



United States Department of Justice  
Civil Rights Division

## RELIGIOUS FREEDOM IN FOCUS

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**Religious Freedom in Focus** is a periodic email update about the Civil Rights Division's religious liberty and religious discrimination cases. Through vigorous enforcement of:

- Federal statutes prohibiting religion-based discrimination in education, employment, housing, public facilities, and public accommodations;
- Federal laws against arson and vandalism of houses of worship and bias crimes against people because of their faith; and
- The Religious Land Use and Institutionalized Persons Act (RLUIPA);

the Civil Rights Division is working to protect the right of all people to practice their faiths freely and without discrimination.

Back issues of this newsletter may be found at [http://www.justice.gov/crt/spec\\_topics/religiousdiscrimination](http://www.justice.gov/crt/spec_topics/religiousdiscrimination). You may also contact the Special Counsel for Religious Discrimination, Eric W. Treene, at (202) 353-8622.

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### **Trial Court Erred in Ruling Against Church in RLUIPA Case, Appeals Brief Argues**

In a [friend-of-the-court brief](#) filed on April 12, the Civil Rights Division argued that a church in Montgomery County, Maryland, that had been prevented by the county from building an 800-seat church on a 119-acre site, had set forth facts that could show that the county imposed a "substantial burden" on the church's religious exercise in violation of the [Religious Land Use and Institutionalized Persons Act \(RLUIPA\)](#). The brief in the case, *Bethel World Outreach Ministries v. Montgomery County*, was filed with the U.S Court of Appeals for the Fourth Circuit, and contends that a federal trial court in Maryland erred in granting summary judgment to the county.

Bethel World Outreach Ministries currently serves a congregation of 2,000 by holding multiple services at two locations in Montgomery County. In 2004, the church purchased a 119-acre parcel of land in the county in a zone that at the time permitted churches. The church began the process of planning construction of a large church. Subsequent zoning changes had the effect of blocking the development.

The church brought suit under various sections of RLUIPA, including a claim that the county had imposed a substantial burden on its religious exercise in violation of RLUIPA Section 2(a). The suit also claimed that the county discriminated against the church in violation of RLUIPA Section 2(b)(2) and that it imposed an unreasonable limitation on religious property uses in violation of Section 2(b)(3). The trial court ruled against the church on summary judgment, holding that it had not produced facts sufficient to go to trial. The church appealed to the Fourth Circuit Court of Appeals.

The United States' brief argues that the church did in fact produce evidence that its religious exercise had been substantially burdened under RLUIPA. The Fourth Circuit has not previously ruled on how to evaluate "substantial burden" under RLUIPA's land use

provisions. In the prisoner context, the Fourth Circuit has held that a substantial burden occurs when a government action "puts substantial pressure on an adherent to modify his behavior and to violate his beliefs." The United States' brief surveys the standards used in other Courts of Appeals, and concludes that in land use cases the substantial burden inquiry should focus on whether, "considering the totality of the circumstances, the regulation substantially inhibits, limits, or interferes with an organization's religious exercise rather than merely inconveniencing it."

The United States' brief observes that Bethel Outreach Ministries presented numerous facts to show that its religious exercise was substantially inhibited and limited. For example, it presented facts that its current services were so over-capacity that ushers had to physically bar congregants from entering, that religious elements of services including alter calls and communion had to be limited, that children were turned away from Sunday school, that various charitable programs of the church had to be eliminated because of inadequate space, and that the church would face considerable "delay, uncertainty, and expense" in seeking alternative properties. In light of these and other similar factors, the United States' brief argues, the church presented sufficient evidence of a substantial burden on its religious exercise to allow the case to go trial.

RLUIPA, enacted in 2000, contains a number of different provisions protecting churches, synagogues, mosques, temples, and other places of worship from discrimination and undue interference with religious exercise through application of zoning and landmarking laws. It also contains provisions protecting the religious rights of persons confined to institutions. On the tenth anniversary of RLUIPA on September 22, 2010, the Department of Justice issued a [Report on Enforcement of RLUIPA](#), along with a [policy statement on the land use provisions of RLUIPA](#) and a [policy statement on the institutionalized person provisions](#), which include common questions and answers about this important law. Further information on the Civil Rights Division's RLUIPA enforcement work is available at the [Housing and Civil Enforcement Section's RLUIPA page](#) and the [Special Litigation Section's RLUIPA page](#).

