How to Avoid a "Holy War" -- Dealing with Potential RLUIPA Claims

Alan C. Weinstein

Cleveland State University, a.weinstein@csuohio.edu

How does access to this work benefit you? Let us know!
Follow this and additional works at: https://engagedscholarship.csuohio.edu/fac_articles
Part of the First Amendment Commons, Land Use Law Commons, and the Urban Studies Commons

Repository Citation
https://engagedscholarship.csuohio.edu/fac_articles/540

This Article is brought to you for free and open access by the Faculty Scholarship at EngagedScholarship@CSU. It has been accepted for inclusion in Law Faculty Articles and Essays by an authorized administrator of EngagedScholarship@CSU. For more information, please contact research.services@law.csuohio.edu.
How to Avoid a “Holy War”—Dealing With Potential RLUIPA Claims

Alan C. Weinstein

INTRODUCTION

RLUIPA was signed into law by President Clinton on September 22, 2000. Almost immediately, churches in every section of the country began to use the statute to challenge local government decisions they viewed as obstacles to how they could develop or use their properties. In the succeeding years, hardly a week has gone by without at least one news story announcing that a church, synagogue, temple, mosque, or religious school is claiming that its right to religious freedom is being infringed upon by local government land use regulations that violate the statute.

While some RLUIPA claims have veered on the frivolous, many disputes pose serious questions about how local governments should balance the goals of land use regulations and the religious mission of churches in the context of a society experiencing rapid cultural and demographic change.

UNDERSTANDING RLUIPA CLAIMS: THE LEGAL, POLITICAL, AND SOCIAL LANDSCAPE

Local government officials need to understand that the “landscape” they will have to navigate when seeking to avoid a RLUIPA claim has legal, political, and social dimensions. Legally, RLUIPA claims occupy a middle ground between challenges to land use regulations in which government is presumed to have acted lawfully and challenges in which government does not have the benefit of that presumption.

Most land use regulation disputes involve either: (a) plans by a property owner or developer to intensify the use of a given property which the city and/or neighbors oppose, or (b) efforts by the city or neighbors to impose additional restrictions on the use of a given property, which the owner or developer opposes. Because such disputes normally involve “economic rights,” local government regulatory actions are presumed to be constitutional and parties challenging the government action, typically under the taking, due process, or equal protection clauses of the state or federal constitution, must overcome that presumption.

A less common type of dispute involves challenges to land use regulations based on a claim that they intrude impermissibly on rights guaranteed under the First and 14th amendments of the Constitution, such as freedom of speech or religion. Typically, these disputes arise when the government seeks to regulate signs and billboards, adult entertainment businesses, or religious institutions. In these cases, government does not receive the benefit of a presumption that its regulations are constitutional.

RLUIPA claims occupy a legal position in between these two types of disputes. With one significant exception, once a plaintiff produces prima facie
Where previous generations attended houses of worship in their own neighborhood, commentators have noted that today, "religious institutions serve populations that are less and less centered in the geographic communities in which they are located."

evidence to support an alleged RLUIPA violation, local government cannot claim a presumption that its regulation is lawful, but rather bears the burden of persuading the court that the challenged regulation should be upheld. The one significant exception involves a claim that a land use regulation imposes a "substantial burden" on the plaintiff's exercise of religion. In that case, the plaintiff bears the burden of persuading the court that the regulation in fact has that effect. Meeting that burden of persuasion has proved difficult.

A second aspect of RLUIPA's "legal landscape"—the availability of expert legal assistance for RLUIPA plaintiffs from "public interest law firms"—is related to the political and social landscape. In recent decades, social and political debate over the proper relationship between religion and government in American society has played out in our media, at the ballot box, and in our legislatures and courthouses. In all of these forums, advocates for the strict separation of church and state argue that the religious landscape is carried on to a significant degree through the rapprochement position, has effectively provided RLUIPA enforcement high on the agenda of the Justice Department and, through 2006, lawyers in its Housing and Civil Rights Division had inquired into approximately 80 RLUIPA matters, opened more than 25 formal investigations (a significant number of which resulted in a favorable outcome for the complainant) and filed three cases in federal court against local governments.

