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Lessons for Planners and Local Governments

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THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT:

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ABSTRACT

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) has great significance for planners and local governments as it provides special protection for religion from local land use laws and decision-making processes. Familiarity with RLUIPA is limited among planners and local governments as the statute has not been widely publicized or frequently litigated. This Thesis describes RLUIPA and its origin, outlines and analyzes five cases brought under the statute, and concludes in a series of recommendations and conclusions that planners and local governments can use to think about their own land use regulations and decision-making processes in light of RLUIPA’s mandates. With an understanding of RLUIPA and how it can be used, planners and local governments can be more sensitive to the needs of religion within their own communities and avoid conflict under the statute.
# Table of Contents

List of Tables...........................................................................................................................................2

Glossary of Terms........................................................................................................................................3

Chapter 1—Background of the Religious Land Use and Institutionalized Persons Act........................................5

Chapter 2—The Congressional History of the Religious Land Use and Institutionalized Persons Act..................................................19

Chapter 3—The Act and its Provisions........................................................................................................38

Chapter 4—*Cottonwood Christian Center v. Cypress Redevelopment Agency* .............................................................................44

Chapter 5—*C.L.U.B. v. City of Chicago* ..................................................................................................66

Chapter 6—*San Jose Christian College v. City of Morgan Hill* ......................................................................88

Chapter 7—*Hale O Kaula Church v. The Maui Planning Commission*.......................................................105

Chapter 8—*Congregation Kol Ami v. Abington Township* ........................................................................121

Chapter 9—Overview and Analysis of the Case Studies............................................................................144

Chapter 10—Lessons for Planners and Local Governments........................................................................157

Bibliography.............................................................................................................................................182

Appendix A..............................................................................................................................................187

Appendix B..............................................................................................................................................188
**List of Tables**

Table 1: Percentage of Zoning Cases Won and Lost by Denominational Group and Percentage of U.S. Population

Table 2: Thinking Points for Planners and Local Governments

Table 3: *Cottonwood Christian Center v. Cypress Redevelopment Agency*

Table 4: *C.L.U.B. v. City of Chicago*

Table 5: *San Jose Christian College v. City of Morgan Hill*

Table 6: *Hale O Kaula Church v. The Maui Planning Commission*

Table 7: *Congregation Kol Ami v. Abington Township*
GLOSSARY

Accessory Use—Where property is being used for a particular purpose, the use of that property for a related and extended use. For example, an accessory use for a house might be a storage shed.

Assembly Use—The use of property as a place of assembly. For example, a social club or a meeting hall might be considered assembly uses.

Complaint—The formal document filed with the court in which a party announces its intent to sue, lists the reasons for the suit and outlines the facts to support its claims.

Conditional Use—A use that is allowed in a particular zone, but only with special permission.

Discovery—The formal process of fact gathering that takes place before a hearing or trial.

Eminent Domain—The legal process through which the government can acquire private property against the will of the property owner.

Facial/Facially—As the text of a statute or regulation is written. “On its face” refers to a plain reading of such a document without any additional inferences being made as to the meaning of the document. There is no added interpretation required in a facial reading of a statute or regulation.

Motion for Summary Judgment—A motion made to a court to resolve the case. Summary judgment refers to a finding by a court that there is no factual basis for a claim and that the party who filed the motion for summary judgment is therefore entitled to prevail as a matter of law. Motions for Summary Judgment can be partial, in the sense that they request the resolution for only some of the claims involved in the lawsuit.

Motion to Dismiss—A motion made to a court to dismiss a case, thereby ending it.

Non-Conforming Use—A use that does not fit the description of the uses permitted in a particular zoning district, but that is allowed to exist in that
district because it was being used in the particular way before the zoning code was written.

**Oral Argument**—A phase of a trial or hearing at which the attorneys for each party have an opportunity to orally present their positions to the court.

**Permitted Use**—A use that is allowed in a particular zoning district without the need for any special permission.

**Preliminary Injunction**—A request that the court issue an order in a case that will either prevent a particular thing from happening or that compels something to happen.

**Prior Non-Conforming Use**—A non-conforming use that existed in the past. A continuation of a prior non-conforming use is said to take place when a non-conforming use is replaced by another identical use.

**Ripeness**—In the legal sense, ripeness is when there is an issue that can be resolved by the courts because the facts are appropriate for resolution under the law. For example, where a person is in the hospital on life support but has not yet been declared legally dead, a complaint filed for the wrongful death of that person would not be ripe because one of the legal requirements for a claim of wrongful death is that the individual has died.

**Rule of General Applicability**—A rule that applies universally to all things, entities or individuals.

**Variance**—Formal permission to deviate from the applicable zoning code or regulations.
CHAPTER 1— THE BACKGROUND OF THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT

A. INTRODUCTION

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) provides protection for religious organizations from certain land use decisions and regulations imposed by local governments and therefore has the potential to greatly impact the practice of planning. Despite this potential, the statute currently not well-known to planners, to religious institutions or to the Courts. As a result, planners may subject themselves to unnecessary liability through zoning ordinances or particular zoning decisions where religious institutions are involved. Before RLUIPA, planners could justify zoning decisions that prevented churches and other religious institutions from using property in certain ways on the fact that zoning ordinances applied to all uses. Churches were simply required to go through the same process and meet the same criteria that all other uses had to meet in one form or another. However, with the passage of RLUIPA, planners and local governments can no longer rely on these justifications because the statute gives special protection to religious organizations. As RLUIPA becomes more familiar to the planning and legal professions and to religious organizations, planners will need to think more
carefully about how their planning functions affect religious organizations to avoid creating legal problems for their local government.

This Thesis will explore RLUIPA’s history and provisions and will analyze five cases litigated under the statute. These five cases will be used to make recommendations to planners about RLUIPA and its potential for use against local governments by churches and other religious organizations. In order to understand the origin of RLUIPA, it is helpful to understand the changes in legal doctrines that led to its creation.

Prior to 1990, Courts relied on a test known as “strict scrutiny” to determine whether government actions imposed an impermissible substantial burden on the exercise of religion. In Sherbert v. Verner, the United States Supreme Court outlined the strict scrutiny test, a test to be used when government actions impinged on a constitutionally protected right. Faced with the issue of whether a state could refuse to extend unemployment compensation benefits to a woman who, because of her religious beliefs, could not work on Saturdays, the Court noted that the State did not have a right to regulate religious beliefs. Because a fundamental right protected by the Constitution was involved, the Court asked whether a compelling government interest existed to justify the

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2 Id. at 402.
government’s refusal to extend the benefits. Finding that there was no interest, the Court struck down the state policy. The strict scrutiny test continued to be used by the Supreme Court in cases involving the alleged violation of a fundamental right guaranteed by the Constitution.

In 1990, the Supreme Court heard and decided Employment Div. Dept. of Human Res. of Oregon v. Smith. In Smith, the Court considered a challenge to a state law that prohibited the knowing or intentional use of a controlled substance that had not been prescribed by a physician. “Controlled substances” included the drug peyote. No exception for religious purposes was included in the statute. Alfred Smith lost his job with a private drug rehabilitation organization because he ingested peyote for sacramental purposes as a member of the Native American Church. When Smith applied for unemployment benefits, his application was denied because his employment was terminated for work-related misconduct. The Court stated “We have never held that an individual’s religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that a State is free to regulate.” The Court reasoned that it would be a “constitutional anomaly” as individuals would have a right to ignore

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3 Id. at 407.
5 Id. at 882.
6 Id. at 875.
7 Id. at 883.
8 Id. at 878.
laws of general applicability where they could show that their sincerely held religious beliefs would be burdened if they were to follow the law.\(^9\) Rather than apply the strict scrutiny standard, the Court stated that where a law is neutral and of general applicability, there is no violation of the free exercise of religion in requiring all individuals to comply.\(^{10}\)

Three years after the Supreme Court’s decision in *Smith*, Congress responded by enacting the Religious Freedom Restoration Act (RFRA).\(^{11}\) The Act’s stated purposes were “to reinstate the compelling interest test as set forth in *Sherbert v. Verner*…and to guarantee its application in all cases where free exercise of religion is substantially burdened…to provide a claim or defense to persons whose religious exercise is substantially burdened by the government.”\(^{12}\) If the government could show that the burden on religion was the least restrictive means of furthering a compelling government interest, the act or statute could withstand a challenge under RFRA.\(^{13}\) RFRA applied to the federal government and all its branches and agencies, as well as to officials acting under color of state or federal law, and to all facets of State and local governments.\(^{14}\)

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\(^9\) *Id.* at 886.

\(^{10}\) *Id.* at 881-2.


\(^{13}\) 42 U.S.C. §2000bb-1.

City of Boerne v. Flores\textsuperscript{15} struck down the Religious Freedom Restoration Act as exceeding Congressional authority. The Court outlined the provisions of RFRA and stated that though Congress must have the discretion to determine how to remedy unconstitutional actions, Congress must take care to not go too far by making changes in the substantive law surrounding the First Amendment.\textsuperscript{16} In this case, Congress changed the meaning of the Fourteenth Amendment and, through the change, impacted Supreme Court jurisprudence regarding the Free Exercise Clause of the First Amendment.\textsuperscript{17} If Congress had the ability to exercise such power, the Court reasoned, “…no longer would the Constitution be ‘superior paramount law, unchangeable by ordinary means.’ It would be ‘on a level with ordinary legislative acts, and, like other acts, …alterable when the legislature shall please to alter it.’”\textsuperscript{18}Because the scope of RFRA extended to every branch of government and because there was no termination date for when the law would no longer be needed to fix the problem of religious discrimination, the Act exceeded the Congressional power to regulate.\textsuperscript{19} RFRA was struck down as unconstitutional.

\textsuperscript{15}521 U.S. 507 (1997).
\textsuperscript{16}Id. at 519-20.
\textsuperscript{17}Id. at 527.
\textsuperscript{18}Id. at 529, citing Marbury v. Madison, 1 Cranch at 177.
\textsuperscript{19}Id. at 532-36.
Congress responded by considering a series of bills intended to replace RFRA with a similar but less sweeping coverage. The Religious Land Use and Institutionalized Persons Act of 2000\textsuperscript{20} (RLUIPA) was the result.

\textbf{B. PROBLEM STATEMENT}

The Founders of the United States of America gave special protection to religion through the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…”\textsuperscript{21} The special status of religion within American culture creates unique challenges, as the security afforded to the freedom of religion is not always in harmony with other areas of the law. This thesis will address one such conflict between freedom of religion and the police powers granted to the states as expressed through zoning laws.

Through the modernization and growth of urban areas, the need for land use regulation arose. In 1926, the United States Supreme Court recognized the validity of zoning in its decision in \textit{Village of Euclid v. Ambler Realty Company}\textsuperscript{22}. In \textit{Village of Euclid}, the Supreme Court

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{20} 42 U.S.C. §2000cc et. seq.
\item \textsuperscript{21} United States Constitution, Amendment I.
\item \textsuperscript{22} 272 U.S. 365 (1926).
\end{itemize}
\end{footnotesize}
considered a challenge to a comprehensive zoning plan developed for and implemented in the Village of Euclid. The comprehensive zoning plan impacted property owned by Ambler Realty Company and, according to Ambler, decreased the value of the property by prohibiting its development for industrial use. The Supreme Court noted that zoning laws,

…began in this country about twenty-five years ago. Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and which will continue to require, additional restrictions in respect of the use and occupation of private land in urban communities.

The Court went on to add that in the past these regulations of private property would have been thought contrary to the Constitution as “arbitrary and oppressive,” but that “such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit railways, would have been condemned as fatally arbitrary and unreasonable.” The Supreme Court upheld the Village of Euclid’s comprehensive zoning plan as a valid exercise of the Village’s police powers because the plan was designed to promote the public health, safety and welfare and to create an orderly system for the development of the

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23 Id. at 379-80.
24 Id. at 382-5.
25 Id. at 386-7.
26 Id. at 387.
Since Village of Euclid, the United States Supreme Court as well as the state Supreme Courts have upheld zoning plans under this theory.

The need to regulate growth and development of populated areas has been recognized outside the legal realm by the adoption of zoning codes and comprehensive plans, and through the creation of planning commissions, zoning boards of appeals, and other arms of the regulatory framework commonly employed by planners and local governments. The regulation of churches in this context presents unique challenges to planners. On one hand, the Founders of this nation meant religion to be set aside from other aspects of life, such as public education and government in general. The First Amendment embodies the right of individuals to choose their own religion, practice it, and be left to do so with minimal intrusions from the government.

On the other hand, government regulation has increased in kind and degree since 1926. With this increase comes a perception that such laws are necessary for the orderly development and function of society and an expectation that such laws will exist to protect the public. For example, it seems unlikely that members of mainstream American society would not expect to follow traffic laws when driving from home to work in an

\[27\] Id. at 390-7.
automobile, or that the government would not inspect food products such as poultry and grain for their quality and the absence of disease. These laws are not generally questioned for their neutrality, as conditions required by them seem to be in furtherance of the public good. However, these laws may have hidden consequences as applied to certain groups; these consequences may be hidden by the facial neutrality of the laws themselves. Land use laws also seem facially neutral, but have special consequences for religious organizations that apparently do not apply to other uses. Recently, Congress investigated this problem and discovered a conflict between religious freedom and the police power of local governments to engage in zoning.

The conflict is embodied in the Congressional testimony associated with the passage of the Religious Liberty Protection Act, the predecessor of the Religious Land Use and Institutionalized Persons Act of 2000, and the testimony associated with RLUIPA itself. For planners and local governments, the challenge lies in how to balance these interests to allow churches to co-exist as members of the community without giving up their plans for community development.

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This thesis creates a resource for planners and local governments to learn about RLUIPA and how it can be used in certain land use cases, and to use in evaluating the success with which their own zoning codes and decision-making bodies deal with religious organizations given the statute’s mandates.

C. **Research Question**

This Thesis is guided by the following research question: What should planners and local governments be aware of regarding the Religious Land Use and Institutionalized Persons Act and its application to their own planning and zoning functions? A series of five cases filed under RLUIPA were compiled and analyzed to determine what arguments were made by planners and local governments and the religious organizations that filed the claims. The impact of planning and zoning on religious uses was a major factor in Congress’s decision to enact RLUIPA, and for this reason, emphasis is placed on detailing the arguments made by religious organizations involved to better demonstrate how such organizations can be impacted by local land use regulations and decisions.

D. **Methodology**

The methodology of this Thesis follows a case study format in which cases under RLUIPA are used to develop and illustrate the
recommendations and conclusions that follow. The Thesis begins by tracing the evolution of Congress’s perspective on RLUIPA as a result of the Supreme Court’s decisions, testimony presented to Congress and hearings on the issue of land use regulations and their impact on religion. This background gives the reader a perspective on the problems created by local planning and zoning for religious institutions as seen by Congress and helps the reader understand why certain arguments were made in the case studies. The Thesis then engages in an analysis of RLUIPA designed to elucidate its provisions and give guidance on how a case under the statute proceeds. Next, using five case studies out of a total of approximately 22 federal cases filed with RLUIPA claims, the Thesis shows a variety of successful and unsuccessful cases made by planners and local governments and religious organizations. The cases were selected because each included a unique and valuable message that could help planners and local governments evaluate their own planning and zoning functions in light of RLUIPA’s existence. Each case includes something that sets it apart from the other four cases, as will be explained in Chapter 9 and Tables 1-5 as contained in Appendix 2.

In outlining the cases, the parties were described in as much detail as possible to give the reader an idea of their positions before the litigation. In
describing the religious organization or church, attention was given to the organization’s religious beliefs and the reason it found itself before a local zoning authority. In describing the local government actor, more emphasis was placed on the zoning regulations at issue than on the demographics of the community, however this information was included when necessary to understand the position of the municipality.

Cases were analyzed by looking at all the arguments made that pertained to RLUIPA, the outcomes of the cases, and the unique factual or strategic aspects of the case that contributed to the outcomes. These factors are compared in Table 1 in Chapter 9. Using this table and Chapter 9 as a whole, the reader can easily see the most important information about the five case studies presented in the Thesis. Chapter 10 is written to help the reader understand the many ways in which an RLUIPA case could be brought against a local government. Planners and local governments will be able to use this Chapter to think about their own municipality’s encounters with religious organizations, either through particular zoning decisions or through their planning and zoning ordinances, and to develop a strategy to avoid conflicts under RLUIPA when possible and to win them when necessary.
E. **ROADMAP**

Chapter Two summarizes the Congressional history of RLUIPA. This chapter serves to give readers a sense of the Congressional perspective on land use and zoning as it relates to religious organizations at the time Congress considered RLUIPA.

Chapter Three addresses the actual land use provisions of RLUIPA and takes readers through the arguments that must be made under the statute by religious organizations who seek to use it in court. This chapter helps the reader understand the statute and its provisions in more depth and gives the reader a sense of the process of filing a RLUIPA case.

Chapters Four through Eight are the case studies. These chapters serve as the basis for Chapter Nine and give the reader a better understanding of the arguments that have been made by planners and local governments in response to those made by religious institutions.

Chapter Nine summarizes and analyzes the outcomes of Chapters 4-8 and includes tables containing the claims made by each party and the case outcomes. This Chapter is helpful in synthesizing the most important points of the case studies and providing an analysis of what brought about the outcome of each case.
Chapter Ten contains a series of nine recommendations and conclusions that can be drawn from the case studies. It is this chapter that will be of most interest to planners and local governments, in that it is against these recommendations and conclusions that they will be able to measure their own zoning code and method of making land use decisions.

Readers will find a glossary at the beginning of the Thesis in which legal terminology and certain technical planning terms are defined.
CHAPTER 2—THE CONGRESSIONAL HISTORY OF THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT

As explained in Chapter 1, RLUIPA is a product of many years of Congressional action and testimony regarding the special burdens placed on religious uses by government action in the area of land use. In approving RLUIPA, Congress drew from testimony given in support of previous unsuccessful bills such as the Religious Liberty Protection Act. All references in this Chapter to testimony given prior to 2000 relate to information presented in support of RLUIPA’s predecessor bills. All testimony referenced in 2000 relates directly to the passage of RLUIPA. Chapter Two is intended to give the reader a better understanding of the origin of Congress’s perception of land use regulation as it impacts religious organizations.

A. EXPERIENTIAL EVIDENCE

1. STATEMENTS OF MARC STERN AND MARK E. CHOPKO

On March 26, 1998, Marc Stern, Legal Director of the American Jewish Congress, and Mark E. Chopko, General Counsel to the United States Catholic Conference testified before the House Judiciary Committee Subcommittee on the Constitution as part of a three-part hearing on the
effects of *City of Boerne v. Flores.*\(^{29}\) Their testimony reflects the frustrations felt by representatives of the religious community after the Supreme Court struck down the Religious Freedom Restoration Act (RFRA) in *City of Boerne v. Flores.* Both urged Congress to find a way to reinstate the strict scrutiny rule applied before *City of Boerne.*

For example, Marc Stern stated, “When a mechanism is available to force a second look…it is often possible to work out compromises acceptable to both sides, compromises that value and preserve as far as possible the legitimate interests of all concerned.”\(^{30}\) After *Boerne,* the mechanism used most commonly by attorneys for religious organizations was eliminated, leaving nothing to force local governments to take that second look at their land use policies and decisions. Stern testified that without a mechanism such as RFRA, zoning cases that would normally lend themselves to creative solutions no longer allow for the accommodation of religious practice.\(^{31}\)

Mark E. Chopko echoed these concerns and expressed a fear that conformity and not accommodation will become the rule in land use decisions involving religious uses. Such a rule, in Chopko’s opinion, would

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\(^{29}\) Congressional Testimony, House Judiciary Committee Subcommittee on the Constitution, March 26, 1998, Testimony of Marc Stern and Mark E. Chopko.

\(^{30}\) *Id.* at Testimony of Marc Stern.

\(^{31}\) *Id.*
disregard the nation’s longstanding tradition of making accommodations for religious beliefs as a matter of right. Chopko reminded the Committee of the purpose of the religious community and the resulting needs of that community:

A religious community has a presence in a community that it serves through its physical real property. As the religion changes, so must the physical presence change or the community will decline and die or move on, causing disruption in the place it originally served. In some instances, the needs of a growing religious community conflict with the desire of the state to restrict growth.32

Chopko stated that the Catholic Church is treated the same as secular uses in zoning and land use matters, but that because of the unique presence and purpose in the community as a religious organization, it may experience negative effects not felt by secular uses.33

2. STATEMENT OF STEVEN T. MCFARLAND

On March 26, 1998, Steven T. McFarland, the Director of the Center for Law and Religious Freedom, testified before the House Judiciary Committee’s Subcommittee on the Constitution about several cases in which the Center for Law and Religious Freedom was involved.34 These cases dealt with how religious organizations were impacted by local government decisions regarding land use and zoning.

32 Id. at Testimony of Mark E. Chopko.
33 Id.
In St. Petersburg, Florida, a church, the Refuge Pinellas, Inc., located in an economically depressed area of town, encountered difficulties with zoning requirements when it began conducting feeding operations out of its rented facility. The facility was located in a zoning district in which churches were permitted uses, but where social service agencies were required to obtain special permission before they could occupy property. The Refuge conducted worship services and an extensive outreach program including Bible studies and counseling, Christian leadership training, a crisis hotline, an Alcoholics Anonymous group, an HIV support group, and feeding operations for the poor and homeless. Most of the congregants of the Refuge were of lower socioeconomic status.

The Refuge agreed to let a coalition of churches operate a community feeding program out of its facility after St. Petersburg officials objected to the coalition’s use of a parking lot for the operation. Officials were concerned that the program lacked access to restroom facilities and did not have adequate trash collection services. The feeding program had been operating out of the Refuge for over a year when the manager of the St. Petersburg Development Review Services, the local planning and zoning agency, informed the church that it would either be required to obtain a special permit to continue to occupy its current location or cease
its feeding operations. The Development Review Services was under the impression that The Refuge was actually a social service agency and not a church. The Refuge decided to appeal this determination to the St. Petersburg Board of Adjustment.

On appeal, one member of the Board of Adjustment stated that, “…if the Board adopted the Development Review Services position, ‘many other churches in this City would also have to be labeled social service agencies.’”35 Another member likened the activities of The Refuge to his own church’s activities and those of most other churches. However, The Refuge lost its appeal because in order to override a determination of the Development Review Services, the Board of Adjustment required a supermajority. Only three of five members of the Board of Adjustment believed that The Refuge was a church.

The Refuge appealed again to the Circuit Court for Pinellas County. The City took the position that The Refuge was having a negative impact on the City’s efforts to revitalize the neighborhood in which it was located. A newly adopted redevelopment plan was in place for the neighborhood. The City described the church as “a ‘stink weed’ that is eventually going to

35 Id.
have a negative impact on the rose garden,” in reference to the impact on the redevelopment plan.\textsuperscript{36}

McFarland also described two cases out of Chicago in which churches contracted to purchase property. In both cases, the property was located in zoning districts in which churches were permitted uses subject to special use permits. In both cases, the aldermen delayed voting on the special use permits until they could act to re-zone the property so that churches would no longer be permitted uses. The cases were combined and litigated as one case through the federal courts. The United States Court of Appeals for the Seventh Circuit ruled in that the aldermen were entitled to absolute legislative immunity for their actions and denied the churches’ request for relief.\textsuperscript{37}

3. \textbf{STATEMENT OF VON G. KEETCH}

On May 12, 1999, Von G. Keetch, Counsel to the Church of Jesus Christ of Latter-day Saints testified before the House Judiciary Committee Subcommittee on the Constitution as to the special circumstances that render land use decisions particularly meaningful to the Church of Jesus Christ of Latter-day Saints (LDS Church). According to central LDS Church doctrine, in order to gain eternal exaltation, which is the ultimate spiritual

\textsuperscript{36} \textit{Id.}
\textsuperscript{37} \textit{Id.} See also, \textit{C.L.U.B. v. Huels}, 129 F. 3d 899 (7th Cir. 1999.)
glory, members must receive certain ordinances “through the authority and power of God.” The highest and most sacred of these ordinances can only be performed in an LDS temple. “Thus, for members of The Church of Jesus Christ of Latter-day Saints, the right to erect buildings (especially temples) lies at the core of their religious practice.” In the absence of temples, there can be none of the highest and most sacred ordinances, and without these ordinances, members of the LDS Church believe that they will not be granted exaltation.

As a result of these strongly held beliefs, and because The Church of Jesus Christ of Latter-day Saints is one of the fastest growing religious organizations in America, the Church by necessity is constantly engaged in the building of temples and other religious buildings. It therefore finds itself constantly before planning commissions, boards of commissioners, and other local government entities that control land use and planning within the community.  

Protection for religious organizations from arbitrary and discriminatory land use decisions, therefore, is of great concern to the LDS Church.

4. Evidence Presented by Representative Henry Hyde

On September 21, 2000, Representative Henry Hyde submitted for the record a report prepared by the Christian Legal Society. The report described eighteen conflicts between local zoning officials and religious organizations. The report was presented the day before President William

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Jefferson Clinton was to sign the bill into law as the Religious Land Use and Institutionalized Persons Act. A representative sampling of the cases cited in the report follows.

