28 standards where "nothing in the record establishes that [the plaintiff] could have

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

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

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

1 making them entirely inapposite. *See Baffert v. Cal. Horse Racing Bd.*, 332 F.3d  
2 613 (9th Cir. 2003) (abstention doctrine); *Cadiz Land Co. v. Rail Cycle*, 83 Cal.  
3 App. 4th 74, 99 Cal. Rptr. 2d 378 (2000) (adequacy of an environmental impact  
4 report); *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519, 8 Cal. Rptr.  
5 2d 385 (1992) (standard of review for a writ of administrative mandamus).

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

11  
12 **B. The Issue Decided in the Administrative and Federal Forums Is**  
13 **Not Identical**

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

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

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

4 The court rejected the county's argument, finding that claim preclusion was

5  
6 obviously . . . inapposite because the claims in this lawsuit are entirely  
7 different from the claim, or more accurately, the application, that was  
8 denied by the Board of Supervisors. Plaintiff's complaint alleges that  
9 the Board violated their rights under RLUIPA, the Free Exercise  
10 Clause and the Equal Protection Clause. Those claims could not have  
11 been before the Board, of course, because it was the Board's ultimate  
12 decision to reverse the County Planning Commission, and the  
13 allegedly discriminatory nature of that decision, that gave rise to  
14 plaintiff's claims.

15  
16 *Id.* at 1133 (emphasis added). In other words, the issue at the county level was  
17 whether the temple's use comported with local land use laws, while the issue in  
18 federal court was whether the county's decision violated RLUIPA. Consequently,  
19 the court found that the administrative decision gave rise to the federal claims, and  
20 thus the issues litigated in each forum are necessarily distinct.<sup>4</sup>

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

23  
24 It would be counterintuitive, to say the least, for a federal court to  
25 shield local government officials from scrutiny under the Constitution

26 <sup>4</sup> The court also distinguished the *Miller* court's finding of preclusion. In *Miller*,  
27 the issues litigated in the administrative and federal forums were identical  
28 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.

1 and federal civil rights laws by giving preclusive effect to their  
2 allegedly discriminatory decisions. Federal common law does not  
3 command such an abdication of judicial responsibility.  
4

5 *Id.* at 1134.

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

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

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

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

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

13  
14 **C. The City's Administrative Proceedings Do Not Overcome RLUIPA's**  
15 **Presumption Against Preclusion**

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

1 and fair adjudication” of the Congregation’s RLUIPA claims.

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

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

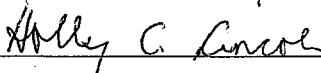


1 **V. CONCLUSION**

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

6  
7 Dated: November 1, 2010

Respectfully submitted,  
THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

8  
9  
10  
11 

12 STEVEN H. ROSENBAUM  
13 Chief

14 ERIC TREENE  
15 Special Counsel

16 HOLLY C. LINCOLN

E-mail: holly.lincoln@usdoj.gov

Trial Attorney

17 Housing and Civil Enforcement Section

Civil Rights Division

18 U.S. Department of Justice

19 950 Pennsylvania Avenue, N.W. – G St.

20 Washington, DC 20530

Phone: (202) 514-0553

21 Fax: (202) 514-1116

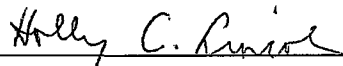
22  
23 Attorneys for the United States of America  
24  
25  
26  
27  
28

**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  
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