Another aspect of the political and social landscape for RLUIPA claims is that disputes over the application of local zoning and historic preservation ordinances to houses of worship and other "religious" uses of property have been escalating. Obviously, the enactment of RLUIPA itself has played a major role in that escalation, but there are larger factors at work that predate RLUIPA.

First, houses of worship today are more likely to be perceived as inflicting negative effects on neighboring properties. New churches, and older ones seeking to expand an existing use, often are significantly larger than the churches of earlier eras and use their facilities more intensively. In addition to religious services, many churches sponsor a school, day care center, adult education classes, a variety of programming serving different age groups, and various faith-based "support" groups. Some churches also provide shelter for the homeless and meals for the indigent. Many houses of worship also have venues where wedding receptions or bar/bat mitzvah celebrations are held late into the night on weekends. As church activities expand to 12 or more hours per day at least seven a week, neighbors become increasingly concerned about the negative effects of the increased traffic, parking, noise, and late-night activity on property values.

Of course, any new or expanded "non-residential" development proposed for a residential neighborhood—the traditional locale for houses of worship—is likely to be opposed by neighbors. But the classic "NIMBY" phenomenon poses additional difficulties with respect to houses of worship because of recent changes in the manner in which Americans worship. Where previous generations attended houses of worship in their own neighborhood, commentators have noted that today, "religious institutions serve populations that are less and less centered in the geographic communities in which they are located."

Thus, the proposed house of worship is likely to be seen by its neighbors as providing few benefits—since most of them will not be members—while imposing on them the burdens associated with any more intense land use, such as increased traffic, parking difficulties, noise, and the possibility of negative effects on property values.

7. The introductory materials in the "litigation" section of the Fund's website state: "The Becket Fund fights to protect the free exercise of religion for every person everywhere." We have developed expertise in all areas of religious freedom law, but especially under the Free Exercise, Free Speech, Free Assembly, and Establishment Clauses of the First Amendment to the U.S. Constitution. http://www.becketfund.org/index.php/litigation.
Local officials may also be concerned about erosion of the city's tax base if too much property is acquired by tax-exempt religious institutions.

The rapidly increasing scope of our religious diversity may also be a factor in some land use disputes involving religious institutions. Traditionally the major religious institutions in most American communities were those affiliated with the Catholic Church or "mainstream" Protestant denominations such as Lutheran, Baptist, Methodist, and Presbyterian, with larger cities also home to a variety of Jewish, Eastern Orthodox, and smaller Christian denominations. In contrast, today's fastest-growing religious groups—Mormon, Evangelical Christian, Orthodox Muslim, Hindu, Sikh, Buddhist, and ultra-Orthodox Judaism—which previously were either geographically isolated (e.g., the Mormons in Utah and ultra-Orthodox Jews in New York City) or in smaller numbers, now may be found in almost any American community.

At times, the entry of such "non-mainstream" groups into a community—or the local community's reaction to it—can lead to land use conflicts. A study of all reported cases in the zoning and land use context claims that its findings "strongly suggest that a high percentage of cases are being contested by religious groups comprising a very small percentage of the total population." 11 Why is this so? On the one hand, the arrival of a new religious denomination—if it is small and insidious—can lead to conflict if the members of the fledgling congregation seek to worship and study regularly in a private home or a rented storefront and the neighbors or local officials claim the property is not zoned for use as a place of worship.