In Vacaville, California, a Seventh-Day Adventist Church was denied a permit to locate and operate a radio station. The station was to be located in a mobile home on church property and the signal was to be broadcast from an existing nearby radio tower, not from the home itself. The permit was denied on the grounds that, in the opinion of local zoning officials, a radio ministry is not an accessory use to a Seventh-Day Adventist Church. The zoning board’s decision was upheld by the California Court of Appeals.

In Grand Haven, Michigan, the Haven Shores Community Church, a branch of the Reformed Church in America, offered contemporary worship services, education and counseling to adults and teens as part of its goal to “worship and glorify God by reaching out and serving the community.” The church believed that a nontraditional storefront ministry was the most effective way to reach the community and decided to rent a storefront for its facility. The city and zoning board denied the church a building permit on

40 Id. at 1564.
41 Id. at 1565.
42 Id. See also, Vacaville Seventh Day Adventist Church v. Solano County Bd. of Supervisors, 2000 Cal. Lexis 7769 (2000) (petition for review from First Appellate District denied). The decision of the lower court is not available.
43 Id.
the grounds that the storefront was in a business district zoned for “private clubs and schools, fraternal organizations, concert halls, and funeral homes.” 44

In Jacksonville, Oregon, a church was given permission to build a new facility on ten acres of land only if it complied with certain conditions imposed by local planning officials. “The church would be required to close its buildings on Saturdays and during certain weekday hours, would be forbidden to hold weddings or funerals on Saturdays, and could not serve alcohol on the premises.” 45 The City met to review these conditions after being advised that the restrictions on weddings and funerals could be unconstitutional. Rather than revising the conditions, the City denied the permit entirely.

In the Hancock Park neighborhood of Los Angeles, California, a congregation of elderly and disabled Orthodox Jews called Etz Chaim was denied permission to build a synagogue in their neighborhood. Orthodox Jews are required to walk to services on the Sabbath. Though there was a nearby synagogue in a commercial zone, the members of the congregation were unable to walk for more than a half mile and were therefore unable to reach it. The Hancock Park homeowners association opposed a special

44 Id. at 1565.
45 Id. at 1566.
permit to allow the synagogue because they feared it would hurt property values. It was on this basis that the permit was denied.\textsuperscript{46} In the California Court of Appeals, the testimony of a single resident who stated that anyone “should” be able to walk to the synagogue in the commercial zone, the denial of the permit was upheld.\textsuperscript{47}

\textbf{B. The Brigham Young Study}

In 1998 the findings of a study\textsuperscript{48} conducted to measure the impact of land use decisions on various churches in the United State was presented to the Senate Judiciary Committee and the House Judiciary Committee Subcommittee.\textsuperscript{49} The study was conducted by a group of law professors at Brigham Young University, including Cole Durham, and the law firm of Mayer Brown & Platt in Chicago.\textsuperscript{50} The study reviewed all the reported cases that could be identified in which challenges under the Free Exercise Clause of the First Amendment to the United States Constitution were made in the context of a land use decision.\textsuperscript{51}

\textsuperscript{46}Id.

\textsuperscript{47}Id. See also, \textit{Congregation Etz Chaim v. City of Los Angeles}, 2000 Cal. Lexis 1088 (2000) (petition for review from Second Appellate District denied). The decision of the lower court is not available.

\textsuperscript{48}The data tables included in the study can be found attached to this thesis as Table 1 in Appendix A.


\textsuperscript{50}Congressional Testimony, House Judiciary Committee, Subcommittee on the Constitution, March 26, 1998, Testimony of Von G. Keetch.

\textsuperscript{51}Congressional Testimony, House Judiciary Committee, Subcommittee on the Constitution, March 26, 1998, Appendix; Congressional Testimony, Senate Judiciary Committee, June 23, 1998, Written
Cases used in the study were grouped into two categories: location cases involving new construction and accessory use cases involving the development of a related use such as a gymnasium, homeless shelter or daycare facility, at an already existing religious facility. Cases were grouped by denomination based on information about the churches as provided by the cases, and information on the size of the denomination in the United States was collected from the National Survey of Religious Identification, a representative survey of 113,000 Americans conducted by the Graduate School of the City University of New York. This survey is considered to be the most comprehensive poll ever taken on religious affiliation in the United States and relied on data collected from each participant regarding their personal religious affiliations to determine the percent of the population that belonged to each denomination.

The study revealed that land use authorities, including planning commissions, zoning boards, and boards of revision, treated smaller denominations differently than larger denominations as a general rule. However, when cases are brought before courts, judges do not seem to be bound by the same biases as these land use authorities. Though smaller religious groups end up before the court more often than larger groups, the

statement of Cole Durham (as entered into the record on June 16, 1998 before the House Judiciary Committee, Subcommittee on the Constitution).
success rate for smaller groups is approximately the same as for large groups. This demonstrates that smaller churches do not end up in court more often because they make frivolous claims against local governments. Instead it suggests that planning authorities face bias when they evaluate applications made by religious organizations in general, but especially when a religious organization is affiliated with a less well-known denomination. Courts do not display the same sort of bias, as evidenced by the fact that cases brought by large and small denominations win their cases with approximately the same frequency. The study demonstrates the need for special protection for churches in the area of land use.

C. **HOUSE REPORT OF 1999**

In 1999, the House of Representatives issued a report on the Religious Liberty Protection Act of 1999. The report reflected the findings of the House regarding the need for protection for religious organizations from land use decisions made by local governments. It concluded, “Land use regulation is commonly administered through individualized processes not controlled by neutral and generally applicable laws. The standards in individualized land use decisions are often vague, discretionary and

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subjective.” The report did not make recommendations for action based on this conclusion, but served as a statement of Congressional belief on the issue.

The report contained several findings of fact made by the House in considering the issue of land use regulation. Most compelling was the statement that:

Religions are practiced by a community of believers. At the very core of religious liberty is the ability to assemble for worship. Finding a location for a new church, however, can be extremely difficult in the face of pervasive land use regulation and the nearly unlimited discretionary power of land use authorities. The frustration of this core First Amendment right is not limited to certain religions or certain areas of land. Churches, large and small, are unwelcome in suburban residential neighborhoods and in commercial districts alike. Land use regulations frequently discriminate by design, other times by their neutral application, and sometimes by both.

This statement reiterated what many witnesses before the House Judiciary Committee Subcommittee on the Constitution stated in their testimony, as well as the information contained in the Brigham Young study. The report as a document reflects the persuasiveness of the anecdotal evidence presented and Congress’s willingness to act to protect religious organizations from land use regulations that become oppressive to religious organizations as a result of their vague, discretionary and subjective terms. The House Report reflects the determination of the

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54 Id.
House of Representatives to support a law to protect religious organizations from these types of land use decisions.

D. **RECOMMENDATIONS MADE**

Steven T. McFarland, Director of the Center for Law and Religious Freedom, concluded his remarks before the House Judiciary Committee Subcommittee on the Constitution on March 26, 1998 with informal recommendations for the Subcommittee to consider when addressing discrimination against religious organizations after the Supreme Court’s decision in *City of Boerne v. Flores*. McFarland recommended that the Subcommittee consider, in any bill proposed to deal with this issue, including a separate section to deal with church-related land use issues. Specifically, two provisions were suggested.\(^{55}\)

McFarland stated that an equal access provision would ensure that wherever a community allowed other places of assembly to locate, churches and other religious uses should be permitted. This provision would prevent local government from discriminating based on the type of assembly. McFarland also requested that churches be permitted as of right somewhere in each jurisdiction. This requirement would give churches clarity as to where they could buy or lease without the fear that a special

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permit application and individualized decision-making would prevent them from completing the transaction.\textsuperscript{56}

Later in 1998, Douglas Laycock, Professor of Law at the University of Texas School of Law, made another more detailed series of recommendations and conclusions based on the evidence presented regarding churches and land use decisions. Laycock suggested that land use regulation is more commonly administered through individualized review process than though laws of general and neutral application. These standards are often vague and discretionary and may be used to entirely exclude religious uses from certain zones or from the jurisdiction. Because standards are vague, they may also be used to hide religious bias or hostility and to discriminate against religion in general or a particular religion.\textsuperscript{57}

The idea of religious discrimination in land use decisions is supported by a Gallup Poll cited by Laycock in which 45\% of Americans reported having “mostly unfavorable” or “very unfavorable” views of “religious fundamentalists. The poll also showed that 86\% of Americans had these views of “religious cults or sects.” The poll reported that 30\% of Americans would not like to have “religious fundamentalists” as neighbors and that

\textsuperscript{56} Id.
62% would not like to have “members of religious cults or sects” as neighbors. These statistics, according to Laycock, show widespread hostility to persons with unusual or extreme religious beliefs. Laycock also stated that citizens may voice this hostility and claim it as the reason to refuse land use permits and that government officials respond to these opinions as they would to other opinions of their constituents. For this reason, land use decisions involving religious institutions may be influenced by negative views of religion.\textsuperscript{58}

Laycock explained that because churches and other religious institutions have an interest in maintaining good community relations and because they may have religious objections to pursuing legal options, serious conflicts between these institutions and local government are likely to be far greater in number than indicated by reported cases. Because zoning litigation is expensive, many religious organizations that would not object to litigation to resolve their conflicts with local government are unable to do so for financial reasons. Financial difficulty may also be encountered if litigation is pursued, as churches may be required to hold and maintain property for years without knowing whether they will ultimately be permitted to use it.

\textsuperscript{58} Id.
Laycock ended by stating that if Congress chose to adopt his conclusions, it would have no difficulty in justifying the creation of special protection for churches and other religious organizations in the area of land use regulation.\[^59\]

**E. Congressional Action on the Religious Land Use and Institutionalized Persons Act of 2000**

On July 13, 2000, Senator Orrin Hatch introduced a bill co-sponsored by Senator Edward Kennedy to “protect religious liberty from unnecessary governmental interference.”\[^60\] The bill was specifically designed to address land use regulation and to provide protection for religious organizations from land use decisions that prevent the practice of religion.\[^61\] The land use provisions of what was to become the Religious Land Use and Institutionalized Persons Act prohibited discrimination against religious uses in land use and prohibited the total exclusion of religious uses by local governments.

Senator Hatch explained that the legislation would not provide blanket immunity for religious uses from land use regulation. If a religious claimant wanted to use the protections of the law, it would be necessary for that claimant to demonstrate that the challenged land use regulation placed

\[^{59}\] Id.
\[^{60}\] 146 Cong. Rec. S 6687, 106th Congress, 2d Session.
\[^{61}\] Id.
“a substantial burden on sincere religious exercise.”\textsuperscript{62} Without such a showing, a claim under the law would fail without further consideration.

Several examples of religious discrimination in land use cases were given to illustrate Senator Kennedy’s belief that local land use laws often have discriminatory effects on the free exercise of religion. He stated, “Our goal in proposing this legislation is to reach a reasonably and constitutionally sound balance between respecting the compelling interests of government and protecting the ability of people freely to exercise their religion.”\textsuperscript{63}

Several subsequent hearings took place at which questions related to the bill were answered and additional information in support of the bill was offered. On July 27, 2000, the bill officially passed both houses of Congress. On September 22, 2000, President William Jefferson Clinton signed it into law.

F. \textbf{CHAPTER SUMMARY}

The Religious Land Use and Institutionalized Persons Act of 2000 is the product of much Congressional testimony, including anecdotal evidence and statistical studies. As the result of the bipartisan effort to pass it, RLUIPA reflects Congress’s interest in preserving the First Amendment.

\textsuperscript{62} \textit{Id.} at 6688.
\textsuperscript{63} \textit{Id.}
Amendment right to free exercise of religion even after its previous attempts to do so met with disapproval by the United States Supreme Court. The background of RLUIPA shows what Congress intends it to prevent: seemingly widespread examples of religious discrimination through land use regulations and decisions.
CHAPTER 3— THE ACT AND ITS PROVISIONS

After understanding the context in which Congress passed RLUIPA, it is helpful to review the act and its provisions. Chapter Three is intended to give the reader an understanding of the land use provisions of RLUIPA. Chapter Three describes the sections of the statute related to land use and outlines the method by which a case under the statute proceeds. With an understanding of RLUIPA and the basic structure of a case under it, the reader will be prepared to recognize the basic arguments made by the parties involved in the case studies and to understand the purpose for making the arguments described therein.

A. RLUIPA’S LAND USE PROVISIONS

The land use provisions of RLUIPA were intended to be a broad protection of religious exercise. Even the term “religious exercise” is defined broadly by the statute. Religious exercise includes “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” For purposes of RLUIPA, the statute automatically assumes that the “use, building, or conversion of real property for the purpose of religious

64 42 U.S.C. §2000cc-3(g).
65 42 U.S.C. §2000cc-5(7)(A)
exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.”

The statute applies in any case where a substantial burden is imposed by a program that receives Federal funding, even if the burden comes from a rule of general applicability. It applies where the substantial burden affects commerce across state or national lines. It applies where the “substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make individualized assessments of the proposed uses for the property involved.”

RLUIPA’s general rule regarding land use is that:

No government shall impose or implement 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 demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling government interest; and

(B) is the least restrictive means of furthering that compelling government interest.

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The term “land use regulation” includes zoning and landmarking laws that limit or restrict the use of land or structures attached to the land.\textsuperscript{71} The individual, religious assembly or institution affected needs only some sort of property interest such as ownership, a lease, or an easement, in order to use RLUIPA to challenge a government action.\textsuperscript{72}

Governments are also prohibited from imposing or implementing land use regulations that treat religious assemblies “on less than equal terms” with non-religious uses, that discriminate against religious uses, that totally exclude religious uses from the community, or that “unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.”\textsuperscript{73}

“Religious assemblies” are also defined broadly according to RLUIPA as

RLUIPA gives individuals the right to enforce the statute against government actors, however the United States Department of Justice also has the ability to enforce the statute by bringing a case against a local government to protect religion.\textsuperscript{74}

\section*{B. A CASE UNDER RLUIPA}

A case under RLUIPA begins when a religious organization feels it has been improperly and discriminatorily treated by a local government and

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{71} 42 U.S.C. §2000cc-5(5).
\item \textsuperscript{72} Id.
\item \textsuperscript{73} 42 U.S.C. §2000cc(b)(1), (2), (3).
\item \textsuperscript{74} 42 U.S.C. §2000cc-2(a), (f).
\end{itemize}
\end{footnotesize}
its land use authority, or when the United States Department of Justice chooses to act on behalf of such religious organizations. This section will focus on the actions of a religious organization, because it is religious organizations that have initiated the vast majority of cases under RLUIPA.

The religious organization must first make a claim that the local government or land use authority has taken an action that placed a substantial burden on the free exercise of religion.\(^{75}\) An actual showing of such burden is necessary to make out this claim; mere assertions that such a burden is present without evidentiary support will not suffice. What constitutes a showing of a compelling government interest is not necessarily obvious. Congress did not intend to make the definition of “compelling interest” different for RLUIPA than for other situations in which the government can justify its actions through such a showing.\(^{76}\)

"Substantial burden" has been defined in several different ways by the courts.\(^{77}\) It has been described as existing where the state pressures a person to modify her religious behavior or violate her religious beliefs.\(^{78}\) It has also been explained as existing when a person is required by the government to choose between following the teachings of her religion and

\(^{75}\) 42 U.S.C. §2000cc(a).
\(^{76}\) 146 Cong. Rec. S7774, S7776.
forfeiting government benefits as a result or abandoning her religious beliefs.\textsuperscript{79} A substantial burden on religion can exist where a government prevents a person from engaging in conduct or having a religious experience that is central to her religion’s doctrine.\textsuperscript{80} No matter how “substantial burden” is defined, it must be more than a mere inconvenience to the religious organization claiming it. Courts will look to whether the religious belief involved is sincerely held by the religious organization and whether the belief claimed to be impaired is actually religious in nature.\textsuperscript{81}

If the religious claimant makes out a showing of substantial burden, the local government or land use authority must demonstrate that the challenged decision or regulation is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest.\textsuperscript{82} Courts will look to see whether the interests advanced by the government to support the challenged action support allowing the government action or whether the interests of the religious organization outweigh the interests of the government in regulating. If the government action is found to be compelling, it must also be found to be no broader than necessary to accomplish the government’s stated goals. If the

\begin{footnotesize}
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\item \textsuperscript{79} \textit{Sherbert v. Verner}, 374 U.S. 398, 404 (1963).
\item \textsuperscript{80} \textit{Bryant v. Gomez}, 46 F. 3d 948, 949 (9th Cir. 1995).
\item \textsuperscript{81} \textit{Jolly v. Coughlin}, 76 F. 3d 468, 476 (2d Cir. 1996).
\item \textsuperscript{82} 42 U.S.C. §2000cc(a)(1)(A), (B).
\end{itemize}
\end{footnotesize}
government’s decision or regulation is overly broad in its scope, courts will strike it down.

A religious organization, therefore can win a case under RLUIPA by showing that its sincerely held religious beliefs were impaired by government action in the area of land use where the government cannot show that the challenged action was in furtherance of a compelling government interest and was the least restrictive means of advancing that interest.

C. CHAPTER SUMMARY

With an understanding of the workings of RLUIPA and its provisions, and an idea of how a case proceeds under the statute, the reader is equipped to turn to the case studies. Chapter Three explained how a typical case proceeds under RLUIPA and gave the reader an understanding of the basic arguments that the parties to such a case are required to make under the statute. The case studies that follow use this basic argument structure to advance the positions of each party and elaborate on this general format as required by the factual background of each claim. The following seven chapters outline cases that have been filed under RLUIPA, including the factual backgrounds and the arguments made by the religious organizations and local governments involved.
COTTONWOOD CHRISTIAN CENTER V. CYPRESS

COTTONWOOD CHRISTIAN CENTER V. CYPRESS

involves a claim against a local government that attempted to keep a large
curch and its accessory uses from constructing a new facility on church-
owned property in order to allow for retail development of that property in
accordance with a City redevelopment plan.

A. FACTS

1. THE CHURCH/RELIGIOUS INSTITUTION

Cottonwood Christian Center (Cottonwood) is a non-denominational
Christian church that, at the beginning of the conflict described in this
Chapter, was located in Los Alamitos, a suburb of Los Angeles,
California. In 1983, Cottonwood had 50 members; since then, the
congregation experienced a 15% annual increase in membership. The
current congregation totals in excess of 4000 adults and 1200 youths. At
the Los Alamitos location, Cottonwood’s worship hall could accommodate
700 individuals and lacked adequate parking to serve the needs of its

83 Amended Complaint, ¶14.
84 Plaintiff’s Motion for Preliminary Injunction, Declaration of Pastor Bayless Conley, ¶5.
85 Amended Complaint, ¶14.
members.  

Parking was offsite and members attending services rode a church shuttle to reach the worship hall. In order to accommodate the needs of its congregation, Cottonwood held two services each Saturday and four each Sunday.  

Cottonwood’s ministry includes more than just worship services. It includes many traditional church functions such as the provision of food, clothes, and toiletry items to the needy, regular youth services and Sunday School for the children of its members, and the sponsorship of an Adopt-a-Block program through which it provides household assistance to the elderly. However, Cottonwood also has an extensive non-traditional component to its ministry. It supports a School of Ministry that educates and trains new ministers in Cottonwood’s beliefs and a Women’s Ministry designed to encourage women to develop and share the special spiritual gifts the church believes them to possess. It sponsors and runs an annual conference “to develop strong Christian women who can reach their full potential in Christ.” A recent conference attracted approximately 1200 women. Cottonwood engages in several evangelic ministries in the community designed to spread the message of Christianity, including an

86 Plaintiff’s Motion for Preliminary Injunction, Declaration of Pastor Bayless Conley, ¶6.
87 Amended Complaint, ¶14.
88 Id. at ¶¶29, 31, 42, 47.
89 Id. at ¶¶39-40.
90 Id. at ¶41.
annual “Outpouring Conference” at which non-Christians are invited to learn about Christianity. Ironically, though Cottonwood involved itself with these ministries, it was unable to invite community participants to attend services at its church due to limited space at the Los Alamitos facility.\(^91\)

Cottonwood hosts a regular ministry for ministers to provide a forum for encouragement, preservation of religious doctrine, and unity-building.\(^92\)

Finally, Cottonwood has a media ministry through which it televises its services throughout the United States and to 100 different countries.\(^93\)

Because Cottonwood recognized that its limited space could no longer meet the needs of its growing congregation or its beliefs that it should expand its already long list of evangelistic and community service offerings, the church sought to relocate to a larger and more suitable site.\(^94\)

Beginning in 1994, the church began looking for a 15-20 acre site in the communities from which it draws a significant portion of its congregation.\(^95\)

From 1998 to 1999, Cottonwood purchased and assembled six individual parcels in the City of Cypress to make a 17.9-acre site on which the new facility would be constructed (the Cottonwood site).\(^96\) The Cottonwood site was ideal for Cottonwood because it was located within a five-mile radius of

\(^{91}\) Id. at ¶¶46, 48.
\(^{92}\) Id. at ¶49.
\(^{93}\) Id. at ¶51, Amended Complaint, ¶13.
\(^{94}\) Plaintiff's Motion for Preliminary Injunction, Declaration of Pastor Bayless Conley, ¶8.
\(^{95}\) Id. at ¶¶9-10.
\(^{96}\) Id. at ¶11.
the majority of its members on a major thoroughfare in Orange County, on the way to Disneyland and close to a six-lane highway. The property was therefore highly visible to the community and to its congregation. Cottonwood began studying the property to design a facility to fit its needs.

2. THE GOVERNMENT ACTOR

The City of Cypress (Cypress) is located in Orange County, California, approximately halfway between Los Angeles and San Diego. Cypress has a total population of 47,263. The median annual income for residents of Cypress is approximately $50,000. Four different plans were put into place by Cypress that impacted the Cottonwood site. First, in 1990, the Cypress City Council approved and adopted a redevelopment plan for the Los Alamitos Race Track and Golf Course Redevelopment Project Area (the redevelopment plan). It includes the property assembled and purchased by Cottonwood. Second, Cypress adopted an update to its city-wide General Plan in 1993. The General Plan designates certain property within the redevelopment plan as a Business Park, including the Cottonwood site. Third, a Specific Plan, which tailors the implementation of the General Plan for specific areas of Cypress, designates permitted uses

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97 Id. at ¶¶12-13.
98 http://www.ci.cypress.ca.us/about_cypress/about_w_info_photos.htm#location (last accessed 4/21/2003).
99 Amended Complaint, ¶22.
100 Id. at ¶18.
for the redevelopment plan. Churches, day care facilities, and educational and recreational centers are permitted uses for the Business Park, however, retail is not permitted. The Specific Plan designates the Cottonwood site as a Professional Office Zone in which churches are a permitted use subject to a Conditional Use Permit. Retail is not permitted in Professional Office zones.

Finally, in 2000, Cypress informed Cottonwood that the City decided to proceed with an additional plan called the Town Center Master Plan (the Master Plan) within the redevelopment plan, including the Cottonwood site. The Master Plan focused on creating a large retail center for Cypress. In a letter, Cypress stated that the Master Plan envisioned two to three large retail anchor tenants to “create the necessary synergy to draw a cross-mix of consumers to shop the project along with drawing the additional quality retailers to augment the anchor tenant mix…” The major tenant was to be a discount-warehouse user that could generate over $150 million in annual taxable sales. In 2001, Cypress extended its eminent domain
power to its redevelopment agency to move forward on its plans for the development.\textsuperscript{105}

\section*{3. THE CONFLICT}

In 1999, Cypress sent a letter to Cottonwood’s attorneys stating that though a church could obtain a Conditional Use Permit to use the Cottonwood site under the Specific Plan, Cottonwood’s proposed use was not favored by the City for the sole reason that it would not generate enough tax revenue for Cypress. Cottonwood interpreted this statement as Cypress’s intent to include a previously nonexistent requirement to the permitting process, the ability to generate tax revenue.\textsuperscript{106}

Despite Cyress’s attitude towards Cottonwood’s proposed use, in October 2000, Cottonwood submitted its application for a Conditional Use Permit to build its new facility at the Cottonwood site. The application included extensive studies and reports on the site and the impact of its facility. These studies and reports exceeded the requirements of the Conditional Use Permit.\textsuperscript{107} Later that month, Cypress replied to Cottonwood’s application with a statement that it believed the application to be incomplete for lack of a preliminary design review application.\textsuperscript{108}

\begin{flushright}
\textsuperscript{105}Id. at ¶26.
\textsuperscript{106}Id. at ¶32.
\textsuperscript{107}Id. at ¶34.
\textsuperscript{108}Id. at ¶35.
\end{flushright}
Cottonwood’s review of the Cypress Municipal Code and zoning regulations indicated that no such design review application was required for a Conditional Use Permit.\textsuperscript{109} Cypress also stated that because Cottonwood’s application would require an amendment to the goals and policies of the Specific Plan for the area, Cottonwood’s application was incomplete.\textsuperscript{110}

Also in October 2000, Cypress suspended the granting of land use entitlement permits, including Conditional Use Permits, within the redevelopment area in which Cottonwood’s property was located. The purposes of the suspension was to prevent development until studies of the Master Plan project were complete.\textsuperscript{111} This suspension was in place for over a year.\textsuperscript{112} Cypress made exceptions to the suspension to allow projects such as a hotel and a subdivision for warehouse and manufacturing facilities that were consistent with its Master Plan project.\textsuperscript{113} Cottonwood lodged its objections to the suspension with Cypress but received no response.\textsuperscript{114}

Cypress also sent out letters to property owners in the redevelopment area, including Cottonwood, inviting them to submit proposals and

\textsuperscript{109} Id. at ¶36.
\textsuperscript{110} Id. at ¶35.
\textsuperscript{111} Id. at ¶39.
\textsuperscript{112} Id. at ¶41.
\textsuperscript{113} Id. at ¶42.
\textsuperscript{114} Id. at ¶43.
statements of interest for participation in the redevelopment process. The letters suggested that the proposals should be for a retail tenant that could generate a large tax revenue for the City and that would occupy the Cottonwood site.\textsuperscript{115} Though Cottonwood asked Cypress for the rules concerning a response to the request for proposal, Cypress refused to respond until Cottonwood submitted a formal public records request.\textsuperscript{116}

Though Cottonwood owned the Cottonwood site throughout this time, its ability to use the property was limited by the City to secular events. Cottonwood was required to apply for a Temporary Use Permit to use the Cottonwood site for any purpose. Cypress allowed Cottonwood to use the Cottonwood site on infrequent occasions for certain non-religious events, such as for a public high school fundraiser. However a Temporary Use Permit application to allow Cottonwood to hold an Easter service on the property was denied in 2000. In November 2000, Cottonwood’s members met at the site for a traditional prayer event. After the event, Cypress sent “an insulting letter to a representative of Cottonwood, claiming that Cottonwood’s actions were a ‘clear and deliberate breach of the Temporary Use Permit process.’”\textsuperscript{117}

\textsuperscript{115} Id. at ¶44.  
\textsuperscript{116} Id. at ¶47.  
\textsuperscript{117} Id. at ¶33.
Cottonwood appealed the decision that its Conditional Use Permit application was incomplete to the Cypress City Council (the Council) but the appeal was continued several times pending discussions between the parties. These discussions included an offer by Cypress to allow Cottonwood to develop its facility on property adjacent to the Cottonwood site so that Cypress could implement its Master Plan project. One of the conditions required by Cypress for this arrangement to be acceptable was that Cottonwood make a payment to Cypress in lieu of property taxes to ease Cypress’s concerns regarding the presence of a non-tax-generating user of the property. Cottonwood refused to make such a payment.

