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RLUIPA Sparks Spirited Debate in San Juan

By Jay T. Squires

Jay T. Squires is a shareholder in the Minneapolis, Minnesota, firm of Ratwik, Roszak & Maloney, P.A.

Who says disagreement can't be educational and entertaining. If you missed the presentation in San Juan on the Religious Land Use and Institutionalized Persons Act of 2005 (RLUIPA), you missed a spirited debate. You also missed the definitive determination of the correct pronunciation of the federal act: Is it "Ray-Loopa" or "R-Loopa"?

Bob Foster moderated the presentation. Professor Marci Hamilton of the Benjamin N. Cardozo School of Law and Roman Storzer of the Washington, D.C., firm of Storzer and Greene offered their own views of the law's benefits and shortcomings. Section member Dan Dalton of Royal Oaks, Michigan, shared his firsthand experience litigating a RLUIPA claim involving the City of Southfield, Michigan.

RLUIPA was adopted in September 2000 based on a congressional finding that land use authorities had historically discriminated against religious institutions in the area of land use regulations. In very simple terms, the law provides that a land use authority may not impose a "substantial burden" on the exercise of a religion unless the regulation or decision at issue is in furtherance of a "compelling governmental interest" and is the "least restrictive means" of addressing the issue.

I wasn't left wondering how Professor Hamilton feels about RLUIPA; she feels RLUIPA is a bad law that impacts communities in ways not intended by Congress. She is concerned that the law creates two tiers of landowners: religious organizations benefited by RLUIPA, and everyone else. Finally, she has concerns that RLUIPA has been used as a "sword of intimidation," dividing communities and community groups.

It was also clear to me that Mr. Storzer believes there were and continue to be very good reasons behind the adoption of RLUIPA. He does not believe that RLUIPA gives religious organizations a "blank check" to engage in activities free of land regulation, noting that courts have consistently indicated RLUIPA is not a "free pass." Storzer believes RLUIPA needs to be available where facts demonstrate a community has attempted improperly to use its zoning powers to keep a religious organization with different practices and lifestyles out of a community.

Mr. Dalton's portion of the presentation offered helpful birds-eye observations of a religious organization caught in what he described as a "Perfect Storm" of factors contributing to the City of Southfield's disapproval of his client's proposal to construct a church in an existing building. He described a city approval process that he believes was structured toward a certain result—rejection of his client's proposal.

Professor Hamilton and Mr. Storzer do agree on one point—the effect of RLUIPA is to bring parties to the table and make the land use process more transparent. Ironically, Mr. Dalton found that not to be true. And, to answer the burning question, it is pronounced "R-Loopa."

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