On the other hand, when a well-funded religious denomination arrives and seeks approval for a new, large house of worship—a Mormon temple 12 or a "big box church" 13 being paradigmatic cases—neighbors or local officials may again object, citing such traditional zoning concerns as effect on property values, traffic, parking, landscaping, etc., as the basis for their opposition. Local officials may also be concerned about erosion of the city's tax base if too much property is acquired by tax-exempt religious institutions. Regrettably, conflict may sometimes arise as a result of citizens' and local officials' antipathy for, and resulting discriminatory actions toward, the newly arrived, or rapidly expanding, denomination. 14

**How does RLUIPA affect land use regulation?**

RLUIPA can be implicated in several ways when a local land use regulation is applied to a church. First, RLUIPA has a "general rule" calling for strict judicial scrutiny of land use regulations that impose a "substantial burden" on religious exercise. RLUIPA also provides that local land use regulations must: grant "equal treatment" to a religious assembly or institution; not discriminate against any assembly or institution on the basis of religion or religious denomination; and not impose or implement a land use regulation that totally excludes religious assemblies from a jurisdiction or unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

RLUIPA's general rule prohibits a local government from imposing or implementing a "land use regulation" in a manner that imposes a "substantial burden" on the "religious exercise" of a person, including a religious assembly or institution, unless the government can demonstrate that imposition of the burden is in furtherance of a "compelling governmental interest" and is the "least restrictive means of furthering" that interest. 15 RLUIPA defines "land use regulation" as "a zoning or land-marking 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." 16 RLUIPA defines "religious exercise" both in general terms—"any exercise of religion, whether or not compelled by, or central to, a system of religious belief" 17—and by means of a rule: "The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." 18

RLUIPA's general rule does not, however, define "substantial burden." RLUIPA's congressional sponsors made it clear that this omission was intentional: "The Act does not include a definition of the term 'substantial burden' because it is not the intent of this Act to create a new standard for the definition of substantial burden on religious exercise. Instead, that term as used in the Act should be interpreted by reference to Supreme Court jurisprudence." 19 In short, the general rule mandates that once a RLUIPA plaintiff demonstrates that a land use regulation imposes a substantial burden on the exercise of religion, the court must apply strict scrutiny in judging the validity of the challenged land use regulation.

10. For example, in 1990, the National Advisory Committee on Military Personnel, conducted by the Graduate School of the City University of New York, estimated the number of Muslims in the United States at 350,000. A decade later, the 2000 edition of the Yearbook of American and Canadian Churches estimated there were 3.8 million Muslims in America.


14. Professor Douglas Laycock notes that there is a suspicion of, or hostility to, religious minorities. Those who are religious minorities are often hostile to unfamiliar beliefs, to high-intensity faiths, and to the conservative and evangelical churches associated with the Religious Right. Thus, in 1999, 43 percent of Americans nominated "most popular" or "very unpopular" churches as neighbors. Douglas Laycock, The Cost of Free Exercise in the Land Use Context, 77 Yale L.J. 725, 759 (1998) (footnotes omitted).


Local government reactions to potential RLUIPA claims have run the gamut from immediate unconditional surrender at a church’s mere mention of RLUIPA, to good-faith efforts at compromise . . . to willingness to litigate the case all the way to the U.S. Supreme Court.

RLUIPA’s “equal treatment” section provides that no local 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.” The Act’s “non-discrimination” section prohibits land use regulations “that discriminate against any assembly or institution on the basis of religion or religious denomination.”1 Finally, the Act’s “exclusions and limits” section provides that “No government shall impose or implement a land use regulation that: A) totally excludes religious assemblies from a jurisdiction, or B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.”2

Although all of these provisions refer to “a religious assembly or institution,” the Act does not define either term; however, their differing treatment in the “exclusions and limits” section—the ban on total exclusion applies only to “religious assemblies”—strongly suggests that “religious assembly” is a broader term than “religious institution” and would include, for example, informal religious groups that worship or study in private homes.