Cypress initiated proceedings to take the Cottonwood site through eminent domain on December 28, 2001, by sending a letter to Cottonwood indicating that its property was being considered for the Master Plan project. Though Cottonwood filed its original complaint in January of 2002, Cypress continued to take steps to acquire the Cottonwood property.

On February 11, 2002, Cottonwood’s appeal of its permit application was finally decided by the Council. Cottonwood’s Conditional Use Permit application was considered complete, however no further action was taken.

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118 Id. at ¶38.
119 Id. at ¶53.
120 Id. at ¶55.
121 Id. at ¶¶59-60.
by Cypress to process the application.\textsuperscript{122} On February 28, 2002, the Cypress Redevelopment Agency sent Cottonwood a letter offering to purchase the Cottonwood property as a prerequisite to a formal eminent domain action.\textsuperscript{123} In April 2002, Cypress selected Costco as the preferred developer for the Cottonwood site and notified Cottonwood of a hearing at which the formal eminent domain action would be approved by the Cypress Redevelopment Agency.\textsuperscript{124} At a May 28, 2002, hearing, the Cypress Redevelopment Agency voted to authorize the taking of the Cottonwood site through eminent domain.\textsuperscript{125} Cottonwood’s litigation was already underway at this time.

B. THE LITIGATION

After filing a complaint in January 2002, and an Amended Complaint in June 2002, Cottonwood applied to the United States District Court for the Central District of California, Southern Division, for a preliminary injunction. This injunction was to maintain the status quo—to prevent Cypress from acting through its eminent domain power to condemn the Cottonwood site as part of its Master Plan. Part of an application for an injunction is to show that there is a likelihood that the applicant will win its case. Cottonwood

\textsuperscript{122}\textit{Id.} at ¶38.
\textsuperscript{123}\textit{Id.} at ¶60.
\textsuperscript{124}\textit{Id.} at ¶¶61-2.
\textsuperscript{125}\textit{Id.} at ¶64.
therefore addressed its claims against Cypress and attempted to show that it would prevail on those claims under the law. This section will address only those claims made under RLUIPA.

1. THE CHURCH/RELIGIOUS INSTITUTION’S CLAIMS

Cottonwood’s single RLUIPA claim was based on the substantial burden section of that Act\textsuperscript{126}, which provides a cause of action where a government has imposed a substantial burden on the free exercise of religion through its land use regulations or decisions. Cottonwood was only required to show that Cypress’s land use decisions had imposed a substantial burden on its religious beliefs to make a case under RLUIPA. In order to support that claim, Cottonwood described in detail its plans for the Cottonwood site, the needs of its current outreach ministries and its plans for additional ministries, and its religious beliefs.

Cottonwood generally described its religious beliefs through its statement of faith and vision statement entitled “Bringing a Living Jesus to a Dying World.”\textsuperscript{127} In its vision statement, Cottonwood’s members state: “We strongly believe that we are called to reach out and make a difference herein our own local communities and to extend from there out to the four corners of the earth. By faith in Jesus Christ and our God-honoring

\textsuperscript{126} 42 U.S.C. §2000cc(2)(a).
\textsuperscript{127} Amended Complaint, ¶12.
relevant life-styles we are bringing love and hope to a hurting world.”¹²⁸
Cottonwood’s members believe that a church performs three functions for
its congregants: ecclesiastical, educational and social. These three
functions are vital to fulfilling the religious needs of its members. Because
the Cottonwood site is centrally located and visible to the community, these
functions will be more easily accessible for all current and future
members.¹²⁹

Cottonwood used quotes from the Bible to support its statements of
religious beliefs. For example, Cottonwood’s beliefs include a requirement
to engage in evangelism and to encourage others to convert to
Christianity.¹³⁰ Cottonwood’s belief comes from Matthew 28:18-20, “Go
therefore and make disciples of all the nations, baptizing them in the name
of the Father and the Son and of the Holy Spirit, teaching them to observe
all things that I have commanded you; and lo, I am with you always, even
to the end of age,” which it quotes in its Complaint.¹³¹ Cottonwood also
relied on Biblical instruction to support their belief that a church should
worship as one body.¹³²

¹²⁸ Id.
¹²⁹ Id. at ¶17.
¹³⁰ Id. at ¶14.
¹³¹ Id.
¹³² Id. at ¶15.
Cottonwood described the substantial burden imposed on its religious exercise in a bullet-point list in its Motion for Preliminary Injunction. The list included the fact that Cottonwood must turn away prospective worshipers, including non-Christians, due to lack of parking or seating space at its Los Alamitos site, and the fact that Cottonwood has been forced to “splinter the congregation into different parts (contrary to its belief that the church is one body) and hold multiple worship services.” Because multiple services were required, Cottonwood was forced to limit the time available for the congregation to worship God through prayer and music, and to reduce the length of the sermon. Cottonwood had to limit the scope of its food and clothing bank and the attendance at its Sunday School by turning away special needs children, including those with developmental disabilities such as autism, that it would otherwise like to include in its ministry. Cottonwood had to limit enrollment in its School of Ministry, making it more difficult to train new pastors and missionaries in its beliefs. Cottonwood was unable to provide English classes with Christian teachings to the Spanish-speaking community, which prevented it from carrying out its mission of evangelism. Cottonwood lacked space for an adequate youth ministry and an adequate women’s ministry and has been forced to turn away would-be participants.

133 Plaintiffs’ Motion for Preliminary Injunction, 12-13.
in these activities as a result.\textsuperscript{134} Finally, Cottonwood lacked the space to provide day-care for children of its members and the surrounding community.\textsuperscript{135}

These claims of substantial burden were supported not only by statements made in Cottonwood’s Motion for Preliminary Injunction, but by its Amended Complaint and a Declaration made by Pastor Bayless Conley of Cottonwood Christian Center. Cottonwood reinforced these claims by describing the facility it hoped to build at the Cottonwood site:

Cottonwood intends to develop the Cottonwood Property into a church site and a well-planned community-oriented project...that will include such facilities as a worship center, daycare center, youth center, gymnasium, bookstore, and parking structure...The Cottonwood Project also envisions a 200-child daycare program for parents of both congregational members and the surrounding business community. Cottonwood also plans to open a ‘state-of-the-art’ youth center, with a gymnasium and study rooms for the teens and adults of the community.\textsuperscript{136}

\section*{2. THE GOVERNMENT’S CLAIMS

Cypress made several arguments relevant to Cottonwood’s RLUIPA claim. First, it argued that a strict scrutiny review did not apply and that under \textit{Employment Division, Department of Human Resources of Oregon v.}

\begin{flushleft}
\textsuperscript{134} \textit{Id}. at 13.  \\
\textsuperscript{135} \textit{Id}. at 14.  \\
\textsuperscript{136} Amended Complaint, ¶16.
\end{flushleft}
Smith, the court should look to whether there was a rational basis for the City’s actions.\textsuperscript{137}

Second, it claimed that there was no individualized assessment made of Cottonwood’s application for a conditional use permit. Cypress claimed that individualized assessments only occur where a government creates exceptions to a regulatory scheme for secular purposes but not for religious purposes or where the regulations at issue allow the government to make value judgments regarding religious beliefs. Cypress claimed that when a government makes legislative decisions in applying neutral and generally applicable zoning laws, no individualized assessment occurs and therefore RLUIPA should not apply.\textsuperscript{138}

Third, Cypress argued that it was necessary to use eminent domain to acquire the Cottonwood site in order to eliminate blight. Because a retail development would accomplish this purpose and create an aesthetically pleasing environment, the City argued it was justified in taking the property. Cypress relied on a blight study performed in 1990 to justify this claim.

Fourth, Cypress argued that it needed the tax revenue that a large retail store could generate to support its redevelopment plan and that a


\textsuperscript{138} Id. at 1223.
church would be unable to support the tax base in such a manner.\textsuperscript{139} Cypress asked the Court to dismiss the case through a Motion to Dismiss.

3. \textbf{THE OUTCOME}

Judge David O. Carter of the Central District of California heard the case and authored the opinion on the issue of the injunction and the Motion to Dismiss. After detailing the factual background of the case and outlining Cottonwood’s religious beliefs and the origin of the conflict between the parties, Judge Carter addressed Cypress’s Motion to Dismiss the case.\textsuperscript{140} Because the Motion to Dismiss was based on a technicality, a failure by Cottonwood to give adequate notice of the suit to certain unnamed defendants, Judge Carter found that there was no actual harm caused by Cottonwood’s mistake. He denied the Motion to Dismiss.\textsuperscript{141}

Judge Carter then addressed Cottonwood’s claims under RLUIPA. First, Judge Carter addressed the contention made by Cypress that, rather than a strict scrutiny standard of review in which the government must provide a compelling interest to justify their actions and demonstrate that it is the least restrictive means of furthering that interest, what is known as a rational basis standard of review applied to the case. Under a rational basis approach, the government would be required only to show that it had a

\textsuperscript{139} \textit{Id.} at 1228.
\textsuperscript{140} \textit{Id.} at 1215.
\textsuperscript{141} \textit{Id.} at 1215-16.
legitimate and reasonable interest in the actions it took to justify its actions. To decide which standard applied, Judge Carter turned to whether individualized assessments actually occurred in processing Cottonwood’s application for a conditional use permit.

Though Cypress argued that where neutral and generally applicable zoning laws are used to make a determination, no individualized assessment occurs, Judge Carter disagreed. Where a zoning scheme is used to make a determination about an individual property, a municipality must hold hearings, hear testimony from affected landowners, and make specific factual findings. These actions are judicial involve individualized assessments. Judge Carter stated that if Cypress’s review of the application was not an individualized assessment, “government agencies could vest absolute discretion in a single person or body. That decision-maker would then be free to discriminate against religious uses and exceptions with impunity,” because according to the law its decisions would be based on neutral and generally applicable laws and not on individual determinations. Courts would be required to give too much deference to such determinations. Judge Carter noted the applicability of RLUIPA to the facts of the case. Because Cypress’s refusal to grant

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143 Cottonwood Christian Center, 218 F. Supp. 2d at 1223.
144 Id. at 1224.
Cottonwood a permit involved an individualized assessment of Cottonwood’s application, RLUIPA applied, as did its requirement of a strict scrutiny standard of review.

Judge Carter found that there existed “…strong evidence that Defendants [Cypress’s] actions are not neutral, but instead specifically aimed at discriminating against religious uses.”¹⁴⁵ The City expressed no interest in developing the Cottonwood site for ten years, though a plan existed for its redevelopment. Only after Cottonwood acquired the site and expressed an interest in beginning construction of its new facility did Cypress take action to begin its redevelopment plan in earnest.

The claim of blight made by Cypress was not convincing to Judge Carter, as Cypress took no action to eliminate the “blight” until Cottonwood’s decision to build.¹⁴⁶ Judge Carter found that no evidence of blight existed. The only study of blight in the area was performed in 1990, long before the case was filed, and was not indicative of the current conditions. There was no indication that the denial of Cottonwood’s permit was based on blight; the construction of a church on the property would eliminate blight.¹⁴⁷ Cypress designated the Cottonwood property as part of a business park and attempted to deny Cottonwood’s permit on the

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¹⁴⁵ *Id.* at 1222.
¹⁴⁶ *Id.* at 1225.
¹⁴⁷ *Id.* at 1228.
grounds that it would be incompatible with such a use. However, Cypress proceeded to plan a large retail and entertainment center for the same property, which to Judge Carter also seemed incompatible with the business park designation.\textsuperscript{148}

Cypress’s claim that it needed the tax revenue generated by a large retail tenant to finance its redevelopment plan was also unpersuasive to Judge Carter.\textsuperscript{149} Citing Mayor Lydia Sondhi’s State of the City Address of 2002, Judge Carter remarked that Cypress operated at a 25\% annual surplus without the benefit of a utility tax.\textsuperscript{150} Because Cypress had not acted for 12 years to find a revenue-generating use for the property and because there was no evidence that Cottonwood’s presence on the property would harm the fiscal condition of the City, Judge Carter found Cypress’s argument insufficient to justify a finding in its favor.\textsuperscript{151} However, Judge Carter did find that Cottonwood’s bookstore would generate sales tax for Cypress and that the church would attract large numbers of people who would likely patronize nearby revenue-generating uses.\textsuperscript{152}

Judge Carter found that Cottonwood met its burden of demonstrating that Cypress’s land use regulations imposed a substantial burden on its

\textsuperscript{148} ld. at 1225.  
\textsuperscript{149} ld. at 1228-9.  
\textsuperscript{150} ld. at 1228.  
\textsuperscript{151} ld. at 1228-9.  
\textsuperscript{152} ld. at 1229.
religious beliefs. He stated: “Cottonwood is unable to practice its religious beliefs in its current location. Simply put, its Los Alamitos facility cannot handle the congregation’s large and growing membership, and its small quarters prevent Cottonwood from meeting as a single body, as its beliefs counsel.” Judge Carter also noted, “Preventing a church from building a worship site fundamentally impairs its ability to practice its religion. Churches are central to the religious exercise of most religions. If Cottonwood could not build a church, it could not exist.” Interestingly, Judge Carter did not rely on the bulk of the information regarding Cottonwood’s planned and existing outreach ministries to find sufficient its claim of substantial burden. Judge Carter found that Cottonwood showed a likelihood of success on the merits of its case under RLUIPA and granted the injunction to prevent Cypress from taking action to develop the property.

To avoid further delays in the redevelopment plan and to avoid additional litigation costs, the City of Cypress agreed to enter negotiations with Cottonwood to reach a compromise. An agreement was reached to allow Cottonwood to build on property in the same redevelopment area.

The City of Cypress Redevelopment Agency agreed to purchase the

\[153\] Id. at 1226.
\[154\] Id.
\[155\] Id. at 1230-32.
Cottonwood site for $18.8 million, the target closing date for which is August 31, 2003. A condition of this sale is Cottonwood’s purchase of a 29-acre site to the immediate northeast of their former site. Another condition of the transaction is the issuance of building permits and land entitlements by the City of Cypress to allow Cottonwood to construct its facility on the site. The City of Cypress Council voted unanimously to accept the terms of the agreement. After the completion of these steps, Cottonwood has agreed to dismiss its pending lawsuit.\footnote{http://www.rluipa.com/cases/Cottonwood.html (last accessed 4/21/2003)}

\textbf{C. CHAPTER SUMMARY}

\textit{Cottonwood Christian Center v. Cypress Redevelopment Agency} resulted from a conflict between Cottonwood’s proposed use of a large site in a prime location and the City of Cypress’s preferred use of that property. Though the arguments made by the City were founded in basic government interests, the elimination of blight and the creation of additional revenue for the City, the arguments made by Cottonwood in support of its claims under RLUIPA were very detailed. In claiming that the City of Cypress imposed a substantial burden on Cottonwood’s religious exercise, Cottonwood described the tenets of its beliefs either by directly stating them using its mission statement and its vision statement, or indirectly using Bible
passages to demonstrate the source of its beliefs. Cottonwood explained each of its outreach ministries and each of the outreach ministries it felt compelled to sponsor but was unable to sponsor due to lack of space. The resolution in this case, a compromise in which Cottonwood agreed to sell its property to the City of Cypress, locate at a nearby site, and dismiss its lawsuit against the City, demonstrates a point made in the Congressional record: that land use conflicts are better solved through compromise and that churches are particularly willing to negotiate to reach a suitable resolution for all parties involved.
CHAPTER 5— C.L.U.B. v. CITY OF CHICAGO

C.L.U.B. v. City of Chicago involves a general claim by an organization of area churches and several of its individual member churches that the City of Chicago’s zoning laws restrict the free exercise of religion by making it more difficult for churches as a group to find and secure adequate facilities for their religious functions.

A. FACTS

1. THE RELIGIOUS ORGANIZATION AND ITS MEMBER CHURCHES

C.L.U.B. (CLUB), which stands for “Civil Liberties for Urban Believers,”¹⁵⁷ is an unincorporated association of approximately 50 churches with congregations ranging from 15 to 15,000 members.¹⁵⁸ CLUB’s function is to challenge zoning ordinances that it claims restrict the free exercise of religion and the rights of its member churches.¹⁵⁹ Each of the five churches involved in the litigation described in this Chapter, Christ Center, Christian Covenant Outreach Church, Christian Bible Center, The Church on “The Way” Praise Center, Iglesia De Avivamento Monte de

¹⁵⁸ Brief and Required Short Appendix of Appellants on Appeal from the U.S. District Court, 6.
¹⁵⁹ C.L.U.B. v. City of Chicago (Northern Dist. of Ill, 2001), 157 F. Supp. 2d 903, 905. (CLUB I)
Sion, and His Word Ministries, had an experience with the City of Chicago (Chicago) that CLUB claims infringed on its ability to exercise its religion.

Christ Center, with a congregation of 150, required a downtown location to serve its mainly inner-city membership. It originally met in a high school auditorium, but sought a different location when school activities began to conflict with the church’s ability to hold its services. Christ Center first attempted to acquire property in a Commercial (C) zone but was unable to obtain a Special Use Permit as a result of neighborhood objections and the actions of the alderman who represented the district in which the property was located. “Most neighbors favored a taxpaying entity in the neighborhood rather than a church,” and the alderman, without further elaboration, stated that he would support a church in any location other than on the street selected by Christ Center. In another attempt to find suitable property, the church lost an opportunity to locate in a Manufacturing (M) zone. The Chicago Planning Department opposed the rezoning of the property to allow for the church to use the property because it planned to develop the area into an entertainment district and feared the presence of a church would hinder that plan. Christ Center eventually acquired suitable property and a Special Use Permit to use it, but claimed

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160 Brief and Required Short Appendix of Appellants on Appeal from the U.S. District Court, 7.
161 CLUB I, 157 F. Supp. 2d at 907.
that it “paid substantial sums in attorneys fees, appraisal fees, zoning application charges, title charges, and other expenses to find suitable property.”

Christian Covenant Outreach Center’s congregation includes many teenagers and former street gang members. It met in a Commercial zone without approval by Chicago until it was threatened with closure by inspectors who cited it for failure to obtain a Special Use Permit. Prior to the citation, the owner of the facility in which the church met offered to co-sign a loan application to allow the church to purchase the building. However, because Christian Covenant Outreach Center could not afford the $4,000 application fee for the Special Use Permit, the church was forced to leave the building. The church finally purchased a suitable location in a Residence (R) zone.

Christian Bible Center, a congregation of 35 people, originally met in a private residence, but moved to a former funeral home when its membership outgrew the residential location. The church “found a building and lot... zoned ‘B’ but did not purchase the property because their

162 Id.
163 Brief and Required Short Appendix of Appellants on Appeal from the U.S. District Court, 7.
164 CLUB I, 157 F. Supp. 2d at 908.
165 Brief and Required Short Appendix of Appellants on Appeal from the U.S. District Court, 7.
166 CLUB I, 157 F. Supp. 2d at 908.
167 Id. at 907.
local alderman…said he ‘could not allow’ a church in that location.”

The church found and purchased another property in a C zone, but this location was opposed by another alderman and the local neighborhood association. The Special Use Permit application filed for the property was denied. The church spent ten months trying to sell the property but was unsuccessful as nearly all potential buyers were churches who were hesitant because of the denial of the Special Use Permit. To make the building more appealing to other potential buyers, the church undertook renovations of the site, during which time it held services at private homes or in rented space. Two years later, a second Special Use Permit application was filed for the property and was granted after neighbors decided to support the church. Christian Bible claims that the delay in granting the Special Use Permit precluded it from taking advantage of a real estate tax exemption for non-profit organizations, that it paid substantial fees during the permitting process, and that its membership decreased as a result of its inability to obtain the permit.

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168 Brief and Required Short Appendix of Appellants on Appeal from the U.S. District Court, 8.
170 Id. at 908.
171 Brief and Required Short Appendix of Appellants on Appeal from the U.S. District Court, 8.
172 CLUB I, 157 F. Supp. 2d at 908.
173 Brief and Required Short Appendix of Appellants on Appeal from the U.S. District Court, 8.
The Church on “The Way” Praise Center spent approximately $5,000 to obtain a special use permit for a building that was suitable for its needs. The building was in a Commercial zone. However, to meet the conditions imposed by the Chicago Zoning Board of Appeals (ZBA), the Church was required to spend an additional $10,075.\footnote{\underline{175} Brief and Required Short Appendix of Appellants on Appeal from the U.S. District Court, 8.}

Iglesia De Avivamento Monte de Sion (Mount Zion), a church of 110 congregants, operated out of a building in a C zone for approximately five years without a Special Use Permit. When Chicago discovered this arrangement, it ordered the church to vacate the building.\footnote{\underline{176} \textit{CLUB I}, 157 F. Supp. 2d at 908.} The Church then entered a lease agreement for another building contingent on the approval of a Special Use Permit for the church to operate in the C zone in which the building was located.\footnote{\underline{177} Brief and Required Short Appendix of Appellants on Appeal from the U.S. District Court, 8.} The ZBA subsequently informed the Church that the building it planned to occupy lacked suitable parking accommodations for a church and that therefore the both church and a parking lot adjacent to the building would require Special Use Permits.\footnote{\underline{178} \textit{CLUB I}, 157 F. Supp. 2d at 908.} The district’s alderman and a group of neighbors opposed the grant of the permit and as a result of the lack of support, the Church terminated its
Though the Church ultimately purchased a building suitable for its use, the Church claims it lost members as a result of the difficulty it faced in obtaining a Special Use Permit.  

His Word Ministries contracted to purchase a former bank building in a Commercial zone that would meet the needs of its 60-member congregation. The congregation had outgrown its former residential location. The contract was contingent on the approval of a Special Use Permit. In order to secure approval, representatives of the church met with the district alderman, who declined to support or oppose the permit application, and with neighbors, who generally supported the application. On three separate occasions, each at the request of the alderman, the ZBA postponed its decision on the permit application. While the permit application was pending, the alderman introduced a resolution that was passed by City Council to re-zone the property at issue in the permit application from C to Manufacturing (M). Churches are not permitted in M zones, even with a Special Use Permit. The alderman refused to give a reason for his actions to reclassify the property, though he did admit to having received between three and five letters from neighboring property owners.  

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179 Brief and Required Short Appendix of Appellants on Appeal from the U.S. District Court, 8.  
180 Id. at 8-9.  
181 Id. at 9.  
182 CLUB I, 157 F. Supp. 2d at 908.
owners who opposed the church. After much expense and time, the church found another location in an (R) zone.

2. THE GOVERNMENT ACTOR

Chicago’s zoning ordinance breaks land use into four broad zoning districts, R, B (Business), C, and M, each of which is further broken into sub-districts. All property is placed into one of these four categories, with the exception of property zoned as a Planned Development.

Approximately 40% of the City is zoned R. Churches are allowed as of right in R zones, but must obtain a Special Use Permit to locate in B or most C zones. Churches are not permitted uses in M and certain C zones. The Chicago zoning code has not been amended since 1957.

