

# Religious Land Use and Institutionalized Persons Act Claims

## Strategies for Local Governments for Avoiding and Defending RLUIPA Litigation

**Tuesday, March 13, 2012**  
**1:00 p.m. Eastern Time / 12:00 p.m. Central Time /**  
**11:00 a.m. Mountain Time / 10:00 a.m. Pacific Time**

After the Religious Land Use and Institutionalized Persons Act (RLUIPA) was enacted a decade ago, religious institutions nationwide began filing claims against municipalities alleging that zoning and land use decisions violated the statute and infringed upon their right to religious exercise.

The swell of litigation continues today. Courts have ordered injunctions and awarded monetary damages and attorneys' fees for RLUIPA violations, including at least two multimillion dollar awards in the past year. On the other hand, courts have dismissed RLUIPA (and related) claims in appropriate circumstances.

In light of the increase in RLUIPA litigation, municipalities should evaluate their zoning policies and practices to ensure that they comply with the law.

Listen as our panel of land use lawyers, litigators and legal scholars examines current RLUIPA case law trends, offers practical guidance on how to avoid RLUIPA claims, and recommends steps to take when a lawsuit has been filed against your municipality.

- I. The origins of RLUIPA
  - A. The RFRA
  - B. Legislative history of RLUIPA
  - C. What did Congress intend?
- II. RLUIPA basic provisions
- III. A decade of litigation
  - A. Principal claims
    1. Challenges to all or portions of zoning code
    2. Challenges to individual zoning decisions
  - B. Outcomes
- IV. Interpretation and application of RLUIPA
  - A. Challenges to the constitutionality of RLUIPA
  - B. What is "religious exercise"?
  - C. What constitutes a "substantial burden" on religious exercise?

- D. What are “compelling governmental interests” that warrant a substantial burden on religious exercise?
  - E. What procedures constitute the “individualized assessment” of the proposed use of property?
  - F. What constitutes treating a religious assembly or institution on “less than equal terms”?
  - G. When are religious and secular institutions or assemblies “similarly situated”?
  - H. What constitutes discrimination against an assembly or institution on the basis of religion or religious denomination?
  - I. What constitutes the imposition of an unreasonable limitation on a religious assembly, institution or structure?
- V. Strategies for avoiding/addressing RLUIPA claims
- A. Planning for relationship building with religious institutions
  - B. Review zoning regulations affecting religious institutions and how they have been applied
  - C. Conduct study to determine how to accommodate religious uses without harming surrounding property owners
  - D. Review historic preservation ordinances
  - E. Fairly administer procedural requirements of land use regulations
  - F. Establish internal review process for zoning requests related to religious use
  - G. Follow precedent when handling a religious institution’s land use application
  - H. Establishing ripeness through local quasi-judicial appellate review
  - I. Negotiating settlement short of litigation; after commencement of litigation
- VI. Defending against RLUIPA claims
- A. Trial strategies
    - 1. Choice of forum
    - 2. Jury or bench trial
    - 3. Discovery
    - 4. Disposition short of trial
      - a) Motion to Dismiss
      - b) Motion for Summary Judgment
    - 5. Jury instructions, if applicable
    - 6. Post-trial matters
  - B. Evidentiary issues during trial
    - 1. Proving that restrictions do not target religious uses
    - 2. Do not force religious institution to cease religious worship; alternative analysis
    - 3. Proving no “substantial burden”
    - 4. Proving “compelling interest” by least restrictive means, if there is substantial burden
      - a) Proving restrictions are required to achieve land use regulatory goals
  - C. Remedies
    - 1. Declaratory judgment
    - 2. Remand
    - 3. Injunctive relief
    - 4. Damages
  - D. Attorneys’ fees