RLUIPA also contains a “jurisdictional element” that has been an issue in some RLUIPA litigation. Local officials need only understand that while the Act by its terms applies only to those land use regulations that permit the government to make “individualized assessments” regarding the use of the affected property, courts have normally found that almost any required zoning approval qualifies as an “individualized assessment.”3

HOW TO AVOID A RLUIPA CLAIM

Advising local officials on how to avoid a RLUIPA claim is no easy task. Once we are beyond obvious “no-nos”—things like “don’t totally exclude churches” or “don’t regulate churches in a discriminatory manner” (e.g., require them to obtain a conditional use approval while similar secular uses are allowed “as of right”)—it is difficult to prescribe a list of specific dos and don’ts. Each potential RLUIPA claim arises within the context of a particular site and the implementation of a specific land use end. Thus, when it comes to RLUIPA, the adage that “the devil is in the details” is particularly apt: It is difficult to provide specific guidance absent knowledge of those details. Further, similar “RLUIPA facts” can yield very different outcomes depending on the attitudes and knowledge of the parties involved.

Local government reactions to potential RLUIPA claims have run the gamut from immediate unconditional surrender at a church’s mere mention of RLUIPA, to good-faith efforts at compromise, to willingness, perhaps even eagerness, to litigate the case all the way to the U.S. Supreme Court. These differing reactions are partly explained by the facts of particular RLUIPA disputes, but another critical factor is the attitude of the parties. If either or both of the parties is unwilling to acknowledge the legitimacy of, or minimizes, the other’s concerns, conflict rather than compromise is the more likely outcome. Thus, for example, some religious leaders may believe that RLUIPA affords them almost carte blanche when it comes to complying with land use regulations. Similarly, some local officials may lack sensitivity to the legitimate needs of a particular religious group or, on rare occasion, actually view a particular religious sect in a negative light.

A final factor making specific advice difficult is that the courts have not provided clear-cut guidance in the RLUIPA decisions issued to date. This may be due, in part, to the unique circumstances of each case, and also due to the fact that courts have differed in interpreting RLUIPA’s provisions.

Proactive Steps Local Governments Might Take to Avoid a RLUIPA Claim

When it comes to facing an actual RLUIPA claim, local government officials need to understand that some claims should not be avoided. RLUIPA was enacted to address congressional concerns about unfair treatment of religious land uses, not to provide religious land uses with immunity from land use regulation.4 Local officials need to give serious consideration to any claim that a land use regulation violates RLUIPA, but if after such consideration they decide that the claim lacks merit, they should not accede to a violation of a legitimate land use regulation merely to avoid possible litigation.5

Local officials can seek to avoid a potential RLUIPA claim both proactively and reactively. Proactively, local governments should examine their land use regulations affecting religious uses and how those regulations have been applied. At a minimum, zoning ordinances should provide reasonable options for locating new, or expanding, houses of worship and such accessory religious uses as schools. While providing such options may not be particularly difficult in newer, less-developed communities, it can be a problem in older communities that are almost fully developed. Such communities may find that their current zoning effectively precludes houses of worship from residential areas because no sites are available, and also severely restricts their location in business and industrial areas, either because religious uses are seen as incompatible in such zones or out of a concern for maintaining the city’s tax base.

24. See, e.g., Living Water Church of God v. Chateau Twp., 600 F. Supp. 2d 1125, 1130 (W.D. Mich. 2008), where the court stated: “... even assuming that a governmental entity's amendments were rational or generally applicable to particular facts, the requirement can constitute an individualized assessment—particularly where, as here, the application does not involve a mere numerical or monetary assessment, but one involving criteria that are at least partially subjective in nature.” But see Gratz v. Bollinger, 535 U.S. 244, 262 (2002). (10th Cir. 2000) (finding that denial of variance was not a substantive individualized assessment) in addition to involving RLUIPA's definition of a “substantially burdening religous exercise” as a claim that a land use regulation has imposed a substantial burden on religious exercise can also seek to invoke protection if the substantive burden imposed in connection with a land use regulation is a violation of the RLUIPA decision issued to date).
26. While RLUIPA claims have faced somewhat better than negligible case to date, courts have differed in interpreting RLUIPA provision to avoid possible litigation.25
Local governments should also review the procedural requirements of their land use regulations to ensure that they are administered fairly and in a nondiscriminatory manner as applied to religious institutions.