To obtain a permit to locate in a B or C zone, a church must demonstrate that as a special use, it will serve the public convenience, it does not threaten public health, safety or welfare, it will not diminish the value of nearby property, it will comply with certain other requirements of the zoning code, and it will conform with the zoning district’s regulations. The Commissioner of Planning and Development may recommend that the ZBA, the administrative body responsible for granting Special Use Permits, consider other factors such as off-street parking. Additionally the alderman

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183 Brief and Required Short Appendix of Appellants on Appeal from the U.S. District Court, 9.
184 CLUB I, 157 F. Supp. 2d at 908.
185 Id. at 905.
for the district in which the property is located as well as neighbors and community groups may influence the determination of whether to grant the permit. A typical application for a Special Use Permit costs the applicant between $4,000 and $5,000.186

Churches seeking to locate in a M zone or a C zone from which churches are prohibited can attempt to obtain a zoning map amendment from Chicago.187 This process requires a special application to the City Council and the passage of a new ordinance to re-zone the property at issue to a zone in which churches are permitted to locate.188 Map amendments can also be requested by City aldermen. According to an expert witness for Chicago, the City Council passes approximately 600 map amendments annually.189

Churches with congregations of over 500 members require two or more acres of land to accommodate their facilities and are barred from locating within Chicago without first applying for a Planned Development ordinance through City Council. The City Planning Commission must first recommend the project’s approval and City Council must then unanimously approve the passage of such an ordinance. There are no standards for

186 Id. at 906.
187 Brief and Appendix of Defendant-Appellee on Appeal to the Seventh Circuit Court of Appeals, 6.
188 Brief and Appendix of Plaintiffs-Appellants on Appeal to the Seventh Circuit Court of Appeals, 5.
189 Id. at 16.

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Planned Development approval. The approximate cost for such an application is $500.\textsuperscript{190}

3. THE CONFLICT

\textit{CLUB v. City of Chicago} is unique in that CLUB’s mission to challenge zoning regulations and decisions that impact the exercise of religion differs from a more traditional conflict between an individual church or religious organization and a local government. The conflict in this case arises from a series of interactions between CLUB’s member churches through their attempts to find suitable locations for their facilities and Chicago through its zoning function. These interactions are described in detail in Section A(1) of this Chapter. Though no particular catalyst seems to have forced the conflicts between CLUB’s member churches and Chicago to move to a more formal adversarial process, each individual church’s interaction with Chicago appears to have contributed to CLUB’s decision to litigate.

The conflict between CLUB and Chicago was the subject of three earlier complaints filed and resolved between 1994 and 1997. Each of these complaints alleged that Chicago, “needlessly restricted churches from obtaining properties in the Business, Commercial and Manufacturing

\textsuperscript{190} \textit{Id.} at 6.
zones and treated churches less favorably than nonreligious assemblies in these zones.”\(^{191}\) On July 2, 1999, the case was transferred to Judge William Hibbler, of the United States District Court for the Northern District of Illinois, Eastern Division, on his appointment to the bench. Between 1994 and 2000, the conflict consisted of discovery and unsuccessful settlement negotiations. In February 2000, Chicago amended its zoning code in direct response to the litigation. In September 2000, RLUIPA was signed into law and CLUB amended its complaint to reflect the new claim it was entitled to make under the statute.\(^{192}\)

The changes to the zoning code made in February 2000, were intended to eliminate the conflict between CLUB and Chicago and to foreclose the potential for additional litigation.\(^{193}\) Specifically, Chicago removed the requirement that a church or religious institution applying for a Special Use Permit demonstrate it was necessary for the public convenience. Chicago also included a requirement that the ZBA make a decision with regard to Special Use Permit applications filed by churches and religious institutions within 120 days. If no decision is made after 120 days, the application is considered approved.\(^{194}\) The amendments also

\(^{191}\) Id. at 4.
\(^{192}\) Id.
\(^{193}\) Brief and Appendix of Plaintiffs-Appellants on Appeal to the Seventh Circuit Court of Appeals, 17.
\(^{194}\) Brief and Appendix of Defendant-Appellee on Appeal to the Seventh Circuit Court of Appeals, 7.
removed discrepancies between what was required of churches as opposed to what was required of other places of assembly in B and C zones. Where churches were once the only places of assembly that were required to file applications for Special Use Permits for these zones, the amendments now made the permit a requirement for “clubs, meeting halls, recreation buildings, and community centers…” Though Chicago’s amendments to the zoning code attempted to eliminate the claims made by CLUB, the organization did not dismiss its lawsuit.

B. THE LITIGATION

In November 2000, CLUB filed its fourth complaint involving the facts outlined above in Section A in the United States District Court for the Northern District of Illinois, Eastern Division. Judge William Hibbler was assigned to the case. Both parties made motions for summary judgment, a legal request that asks the court to look at all the facts of a case and decide whether any issues raised require a more formal resolution or whether they can be decided on what is already before the court. If what is already before the court is unambiguously supportive of one party’s position, as a matter of law, that party is entitled to prevail in the case. Though many arguments were made by the parties, this section will address only those

\[19^5\] Id. at 6.
\[19^6\] CLUB I, 157 F. Supp. 2d at 905.
claims made under RLUIPA. The claims that are outlined below come from briefs submitted to the Seventh Circuit Court of Appeals, however the arguments made by each party are restatements of those made before the District Court and are therefore applicable to Judge Hibbler’s evaluation of the case.

1. THE CHURCH/RELIGIOUS INSTITUTION’S CLAIMS

CLUB’s RLUIPA claim was based on the substantial burden section\(^{197}\) and the unreasonable limitations section\(^{198}\) of the act.\(^{199}\) CLUB explained why churches would benefit from better access to B and C zones. “Churches come in many different sizes and varieties. To accomplish their goals, many churches need the flexibility, visibility and accessibility that ordinary businesses have.”\(^{200}\) Because the objectives of most churches are to reach as many people as possible with their beliefs, many churches would benefit from a visible location. Affordability of property is a consideration for churches and the lower property values in B or C zones are attractive to many churches. The size of these properties is also better suited to the needs of churches than the size of most area

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\(^{198}\) 42. U.S.C. §2000cc(b)(3)
\(^{199}\) Brief and Appendix of Plaintiffs-Appellants on Appeal to the Seventh Circuit Court of Appeals, 35.
\(^{200}\) Id. at 19.
residential properties. These properties are also generally more accessible by car and public transportation than properties in residential areas and the parking accommodations are generally more suited to large assembly uses than those in residential areas.

CLUB relied on passages from the Bible to support its contention that churches require meeting facilities to carry out certain critical practices such as weekly worship meetings, weekly preaching including personal development through God, pastoral counseling, prayer meetings, musical ministries, baptisms, confirmations, weddings, funerals, and communion, Bible study, community service projects, and evangelism. CLUB also noted that the “ability, quality, and cost of conducting the religious exercises listed is significantly impacted by the type and location of a building” in several ways, including the number of people accommodated, the availability of parking, the proximity to public transportation, the cost of building acquisition and maintenance, safety, and appearance. With this foundation, CLUB moved to its actual claims under RLUIPA.

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201 Id. at 10.
202 Id. at 10-11.
203 Id. at 11-12.
204 Id. at 12.
CLUB argued, though not using RLUIPA’s equal terms section\textsuperscript{205}, that Chicago’s use of individualized assessments in its zoning ordinance required the court to review the case under a heightened standard of scrutiny.\textsuperscript{206} Individualized assessment occurred, according to CLUB, during the special use permitting process, the planned development process and the zoning map amendment process.\textsuperscript{207}

The Special Use Application process involves individualized decision-making at a specific hearing for a specific applicant and a specific property and allows for discretionary judgments to be made by zoning officials as there is no right to a Special Use Permit according to the zoning ordinance. Political and neighborhood influences may affect the outcome of Special Use Permit applications.\textsuperscript{208} Because the Chicago City Council maintains complete discretion as to whether to grant or deny a Planned Development application according to the guidelines for such applications, and because no test or standard can be met by a religious organization to ensure its application will be granted, the Planned Development process is a system of individualized assessments. Finally, because no standards govern map

\textsuperscript{205} 42 U.S.C. §2000(b)(1).
\textsuperscript{206} Id. at 24.
\textsuperscript{207} Id. at 24-5.
\textsuperscript{208} Id. at 24.
amendment approval or denial, that application process is also a system of individualized assessments.\textsuperscript{209}

CLUB next claimed that a substantial burden was imposed on its member churches’ exercise of religion as a result of Chicago’s zoning regulations and practices.\textsuperscript{210} CLUB claimed that Chicago’s zoning ordinances constituted an over-regulation of religious uses in several ways. First, by restricting churches to residential zones, churches are deprived of “sufficient options for hosting religious assemblies due to the cost of building/locating in those neighborhoods and the unavailability of land.”\textsuperscript{211} A church seeking to locate in a residential neighborhood would likely require three adjacent parcels of land, which CLUB claimed was nearly impossible to acquire due to “scarcity and cost of purchasing/building.”\textsuperscript{212} Second, CLUB argued that the Special Use Permit required for churches to locate in B or most C zones imposed cost, procedural burdens, the invitation of neighborhood opposition, and the discretionary and arbitrary nature of the proceedings on religious uses.\textsuperscript{213} Third, CLUB claimed that the map amendment process required for churches to locate in certain C and all M zones was completely arbitrary and therefore burdensome on

\textsuperscript{209} Id. at 25.
\textsuperscript{210} Id. at 26., see also 42 U.S.C. §2000(a)(1).
\textsuperscript{211} Id. at 26-7.
\textsuperscript{212} Id. at 27.
\textsuperscript{213} Id.
religion. The same was claimed to be true for the planned development process.\footnote{Id.} As a result of these burdens, churches had to choose between acquiring property without the knowledge of whether a Special Use Permit would be granted and negotiating a contingency clause in the sale or lease agreement, not without costs to the church, to protect against the uncertainty.\footnote{Id. at 28.}

Finally, under RLUIPA’s section prohibiting unreasonable limits on religious uses, CLUB alleged that Chicago violated RLUIPA by requiring churches to obtain Special Use Permits and because Chicago’s decision-making processes allowed for individualized assessments.\footnote{See 42 U.S.C. §2000cc(b)(3).} CLUB claimed that Chicago effectively excluded all large churches from its jurisdiction where such churches were not able to obtain a Planned Development permit but that such churches had to be allowed to locate somewhere within Chicago to avoid violating RLUIPA and the Constitution.\footnote{Id. at 37.} Because the permit application process required City Council approval and was therefore the equivalent of a new zoning ordinance, the process amounted to government control of religion.\footnote{Id. at 38.}
2. The Government’s Claims

Chicago began with a justification for its treatment of churches under its zoning ordinance and moved into a discussion of why RLUIPA should not apply to the case. Chicago claimed that, “By allowing churches as permitted uses in R districts, the zoning ordinance recognizes the traditional role that churches have played in the community.” The presence of a neighborhood church improves the quality of life in an urban neighborhood. Generally, churches provide needed community service to a neighborhood. For these reasons, Chicago chose to limit churches to R zones.

Chicago also explained why it restricted church access to B and C zones: “The goals of such districts are to provide retail and commercial services to residents, and to foster economic growth…The presence of unregulated residences or churches would inhibit economic growth in a district, and would, in turn, negatively affect the growth and development of residential district and the City as a whole.” Because business and commercial uses might be discouraged from locating in a district in which non-commercial users existed, the development of contiguous areas of

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219 Brief and Appendix of Defendant-Appellee on Appeal to the Seventh Circuit Court of Appeals, 7.
220 Id.
221 Id. at 8.
222 Id.
retail or commercial use would be impeded.\textsuperscript{223} Chicago advanced a public health and safety justification for separating church use from business or commercial uses: “Given the nature of certain church activities, including the need for quiet and activities for children, the City Council determined that churches should be kept away from certain commercial businesses and excluded from more congested commercial streets.”\textsuperscript{224} This public health and safety argument was also advanced to explain why churches are excluded from certain C and all M zones. Chicago justified Planned Development requirements for large churches by comparing large churches to other large development projects and outlining the need for Planning Commission oversight of developments that would have a major impact on the community.\textsuperscript{225}

Chicago next stated that in 1999, only two applications for Special Use Permits made by churches were denied.\textsuperscript{226} In contrast, 36 permits were granted for churches to locate in B or C zones and 18 were granted to allow churches to expand their facilities.\textsuperscript{227} Over 2000 churches exist in Chicago and the fact that these churches had successfully found homes within the City demonstrated that its zoning ordinance did not have the

\begin{flushleft}
\textsuperscript{223} \textit{Id.} \\
\textsuperscript{224} \textit{Id.} at 9. \\
\textsuperscript{225} \textit{Id.} \\
\textsuperscript{226} \textit{Id.} at 10. \\
\textsuperscript{227} \textit{Id.}
\end{flushleft}
effect of inhibiting religion. Chicago also noted that each of the individual churches involved in the lawsuit had found a suitable location within the City of Chicago. Chicago claimed that what CLUB sought was a “blanket exception from all zoning requirements so that churches may locate anywhere without regard to their compatibility with surrounding uses.”

Chicago continued its argument by claiming that no substantial burden was placed on the exercise of religion by its zoning ordinance. Because the zoning ordinance is a neutral and secular land use regulation designed to promote “harmonious land use,” and because the facts presented by Chicago showed that the ordinance was designed to allow churches to exist in Chicago while preserving the uniformity of other zones, Chicago claimed there was no burden on religion. Every land owner in Chicago was required under the zoning ordinance to adhere to use limitations based on compatibility. Chicago claimed it identified churches as a use only so that they could be “properly placed within districts where their land use is most compatible with others.”

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228 Id. at 10, 48.
229 Id. at 10.
230 Id. at 14.
231 Id. at 15.
232 Id. at 17.
233 Id. at 20.
234 Id.
Chicago claimed that the only differences between how churches are treated by Chicago’s zoning authorities and how other uses are treated is that churches are not required to show that they are necessary for the public convenience and that church applications are deemed granted if no decision is made within 120 days of their receipt. Chicago claimed that these differences gave churches an advantage over secular uses rather than a burden on their religious exercise.\textsuperscript{235}

Chicago specifically attacked CLUB’s claim of substantial burden stating that though CLUB claimed it would be more convenient for churches to locate in B or C zones, it gave no specific evidence of religious belief that required churches to locate in those zones as opposed to residential areas.\textsuperscript{236} Chicago claimed: “…churches are not inappropriately burdened simply because they may have to pay to apply for special use permits in B or C districts or higher prices for property in R districts.”\textsuperscript{237}

Because churches are permitted in R zones and because 40% of the City is zoned for residential use, Chicago claimed that ample land was available for church use. Chicago noted that the denial of a special use permit for a B or C zone did not automatically require the conclusion that its

\textsuperscript{235} Id. at 20.
\textsuperscript{236} Id. at 43.
\textsuperscript{237} Id. at 44.
zoning ordinance substantially burdened religious practice and that CLUB’s evidence did not rise to the level of showing a substantial burden.238

3. THE OUTCOME

Judge Hibbler undertook a detailed factual description of the case. He then addressed the Motions for Summary Judgment made by each party. In addressing CLUB’s claims under RLUIPA, Judge Hibbler found, without much discussion of the issue, that because Chicago “amended its Zoning Ordinance in February 2002 and adjusted its policies concerning special use permits and related districts,” the City removed any substantial burden that may have existed and prevented the application of RLUIPA.239

He granted Chicago’s Motion for Summary Judgment on this issue. CLUB asked that Judge Hibbler reconsider his decision, but he declined to amend or alter his decision and stated that Chicago’s revised zoning ordinance treated CLUB and its member churches as well as, if not better than similar secular assembly uses.240 Because Chicago, in the eyes of Judge Hibbler, removed what could have constituted a substantial burden to religious uses, the claim under RLUIPA was no longer properly before the court.

238 Id. at 45.
239 CLUB I, 157 F. Supp. 2d at 917.
240 Id. at *6.
CLUB appealed this decision to the Seventh Circuit Court of Appeals. Oral arguments before the Court were held on January 17, 2003, however no decision has been released to date.  

C. CHAPTER SUMMARY

The conflict between CLUB and its member churches and Chicago resulted from what CLUB perceived as a general discrimination against religious uses through Chicago’s zoning ordinances. In describing the substantial burden on its members’ religious exercise, CLUB relied on Biblical passages, but also detailed the time and expense needed to apply for a Special Use Permit under Chicago’s zoning ordinance. CLUB paid special attention to the fact that other secular assembly uses were not required, at least under the old version of the zoning ordinance, to apply for a Special Use Permit where churches and religious organizations were. CLUB v. City of Chicago is a unique case in that CLUB’s purpose is to undertake litigation to challenge Chicago’s zoning authority on behalf of its member churches. The case is also unique in that Chicago took steps to remove the RLUIPA claim before the District Court heard the case. Chicago’s success before the District Court can be directly attributed to this step.

San Jose Christian College v. City of Morgan Hill is centered around a dispute between a Christian college dedicated to the training of ministers and a local government, both of which have an interest in using a former hospital and its grounds.

A. FACTS

1. THE CHURCH/RELIGIOUS INSTITUTION

San Jose Christian College (the College) was founded in the 1930’s as a school for those interested in learning to engage in the ministry. Its mission statement includes the following: “In partnership with the Church, the purpose of San Jose Christian College is to prepare Christians for leadership and service in church and society, through Christian higher education, spiritual formation, and directed experiences.” The College needed to accommodate a growing student body with larger facilities and began looking for acceptable accommodations in Morgan Hill, California. It found and purchased a suitable location in June of 2000 at the former St. Louise Hospital site in Morgan Hill.

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244 See http://www.rluipa.com/cases/SanJoseChristian.html (Last accessed on 4/29/2003.)
2. THE GOVERNMENT ACTOR

The City of Morgan Hill, California, (Morgan Hill) is a suburb of San Jose. Its population is 33,000.\textsuperscript{245} The St. Louise Hospital site (the St. Louise site) is located in what Morgan Hill’s zoning ordinance classifies as a residential zone. The original development of the site as St. Louise Hospital was through a conditional use permit, as a hospital was not a permitted use for a residential neighborhood under the zoning code. In 1992, Morgan Hill approved a Planned Unit Development (PUD) application to change the zoning of the property from residential to “hospital” and to allow for the construction of supporting medical facilities.\textsuperscript{246} St. Louise Hospital closed in 1999 due to financial failure, but the St. Louise site is the only site in Morgan Hill designated as “hospital.” Nearby hospitals in San Jose and Gilroy, California serve the Morgan Hill area and Morgan Hill’s projections do not anticipate the need to open a local hospital for at least 15-20 years. However, Morgan Hill expressed an interest in preserving the St. Louise site for future use as a hospital in order to avoid re-zoning another property for such use.\textsuperscript{247} In order for the College to use the St.

\textsuperscript{245} http://www.morgan-hill.ca.gov/html/about/history.asp (Last accessed 4/30/2003.)
\textsuperscript{246} Plaintiff’s Memorandum of Points and Authorities in Opposition to Defendant’s Motion for Summary Judgment, 1.
Louise site for an educational institution, Morgan Hill required that it obtain approval as a PUD.

3. THE CONFLICT

San Jose Christian College purchased the St. Louise site after a lengthy process in which 11 other properties in Morgan Hill were considered and rejected. College leaders believed that their success in finding a site so ideal for its use was a direct result of God’s intervention. Before submitting its PUD application to use the property as an educational institution as required by the zoning code, the College met with Morgan Hill’s planning staff. The application’s site plan was based on the existing buildings constructed by St. Louise Hospital rather than on a new plan that demonstrated how the College planned to expand the facility, as the College did not plan any foreseeable expansions.

The PUD application requirements stated that future expansions should be predicted and included in any material submitted to Morgan Hill. The plan for the site included plans for future expansion by the hospital, though the College did not plan to carry out this expansion. Because the College did not plan to expand the facility in the immediate future, Morgan Hill’s planning staff did not require the College to include plans for future expansions.

248 Plaintiff’s Memorandum of Points and Authorities in Opposition to Defendant’s Motion for Summary Judgment, 5.

249 Id. at 4.
expansion in its final application. The planning staff also agreed that because the College did not anticipate future expansion of the property that its review under California’s environmental laws should be limited to the existing buildings with no projections for future uses.

Because the site plan included the former hospital’s planned expansion, the address these expansions for purposes of the PUD application, the College agreed that it would need to obtain additional permission from Morgan Hill to carry out any future expansion plans.\textsuperscript{250} The application was limited to the use of 132,550 square feet of existing building space and a maximum of 500 students, 160 of which would live in residence halls. No other uses of the property were proposed. The planning staff recommended the application be approved by the Morgan Hill Planning Commission.\textsuperscript{251}

In response to its application, the College received notice from the Planning Commission that it would be required to include more detailed information about its anticipated future uses over the next ten years, including information about dormitory expansion and facilities for commuter students. The College revised its application to note no increase in the need for dormitory space or commuter student resources. It projected no

\textsuperscript{250} \textit{Id.} at 2.
\textsuperscript{251} \textit{Id.} at 5.
increase in its residential student population and an increase of 100 commuter students over that period.\textsuperscript{252}

At the Planning Commission meeting of September 26, 2000, the College’s application was considered and community response was elicited. Approximately 2400 signatures in support of the College and a list of community businesses and churches that supported the College were offered to the Commission. However community response was mixed. The Mayor of Morgan Hill in particular expressed concern that the site would no longer be available for use as a hospital and stated that the community struggled to provide health care for its residents. The Planning Commission responded to these concerns by appropriating $100,000 for a Blue Ribbon Task Force to study the issue and postponed its decision on the application pending a report from the Task Force.

Because of the delay caused by the appointment of the Task Force, the College appealed to the City Council to force a decision to be made on its application and raised the issue of RLUIPA.\textsuperscript{253} The City Council responded to the College by ordering the Planning Commission to complete its investigation and take action on the application.\textsuperscript{254} At a meeting on February 7, 2001, the Planning Commission considered the

\textsuperscript{252} Id. at 2.  
\textsuperscript{253} Id. at 3.  
\textsuperscript{254} Id. at 4.
report of the Blue Ribbon Task Force which contained a recommendation that the St. Louise site be maintained for future use as a hospital. This recommendation was based on the fact that there were no other sites zoned for hospital use in Morgan Hill.

Also at the February 7 meeting, the College presented expert testimony to further support its PUD application, including the testimony of an architect regarding future use of the property. The architect claimed that he had not been hired by the College to consider any future use of the property and that the only anticipated changes to the property were to the interior floor plans of the existing buildings.\(^{255}\) The Planning Commission also considered two College publications in which College leaders expressed their excitement over finding the St. Louise site and hypothesized about how the property could be used to improve the College. The Planning Commission interpreted these publications as evidence that the College planned to expand its facility in the near future and relied on this to find that the College was misleading the Planning Commission when it claimed that no future expansion was anticipated.\(^{256}\)

The Planning Commission voted to deny the College’s application for the PUD permit needed to use the St. Louise site as an educational

\(^{255}\) Id. at 6.
\(^{256}\) Id. at 4.
facility. In its denial, the Planning Commission relied on the fact that the hospital had considered other sites in its search for a location as evidence that the St. Louise site was not the only suitable location for the school. The Planning Commission also considered the fact that the College did not complete an environmental impact review for future use of the property, despite the fact that the College did not undertake the review on the recommendation of the planning staff. The College filed a complaint in the United States District Court for the Northern District of California, San Jose Division to challenge the denial.

B. THE LITIGATION

In this case, the litigation involved not only a Motion for a Preliminary Injunction made by the College, but also a Motion for Summary Judgment. Oral arguments were made in both cases, for the preliminary injunction on November 1, 2001, and for the Motion for Summary Judgment on March 1, 2002.