### **Neighbor Veto for Churches Violates RLUIPA, Brief Argues**

A provision in a Mississippi city's zoning ordinance requiring churches to obtain approval from 60% of neighboring property owners is invalid under RLUIPA, the United States argued in a [friend-of-the-court brief](#) filed on March 13. The brief, filed in *Opulent Life Church v. City of Holly Springs* in the U.S. Court of Appeals for the Fifth Circuit, asks the court to vacate a lower court ruling against the church.

Opulent Life Church is a small independent church in Holly Springs, Mississippi that has been meeting in a space rented from a Baptist Church that can only accommodate 20 to 25 people. It entered a lease to rent a larger space in the city's central business district, and applied for zoning approval, which was denied.

The City Code applies "supplemental standards" to churches and other places of worship, requiring approval of the Mayor and Board of Alderman, and the approval of 60% of property owners within a 1,300 foot radius. These supplemental standards do not apply to a wide range of other land uses, including lodges, union halls, bowling alleys, pool halls, bars, and nightclubs.

Section 2(b)(1) of RLUIPA provides that "no 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 church filed suit against the city and sought a preliminary injunction against enforcement of the supplemental standards for churches. A federal district court denied the injunction, finding that the church had not shown that it was "irreparably harmed" by the application of the supplemental standards.

In its brief to the court of appeals, the United States contends that the supplemental standards for churches violate section 2(b)(1) of RLUIPA. There is no valid reason, the brief maintains, for treating churches less favorably than various nonreligious assemblies. The city claims that it desires to have a wide variety of commercial uses, especially those that are pedestrian friendly. However, it does not apply the supplemental standards to a variety of noncommercial uses including social clubs, lodges, union halls, museums,

and libraries. It also does not apply the supplemental standards to various commercial uses that are not pedestrian friendly, such as gas stations, wholesalers, funeral homes, and drive-in bank tellers.

The United States' brief also contends that the 60% approval rule opens the zoning process to biases that RLUIPA was intended to prevent. The brief points out that "a requirement for approval by City officials, and particularly by neighbors, is susceptible to arbitrary action and, worse, the implementation through the City of outright bias. Neighbors and officials need not give any reason for vetoing a religious institution, and may freely do so in order to exclude an unpopular minority." The brief adds that "implementation of bias through city zoning is one of the principle evils that RLUIPA was enacted to prevent."

The brief also contends that the court erred as a factual matter in finding no irreparable harm to the church, and asks the appeals court to vacate and remand the case for further proceedings.

### **Brief Filed in Prisoner RLUIPA Case**

On March 29, the Civil Rights Division [filed a brief](#) in the United States District Court for the Eastern District of Texas in support of a Muslim prisoner's claim under RLUIPA that he should be allowed to wear a short beard for religious purposes. The brief, filed in *Ali v. Thaler*, points out that approximately 7,000 Texas inmates with a skin condition making shaving difficult are permitted to wear short beards. The brief directs the court to [another recent brief](#) filed by the Civil Rights Division in the U.S. Court of Appeals for the Fifth Circuit, in a nearly identical case, *Garner v. Livingston*. That case was discussed in detail in the [January issue](#) of *Religious Freedom in Focus*.

The institutionalized persons section of RLUIPA provides that prison regulations that impose a "substantial burden" on an inmate's religious exercise may only be enforced if they serve a compelling governmental justification and do so through the means that are the least restrictive of religious exercise. More information about the institutionalized persons section of RLUIPA may be found at the [Special Litigation Section's RLUIPA page](#).

### **Update: Four More Indicted in Attack on Amish in Ohio**

On March 28, a grand jury in Cleveland returned a superseding indictment adding four more defendants to a federal hate crime case involving a series of assaults on Amish men and women from September through November 2011. The attacks, according to the indictment, were perpetrated by one group of Amish against other Amish people with whom they had religious disagreements. Twelve defendants had been indicted on December 20, 2011, as discussed in the [January Religious Freedom in Focus](#).

There are now a total of ten men and six women charged with violating the Matthew Shepard-James Byrd Hate Crimes Prevention Act, [18 USC § 249](#) and other federal offenses including obstruction of justice. The alleged assaults involved restraining the victims and cutting their beards, in the case of male victims, and cutting their hair, in the case of female victims. As set forth in the indictment, the manner in which Amish men wear their beards and Amish women wear their hair are symbols of their faith.

Thomas E. Perez, Assistant Attorney General for Civil Rights, remarked on the day of the original indictments: "Every American has the right to worship in the manner of his or her choosing without fear of violent interference." Similarly, U.S. Attorney Steven M. Dettelbach stated: "For nearly 500 years, people have come to this land so that they could pray however and to whomever they wished. Violent attempts to attack this most basic freedom have no place in our country."

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