Where options are effectively nonexistent or extremely limited, a local government should undertake a planning study that seeks to determine how it might accommodate the needs of religious uses without unduly harming surrounding property owners.

Local governments should also examine whether they have adequate locational options for "social services" uses such as shelters for the homeless or victims of domestic abuse and facilities to feed the homeless and indigent. The claims of religious institutions that a local government must allow them to "minister to the poor" at a location of their choosing is blunted when a zoning code designates reasonable options for both secular and religious groups to provide such services.

Historic preservation ordinances should also be reviewed. As a rule, such ordinances should not allow landmark designation of the interior of a sanctuary without consent of the religious institution and should also contain a "hardship" exemption that could be applied to a designated structure if the church meets appropriate criteria.

Local governments should also review the procedural requirements of their land use regulations to ensure that they are administered fairly and in a nondiscriminatory manner as applied to religious institutions. Officials need to make sure that land use procedures do not overly or inadvertently grant religious uses favorable or unfavorable treatment in the land use regulatory process and applications from religious uses are treated no differently than similar applications from secular uses.

Finally, local elected officials should also consider arranging for "sensitivity training" for themselves and other appropriate public employees to enhance their awareness of religious differences and the need to provide equal treatment to all religious adherents and institutions. It is far less costly to conduct such training before a lack of "sensitivity" to religious differences results in a RLUIPA violation.

Reactive Steps Local Governments Should Take to Avoid a RLUIPA Claim.

While providing specific substantive guidance on avoiding a potential claim is difficult, guidance on procedural matters is more straightforward. Local government officials and staff need to be aware that when dealing with either an enforcement action or an application for a land use approval by a church, extra care is advisable, just as it is with other land uses—such as adult entertainment businesses or signs and billboards—that have legal protection beyond the norm. For example, when government employees and officials meet with principals or representatives of a church to discuss a land use application, they would be well advised to conclude the meeting by confirming with church officials, in writing, the precise points of agreement or disagreement in that discussion and then follow up with a letter or e-mail reiterating that understanding and requesting notification if there is any disagreement. This practice can help to avoid "we said/they said" disputes that could lead to litigation.

Another way of taking extra care is to establish some type of internal review process when enforcement actions target religious uses. The goal here is not to exempt churches from enforcement of land use regulations, but rather to ensure that churches or, more likely, a particular church, is not being singled out for more frequent or severe enforcement that could form the basis for a discriminatory treatment claim under RLUIPA.

Cities should also be extremely cautious about departing from well-established precedents when handling a church's land use application. Such a departure can easily lead to a potential RLUIPA claim. For example, in Hollywood Community Synagogue, Inc. v. City of Hollywood, Fla., the plaintiff's synagogue applied for a conditional use permit that would allow it to use two houses on the edge of a residential district for religious worship and study. The city granted the permit, but for a term of only one year, after which the application would have to be reconsidered. The city had considered many such applications in the past from both churches and secular uses and had never previously granted only a "temporary" permit. This different treatment of the plaintiff's application ultimately formed one aspect of a successful RLUIPA claim that led to a settlement in which the city paid the plaintiff $2 million in damages. In another case, the district court ruled that the city's refusal even to accept a church's zoning permit application—surely a departure from normal procedures—constituted a substantial burden on religion.