1. THE CHURCH/RELIGIOUS INSTITUTION’S CLAIMS

   a. SUPPORT FOR PRELIMINARY INJUNCTION

   The College advanced several arguments in support of its Motion for a Preliminary Injunction. First, the case concerned something identical to

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257 Id. at 6.
258 Id. at 5.
worship in a church and therefore RLUIPA applied.\textsuperscript{259} The College’s desire to use the former hospital building as a Christian school and to hold religious services there was a form of religious exercise covered under RLUIPA. Because the school is designed to teach its students how to minister, the College argued that it is more like a seminary than a secular university, even one with a religion department, and that its program therefore constituted religious exercise. Second, because the College’s leaders held a sincere belief that the St. Louise site was found as a result of God’s will that the College use the site to continue its religious mission, the College claimed a substantial burden on its religious exercise existed as a result of Morgan Hill’s zoning decisions.\textsuperscript{260} Third, there is no zone in Morgan Hill in which a Christian educational institution can open and operate without first obtaining a special permit: Morgan Hill’s land use practices and procedures therefore unreasonably limit religious organizations.\textsuperscript{261} Fourth, Morgan Hill’s land use procedures have the effect of religious discrimination because the procedures have disparate impacts on religious uses as opposed to secular uses.\textsuperscript{262}

\begin{footnotesize}
\begin{enumerate}
\item \textit{SJCC I}, 2001 U.S. Dist. Lexis at *8.
\item \textit{Id.} at *10-*11., see also 42 U.S.C. §2000cc(a)(1).
\item \textit{Id.} at *13., see also 42 U.S.C. §2000cc(b)(1).
\item \textit{Id.} at *14., see also 42 U.S.C. §2000cc(b)(3).
\end{enumerate}
\end{footnotesize}
b. **OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

At the oral arguments in opposition to Morgan Hill’s motion for summary judgment, the College elaborated on its substantial burden argument in particular. The College claimed that whether a particular belief is central to its religious exercise did not matter for purpose of RLUIPA and that the function of the Court was to consider only whether the belief is sincerely held. 263 Where the government prohibits actions that are founded in religion, it imposes a substantial burden on that religion. Because “religious exercise” includes any exercise of religion and not just those practices that traditionally take place in a church or synagogue, religious institutions other than churches may be impaired in their exercise of religion. The College also claimed that when a local government prohibits a religious institution from changing its religious practice, that prohibition constitutes as great a burden on religion as if the government had prohibited the practice of that religion. 264 Because Morgan Hill prevented the College from using its own property for religious purposes, it imposed a substantial burden on the College’s religious exercise and triggered the protection of RLUIPA. 265

263 *Id.* at *15.
264 *Id.* at *13.
265 *Id.* at *15.
The College again claimed that God wanted them to worship at the St. Louise site and that its students, faculty and administration consider the site to have religious significance.\textsuperscript{266} The College also claimed that Morgan Hill had notice that it was a religious institution and that regardless of actual knowledge of the school’s religious affiliation, RLUIPA applied because of the substantial burden placed on the College’s religious exercise.

The College argued that Morgan Hill had no compelling interest in its decision to deny the permit application. Though Morgan Hill claimed a need to preserve the St. Louise site for future use as a hospital, the College stated that the record showed a present lack of demand for a hospital and no need for a hospital for the next 15-20 years.\textsuperscript{267} The College also noted that Morgan Hill did not show how denial of the application would advance its interest in ensuring the orderly development of institutional uses.\textsuperscript{268}

\textbf{2. THE GOVERNMENT’S CLAIMS}

\textbf{a. OPPOSITION TO PRELIMINARY INJUNCTION}

In response to the College’s motion for a preliminary injunction, Morgan Hill stated that the legislative history of RLUIPA did not indicate that it was intended to apply to all religious activities of all religious organizations. The mere fact of religious affiliation did not bring the College

\textsuperscript{266} Id. at *16.  
\textsuperscript{267} Id. at *17.  
\textsuperscript{268} Id. at *18.
under RLUIPA without something more to tie the activity to the purpose of the statute.\textsuperscript{269} In response to the College’s argument that there is no zone in Morgan Hill in which a Christian educational institution can operate without a special permit, Morgan Hill noted that its zoning code allows schools and churches to exist in several zones as a matter of right. It also demonstrated that its policies did not discriminate against churches by using evidence that 15 churches of various denominations were located within the city and that several of them operated schools. Morgan Hill also demonstrated evidence of its recognition of the importance of education.\textsuperscript{270} Because all uses were allowed to apply for special permits to use property that would otherwise be unavailable, Morgan Hill claimed that the application process did not discriminate against religious institutions.\textsuperscript{271}

\textbf{b. SUPPORT FOR MOTION FOR SUMMARY JUDGMENT}

In support of its motion for summary judgment, Morgan Hill claimed that there was no impairment of religious practices because there was no specific discrimination against religion or religious use.\textsuperscript{272} Morgan Hill claimed that there was no substantial burden on the College’s religious exercise because what the College proposed to do with the St. Louise

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{269}] SJCC I, 2001 U.S. Dist. Lexis at *12.
\item[\textsuperscript{270}] \textit{Id.} at *13.
\item[\textsuperscript{271}] \textit{Id.} at *15.
\item[\textsuperscript{272}] Plaintiff’s Memorandum of Points and Authorities in Opposition to Defendant’s Motion for Summary Judgment, 10.
\end{enumerate}
\end{footnotesize}
property was not religious exercise at all. The implication of this claim is that if there was no problem with the free exercise of religion, there could be no substantial burden on religion and therefore no RLIUIPA claim. Morgan Hill also argued that a substantial burden on religion did not exist when government action prevented a change in religious practice. Morgan Hill claimed that courts across the nation had found this to be the law, however it failed to cite cases that demonstrated this to be the case.

To support its claim of having a compelling government interest in denying the College’s application, Morgan Hill stated that it had an interest in the results of the College’s environmental impact study for future uses and was therefore justified in denying its application when no such study was completed. Because the College’s plan involved reasonably foreseeable plans for expansion, according to Morgan Hill, it was reasonable that the College be required to submit an environmental impact statement as part of its application. Morgan Hill also claimed a compelling interest in preserving the St. Louise site for future use as a

273 Id. at 15.
274 Id. at 14.
275 Id. at 15.
276 Id. at 17.
277 Id. at 21.
hospital and an interest in the orderly development of large institutional uses.\textsuperscript{278}

3. THE OUTCOME

A. OUTCOME OF MOTION FOR PRELIMINARY INJUNCTION

Judge Ronald Whyte of the United States District Court for the Northern District of California, San Jose Division, heard arguments on the College’s application for a preliminary injunction and rendered a decision on the issue on November 19, 2001. Judge Whyte denied the application for injunction, in part because he found that there was not a likelihood that the College would succeed in its claims under RLUIPA.\textsuperscript{279}

In response to the College’s claim that its function was religious and that a substantial burden was placed on its religion as a result of Morgan Hill’s zoning decisions, Judge Whyte stated that the College had not met its burden of demonstrating that its religious belief is central to its religious doctrine.\textsuperscript{280} Judge Whyte found that there is a difference between restricting the current practice of religion and preventing a change in that practice; because Morgan Hill did not seek to prevent the College from carrying out its current practice of religion but only refused a request that

\textsuperscript{278} Id. at 17-18.  
\textsuperscript{279} SJCC I, 2001 U.S. Dist Lexis at *1.  
\textsuperscript{280} Id. at *9.
would allow the College to expand it, RLUIPA was not violated. Because Judge Whyte did not believe that a religious exercise was at issue in the case, and because he believed that the College did not identify itself as a religious institution in its application to Morgan Hill, the College failed to assert a religious use sufficient to trigger RLUIPA’s protection.

Judge Whyte pointed to a passage in RLUIPA’s legislative history that explained that not all functions of religious institutions are defined as religious exercise. Specifically, the legislative history gave an example of a commercial building owned by a religious institution. A burden on the commercial building connected to a religious organization “primarily by the fact that the proceeds from the building’s operation would be used to support religious exercise, is not a substantial burden on ‘religious exercise.’” Judge Whyte compared the commercial use of a building owned by a religious institution to the educational mission of the College and found that neither constituted religious exercise.

Judge Whyte briefly addressed the College’s remaining arguments. Because Morgan Hill offered evidence that it did not discriminate against religious uses or schools, and because the College could not establish that

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281 Id. at *10.
282 Id. at *11.
283 Id. at *12.
284 Id.
Morgan Hill had intentionally blocked its application to use the St. Louise site on the grounds of religion, Judge Whyte found that RLUIPA did not apply to the College’s claims.\textsuperscript{285}

Judge Whyte also discussed the applicability of RLUIPA to California’s environmental quality statutes. Under Morgan Hill’s zoning process, the College was required to engage in an environmental impact study for future expansion under these environmental statutes, and its application was denied in part because Morgan Hill claimed the College failed to complete this part of the application.\textsuperscript{286} However, Judge Whyte found that these statutes were outside the scope of RLUIPA because the statute did not explicitly indicate that it was meant to cover such laws.\textsuperscript{287}

\textbf{B. OUTCOME OF MOTION FOR SUMMARY JUDGMENT}

Judge Whyte granted Morgan Hill’s Motion for Summary Judgment on March 5, 2002. He agreed with the City that its zoning ordinance did not treat religious uses differently than other uses and that it was a neutral law of general applicability.\textsuperscript{288} Because the College failed to show that there was a substantial burden placed on its religious exercise through the

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id.} at *14-15.
\item \textit{Id.} at *16.
\item \textit{Id.}
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application of the zoning ordinance, its RLUIPA claim failed. Judge Whyte stated that RLUIPA did not grant complete immunity from land use decisions and that without a showing of substantial burden, no claim under RLUIPA could be made.

San Jose Christian College appealed this decision to the Ninth Circuit Court of Appeals on April 4, 2002. No decision has been made by that Court as of the date of this Thesis.

C. CHAPTER SUMMARY

San Jose Christian College v. City of Morgan Hill is unique in that a religious institution that does not include a traditional church use sought the protection of RLUIPA when faced with an adverse zoning decision. San Jose Christian College relied on its sincerely held religious beliefs that it should provide education to individuals seeking to enter the ministry to support its RLUIPA claim. It also relied on its belief that Morgan Hill’s intent was not to preserve the St. Louise site for use as a hospital but to prevent the College from using it as a church. These arguments were not accepted by the District Court and it is as a result of this that the College lost its case before that Court. Morgan Hill’s evidentiary presentation was more successful. Its challenge to whether the College was actually burdened in

\[289 \text{Id. at *4.} \]
\[290 \text{Id. at *7.} \]
a religious exercise and its claim that its zoning process was not facially discriminatory toward religious uses met with approval by the Court. It is unclear how the Court of Appeals will respond to these arguments.
Hale O Kaula Church v. The Maui Planning Commission involves a conflict between a church whose beliefs require it to engage in organic agriculture and regular community activities and the County of Maui. These beliefs necessitate the use of a relatively large property, which can only be found in an Agricultural District, in which churches are not permitted by state and local land use laws.

A. FACTS

1. THE CHURCH/RELIGIOUS INSTITUTION

Hale O Kaula (the Church), which means “House of Prophets,” is a Christian church that follows the Living Word Fellowship’s Statement of Faith. The Church has operated in Pukalani, County of Maui, Hawaii, since 1960. It has approximately 60 members, including 40 adults and approximately 20 children. This number has remained constant over the last ten years. The Living Word Fellowship attempts to follow the early church as recorded in the New Testament. The “Joseph Ministry” is a central function of the Living Word Fellowship’s belief system. “By ‘Joseph Ministry’ we refer to Joseph in Egypt when, by the wisdom and leading of

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291 Complaint, ¶7. Plaintiff’s Motion for Preliminary Injunction, 25.
292 Complaint, ¶7, Plaintiff’s Motion for Preliminary Injunction, 30.
293 Complaint, ¶30.
the Lord, he saved the entire nation of Egypt and his own brothers from starvation during a time of famine.”

Followers of the “Joseph Ministry” believe they must restore the condition of the Earth as much as possible to its natural condition, the state in which God created it, and to provide assistance to God’s people to sustain them until God returns. The scriptural basis for this belief exists in Genesis Chapters 37-50. The key functions of the “Joseph Ministry” are to produce and distribute organically grown food, to practice ecosystem management including soil restoration, and to use alternative water and energy systems, transportation and housing techniques. The Church and other followers of the Joseph Ministry believe that land “is an absolutely necessary aspect of the prophetic community and is also part of our ministry to the community and to the whole earth.”

The Church used facilities in Haiku (the Haiku Property) before finding a more appropriate location for its ministry. The Haiku Property is approximately one-half acre in size. It is located along a busy road and lacks the space needed to carry out the agricultural portion of the Church’s beliefs. At the Haiku Property, the Church holds two services per week,

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294 Plaintiff’s Motion for Preliminary Injunction, 25.
295 Id. at 25-26.
296 Id. at 26.
297 Id. at 26.
298 Plaintiff’s Motion for Preliminary Injunction, 28.
one on Wednesday or Friday with approximately 10 members, and one on Sunday morning with approximately 40 members, including children. An administrative meeting is held on Mondays with approximately ten members. Saturdays are “work days” on which the congregation gathers to maintain existing structures, work on agricultural projects, and maintain the landscape. Because the Haiku Property is too small to allow for the Church to carry out many of its non-agricultural projects, it often uses the Pukalani Community Center, a public facility.

In 1986, the Church began looking for property to buy or lease to accommodate the needs of its congregation, and especially for its agricultural functions. The Church sought property that was more central to its members’ homes than was the Haiku Property. It purchased a 5.85-acre parcel near the end of Anuhea Place (the Anuhea Property), a private road. The Church secured the consent of the road’s owners to use it to access its property. The property is located in an Agricultural District, in which several other churches are located. The property was used initially as a residence for church members, an agricultural center, (including a greenhouse, an agricultural building with a concrete floor, a shade house, and a demonstration garden), at which organic crops for members and for

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298 Complaint, ¶¶33-34.  
299 Id. at ¶38.  
300 Id. at ¶45.
sale to the community were grown, and as an outdoor recreation site for its congregation.\footnote{301 Id. at ¶¶46-50.} The Church spent approximately $7,000 in making the Anuhea Property useable for its purposes, in addition to the cost of purchasing the property.\footnote{302 Id. at ¶41.}

The Anuhea Property’s neighbors include agricultural lots and residential development along Anuhea Place, a commercial and multi-family residential development, a large elementary and middle school campus, and other rapidly developing urban lands.\footnote{303 Id. at ¶¶56-59.} The residential property along Anuhea Place has 15 lots, 6 of which are developed with private residences. All of the developed properties are fenced and gated; one has commercial riding stables and a lighted rodeo ring, another has an automobile servicing area, and another has approximately 18 cows that are regularly transported by trailer.\footnote{304 Id. at ¶61. Plaintiff’s Motion for Preliminary Injunction, 7,}

2. THE GOVERNMENT ACTOR

The County of Maui (Maui) consists of one of the islands of Hawaii. The Maui Planning Commission (Planning Commission) is an arm of the local government that has the power to grant special land use permits for properties of less than 15 acres. Permits for land over 15 acres in size
must come from the State of Hawaii.\textsuperscript{305} As a matter of state law, churches are only permitted by right in Urban Districts where intensive agricultural uses are not permitted. Intensive agricultural uses, however, are permitted only in Rural Districts, where churches are allowed only by Special Permit.\textsuperscript{306} The Anuhea Property is in the State Agricultural District and is zoned for Agriculture by Maui.\textsuperscript{307} Permitted uses in the District include most agricultural uses, residential uses, rodeo arenas, polo grounds, arboretums, petting zoos, vehicle and equipment storage areas, agricultural processing plants such as pineapple canneries, and farmers cooperatives.\textsuperscript{308} However, churches are not permitted uses according to Maui.\textsuperscript{309}

To obtain a Special Permit, an applicant must first file an application which is reviewed by the appropriate government officials. A hearing officer is appointed to review the case and coordinate an investigation of the issue. A hearing is held and the parties may submit written findings of fact and conclusions of law that the hearing officer will consider in making a decision. The hearing officer issues a report with recommendations on the case to the Planning Commission. The parties are entitled to submit

\textsuperscript{305} Complaint, ¶¶12, 23.
\textsuperscript{306} Plaintiff's Motion for Preliminary Injunction, 27.
\textsuperscript{307} Complaint, ¶47.
\textsuperscript{308} Plaintiff's Motion for Preliminary Injunction, 61.
\textsuperscript{309} Complaint, ¶62.
written exceptions to the report and may make oral arguments before the Planning Commission. Finally, the Planning Commission makes the final decision on the matter and issues its own findings of fact and conclusions of law.\textsuperscript{310}

3. \textbf{THE CONFLICT}

In 1995, the Church applied for a Special Permit for the Anuhea Property. The application was originally for permission to hold occasional outdoor worship services under a tent on the property. However, at the advice of the Planning Director for Maui, the Church revised its application to propose the most expansive long-term plans it could imagine. These plans included an 8,500 square-foot facility. After neighbors complained about the church, the application was denied.

In 1999, the Church filed a second application for a Special Permit to conduct religious uses on the Anuhea Property in addition to its agricultural use of the property. The Church planned to use the existing agricultural building for church services and to add a second story to the building for office functions and occasional religious services. The Church intended to separate the utility portion of the building from the church portion of the

\textsuperscript{310} Memorandum in Support of Applicant’s Exceptions to Hearing Officer’s Report and Recommendations, 2.
building and to continue its agricultural and recreational use of the property.\textsuperscript{311}

Hearing Officer Judith Neustadter Fuqua (the Hearing Officer) was assigned to the case. She undertook discovery on the issues before her and several neighbors on Anuhea Place intervened to testify against the Church.\textsuperscript{312} These neighbors had previously engaged in harassing behavior against the Church and its members, including closing off the private road that led to the Anuhea Property, making people identify themselves and their purpose for being on the road before allowing them to pass, posting signs that read “Jesus Loves You, Everyone Else Knows You’re An Asshole”, and making comments to Church members about the Church being unwelcome in the neighborhood. Neighbors had also accused the Church of being a cult, practicing mind-control on its members, and being something other than a “real” church.\textsuperscript{313}

At a settlement conference, the Hearing Officer expressed that if she lived in a neighborhood similar to the one in which the Church sought to hold services, she would oppose it and that the neighbors should be able to decide whether the Church should be permitted to locate in the area.

Based on these comments, the Church asked the Hearing Officer to step

\textsuperscript{311} Complaint, ¶82.
\textsuperscript{312} Plaintiffs’ Motion for Preliminary Injunction, 65.
\textsuperscript{313} Complaint, ¶¶70-79.
down because she was unable to make an unbiased decision on the application. The Hearing Officer refused to do so and informed the Church’s attorney that she was very angry at the Church for making the request. The Church asked the Planning Commission to remove the Hearing Officer, however the Hearing Officer decided the issue for herself even though the request was not before her. She decided that she was able to hear the application and ordered that she would proceed with the hearing.  

The Hearing Officer also refused a request made by the Church to postpone the hearing until the Planning Commission considered the Church’s request to remove her and until the Church had time to fully research and brief RLUIPA as a basis for its application and to complete additional discovery that would demonstrate that the Planning Commission had previously issued Special Permits to other churches in Agricultural Districts. Because of the Hearing Officer’s past bias against the Church and her denial of the postponement, the Church refused to participate in the hearing.  

On April 30, 2001, the Hearing Officer recommended denial of the Special Permit to the Church. In her opinion, the Church’s proposed use

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314 Plaintiff’s Motion for Preliminary Injunction, 66.
315 Id. at 66-67.
did not conform with the provisions of the Rules of the Land Use Commission of the State of Hawaii. The Hearing Officer held that religious use of the property would adversely affect neighboring landowners because it would create high levels of traffic and noise, and would cause a problem for the municipality by creating problems with water services, police, and fire protection.\textsuperscript{316} The Church submitted a written memorandum of exceptions to the decision to the Planning Commission in which it objected specifically to the Hearing Officer’s refusal to consider RLUIPA, her obvious bias, and her refusal to step down from the case, and in which it again outlined and justified its application based on state law.

The Planning Commission adopted the Hearing Officer’s recommendations and unanimously voted to deny the Church’s application. Though the Church requested it do so, the Planning Commission explicitly refused to consider RLUIPA and other federal law in making its decision.\textsuperscript{317} One Commissioner stated that because she did not understand RLUIPA, it did not apply to the case. Another stated that because he was an indigenous Hawaiian whose rights had been taken away by federal law, he did not believe that federal law should be considered at all and refused to apply RLUIPA. Several others refused to apply RLUIPA because the

\textsuperscript{316} Memorandum in Support of Applicant’s Exceptions to Hearing Officer’s Report and Recommendations, 9.
\textsuperscript{317} Id. at 10.
Hearing Officer did not apply it. The Church filed a complaint with the United States District Court for the District of Hawaii.

B. THE LITIGATION

The Church applied for a preliminary injunction to accomplish three things. First, the Church sought to prohibit Maui from preventing the use of the Anuhea Property for religious worship. Second, the Church wanted to prevent Maui from blocking the construction of a second floor on the agricultural building. Third, the Church wanted to prevent Maui from otherwise prohibiting its religious exercise.

1. THE CHURCH/RELIGIOUS INSTITUTION’S CLAIMS

The Church described with great attention to every aspect of its faith why Maui imposed a substantial burden on its religious exercise. It description of the burden included excerpts from statements made by its members, passages from its statement of faith, and an analysis of each aspect of its faith that was burdened through not being able to use the Anuhea Place Property. Because the Church was unable to use its property for religious exercise, it was unable to benefit from the communal

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318 Plaintiff’s Motion for Preliminary Injunction, 75-76.
aspects of its faith such as shared work and play. These activities are mandated by the Joseph Ministry, as explained previously in this Chapter.

Individual church members and its elders expressed the need to have a place where the church community could come together for religious purposes. One member recounted his experiences at an affiliated church:

While living at Shiloh Fellowship’s property, our daughter Katie lived and played with children of other fellowship families. Throughout her time in the preschool, Katie was taught the importance of spiritually-centered relationships in one’s daily life. In this way, a child can learn the natural application of religious principles, rather than just seeing those principles in something one hears about on Sunday at a church service…Because our Church has been prevented from making religious use of the land on Anuhea Place, my children have not been raised with the full benefit of living in a community based church. My son, Casey, who is now 17 years of age, has been reared with only minimal experiences comparable to those which Katie had in the Shiloh Fellowship community.\(^{320}\)

Because Church members believe that they must raise their children in an environment where adults and children interact constantly through work and play, a substantial burden exists where such activities cannot occur.\(^{321}\)

The same justifications were used to explain why the Anuhea Property was essential as a central location to member families.\(^{322}\)

The Church also explained how, under RLUIPA, a system of individualized assessments was used to determine that the Church could

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\(^{320}\) Plaintiff’s Motion for Preliminary Injunction, 27.

\(^{321}\) Id. at 27-29.

\(^{322}\) Id. at 29.
not use its property for worship. Because the Planning Commission had complete discretion in denying the permit, RLUIPA was violated.  

The Church also claimed that RLUIPA applied because Maui’s actions prevented religious use of property for reasons that also applied to permitted secular uses of the property—noise, traffic and fire protection. Because these concerns applied to other uses, the Church claimed that the land use regulations at issue imposed different requirements on religious uses than on secular uses.  

2. THE GOVERNMENT’S CLAIMS

Though there was not much need for it to advance any argument at all to win its case, Maui argued that the state land use regulations at issue were not actually covered under RLUIPA because the regulations did not deal specifically with zoning. It argued that under RLUIPA’s terms, only those regulations that specifically addressed zoning could be invalidated using the statute. Because the land use classification system involved was not a local zoning code, RLUIPA should not apply. Maui also challenged the constitutionality of RLUIPA and claimed that the statute was an invalid

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323 Memorandum in Support of Applicant’s Exceptions to Hearing Officer’s Report and Recommendations, 15; See also 42 U.S.C 2000cc(a)(2)(C).

324 Id. at 58-62., See also 42 U.S.C. §2000cc(b)(1).
exercise of Congressional power. It also cited concerns for traffic congestion, fire protection, water provision, and incompatibility with the agricultural character of the area for denial of the permit.

3. **The Outcome**

The United States District Court for the District of Hawaii denied the Church’s Motion for a Preliminary Injunction. Judge Samuel P. King heard oral arguments on the issue and filed his decision on August 28, 2002. Judge King expressed confusion over what the Church really wanted from the injunction. At the oral arguments, the Church seemed interested only in using the property for worship purposes and not in obtaining permission to construct a second floor on the agricultural building. However, the Special Permit application filed by the Church specifically addressed this addition to the building. Judge King found that despite the request made in its brief, the Church was not interested in the addition of the second story and found that the request to prevent Maui from otherwise barring the religious use of the property was too general to be considered. Judge King considered only the Church’s request to enjoin Maui from using its land use laws to prevent the religious use of the Anuhea property.

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326 *HOK I* at 1050.
Judge King noted that there was no evidence to show that Maui ever prevented the Church from using its property for religious purposes. He stated that “Church leaders did have unofficial talks with county officials and appear to have been advised that church use of the property would require a special use permit.” It was also understood by the Church at the time it purchased the Anuhea Property that such a permit would be required for the Church to use the property for religious worship. However, because there was no actual prohibition issued by Maui County to stop the practice of religion on the Anuhea Property, Judge King refused to issue an injunction.\textsuperscript{327}

After the injunction was denied, Maui moved for a dismissal of the case. Judge King agreed to dismiss certain aspects of the case, including the RLUIPA claim. He found that RLUIPA applied to the state and local land use laws because the laws limited the use of land. Nothing in the Congressional history of RLUIPA indicated that the law was intended only to address zoning. Judge King found that the laws did not discriminate on the basis of religion and found that they were facially neutral—the Church was treated as any other non-religious use would be treated under the law.\textsuperscript{328}

\begin{footnotes}
\item[327] \textit{Id.} at 1055-1056.
\item[328] \textit{HOK II} at 1070.
\end{footnotes}
Though the claim under RLUIPA was dismissed, Judge King noted that Maui’s actions should be evaluated under the strict scrutiny standard as explained in Chapter 1. Because no denial of religious exercise had been made, however, there was nothing to evaluate under the strict scrutiny standard at that time.\(^{329}\) The Church continues to pursue the issue in court and most recently has filed a motion for summary judgment on the remaining issues of law not related to RLUIPA. The Church has also sought clarification from Maui regarding how Maui interprets the Church’s religious use of the property and whether that use violates Maui’s land use statutes.\(^{330}\)

C. CHAPTER SUMMARY

*Hale O Kaula Church v. The Maui Planning Commission* resulted in dismissal of the Church’s claims because the Church failed to show that the Planning Commission imposed a burden of any sort on its exercise of religion. Though a persuasive argument was made by the Church describing the substantial burden that resulted from not being allowed to use the Anuhea Property as a church, no action had been taken, according to the Court, to prevent such use, and consequently, there was no issue to decide under RLUIPA. This case is also unique in that the Court decided

\(^{329}\) *Id.* at 1073-1074.

to use the strict scrutiny standard to evaluate Maui’s actions but would not use that same standard under RLUIPA.
Chapter 8—Congregation Kol Ami v. Abington Township

Congregation Kol Ami v. Abington Township involves a claim against a local government that refused to allow a Jewish Synagogue to use property that was historically used by religious organizations. The property was located in a recently created residential district in which churches could not obtain permission to locate, but in which other uses that involved assembly were permitted.

