

## **CHURCHES ANYWHERE? RELIGIOUS LAND USE ACT UPHELD IN ZONING CASE**

Last month, U.S. District Judge Stewart Dalzell of the Eastern District of Pennsylvania upheld the constitutionality of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). RLUIPA prohibits a local government from enforcing any land use regulation in a manner that imposes a substantial burden on a religious exercise of a person, assembly or institution.

As far as we are aware, this is the first case to test the limitations of RLUIPA and this decision will play an important role in future municipal zoning laws. (*See also* the discussion of the enactment of the law in the November 2000 *VLCT News*, p. 14.) In *Freedom Baptist Church of Delaware County v. Township of Middletown*, 2002 WL 927804 (E.D.Pa. May 8, 2002), Judge Dalzell's decision is significant for municipalities because it exempts religious groups from most local zoning rules unless a community can show a "compelling" need to impose the restrictions.

To understand the scope and importance of the decision, it is important to briefly review the facts of the case. The Freedom Baptist Church of Delaware County is a non-denominational congregation of about 25 members. Since late 2000 the Church has held "make-shift" services in a strictly commercial zone that does not allow for any houses of worship. The Church held services on Sundays and Wednesdays each week. On April 5, 2001, town zoning officials notified the owners of the building and the church pastor that the Church's use of the property violated the township's zoning ordinances. After a hearing on the Church's request for a use variance, the Middletown Zoning Hearing Board promptly denied the application. This present decision was based on the lawsuit brought by the Freedom Baptist Church in the U.S. District Court.

Freedom Baptist Church's complaint claims that the Township discriminated against the Church on the basis of their freedom to practice religion, thus violating RLUIPA. Arguing that the zoning code violated their First Amendment rights, the Church moved to address protection of land use as a religious exercise. The Church claimed that the present zoning ordinance has "the effect of shutting out any religious group from locating within the Township." For its part, the Township of Middletown attacked the validity of RLUIPA and argued that it is unconstitutional because it requires "preferential treatment" for religious organizations.

In deciding the issue, Judge Dalzell ruled in favor of the Church. The Court concluded that Congress was acting within its powers under the Commerce Clause when it ratified RLUIPA and enacting the law did not violate the Establishment Clause of the U.S. Constitution, which requires the separation of church and state. Accordingly, the Court upheld that legality of the Act.

In applying the RLUIPA to the case at hand, the Court read the Church's complaint liberally and agreed with the Church's argument that the "zoning condition on their lease of property in Middletown, and the associated parking requirements, constitute a substantial burden on them..."

In rendering its decision, the Court acknowledged that the legislative history of the bill was crucial in shaping its view of the reach of RLUIPA. The Court noted that Senators Kennedy and Hatch, co sponsors of the bill, said that "churches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes

of land use regulation.” Furthermore, the Court found that the intent of the bill was to guarantee every religious group a First Amendment right to assemble for religious purposes.

So what is the direct impact of the Freedom Baptist Church case? Simply speaking, the effects of RLUIPA are unclear since there has not been a challenge to the act in Vermont’s District and the decision of this District Court is not binding in Vermont. Moreover, the Township of Middletown has filed for appeal and the outcome may be different in another courtroom.

Legally, there are many unanswered questions about RLUIPA. However, the federal government’s influence with regard to local zoning is another issue on the table. In the past, the U.S. government has traditionally not impinged on a state or local government’s ability to regulate through local zoning. This law is one of a handful that place strong restrictions on the municipality’s decision-making capability. Furthermore, it is critical for municipalities to understand that if they do not adhere to RLUIPA, a religious institution may challenge their zoning permitting system.

As a result, VLCT offers a word of caution to zoning officials reviewing permit applications from religious institutions. Using U.S. District Judge Dalzell’s opinion as precedent, we encourage municipalities to be “extremely flexible” when granting permits to places of worship. For now, it is prudent to solicit your municipal attorney for advice or check with the VLCT Municipal Law Center on the particular ramifications of this new law.

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