The big question for local governments, of course, is how they should respond substantively when a church makes a land use application or challenges an enforcement action. The starting point for evaluating whether a potential RLUIPA claim can (or should) be avoided is to determine whether you need to be concerned about RLUIPA in the first place. Does the potential claim even fall within the protection of the statute? Remember that RLUIPA applies only to "land use regulations," i.e., zoning and historic preservation. Thus, while some churches have brought a RLUIPA challenge to an exercise of eminent domain, except for dicta in a footnote in one case, every court that has considered the issue has ruled that
Most “substantial burden” claims under RLUIPA have relied on the “individualized assessments” element, which can easily be met when the church is applying for a zoning permit or some other permit where there is opportunity for the exercise of discretion.

an exercise of eminent domain is not a land use regulation and thus not governed by RLUIPA.34

Other cases have found no jurisdictional basis for a claimed RLUIPA violation where a city had annexed land owned by a church;35 a city decided to develop a previously dedicated roadway located between two church-owned lots;36 a city decided to demolish an old church rather than transfer it to a clergyman;37 and where a city had denied a telecommunications company a permit to construct a transmission tower on a golf course. The court ruled that action did not invoke RLUIPA jurisdiction for a neighboring synagogue seeking to intervene in a plaintiff telephone company’s challenge to the denial.38 Other types of regulatory actions that are clearly outside RLUIPA’s jurisdiction include: building or fire safety permits, permits for utility connections, and other types of “public health, safety, and welfare” permits that are outside of either zoning or historical preservation codes.

If a permit application or enforcement action is within the subject matter jurisdiction of RLUIPA, the next step in determining whether there could be a potential RLUIPA claim is to see whether it falls within one of the Act’s three jurisdictional elements: individualized assessments, affecting interstate commerce, or involving federal funding. These jurisdictional elements are only found, however, in the “substantial burden” section of RLUIPA, and thus would not have to be satisfied if an enforcement action or denial of a permit application could be challenged as violating the “equal terms,” “non-discrimination,” or “exclusions and limits” sections of RLUIPA.39 Where a potential claimant could assert that the regulation or its implementation places a “substantial burden” on religious exercise, however, the claimant must show that one of these jurisdictional elements has been met.

Most “substantial burden” claims under RLUIPA have relied on the “individualized assessments” element, which can easily be met when the church is applying for a zoning permit, conditional use permit, variance, or some other permit where there is opportunity for the exercise of discretion.40 In contrast, although granting or denying a zoning change is clearly discretionary and thus would seem to be an “individualized assessment,”41 one court has ruled that it is not an “individualized assessment,” presumably because it viewed the rezoning as a legislative act involving broad policy and political judgments.42 Courts have also proven to be relatively sympathetic to the claim that a substantial burden on religious exercise successfully invokes the “affects interstate commerce” jurisdictional element.43 In short, meeting the jurisdictional element should not pose a significant problem for a church as it considers a potential substantial burden RLUIPA claim.

We now come to the crux of the matter: What should local governments do—or refrain from doing—to avoid a potential RLUIPA claim when considering a permit application or an enforcement action?

In very general terms, local governments have tended to prevail against RLUIPA challenges when they could demonstrate that the restrictions placed on a church do not target religious uses for discriminatory treatment, are necessary to achieve valid land use regulatory goals, and do not force the church to cease religious worship. Conversely, churches have tended to prevail when local government was unable to meet these same criteria.

Guidance becomes more difficult when we move away from those kinds of generalities. “Substantial burden” claims are particularly difficult in this regard. Recall that RLUIPA does not define “substantial burden”; the drafters’ intent was that courts define the term in line with prior precedent. That strongly suggested that courts would be extremely unlikely to find that a land use regulation had imposed a substantial burden on a church, but that has not been so. While the majority of substantial burden claims have failed outside the context of unemployment compensation claims, courts have found in a number of cases that land use regulations indeed imposed a substantial burden on the exercise of religion.44 These differing outcomes can be explained in part by the different ways that courts have articulated what constitutes a “substantial burden.” For example, the Seventh Circuit has interpreted “substantial burden” both quite narrowly—a substantial burden is imposed only when regulations make religious exercise “impracticable” within the jurisdiction...
We are clearly in the midst of a dynamic environment socially, politically, and legally regarding the role of religion in our society, and RLUIPA reflects this in the context of potential conflicts between churches and land use regulation.