A. Facts

1. The Church/Religious Institution

Congregation Kol Ami (Kol Ami) is a Reform Jewish synagogue located in the suburbs of Philadelphia, Pennsylvania. Its congregation consists of 200 member-families who live in and around Abington Township. Kol Ami has existed as a religious organization since 1994. Kol Ami conducts religious services on alternating Fridays and Saturdays, religious education classes on Sunday mornings, and Hebrew classes on Wednesday afternoons. These activities constitute approximately eight hours per week of meeting time. Kol Ami also holds four High Holiday

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331 Congregation Kol Ami v. Abington Twp., 309 F. 3d 120, 124 (3d Cir. 2002).
332 Complaint, ¶5.
services per year, religious meetings, and occasional Bar and Bat Mitzvah services.  

Prior to finding a permanent location, Kol Ami operated from three different locations. Worship services were held at a rented space at Gratz College in Melrose Park, Pennsylvania. Religious education classes were held at a rented space at Congregation B’Nai Israel Immanuel in nearby Cheltenham Township. High Holy Days were held at a theater in Glenside, Pennsylvania. The Congregation began looking for a permanent facility in 1997, as its use of several rented facilities had become a unacceptable hardship on its religious exercise. The criteria outlined by the Congregation as necessary for a suitable location included the existence of a structure readily adaptable to religious use, outdoor spaces for reflection and celebration of religious holidays, proximity to its members, and ability to accommodate both current members and future growth.

After a two-year search, Kol Ami discovered an ideal 10.9-acre property and a chapel with a seating capacity of 250 in Abington

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333 Id. at ¶57.
334 Id. at ¶5.
335 Id. at ¶12.
336 Id. at ¶13.
337 Id. at ¶14.
Township. The Sisters of the Holy Family of the Nazarene (the Sisters), a Roman Catholic order of nuns that had owned and used the property (the Sisters' Property) for 44 years. The Sisters' Property had been converted to institutional use as a convent, but was also used for religious services, retreats and other religious ceremonies. In 1957, a chapel, which was used for religious services open to the community on certain Holy Days, and a dormitory were built. The property also includes a library, a hall and a dining room. Eventually the population of nuns declined and the Order ceased to use the property.

In 1995, the Sisters' Property was leased to the Greek Orthodox Monastery of the Presentation of Our Lord into the Temple. The Monastery used the property for religious purposes, including family retreats, academic activities and prayer groups, until 1999 when it decided it could not afford to purchase the property. In 1999, Kol Ami began negotiations with the Sisters to purchase the property and in August of that year, an agreement was reached. The agreement was contingent on Kol Ami receiving a variance to use the property for a synagogue, which would be a continuation of the Sisters' non-conforming use under the Abington

338 Id. at ¶19, ¶35.
339 Id. at ¶¶20-21.
340 Id. at ¶22.
341 Id. at ¶¶25-28.
342 Id. at ¶31.
343 Id. at ¶¶33-34.
Township zoning code. The agreement would expire in May 2002. A deposit of $137,500 and annual costs of $20,000 were to be paid by Kol Ami to secure the property until the necessary zoning approvals could be obtained. Members of Kol Ami’s congregation demonstrated their support for the selection of the Sisters’ Property by donating earmarked funds for its purchase.

2. THE GOVERNMENT ACTOR

Abington Township (the Township) is a small township located immediately outside the city limits of Philadelphia, Pennsylvania. Its population is 56,444 and its median household income is $49,090. Its population is approximately 20% Jewish, however, before Kol Ami entered the community, only one synagogue was located in the township. Twenty-six churches exist in the residential districts of the Township; all are Christian. Throughout the Township’s non-residential zones, 37 other churches exist.

In 1957, the Sisters’ Property was located in a district where churches were permitted only by special exception. However, in 1990, the

344 Id. at ¶36.
345 Id. at ¶37.
347 Complaint, ¶50.
348 Id. at ¶48.
349 Id. at ¶50.
350 Id. at ¶30.
Township revised its zoning code. Churches or other religious assemblies were not permitted under the new code to locate in any residential district, however other forms of assembly uses such as day care centers, riding academies, municipal complexes, and recreational uses were permitted in these districts. This revision reclassified the district in which the Sisters’ Property was located as a residential district. 351

After the rezoning, the Sisters were allowed to continue their use of the property as a non-conforming use. 352 However before the Monastery could use the property in 1996, it was required to obtain a variance from the Township’s zoning code to continue a prior non-conforming use. The variance was granted. The Township found that the Monastery would have no adverse effect on the community, that denial of the application would impose unnecessary hardship on the Monastery, and that the previous non-conforming use (the Sisters’ convent) had not been abandoned, which, according to the zoning code, meant that a similar non-conforming use could be allowed on the property according to the zoning code. 353

The Township zoning code prohibits churches from locating in all residential districts, the town center commercial district, the special commercial district, the planned business district, the suburban industrial commercial district, the town center commercial district, the special commercial district, the planned business district, the suburban industrial

351 Memorandum of Law in Support of Plaintiff’s Motion for Partial Summary Judgment, 2.
352 Id. at 3.
353 Complaint, ¶32.
district, the recreation and conservation district, the flood plain, the land preservation district, and the steep slope district. In each of these districts, other places of assembly are permitted. Churches and other religious organizations are permitted by special exception in the Township’s apartment and office district, however, other places of assembly may be located in this district without a special exception. The only districts in which religious uses are permitted without special permission are the community service district and the mixed use district.

To obtain a variance to use property as a continuing non-conforming use, applicants must go before the Township Zoning Hearing Board (ZHB). The ZHB is required by the zoning code to consider certain factors in making its decision. The application must be consistent with the “spirit of the Ordinance,” the property must be suitable for the proposed use, the character of the neighboring uses in the context of the proposed use must not be harmed, and population density, light and air impacts, public safety, traffic congestion, public utilities and services, and the general welfare must all be considered in light of the proposed use.

354 Id. at ¶¶38-43.
355 Id. at ¶44.
356 Id. at ¶45.
The ZHB must also impose appropriate conditions on the proposed use to keep it as close to conformity with the zoning code as possible.\textsuperscript{357} Variances are granted under the zoning code where exceptional circumstances or conditions justify a deviation from the code and where strict interpretation of the code would impose an unnecessary hardship on the applicant.\textsuperscript{358}

3. THE CONFLICT

On October 21, 1999, counsel for the Sisters requested a determination from the Township that Kol Ami’s proposed use of the Sisters’ Property would be considered a continuation of the Sisters’ non-conforming use. On November 12, 1999, the Township responded that the proposed use would be such a continuation.\textsuperscript{359} In December 1999, Kol Ami submitted its own application for a determination that its use of the property would be considered a continuation of the Sisters’ non-conforming use, as well as an application for a variance to use the property as a non-conforming use, and an application for a special exception to use the property for religious purposes.\textsuperscript{360}

\textsuperscript{357} Id. at ¶67.  
\textsuperscript{358} Id.  
\textsuperscript{359} Id. at ¶53.  
\textsuperscript{360} Id. at ¶54.
Kol Ami explained in its application that it intended to use the property for the same purposes as did the Sisters and the Monastery: worship, prayer, religious education and meetings, and religious gatherings and ceremonies. It specified that it had no plans to use the property for residential purposes.\footnote{Id. at ¶56.} No structures on the Sisters’ Property would be altered and Kol Ami offered to bring the parking lots and driveways into compliance with Township standards.\footnote{Id. at ¶60.}

Expert testimony was presented by Kol Ami to discuss issues such as land use planning, civil engineering, traffic flow, architecture, and legal issues, and each expert was accepted as an expert by the ZHB. Several owners of neighboring property testified in support of Kol Ami’s use of the property.\footnote{Id. at ¶61.} Though there was much support for Kol Ami, other neighbors voiced strong objections to the synagogue’s use of the Sisters’ Property and would not agree to Kol Ami’s presence regardless of Kol Ami’s proposal to place additional restrictions and conditions on their presence. One neighbor clearly stated that he was opposed to the presence of a synagogue in his backyard.\footnote{Id. at ¶62.}
On March 20, 2000, the ZHB issued its opinion on Kol Ami’s application. The ZHB rejected Kol Ami’s application to use the Sisters’ Property on the grounds that a religious use was not permitted to exist in a residential district under the zoning code and that no special permission for such use was available. Its decision to deny the use of the property directly contradicted the position taken by the Township in response to the Sisters’ request for a determination that their prior non-conforming use had continued.

The ZHB found that the Sisters’ use of the property, as well as the Monastery’s use, was a conforming residential use and not a non-conforming religious use. It argued in the alternative that even if the Sisters’ Property was a non-conforming use, the Sisters intended to abandon it, which would make it unavailable for religious use by Kol Ami. This intent to abandon the property was based on actions taken by the Sisters before the 1996 determination that the property was a prior non-conforming use and that there was no intent to abandon it by the Sisters. Despite these changes in position, no explanation was given as to why the Monastery was required to obtain a variance to use the property.

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365 Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(6) and/or, in the Alternative, 56(b), 15.
366 Id.
The ZHB specifically found that all of Kol Ami’s expert witnesses lacked credibility. It found that a former resident Sister currently responsible for the management of the Sisters’ Property, formerly accepted as an expert in the use of the property for religious purposes, did not have first-hand knowledge of the property’s use. It also found that Kol Ami had no plans to limit the size of its congregation, the number of religious classes taught at the Sisters’ Property, or the number of services or rabbis performing those services.

The ZHB found instead that the neighbors who opposed Kol Ami’s presence were more credible than Kol Ami’s experts.\footnote{Complaint, ¶63.} The ZHB found that property values would be adversely affected by the presence of a synagogue and that it would take longer to sell a home in the neighborhood because of the synagogue.\footnote{Id. at ¶69.} Despite Kol Ami’s offer to work with the community to make any alterations necessary to allow the synagogue to use the Sisters’ Property, the neighbors who opposed the synagogue could not be persuaded to change their position.\footnote{Id. at ¶65.} Kol Ami filed a complaint in the United States District Court for the Eastern District of Pennsylvania to challenge the decision.
B. THE LITIGATION

Kol Ami’s case against the Township was procedurally complicated. The case started in the United States District Court for the Eastern District of Pennsylvania, was sent back to the ZHB for another hearing on the issue, and then appealed to the United States Court of Appeals for the Third Circuit.

1. THE CHURCH/RELIGIOUS INSTITUTION’S CLAIMS

Kol Ami’s claims against the Township were premised on several aspects of RLUIPA. First, Kol Ami claimed a substantial burden was placed on its religious exercise as a result of the Township’s denial of its permit application. Because Kol Ami lacked a permanent home, it was forced to use several different locations for its functions. As a result of this, the congregation became disjointed,

forcing the cancellation and diminishing the quality and frequency of religious events; hindering both communication of the Rabbi’s religious message, including education of the young, and fellowship among the congregants, eroding membership and financial support; and placing the Congregation’s most sacred possession, an ancient Torah that has survived the Holocaust, at increased risk of destruction.

The congregation’s worship had been interrupted by other groups using the same buildings it used for its services, and once was forced to change the

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371 Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion to Dismiss Plaintiff’s Complaint Pursuant to F.R.C.P. 12(b)(6) and/or, in the Alternative, 56(b), 18.
location of a Confirmation ceremony immediately before the ceremony was to begin when it discovered that a dance recital was scheduled to take place across the hall. Because the noise would have interfered with the ceremony, the congregation was forced to use the library, a less appropriate room for the service, rather than the more appropriate chapel facility.\footnote{372}

Kol Ami’s religious beliefs require it to occupy a permanent home that is part of the community in which its members reside. To support this belief, Kol Ami cited Exodus, a chapter from the Bible, as well as scholarly interpretations of the Torah that teach that a permanent home for a synagogue is part of the Jewish faith.\footnote{373} Specifically, one of the congregation’s Rabbis testified that:

\begin{quote}
Synagogues are found in residential communities because of the correlation between what is taught in the sanctuary and what is expressed outside its walls. Synagogues are ‘anchoring institutions’: they provide stability, inspiration and hope. Their presence confers the unmistakable message that religion can enhance daily life…Religion should not be invisible in the neighborhoods where children go to school and where people congregate. A congregation that expresses a willingness to meet with its neighbors, as we have done, can be a tremendous asset to the neighborhood and the larger community.\footnote{374}
\end{quote}

\footnote{372} Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion for Summary Judgment, 42-43. 
\footnote{373} \textit{Id.} at 40-41. 
\footnote{374} \textit{Id.} at 42.
Kol Ami also expressed concern that its Torah would be damaged as a result of not having a permanent location in which it would reside in its ark. In the Jewish faith, the Torah is used for everyday observances, High Holy Day ceremonies, and every Bar and Bat Mitzvah celebration. The Torah was being kept by one of the Rabbis of the congregation and transported to each location at which it was needed by car. The Rabbis expressed concern that this constant displacement of the Torah would damage it. If a Torah is damaged beyond repair, even if only a small part sustains the damage, the entire Torah must be treated as desecrated, disposed of according to Jewish law, and buried. To Kol Ami, such damage to its Torah would have been devastating.\(^\text{375}\) For these reasons, Kol Ami claimed it experienced a substantial burden when the Township denied its application to use the Sisters’ property.

Second, Kol Ami claimed that the Township treated religious uses on less than equal terms than non-religious uses.\(^\text{376}\) Because the Township excluded religious organizations from residential neighborhoods when it amended its zoning code, but allowed other assembly uses to exist there,
Kol Ami claimed there was evidence of an intent to treat religious organizations differently than other non-religious places of assembly.\(^{377}\)

Third, Kol Ami claimed that the Township discriminated against it on the basis of religious denomination.\(^{378}\) Because the amended zoning ordinance banned all churches in residential zones where older, established churches already had facilities, and because the ordinance severely limited the land available for new churches to construct facilities, Kol Ami claimed there was evidence to support this discrimination. The rejection of Kol Ami’s application by the ZHB when it had previously allowed other Christian religious organizations to make similar use of the Sisters’ Property further supported the claim, according to Kol Ami.\(^{379}\)

Finally, Kol Ami claimed that the Township imposed land use regulations that unreasonably limit religious assemblies within its jurisdiction.\(^{380}\) The Township’s amended zoning ordinance was unreasonable, according to Kol Ami, because it barred churches from all residential areas.\(^{381}\) Kol Ami challenged the Township’s contention that traffic volume, property values, and aesthetics justified the denial of the

\(^{377}\) Plaintiffs’ Memorandum of Law in Opposition to Defendants’ Motion to Dismiss Plaintiffs’ Complaint Pursuant to F.R.C.P. 12(b)(6) and/or, in the Alternative, 56(b), 44-45.
\(^{379}\) Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion to Dismiss Plaintiff’s Complaint Pursuant to F.R.C.P. 12(b)(6) and/or, in the Alternative, 56(b), 45.
\(^{381}\) Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion to Dismiss Plaintiff’s Complaint Pursuant to F.R.C.P. 12(b)(6) and/or, in the Alternative, 56(b), 46.
application. It claimed that these concerns could not be sincere because they applied to all other assembly uses throughout the Township. Because the Township was only concerned with religious uses in residential areas, and not with other assembly uses, the concern had to be motivated by something other than the impacts themselves.\footnote{Memorandum of Law in Support of Plaintiffs’ Motion for a Preliminary Injunction, 34.}

2. **The Government’s Claims**

The Township claimed that there was a longstanding tradition in the United States of deference to local land use controls and limitations. Courts, according to the Township, should allow local governments to make their own decisions regarding local land use because this power was traditionally given to the states. To strike down the Township’s zoning ordinance because of the Township’s decision to restrict new churches from residential areas would be improper according to this tradition.\footnote{Plaintiffs’ Memorandum of Law in Opposition to Defendants’ Motion to Dismiss Plaintiffs’ Complaint Pursuant to F.R.C.P. 12(b)(6) and/or, in the Alternative, 56(b), 1-2.}

The Township also argued that denying Kol Ami the use of the Sisters’ Property as a place of worship did not deny the congregation of a fundamental tenet of its religious beliefs and was merely a secular act that came about a result of its secular and neutral zoning laws. It claimed that owning a particular building was desirable for a church or religious
organization, but was not itself necessary to the religion.\footnote{Id. at 26.} The Township justified its actions on grounds of traffic concerns and aesthetics, as well, claiming that a church would harm property values, increase traffic congestion, and not blend well with the residential feel of the neighborhood.\footnote{Id. at 29.}

3. THE OUTCOME

The outcome of the litigation in \textit{Congregation Kol Ami v. Abington Township} is rather complicated. The case was first heard in the United States District Court for the Eastern District of Pennsylvania where Kol Ami asked for summary judgment on some of the issues involved. The Court found the Township’s zoning code unconstitutional in how it was applied to Kol Ami’s situation and granted Kol Ami’s motion for summary judgment. The Court refused to reconsider this issue and ordered the ZHB to re-hear Kol Ami’s application to use the Sisters’ Property. The ZHB held a second hearing on the application and granted the necessary variances and permits to allow Kol Ami to use the Sisters’ Property for religious purposes. However, the Township appealed the case to the United States Court of Appeals for the Third Circuit to challenge the finding that its zoning code was unconstitutional.

\footnotesize{\textsuperscript{384} Id. at 26. \textsuperscript{385} Id. at 29.}
A. THE DISTRICT COURT

On July 11, 2001, the District Court issued its opinion on Kol Ami’s Motion for Partial Summary Judgment on the issue of whether the Township’s zoning ordinance was unconstitutional in its application to Kol Ami’s application to use the Sisters’ Property. Judge Clarence Newcomer heard oral arguments and issued the opinion. He began by stating that zoning decisions must be related to the public welfare. He compared the case before him to another case in which a local government’s zoning decision was found to be unrelated to the public welfare because a distinction was made between a group home for the mentally impaired and other multi-family dwellings. In that case, the United States Supreme Court stated that because the two types of dwellings were similar, there was no reason for the local government to prohibit the group home for the mentally impaired from locating where other multi-family residential dwellings were permitted. Judge Newcomer found that many of the same issues were present in the case before him, because there was no significant distinction between churches as places of assembly and non-religious places of assembly in terms of impact on residential zones.

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Judge Newcomer also pointed out that the ZHB and the Township cited traffic, noise and aesthetics as reasons to deny the permit, but failed to consider them in making the determination. Judge Newcomer stated:

Not only does a house of worship inherently further the public welfare, but defendants' traffic, noise and light concerns also exist for the uses currently allowed to request a special exception. Indeed, there can be no rational reason to allow a train station, bus shelter, municipal administration building, police barrack, library, snack bar, pro shop, club house, county club or other similar use to request a special exception under the 1996 Ordinance, but not Kol Ami.\footnote{Id. at 437.}

Because the ZHB and the Township failed to consider the actual impact of Kol Ami on the neighborhood and failed to treat it as it would any other place of assembly under the zoning ordinance, Judge Newcomer found that Kol Ami’s rights had been violated and that the zoning ordinance was unconstitutional in how it was applied to the decision to the ZHB’s decision to deny the permit.\footnote{Id.}

On July 20, 2001, Judge Newcomer addressed and denied the Township’s request that he reconsider his July 11 opinion.\footnote{Congregation Kol Ami v. Abington Twp., 2001 U.S. Dist. Lexis 10224 (Eastern Dist. Penn. 2001).} In response to the Township’s claim that Kol Ami was not similar to the other assembly uses allowed in residential districts under the zoning ordinance, Judge Newcomer replied that the other non-religious assembly uses would generate the same traffic and noise and cause the same concerns for
aesthetics as a religious assembly use. In Judge Newcomer’s opinion, this indicated that some form of discrimination against religious organizations was at work.\textsuperscript{391} Judge Newcomer also re-stated that the Township did not consider these factors when it denied the permit; therefore, they could not be the real reason for the denial. Judge Newcomer upheld his previous opinion and ordered the Township to reconsider Kol Ami’s permit application.\textsuperscript{392}

B. THE ZONING HEARING BOARD’S RECONSIDERATION

The ZHB agreed to re-hear Kol Ami’s permit application and, between August 6 and August 9, 2001, conducted the hearing and visited the Sisters’ Property. On August 15, 2001, the ZHB granted the permit. In its decision, the ZHB acknowledged that Kol Ami would not be a detriment to the health, safety or welfare of the community, and that it was consistent with the spirit of the zoning code to grant the permit. However, the ZHB imposed certain limitations with regard to traffic control, light pollution, and noise on Kol Ami’s use of the property. Kol Ami submitted a land development plan in accordance with Township regulations and several months later received approval on this application as well.\textsuperscript{393} However, the Township appealed the issue of whether its zoning ordinance was

\textsuperscript{391} Id. at *4-*7.
\textsuperscript{392} Id. at *14.
\textsuperscript{393} Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion for Summary Judgment, 23-24.
unconstitutional as it was applied to Kol Ami’s application to the Third Circuit Court of Appeals.

C. THE THIRD CIRCUIT COURT OF APPEALS

The Third Circuit Court of Appeals evaluated the District Court’s findings on July 29, 2002 and issued its decision on October 16, 2002. Kol Ami argued that because the ZHB granted the permit application that the case should no longer be before the courts because there was no issue left to be decided. However, the Third Circuit disagreed. Because the zoning code had been declared unconstitutional in how it was applied to Kol Ami’s situation, if another religious organization applied for a similar permit to use residential property, the Township would be forced to deal with it in the same way it was forced to deal with Kol Ami. Rather than using its old standards for granting such permits, the Township would have to let the new religious organization use the lower standards imposed by the District Court. Additionally, if the Township chose to apply its old standards, it would be open to the same challenges made by Kol Ami from the new organization. According to the Third Circuit, the District Court so changed the Township’s zoning code as to create an ongoing burden on the Township and left relevant issues left to be decided.\(^{394}\)

\(^{394}\) 309 F. 3d at 125-132.
The Third Circuit then addressed the District Court’s evaluation of the case. It found that because the District Court assumed that Kol Ami was similar to other assembly uses allowed in residential districts, but did not further examine the issue, that a deeper inquiry was needed before a final determination could be reached on the issue of whether the zoning code was valid. If the uses were similar, the District Court could uphold its decision. However, if the District Court found that there were actual differences between religious assemblies and the permitted assembly uses in residential districts, it would have to reverse its decision and declare the zoning code to be constitutional.395

The Third Circuit expressed its own opinion on the outcome of this inquiry and concluded that it was doubtful that Kol Ami was so similar to other assembly uses as to support the District Court’s initial decision. The permitted non-religious assembly uses included low-impact uses like kennels and riding institutes, support structures for regional transportation such as train stations and bus shelters that are typically found near established and long-traveled rights of way, and municipal services that are essential for the health and safety of the community. Because each of these uses seemed functionally different from a religious organization, the

395 Id. at 125-126.
Third Circuit opined that the chance of these permitted uses generating negative effects was lower than the chance that a religious use would generate such effects. The Third Circuit believed that Kol Ami’s proposed use of the land was more intense than the other permitted assembly uses and incompatible with a residential designation because it would generate too much traffic. According to the Third Circuit, local government has the right to protect certain areas of its jurisdiction from these effects and the Township was justified in its restriction of religious organizations from residential districts.

The Third Circuit concluded by stating: “…we do not believe land use planners can assume anymore that religious uses are inherently compatible with family and residential uses.” 396 Because religious assemblies bring traffic congestion, parking problems, and the deterioration of property values, local governments should be able to create regulations to address these concerns. 397

C. CHAPTER SUMMARY

Congregation Kol Ami v. Abington Township involves a claim against a Township that amended its zoning code in such a way as to prevent churches from moving into most zoning districts. The decision of the ZHB

396 Id. at 143.
397 Id.
appeared to be motivated by concern for community opinion rather than by a consideration of its own precedent and the zoning ordinance. The arguments made by Kol Ami were grounded in the congregation’s actual experiences in using rented facilities and in well-documented religious beliefs. The claim of substantial burden was well-supported in this manner.