generally—and more broadly: A substantial burden could be based on delay, uncertainty, and expense. These different interpretations, when combined with the unique factual settings of each case, have yielded outcomes that are difficult to reconcile. For example, the 11th Circuit found no substantial burden when a synagogue was prohibited from locating in a downtown business district, while the Ninth Circuit upheld a district court ruling that found a substantial burden where the city had denied approval for a church’s preferred site in a downtown business district.

It is easier to provide guidance on avoiding a RLUIPA claim based on the other provisions of RLUIPA. Local officials obviously need to avoid even the appearance of unequal treatment or discrimination—whether for or against—a particular church or sect, or treating religious uses on less than equal terms with secular uses. But even here, some court decisions suggest guidance is not so easy. For example, in the 11th Circuit case noted above, religious uses were not allowed in the central business district—where secular assembly uses were allowed—but churches could locate in residential districts where secular assembly uses were prohibited. From either a planning or legal perspective, one might argue that while the treatment of the secular and religious uses was different, that different treatment did not violate RLUIPA’s equal terms provision because the code “equalized” its treatment of the uses. While religious uses were barred from a district where secular uses were allowed, religious uses were allowed in a district where secular uses were prohibited.

The best advice to local officials on how to avoid a potential RLUIPA claim may well be less legal and more just common sense: Treat church representatives fairly and with respect and try to engage in a good-faith effort to craft a reasonable compromise between the church’s request and achieving the city’s land use policies. As a federal judge noted in one of the first reported RLUIPA cases involving a city’s enforcement action to limit the number of attendees at prayer services held in a private home:

> Even absent a federal statute, one would expect that, before banning an ongoing private religious gathering, public officials in a free and tolerant society would enter into a dialogue with the participants to determine if the legitimate safety concerns of the neighbors could be voluntarily allayed. Particularly where the participants are enjoined by religious teachings to “do unto others” as they would have done unto them, it is not unreasonable to expect the parties to be able to agree on means of reducing the impact of weekly prayer meetings on this small cul-de-sac without undermining the benefit that participants seek to derive from the practice of their faith.

It’s important to note that the judge enjoined both sides to enter into dialogue to seek a reasonable compromise. Avoiding a potential claim is clearly not solely the burden of local officials. Church officials have, in some cases, been dismissive of legitimate land use concerns and pursued claims that bordered on the frivolous. But where both sides are willing to seek common ground, there is certainly often room for compromise.

CONCLUSION

We are clearly in the midst of a dynamic environment socially, politically, and legally regarding the role of religion in our society, and RLUIPA reflects this in the context of potential conflicts between churches and land use regulation. Congress has attempted to empower churches when they choose where and how they build a sanctuary or assemble for worship and to restrain local governments when they seek to apply zoning or landmark regulations to a church when the congregation objects. In this environment, local governments face a difficult task in seeking to avoid RLUIPA potential claims and evaluating their likelihood of prevailing if challenged. Local officials can, however, take several steps to lessen the likelihood of a potential claim, including a comprehensive review of the treatment of religious institutions in its land use codes, both substantively and procedurally; training officials and employees to be sensitive to religious differences; and recognizing that land use applications from, and enforcement of regulations against, religious institutions must be handled with special care.

45. Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin, 596 F.3d 685 (7th Cir. 2009).
46. Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214 (11th Cir. 2004).
47. Greek Orthodox Church, Inc. v. City of New Berlin, 596 F.3d 685 (7th Cir. 2009).
48. Greek Orthodox Church, Inc. v. City of New Berlin, 596 F.3d 685 (7th Cir. 2009).
49. Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214 (11th Cir. 2004).