The Township’s arguments, based on concern for traffic, property values and aesthetics, are commonly made to support zoning decisions. These concerns, as pointed out by Kol Ami, should have applied equally to the other permitted assembly uses for the residential districts and not just to religious uses. The Third Circuit’s discussion of whether Kol Ami was similar to other assembly uses in the context of a residential district indicates that courts may not yet be willing to give up these commonly used justifications for zoning decisions, even in the face of RLUIPA.
Chapter 9—Overview and Analysis of the Case Studies

Chapter 9 outlines the arguments and outcomes of the cases described in the previous chapter to give the reader an overview of Chapters 4-8, as well as an analysis of the outcome of each case. Each case study is analyzed in its own section.

Tables 3-7, contained in Appendix B, summarize the arguments made and outcomes of the cases described above. Each table is named by the case to be discussed therein. For each case, the table lists a description of the religious actor and the land use regulation at issue. The Table then gives a general overview of the RLUIPA claims made in the column entitled “RLUIPA Claims.” The support offered by the religious organization for each claim is included in the column entitled “Support for Claims.” The local government’s claims are included in the column entitled “Government Claims.” Finally, the outcome of the most recent court decision of the case is included in the column entitled “Final Outcome.” This column also includes information about whether the case has been appealed and when the appeal has been scheduled. Planners and local governments can use this information to follow the case in the future.
A. **COTTONWOOD CHRISTIAN CENTER v. CYPRESS REDEVELOPMENT AGENCY**

As shown in Table 3, in *Cottonwood Christian Center v. City of Cypress*, Cottonwood’s RLUIPA claim was limited to one section of the statute that prohibits local governments from taking actions that imposed a substantial burden on the religious institution’s free exercise of religion. Support for this claim came in the form of a declaration by Cottonwood’s Pastor, multiple quotes from the Bible to support its statement of faith and its vision statement, an extensive description of Cottonwood’s traditional and non-traditional ministries and how these ministries could be improved with additional space, and general statements about the religious beliefs of the congregation as they related to the additional space sought by Cottonwood.

Cypress relied on a less-factually driven argument to oppose Cottonwood’s claims. It argued that the standard of review should be whether its actions were reasonable as opposed to using strict scrutiny to review its decisions. It claimed that no individualized assessment took place in denying Cottonwood’s application to use its property. Cypress also relied on a 10-year-old blight study to support its claim that the redevelopment plan area, including the Cottonwood site, was blighted and that its retail development plan would address the blight. Also, Cypress
argued that only the tax-generating capacity of a retail development could support the project.

Cypress lost its case because its arguments were not believed by the Judge who heard the case and because Cottonwood did such a thorough job of supporting its claim of substantial burden with facts that came from multiple sources and that overwhelmed the reader with the number of activities the church could not undertake or carry to their fullest potential because of a lack of space. Cypress’s actions did not correspond to its self-prescribed land use scheme, but the land use scheme was also inconsistent. Cypress’s land use plans did call for the redevelopment of the Cottonwood site, however there was seemingly no interest in that particular site or even in the project until Cottonwood took actions to use the property for church purposes. The land use regulations themselves were inconsistent, as churches were permitted uses in the business park zone but only upon the issuance of a Conditional Use Permit. The language of the regulations makes it unclear as to whether churches are actually permitted uses or whether they are welcome only after special permission is given.

Cottonwood was also fortunate to have been assigned a judge who was not hesitant to apply RLUIPA to the case. Regardless of the reasons
for this willingness to apply the statute, Cottonwood’s decision to only make a claim under one part of RLUIPA may have been less overwhelming to a judge trying to sort out a new law than had Cottonwood decided to use several aspects of RLUIPA in its claims. Judicial unfamiliarity with RLUIPA can be a barrier to successful claims for both religious institutions and planners and local governments, as judges may apply the statute incorrectly or may refuse to apply it at all depending on the circumstances. In making only one claim, Cottonwood allowed the judge to focus on one easily understandable portion of the statute rather than forcing the judge to understand and apply several parts at once.

B. C.L.U.B. v. CITY OF CHICAGO

As Table 4 explains, in C.L.U.B. v. City of Chicago, CLUB’s claims were founded on several different aspects of RLUIPA, two that were expressly stated, and one that was not. CLUB claimed that a substantial burden was placed on the religious exercise of its member churches when Chicago required them to apply for Special Use Permits, Planned Development Permits, and zoning map amendments because other non-religious assembly uses did not have to obtain these permits. CLUB stated its claim of substantial burden in terms of the general needs of churches such as access to public transportation, visibility, and ample parking, but

147
also justified the functions of churches through the Bible. These claims were not extensive and amounted to a small portion of the argument.

CLUB also claimed that Chicago treated religious organizations less favorably than other assembly uses in that Special Use Permits were required for churches but not for other places of assembly. CLUB also pointed out that Chicago’s zoning ordinance as it was applied left no place for churches, as residential properties were generally too small or expensive for churches, and because other zones required special permission for churches to locate there.

CLUB also argued, though not using RLUIPA, that a system of individualized assessments existed in Chicago’s permitting processes because the processes looked to one property and one applicant and because the ZBA had complete discretion over whether permits were granted. For zoning map amendments, no standards existed for review of applications.

Chicago’s arguments centered around a justification for why its zoning ordinances permitted churches in residential areas but not in other areas without special permission. Chicago relied on the protection of the public health and safety, as well as the need for contiguous and unified
business and commercial districts. It also noted the traditional role churches play in the residential communities.

Chicago’s most successful arguments, however, were that each of the CLUB churches had found a suitable location for its facilities despite CLUB’s claims that the zoning ordinances were discriminatory to churches. Chicago supported this claim with additional facts about how many churches had homes in Chicago (2000) and how many permit applications were actually rejected in a particular year (2). These numbers, in addition to the fact that CLUB’s churches had found homes, weighed heavily in Chicago’s favor. Chicago’s decision to amend its zoning ordinances to require all assembly uses to obtain Special Use Permits to locate in B or C zones also helped Chicago’s case. It was because of these amendments that Chicago’s Motion for Summary Judgment was granted.

C. SAN JOSE CHRISTIAN COLLEGE V. CITY OF MORGAN HILL

San Jose Christian College was forced to begin its argument, as Table 5 illustrates, with an explanation of why a college could be considered a religious institution covered under RLUIPA. Because the College trained ministers to spread God’s messages, and because this type of education is needed to maintain religious beliefs, the College claimed it fell under the scope of RLUIPA. Its justification for substantial
burden rested on the beliefs of its students, faculty and administration that God meant for the College to educate new ministers at the site. The denial of permission to use the site constituted a substantial burden on the College’s religious beliefs and therefore brought the case under RLUIPA. The College was also forced to make an argument that the centrality of its religious beliefs did not matter for purposes of RLUIPA’s application. So long as the beliefs were sincerely held, the College argued, RLUIPA applied when the government impaired those beliefs.

Under RLUIPA’s language, these arguments are technically correct. The statute was not meant to apply only to churches or other traditional religious actors, but was intended to be broad in scope. RLUIPA was not meant to protect only the most central and well-known religious beliefs, but was written to protect any imposition on religious exercise. However, for the College, these arguments were difficult to win. The justification for the substantial burden on the College’s religious beliefs was particularly tenuous; had the College put forth statements of its belief in evangelism and religious education, rather than focusing on the belief that God wanted the College to use the site, the argument might have been more persuasive. In general, the College’s argument for substantial burden was
not convincing to the Court. Because no substantial burden was found, the Court refused to consider the College’s other arguments under RLUIPA.

Morgan Hill’s arguments were much more persuasive, especially in the area of whether a substantial burden existed. Morgan Hill argued that the use proposed for the St. Louise site was not religious at all, but was merely educational. Evidence of Morgan Hill’s recognition of the importance of education and church-affiliated places of education supported this argument. Because the Court found the College’s arguments for substantial burden so unpersuasive, Morgan Hill’s arguments were not as critical to the outcome of the case as they might have been had the College done a better job of supporting its position.

D. **Hale O Kaula Church v. The Maui Planning Commission**

As shown in Table 6, Hale O Kaula Church gave a detailed description of its religious beliefs in an attempt to show that there was a substantial burden placed on its religious exercise by the Maui Planning Commission. The Complaint and supporting documents outlined the statements of faith of the religion and explained why access to the land for purposes of agriculture and conservation were so important to the Church. The Church also attempted to explain why its members felt compelled to live as a community and to have a place to congregate with their children.
for purposes of work, play and religious education. The Church also claimed that there was a system of individualized assessments at work in the Planning Commission’s evaluation of its application to use the property. It stated its objections to the hearing officer responsible for the case and her demonstrated bias towards the Church and its beliefs. The Church noted that other assembly uses in the zone in which it sought to locate were not thought to generate excess noise, traffic, or need for fire protection and other municipal services, though church uses were.

Maui’s argument was not needed for it to win its case. It claimed that its concerns for traffic, noise and fire protection were justified. It also claimed that RLUIPA was unconstitutional and, unsuccessfully, that the land use laws at issue were not zoning laws and therefore not covered by RLUIPA. Maui won its case because there was no action taken to prevent the Church from using its property for religious worship. At no time was the Church asked to stop practicing religion on its property and at no time did Maui take steps to prevent the Church from doing so. No substantial burden was placed on the Church’s religious exercise, and as a result, no claim under RLUIPA could be made.

The history of the case is relatively complicated and the procedural steps taken by the Church are not entirely clear. However, it seems that
the Planning Commission’s decision was not enough to constitute a denial of a request to use the Church property for religious purposes. The Church’s application may have been seen by the Planning Commission as a request to build on the property as opposed to a request to use the property for the exercise of religion. Without a specific denial of a request to use property for religion, however, the Church was left with nothing to contest in Court under RLUIPA. If the Church received clarification from the Planning Commission as to whether the Church will be allowed to worship at its property, the case can be continued in court or dropped.

E. **Congregation Kol Ami v. Abington Township**

As listed in Table 7, Kol Ami’s arguments were based on four sections of RLUIPA. It claimed there was a substantial burden placed on its religious exercise through being denied permission to use the Sisters’ Property. This claim was based on the inability of the congregation to protect its Torah from damage because it had to be transported to each of several locations at which it would be used, its loss of members due to the inconvenience of having no fixed location, the difficulty in scheduling space for religious ceremonies and services and the imposition of other uses in the facility on those ceremonies and services, and religious teachings that
a synagogue should serve the residential community in which its members live.

Kol Ami also claimed that Abington Township treated other religious uses better than its proposed use and that religious uses in general received less favorable treatment than non-religious uses. These similar claims were based on the fact that Christian religious uses were permitted to use the Sisters’ Property but Kol Ami as a Jewish religious institution was not permitted to use it, and the fact that the Township prohibited churches and religious uses from most zoning districts. Kol Ami also focused on the fact that non-religious assemblies generated traffic and noise and posed aesthetic problems in the same manner as did religious assembly uses, however the Township was only concerned about these problems as they were caused by religious uses. Kol Ami claimed that this was a sign that something deeper was at issue.

The Township’s zoning code was declared unconstitutional as applied to Kol Ami’s application to use the Sisters’ Property precisely because it treated different types of assembly uses differently without any apparent justifications. The District Court was convinced that there were no justifications for a distinction between religious and non-religious places of assembly and that therefore, the Township should re-write its zoning
code to eliminate the distinctions. This determination, however, is subject to reversal under the Third Circuit’s instruction that the District Court undertake a more thorough investigation of the issue. Given the number of non-religious assembly uses permitted in residential districts and their potential to generate traffic and noise, the District Court may uphold its original opinion despite the Third Circuit’s speculation that the uses are functionally different.

It is unclear why the Zoning Hearing Board reversed its earlier decision and granted Kol Ami’s request. The first decision could have been the product of community influence to deny the request. The second consideration of the application, under the order of the District Court, might have been what the ZHB originally would have decided in the absence of such negative community response to Kol Ami. Where zoning authorities do not want to seem politically insensitive or cause problems for persons in elected offices, it may be more pragmatic to wait until such an order is issued, thereby giving the zoning authorities no choice but to make an unpopular decision. Regardless of the motivations of the ZHB, RLUIPA gave Kol Ami a tool through which it forced the reconsideration of its application, without which it might not have been granted permission to use an otherwise ideal property.
F. CHAPTER SUMMARY

As demonstrated by Chapters 4-8 and the summaries provided in this Chapter, RLUIPA does not always ensure a winning case for a religious organization faced with an unfavorable zoning decision. Many other obstacles must be overcome to win a case under RLUIPA, not the least of which is convincing a court that the zoning decision constituted a substantial burden on religious exercise. Chapter 10’s recommendations and conclusions outline several things that should be considered by planners and local governments when thinking about their own planning and zoning codes and decision-making processes in the context of a potential RLUIPA case.
The case studies in this Thesis were selected because each provides one or more opportunities for planners and local governments to learn from the claims involved and their factual bases. This section outlines these lessons and formulates a series of thinking points for planners and local governments to use when dealing with their own planning and zoning regulations. Table 2 gives an overview of these points and notes the case from which the point is taken.

A theme that comes up repeatedly in the case studies is that local governments must be sensitive to how their planning and zoning codes actually impact religious institutions. This theme originates in the Congressional testimony regarding RLUIPA. Local governments have reasons for writing zoning codes in certain ways, such as the promotion of economic development, the segregation of residential uses from uses seen as incompatible with housing, and the preservation of sensitive resources. However, what Congress and those who testified in support of RLUIPA noticed was that local governments are particularly insensitive to the needs of religious institutions and often do not see the impact that certain zoning decisions and regulations have on religion. One of the greatest challenges to planners and local governments, who must already balance so many
competing interests in writing and enforcing their zoning regulations, is how
to become more sensitive to the interests and needs of religious uses.

Planners and local governments have been forced to accept this challenge
through the passage of RLUIPA. Each of the following points is
underscored by this theme.

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<th>Table 2: Thinking Points for Planners and Local Governments</th>
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<td><strong>Point</strong></td>
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<td>Internal Consistency of Land Use Regulations</td>
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<td>Validity and Believability of Government Justifications</td>
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<td>Validity and Believability of Substantial Burden Justifications</td>
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<td>Familiarity of Religious Institutions, Local Governments and Judges with RLUIPA</td>
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<td>Time and Money to be Spent on Litigation</td>
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A. **INTERNAL CONSISTENCY OF LAND USE REGULATIONS**

Planners and local governments should make their land use
regulations internally consistent. Internal inconsistencies in land use
regulations are confusing for religious organizations, as well as for planners
and local governments who must apply those regulations. The
Congressional history of RLUIPA mentions that religious institutions commonly face ambiguously worded zoning regulations when looking for property to suit their needs. As in *Cottonwood Christian Center v. Cypress Redevelopment Agency*, land use regulations may be confusing where churches are designated as permitted uses but must obtain special permission in the form of a permit before they can use certain property. In Cottonwood’s case, the land use regulations were written in such a way that churches were not permitted uses in the sense that there were no barriers to their location in the Business Park zone. Churches were treated more like conditional uses in that they were required to obtain special permission before they could locate in the Business Park zone.

When local governments write zoning regulations in this manner, they invite challenges under RLUIPA, as churches may claim that the system of land use regulations treats religious uses differently than non-religious uses. If other permitted uses in the zone in which churches are permitted uses do not require special permits to locate there, but churches do, the zoning code may be found to treat religious uses differently than non-religious uses in violation of RLUIPA. No matter what the permitting process, churches may make claims that the process is a system of individualized assessments that brings it under RLUIPA. Planners and
local governments should think about their zoning codes and decision-making processes with an eye for whether churches are treated as actual permitted uses that require no special permission to locate in zones in which they are permitted uses, or whether churches are actually conditional uses.

B. Existence of Non-Traditional Religious Institution With Special Needs or Purpose

Religious institutions as a group include more than just the traditional notion of a church or synagogue. Even these traditional places of worship do not always fit neatly into a picture of a building with stained glass windows or a steeple and cross. Churches and synagogues have taken up residence in abandoned storefronts, warehouses, and big box retail stores, and they have rented space in community centers and college campuses. Some meet outdoors, others in members’ homes. The American place of worship is not easily stereotyped. The case studies in this Thesis illustrate the point that planners and local governments cannot rely on their preconceived notions of what constitutes a place of worship or a religious institution in thinking about RLUIPA. Non-traditional religious institutions with special needs or purposes present several challenges to planners and local governments.
In *C.L.U.B. v. City of Chicago*, the religious institution was not one church, but many that came together for the express purpose of litigating the validity of Chicago’s zoning code. Though a group of churches with this particular purpose does not seem typical, churches engage in information sharing within their own denominations but also across denominational lines. This communication is a valuable tool for churches to use in learning how to work with RLUIPA to secure better outcomes in zoning decisions. The religious exercise of the member churches as well as any religious justification that could be made for the organization are protected under RLUIPA.

The significance of CLUB as a support organization for individual churches is that smaller and less affluent churches potentially receive financial support to challenge zoning decisions in court, where, without the organization’s support, the church might have lacked the resources to pursue a valid claim. Planners and local governments should be aware that these organizations can exist and be sensitive to their purposes and goals.

In *San Jose Christian College v. City of Morgan Hill*, the College made a claim that it was a religious institution deserving of protection under RLUIPA. The support for this claim was not well-argued and the College
had a difficult time persuading the court that it was a religious actor with religious beliefs that had been burdened by Morgan Hill’s zoning decisions. Though the College was unsuccessful in making its claim, there is no reason to think that another college or school might not be able to make the claim in a more persuasive way. A college or school that exists for the sole purpose of training ministers to go out into the world to spread a particular version of God’s message, like the School of Ministry at Cottonwood Christian Church, could make a strong Bible-based argument that its religious exercise was substantially burdened by the denial of a permit to use property for its campus.

The significance of San Jose Christian College as a religious institution is that planners and local governments may not think about religious educational institutions as the type of religious actor covered under RLUIPA. But the terms of RLUIPA do not specify that only certain religious actors will be protected—the terms are broad and include any entity, including an individual, whose religious exercise is impaired by a land use law. Planners and local governments should be creative in thinking about what organizations or entities in their communities could qualify for protection under RLUIPA in thinking about their own zoning codes and decision-making processes.
In Hale O Kaula Church v. The Maui Planning Commission, Hale O Kaula, as a farm-based religious community in which members lived and worked together as part of their worship, was not a stereotypical church. Because its beliefs required such different practices of its members, the church faced community opposition that filtered into the members of the zoning board. Hale O Kaula’s religious needs gave it unique land use needs. A significant amount of agricultural land on which the church could engage in agriculture, recreation, meals, worship services, and other activities was necessary to meet the needs of the church. The conflict arose from the fact that agricultural land was not zoned for churches as permitted uses and the fact that to obtain permission to use such land for church purposes was difficult.

The significance of Hale O Kaula as a religious institution is its illustration of the fact that churches and places of worship do not necessarily fit neatly into one particular zoning district. Planners and local governments should remember that churches and other places of worship may have special land use needs as a result of their religious beliefs. To prevent a church from using land as its religion mandates may be permissible if there is a legitimate and compelling government interest such as fire protection or sanitation concerns. However, planners and local
governments should remember that it is difficult to classify the needs of churches so as to permit them to locate in a particular zoning district. Flexibility in dealing with religious institutions and their needs is essential, especially in light of RLUIPA.

C. Local Government’s General Acceptance of Religious Uses in the Jurisdiction

Planners and local governments should think about how churches are treated in their jurisdictions, especially in terms of zoning and land use. Do churches have a right to locate in one or more zoning districts as permitted uses? Does the zoning code list churches as a permitted use but subject to the acceptance of a special permit application? Are the zoning districts in which churches are permitted uses suitable for institutional uses in that they have suitable parcels of available land? The answers to these questions may illuminate otherwise unknown problems with local land use regulations that could result in challenges under RLUIPA.

In the case of a zoning code that does not allow churches to locate as a permitted use in any zoning district, the problem is obvious. If churches are not permitted anywhere in a jurisdiction, a case under RLUIPA could be made that the jurisdiction treats non-religious uses better than religious uses, or that the jurisdiction discriminates on the basis of religion in its
zoning code. Where a zoning code allows churches as a permitted use but subject to the grant of a special permit, the same claims could be made, especially where churches are the only assembly uses required to go through the permit process.

*C.L.U.B. v. City of Chicago* illustrates the point that when churches are permitted in certain zones, but those zones do not contain land that could be used for a church, the zoning code treats churches no better than if it prohibited them from locating anywhere in the jurisdiction. CLUB claimed that Chicago’s zoning code permitted churches in residential zones, but that the property in residential zones was divided into lots that were too small for churches to use and too expensive for churches to assemble into an acceptable size. Parking was also an issue in residential zones, as churches were forced to purchase additional property to accommodate parking. Planners and local governments should evaluate the ability of each zoning district to accommodate the needs of churches before assigning them to one particular district. The needs of smaller churches with less affluent congregations should also factor into this evaluation and some method for dealing with these churches should be developed. Smaller churches may require rental property, access to public transportation lines, or a more visible location to meet their needs, and
planners and local governments should be aware that the needs of smaller churches may differ from those of larger churches.

Just as small churches’ needs differ from larger churches’ needs, planners and local governments must be aware that newer churches have needs that differ from those of older more established churches. Older churches are likely to have a fixed place within the community, in terms of a facility, but also in terms of a familiarity. This familiarity can prevent much of the community opposition that comes from a misunderstanding and distrust of beliefs that may seem to differ from what is considered “normal.” Planners and local governments should be aware of how they treat newer churches seeking to use the facilities of older and now-defunct churches and other institutions. In *Congregation Kol Ami v. Abington Township*, Kol Ami wanted to use a former convent and monastery for a synagogue. Abington Township did not argue that it had other more appropriate uses for the property in mind, but Kol Ami was initially denied the use of the property. Large and unused institutional facilities are not easily recycled into other uses; when a church or other religious institution proposes to use such a facility, planners and local governments should seriously consider the proposal. There is logic in replacing institutional uses with other
institutional uses, especially when the denial of such a substitution could violate RLUIPA.

Finally, planners and local governments should consider their response to special requests by religious organizations to make use of property within their jurisdictions. Response to these special requests, whether the request is to exist as a conditional use in a zone in which churches are not typically permitted, or to expand a facility at an existing location, demonstrates the ability of the decision-making authority to recognize the special needs of churches and to be flexible in dealing with their requests. Planners and local governments should not feel pressured to respond positively to every land use request made by a religious organization. Such response is not required by RLUIPA and not every denial will lead to a legal challenge under the statute. However, planners and local governments should look for patterns of discrimination or unequal treatment of religious organizations by their land use authorities. If these patterns are discovered, steps should be taken to eliminate those aspects of the process that create the unequal treatment.

Neighborhood opposition to a religious organization’s use of property can be a powerful force in preventing that use. Planners and local governments have a responsibility to all citizens in their jurisdictions, not just the most vocally active, in the area of zoning and land use. This obligation, as well as the added incentive of avoiding RLUIPA challenges to their actions, requires planners and local governments to evaluate their response to community input on zoning decisions to determine whether this input unduly influences the decision-making process. It is understandable that elected officials are concerned with community responses to land use decisions, as their careers depend on their ability to deliver politically popular responses to community issues. However, this instinct of self-preservation should not drive planners and local governments to allow decision-makers to ignore RLUIPA and other laws so that the majority is appeased.

In Hale O Kaula Church v. The Maui Planning Commission, the decision-making process was biased from the beginning, as the hearing officer appointed to evaluate the case expressed her distaste for the Church and its presence in the community. Neighborhood opposition to the church only fueled the hearing officer’s decision to oppose the Church at
any cost; her bias was so strong that she refused to allow another party to consider whether she was able to render a neutral decision in the case. This bias extended into the Planning Commission’s decision to support the hearing officer’s evaluation of the case rather than to re-evaluate it because of her obvious bias.

In *Congregation Kol Ami v. Abington Township*, neighbors appeared to influence the decision of the Zoning Board of Appeals in that the Board initially seemed willing to approve Kol Ami’s application to use the Sisters’ Site for its synagogue. After several neighbors testified against Kol Ami, however, the position changed and the application was denied. Kol Ami’s situation illustrates the point that litigation and a court-imposed order can be a way for planners and local governments to avoid being associated with making unpopular decisions. It is possible that the Zoning Board of Appeals knew it had to approve the application under its zoning code and past decisions, but was unwilling to make the decision in the face of the neighbors’ opposition to the synagogue. Before deciding to rely on a court-imposed order to avoid making an unpopular decision, planners and local governments should consider the time and money involved in litigation, as described in subsection 1 of this Chapter.
Planners and local governments are not the teachers of religious tolerance in their communities. However, they should never support religious discrimination by allowing a group of obviously-biased individuals to influence land use decisions. Planners and local governments must find a way to deal with bias in decision-making, especially in light of the potential consequences under RLUIPA. Whether this involves the creation of more objective criteria in decision-making or making sure that the decision-makers are a balanced group without overt religious intolerance, planners and local governments must try to ensure as much neutrality as possible. Planners and local governments should evaluate the decision-making bodies and their operations to remove as much bias as possible from the process, and develop strategies to prevent neighborhood opposition based on religious intolerance from unduly influencing land use decisions.

E. VALIDITY AND BELIEVABILITY OF GOVERNMENT JUSTIFICATIONS

Planners and local governments face a challenge in responding to claims under RLUIPA. They must justify their actions as compelling government interest or demonstrate that RLUIPA should not apply to the case. The validity and believability of these claims is the difference between liability and no liability under RLUIPA, however, as demonstrated
by the case studies in Chapters 4-8, unless the religious organization makes a showing of substantial burden, the government’s claims may not be considered at all.

In general, those justifications with legitimate evidentiary support found the most favor with the courts. Where local government could show, for example, that it amended its zoning code to eliminate differences in the way churches were treated as opposed to other places of assembly, such as in \textit{C.L.U.B. v. City of Chicago}, the courts found that RLUIPA did not apply. Those claims that lacked legitimate evidentiary support, such the claim of blight in \textit{Cottonwood Christian Center v. Cypress Redevelopment Agency}, where the claim was based on a ten-year-old blight study of the area, were not successful.

In \textit{Congregation Kol Ami v. Abington Township}, the Township argued that because there was a longstanding tradition of deference to local land use controls, the court should not interfere with its zoning decision. This argument was unsuccessful because it failed to take into account the existence of RLUIPA and the ability of Congress to pass such legislation. Had Congress been interested in deferring to local land use controls, RLUIPA would not exist.
Several cases involved general police power arguments. “Police power arguments” refers to justifications such as traffic or noise increases, the elimination of blight, the orderly development of unified zoning districts, the regulation of large institutional uses, or aesthetics, that are typically regulated through the planning and zoning functions of municipal government. These functions exist to protect the general health, safety and welfare of the community and are commonly cited as the rationale for zoning’s existence. However, in the context of RLUIPA, these justifications did not support a compelling government interest sufficient to avoid a challenge under the statute. Planners and local governments should continue to put forth these justifications, but with as much supporting concrete evidence for them as possible.

Planners and local governments should never rely on a religious institution not making a legitimate claim of substantial burden, but should work with their municipal attorneys to make the strongest case possible for their actions.

F. VALIDITY AND BELIEVABILITY OF SUBSTANTIAL BURDEN JUSTIFICATIONS

For religious institutions, the validity and believability of claims of substantial burden are one of the most important aspects of a case under
RLUIPA. Without a solid claim of substantial burden, religious organizations have not made the first step in bringing a successful RLUIPA case. For some organizations, such as San Jose Christian College, this showing begins with a demonstration that they should be considered religious organizations deserving of RLUIPA’s protection; if the court does not agree that this is true, the RLUIPA case ends.

Because it is unlikely under RLUIPA’s broad definitions that a religious organization will typically fail in showing RLUIPA applies to it, the showing of substantial burden is the most critical argument for a religious institution to make. Successful arguments that showed a substantial burden existed included extensive descriptions of the organization’s religious beliefs, often with references to the Bible, such as in Cottonwood Christian Center v. Cypress Redevelopment Agency, Congregation Kol Ami v. Abington Township, and Hale O Kaula Church v. The Maui Planning Commission. The more descriptive an organization can be in outlining its religious beliefs and connecting those beliefs to the challenged land use decision or regulation, the better understood it will be in its substantial burden argument. Without a solid understanding of exactly how a religious organization is impacted by a zoning decision, a court is left without a basis for finding in its favor as no burden seems to exist.
The arguments that failed to demonstrate substantial burden seemed to lack this description of exactly how the religious beliefs of the applicant were harmed through the zoning decision. In *C.L.U.B. v. City of Chicago*, the substantial burden argument was weakened because the individual churches involved in the case had all found suitable facilities. CLUB’s claim that the financial expenses involved in applying for special use permits constituted a substantial burden on the churches did not meet with much favor by the court. Financial expenses, though burdensome to a non-profit organization such as a church, did not seem to constitute enough of a burden as to convince the courts to apply RLUIPA. Likewise, statements such as that made by San Jose Christian College that a substantial burden existed because of a belief that God wanted the College to use specific property for its campus were not believed by the Court. Those statements of belief that were founded in religious texts and reflected in the activities of the religious organization were most successful. Planners and local governments should remember that if a religious organization is unable to make a claim of substantial burden, RLUIPA will not apply to the case.
G. RIPENESS OF RELIGIOUS INSTITUTION’S CLAIMS

Ripeness is a legal term that refers to whether the conflict has reached a point at which the case is properly before the court. The exact legal definition is not relevant to this Thesis and is not the subject of this subsection; the general concept of a conflict being ready for litigation is a concern for planners and local governments. If a conflict has not reached a stage at which litigation is the appropriate resolution, the case should not be before a court. Planners and local governments should be aware that not every action taken in a planning and zoning context will lead to a ripe legal case under RLUIPA.

In C.L.U.B. v. City of Chicago, ripeness was a factor in the judge’s decision to dismiss the case. Because each of the churches involved in the claim against Chicago had found places to locate their facilities, the conflict was not as serious as it would have been had the churches been unable to find suitable facilities. In Hale O Kaula Church v. The Maui Planning Commission, because no action was taken by Maui to deny the church its religious use of its property, there was no issue for the courts to decide and the case was dismissed. These cases illustrate the concept that if the controversy is not yet at a point where a judge can make a decision to resolve it, the case is not properly in court and will be dismissed.
Planners and local governments will likely not be required to determine when a case is ripe in the legal sense of the word. Municipal attorneys are the most appropriate resource for planners and local governments to use in deciding from a legal perspective whether a case should be before a court. What planners and local governments should take from this subsection is that RLUIPA is not a barrier to the normal functions of planning and zoning and should not prevent them from undertaking routing tasks and procedures out of fear that they will be invalidated under the statute. RLUIPA is meant to address serious issues of religious discrimination in the land use context and is not a tool for religious organizations to use in all cases where land use decisions do not resolve in their favor. Planners and local governments should be sensitive to the needs of religious organizations but should not feel compelled to change the way local land use is regulated to avoid problems under the statute.

H. FAMILIARITY OF RELIGIOUS INSTITUTIONS, LOCAL GOVERNMENTS AND JUDGES WITH RLUIPA

RLUIPA’s relative newness as a statute is especially challenging for planners and local governments because of the lack of information directed towards them regarding the statute. However, planners and local
governments are not alone in their minimal exposure to RLUIPA. Religious institutions and judges are also relatively unaware of RLUIPA and its potential use and application. Those religious institutions that have used the statute to challenge an unfavorable zoning decision have taken the first steps to introduce the statute to the legal system and to planners and local governments. Some of the cases are less sophisticated than others in how RLUIPA is argued, but with time, the level of sophistication will increase. This will mean more unique challenges to zoning codes and decisions from religious institutions, better responses to those challenges by planners and local governments, and more refined analyses of the issues in court.

Though RLUIPA is currently relatively unused, the existence of CLUB is an example of how information sharing is taking place in religious communities. Religious institutions are sharing information about RLUIPA as a tool for challenging land use regulations and decisions and as information is shared, the ability of religious institutions to bring a better case under RLUIPA will increase. Attorneys who represent large religious denominations are also learning more about RLUIPA as part of their ongoing effort to review the current state of the relevant law. As these attorneys become more familiar with how a RLUIPA case works and what
strategies are most effective, the denominations will benefit from better representation in their own RLUIPA cases.

As planners and local governments learn more about RLUIPA and how it is applied, they can better incorporate the statute’s requirements into their own land use regulations and decisions. The Maui Planning Commission is an excellent example of a zoning authority without an understanding of RLUIPA. Rather than learn about the statute or ask for legal advice, the Commission chose to ignore the statute entirely. Some members relied on the fact that the hearing officer did not apply the statute to justify their own refusal to consider it. Had the Commission considered RLUIPA, it might have avoided the conflict entirely or at least been better prepared to justify its decisions in light of RLUIPA in court. Planners and local governments with an awareness of RLUIPA can modify their zoning codes and decision-making processes with the help of their municipal attorneys to account for the statute’s requirements. By taking special precautions with religious institutions in the zoning process, planners and local governments acknowledge RLUIPA and may avoid conflict under the statute.
I. TIME AND MONEY TO BE SPENT ON LITIGATION

In all cases involving litigation, the time and money to be spent on preparing the case, paying the attorneys, and going through the lengthy process of one or more appearances before a court must be considered by planners and local governments. The cost of litigation involves the actual dollar figures that correspond to a court case, but the time spent in waiting for a decision in a court case can also have its costs.

Take, for example, *Cottonwood Christian Center v. City of Cypress*, the facts of which stated that the local government wanted to use the Cottonwood site in its community redevelopment plan. The Cottonwood site was to be the new home of a major retail tenant that could generate tax revenue for the City of Cypress through its sales and through its presence in the City. Because of the litigation surrounding the denial of the Special Permit for Cottonwood Christian Church to use the Cottonwood site, the redevelopment plan had to be delayed. Not only were the costs of going to court incurred, but the City of Cypress missed the opportunity to collect months worth of tax revenue as a result of the dispute. The City of Cypress decided in the end to settle the case; the fact that thousands of dollars could be saved through settlement was a likely factor in its decision to settle.
Each of the five case studies presented in this Thesis involved costs to the religious institutions involved, but also to the local governments who opposed the use of property by those institutions. In each case, had the local governments found a way to work through the disputes without relying on the courts, time and money could have been saved. This Thesis is a tool that planners and local governments can use to help save time and money in zoning disputes involving religious institutions. With careful analysis of local zoning codes and decision-making processes, planners and local governments can identify those areas of their local regulations that have the potential to cause conflict.

The case studies give several examples of how zoning regulations can cause such conflicts. For example, where a zoning code lists assembly uses other than churches, such as meeting halls, clubs, and banquet centers, to be located in certain zones, but requires churches to apply for special permission to locate in the same zones, there may be a problem under RLUIPA. Rather than letting the case progress to formal litigation, planners and local governments should think to what RLUIPA prohibits, and attempt to come to a compromise with the religious assembly before moving directly to litigation. Planners and local governments have the tools to move to compromise, with increasing access to literature on the
subject of RLUIPA and the advice of their municipal attorneys, and need
only to spend the time and energy needed to bring about solutions.
Choosing to resolve problems that would fall under RLUIPA in the
courtroom will save time and money for local governments.

J. CONCLUSION

The Religious Land Use and Institutionalized Persons Act presents
many challenges to planners and local governments. The relative newness
of the statute results in an unfamiliarity with it on the parts of planners and
local governments, but also on the parts of religious institutions and judges
who hear cases under the statute. Lack of information about the statute
and its application leaves planners and local governments vulnerable to
challenges to zoning codes or decisions made that negatively impact
religious institutions. Because religious institutions are broadly defined by
RLUIPA, the challenge may come from a unique and unexpected source.
With an understanding of how RLUIPA works and what it protects, planners
and local governments can evaluate their own zoning codes and decision-
making processes to avoid potential conflict under the statute and are
better equipped to deal with challenges when they arise.
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State Court Cases


Constitution and Statutes

United States Constitution, Amendment I.


Congressional Record


- Appendix
- Testimony of Von G. Keetch
- Testimony of Steven T. McFarland
- Testimony of Marc Stern and Mark E. Chopko

Websites


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Cottonwood Christian Center v. Cypress Redevelopment Agency
- Amended Complaint
- Plaintiff’s Motion for Preliminary Injunction

C.L.U.B. v. City of Chicago
- Brief of Defendant-Appellee on Appeal to the Seventh Circuit Court of Appeals
- Brief of Plaintiff-Appellant on Appeal to the Seventh Circuit Court of Appeals
- Brief and Required Short Appendix of Appellants on Appeal from the U.S. District Court

San Jose Christian College v. City of Morgan Hill
- Plaintiff’s Memorandum of Points and Authorities in Opposition to Defendant’s Motion for Summary Judgment

Hale O Kaua Church v. The Maui Planning Commission
- Complaint
- Memorandum in Support of Applicant’s Exceptions to Hearing Officer’s Report and Recommendations
- Plaintiff’s Motion for Preliminary Injunction

Congregation Kol Ami v. Abington Twp.
- Complaint
- Memorandum of Law in Support of Plaintiff’s Motion for Partial Summary Judgment
- Memorandum of Law in Support of Plaintiff’s Motion for a Preliminary Injunction
- Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion to Dismiss Plaintiff’s Complaint Pursuant to F.R.C.P. 12(b)(6) and/or, in the Alternative, 56(b).
• Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion for Summary Judgment
### APPENDIX A

**Table 1: Percentage of Zoning Cases Won and Lost by Denominational Groups and Percentages of US Population**

<table>
<thead>
<tr>
<th>Denomination</th>
<th>Self-Described % of Adult Population</th>
<th>Cases Won as % of Total Cases</th>
<th>Cases Lost as % of Total Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Larger Denominations</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Catholics</td>
<td>26.20%</td>
<td>10.00%</td>
<td>5.26%</td>
</tr>
<tr>
<td><strong>Major Protestants (&gt;0.5% of Adult US Population)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Baptists</td>
<td>19.40%</td>
<td>2.11%</td>
<td>5.26%</td>
</tr>
<tr>
<td>Episcopal</td>
<td>1.70%</td>
<td>3.16%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Lutheran</td>
<td>5.20%</td>
<td>3.16%</td>
<td>1.58%</td>
</tr>
<tr>
<td>Methodist</td>
<td>8.00%</td>
<td>2.11%</td>
<td>0.53%</td>
</tr>
<tr>
<td>Pentecostal</td>
<td>1.80%</td>
<td>0.53%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Presbyterian</td>
<td>2.80%</td>
<td>2.63%</td>
<td>0.00%</td>
</tr>
<tr>
<td><strong>Subtotal:</strong></td>
<td>38.90%</td>
<td>13.68%</td>
<td>7.53%</td>
</tr>
<tr>
<td><strong>Minority Denominations (&lt;0.5% of Adult US Population)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assemblies of God</td>
<td>0.37%</td>
<td>0.00%</td>
<td>2.11%</td>
</tr>
<tr>
<td>Buddhist</td>
<td>0.40%</td>
<td>0.53%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Christian Science</td>
<td>0.12%</td>
<td>0.53%</td>
<td>0.53%</td>
</tr>
<tr>
<td>Churches of Christ</td>
<td>1.00%</td>
<td>0.53%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Church of God</td>
<td>0.30%</td>
<td>1.05%</td>
<td>1.05%</td>
</tr>
<tr>
<td>Church of Jesus Christ of LDS</td>
<td>1.40%</td>
<td>1.05%</td>
<td>1.05%</td>
</tr>
<tr>
<td>Eastern Orthodox</td>
<td>0.28%</td>
<td>0.00%</td>
<td>1.05%</td>
</tr>
<tr>
<td>Evangelical</td>
<td>0.14%</td>
<td>0.53%</td>
<td>0.53%</td>
</tr>
<tr>
<td>Hare Krishna</td>
<td>0.30%</td>
<td>0.00%</td>
<td>0.53%</td>
</tr>
<tr>
<td>Islam</td>
<td>0.50%</td>
<td>1.05%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Jehovah's Witness</td>
<td>0.80%</td>
<td>5.79%</td>
<td>4.74%</td>
</tr>
<tr>
<td>Judaism</td>
<td>2.20%</td>
<td>15.79%</td>
<td>3.16%</td>
</tr>
<tr>
<td>Quakers</td>
<td>0.04%</td>
<td>0.53%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Seventh Day Adventists</td>
<td>0.38%</td>
<td>0.53%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Unification Church</td>
<td>0.30%</td>
<td>1.05%</td>
<td>0.53%</td>
</tr>
<tr>
<td>Unitarian</td>
<td>0.30%</td>
<td>1.05%</td>
<td>0.00%</td>
</tr>
<tr>
<td><strong>Minority Cases</strong></td>
<td>8.83%</td>
<td>30.00%</td>
<td>33.72%</td>
</tr>
<tr>
<td><strong>Unclassified</strong></td>
<td>14.78%</td>
<td>8.95%</td>
<td>9.47%</td>
</tr>
<tr>
<td><strong>Minority + Unclassified</strong></td>
<td>23.61%</td>
<td>38.95%</td>
<td>24.74%</td>
</tr>
<tr>
<td><strong>Total Cases</strong></td>
<td>63.63%</td>
<td>37.37%</td>
<td></td>
</tr>
</tbody>
</table>

### APPENDIX B

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399 This column refers to the results of the National Survey of Religious Identification conducted by the Graduate School of the City University of New York. 113,000 individuals were asked to identify what religious denomination they described themselves as belonging to; the results of this inquiry were extrapolated to describe the United States as a whole.

400 This column represents the number of cases won by each denomination as a percentage of the total cases included in the Brigham Young study. A total of 194 cases were included in the study.

401 This column represents the number of cases lost by each denomination as a percentage of the total cases included in the Brigham Young study. A total of 194 cases were included in the study.
<table>
<thead>
<tr>
<th>Religious Actor</th>
<th>Land Use Law at Issue</th>
<th>RLUIPA Claims</th>
<th>Support for Claims</th>
<th>Government Claims</th>
<th>Case Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Church of approx. 4,000 adult members and 1,200 youth members. Original location was insufficient to accommodate this number of people at one service. Significant outreach ministries existed, but church wanted to support more to reach other segments of the population.</td>
<td>Church needed conditional use permit to use property under Cypress’s zoning scheme</td>
<td>Substantial Burden</td>
<td>Declarations by Pastor, Bible quotes, extensive description of current ministry and what ministry would include if the Cottonwood site could be used, statements of faith and belief as they related to how Cottonwood could use additional space for its facility</td>
<td>Standard of review should be reasonableness rather than strict scrutiny, no individualized assessment took place, blight needed to be eliminated, tax revenue needed to support redevelopment plan.</td>
<td>Injunction granted, compromise reached out of court, Cottonwood site purchased on condition that it be allowed to purchase another similarly located site and build its facility. Closing date for sale of property Aug.31, 2003.</td>
</tr>
<tr>
<td>Religious Actor</td>
<td>Land Use Law at Issue</td>
<td>RLUIPA Claims</td>
<td>Support for Claims</td>
<td>Government Claims</td>
<td>Case Status</td>
</tr>
<tr>
<td>-----------------</td>
<td>-----------------------</td>
<td>---------------</td>
<td>-------------------</td>
<td>------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Group made up of member churches with congregations ranging from 15-15,000 members. Purpose of group to litigate zoning actions that were harmful to churches in Chicago.</td>
<td>Special Use Permit required for churches to locate in business or commercial zones in Chicago. Map amendment required for churches to locate in manufacturing and certain commercial zones. Large churches were required to go through a planned development process.</td>
<td>Substantial Burden</td>
<td>Biblical passages stating that churches need meeting facilities to carry out critical functions for the community; Statement that churches need to be accessible by public transportation and visible to the community; Claim of over-regulation of churches (churches are deprived of adequate space for relocation, special permit process imposes financial burdens, map amendment process completely arbitrary)</td>
<td>Changed zoning ordinance to make all assembly uses follow the same guidelines; no burden in having to pay for application. Claim that very few permit applications are denied, that many churches exist in Chicago, and that the CLUB churches had all found suitable locations. No substantial burden on religion because zoning ordinance is neutral and generally applicable and intended to promote harmonious land use. All uses in Chicago must comply with ordinance.</td>
<td>Chicago removed substantial burden on religion when it amended its zoning code. Claim of RLUIPA violations was not properly before the court. Granted Chicago's Motion for Summary Judgment. Case appealed to Third Circuit Court of Appeals, oral arguments heard on January 17, 2003. No decision has been rendered.</td>
</tr>
<tr>
<td>Five churches were named as parties to the lawsuit in this case.</td>
<td>Permitting process involved individualized assessments because the focus was on one property and one applicant and because the ZBA made discretionary judgments. No standards for map amendments existed (so the process was completely discretionary). This was not actually a claim made under RLUIPA.</td>
<td>Justifications for limiting churches to R zones (recognizes traditional role of churches in the community), restricting access to B and C zones (goals of zones are to provide retail and commercial services, churches would interfere with the continuity of such zones), and denying access to M and some C zones (uses are incompatible for public health and safety reasons).</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Each church had been required to obtain a Special Use Permit to locate in a business or commercial zone in Chicago, was denied the permit initially, but eventually found a suitable location.

Less Favorable Treatment for Religious Assemblies than for Secular Assemblies

New churches are excluded from all areas where churches are not required to obtain special permits. Churches are not really allowed to locate anywhere in Chicago because of limited access to appropriate locations. Special permits are required for churches but not other places of assembly.
<table>
<thead>
<tr>
<th>Religious Actor</th>
<th>Land Use Law at Issue</th>
<th>RLUIPA Claims</th>
<th>Support for Claims</th>
<th>Government Claims</th>
<th>Case Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christian College needed new facility to grow its campus.</td>
<td>College was required to receive a Planned Unit Development permit to use the property.</td>
<td>Substantial Burden</td>
<td>Sincere religious beliefs that site was found as a result of God's will; mission to train new ministers part of religious beliefs. Fact that religious beliefs were not central to religion did not matter. No compelling government interest in preserving the site for hospital use.</td>
<td>No specific discrimination against religious use; College did not propose a religious use for the property and therefore did not implicate RLUIPA. No burden where government prevents a change in religious practice.</td>
<td>Preliminary injunction denied. Motion for Summary Judgment (Morgan Hill's) granted. On appeal to the 9th Circuit Court of Appeals as of April 4, 2002. No further action as of that date.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>System of Individualized Assessments</td>
<td>Discretionary decision-making allowed in permit processes</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Less Favorable Treatment for Religious Assemblies than for Secular Assemblies</td>
<td>Churches are unreasonably limited in having to obtain special permission to locate.</td>
<td>Any user seeking to locate in a zone normally inaccessible to it would need to apply for a special permit.</td>
<td></td>
</tr>
</tbody>
</table>
### Table 6: Hale O Kaula Church v. The Maui Planning Commission

<table>
<thead>
<tr>
<th>Religious Actor</th>
<th>Land Use Law at Issue</th>
<th>RLUIPA Claims</th>
<th>Support for Claims</th>
<th>Government Claims</th>
<th>Case Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Church</td>
<td>Churches were not permitted in agricultural zones, but farming was not permitted in urban zones where churches were permitted. Church was required to obtain a Special Use Permit.</td>
<td>Substantial Burden</td>
<td>Detailed description of religious beliefs, need to live in community of believers, agricultural part of ministry; inability to use current property for agricultural and religious purposes because of land use laws.</td>
<td>Regulations at issue did not specifically address zoning, so not covered under RLUIPA. Challenge to constitutionality of RLUIPA. Concerns for traffic, noise and fire protection.</td>
<td>Denied Motion for Preliminary Injunction, dismissed RLUIPA claims because Maui never prevented the Church from using the property for religious use.</td>
</tr>
<tr>
<td></td>
<td>Communal meals and activities were important to the faith.</td>
<td>System of Individualized Assessments</td>
<td>Planning Commission had complete discretion over permits.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Church needed to have a large amount of land for its purposes.</td>
<td>Less Favorable Treatment for Religious Assemblies than for Secular Assemblies</td>
<td>Concerns for traffic, noise and fire protection present for churches but not for other assembly uses permitted in agricultural zones.</td>
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<td>No substantial burden on religion because no action taken against the Church.</td>
<td>Church seeking review in court and clarification from Maui Planning Commission regarding how religious use of property will be treated.</td>
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<td>Religious Actor</td>
<td>Land Use Law at Issue</td>
<td>RLUIPA Claims</td>
<td>Support for Claims</td>
<td>Government Claims</td>
<td>Case Status</td>
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<td>Synagogue</td>
<td>Synagogue needed Township to agree that its use would be a continuation of a prior non-conforming use because residential zoning did not permit religious organizations.</td>
<td>Substantial Burden</td>
<td>Description of negative incidents at rented facilities, concern for condition of Torah, Biblical and other religious support for belief that synagogue must be a part of the residential community in which its congregation lives.</td>
<td>Religious organizations have no religious basis for wanting to own certain property for their facilities. The desire is driven only by convenience.</td>
<td>District Court declared zoning code as applied to Kol Ami's application to use the Sisters' Property unconstitutional.</td>
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<td>Use of several locations caused loss of members, disruption of services, and posed threat to Torah that had survived the Holocaust.</td>
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<td>Synagogue needed a variance to use the prior non-conforming use (the Sisters' Site).</td>
<td>Less Favorable Treatment for Religious Assemblies than for Secular Assemblies</td>
<td>Non-religious assembly uses, but not churches, were permitted in residential areas.</td>
<td>Longstanding tradition of deference to local land use decisions should prevent Court from striking down zoning code.</td>
<td>ZHB ordered to hold another hearing on the Kol Ami application; the application was granted.</td>
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<td>Church</td>
<td>Church needed fixed location suitable for use as a synagogue.</td>
<td>Discrimination on Basis of Religion</td>
<td>Township allowed Christian religious assemblies to use the Sisters' Property but would not allow the synagogue. Harder for new churches than established churches to locate in the Township.</td>
<td>Traffic, noise and aesthetic concerns justified the denial. Property value would decline and resale of homes in the area would take longer.</td>
<td>Township appealed the decision of the District Court to the Third Circuit Court of Appeals. Third Circuit sent case back to District Court for a determination of whether religious and non-religious assemblies are similar.</td>
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<td>Unreasonable Limits on Religious Assemblies</td>
<td>Concerns cited for churches in residential areas apply equally to non-religious assemblies but were only considerations for religious assemblies.</td>
<td>No outcome from District Court to date, however, case was sent back on October 16, 2002.</td>
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