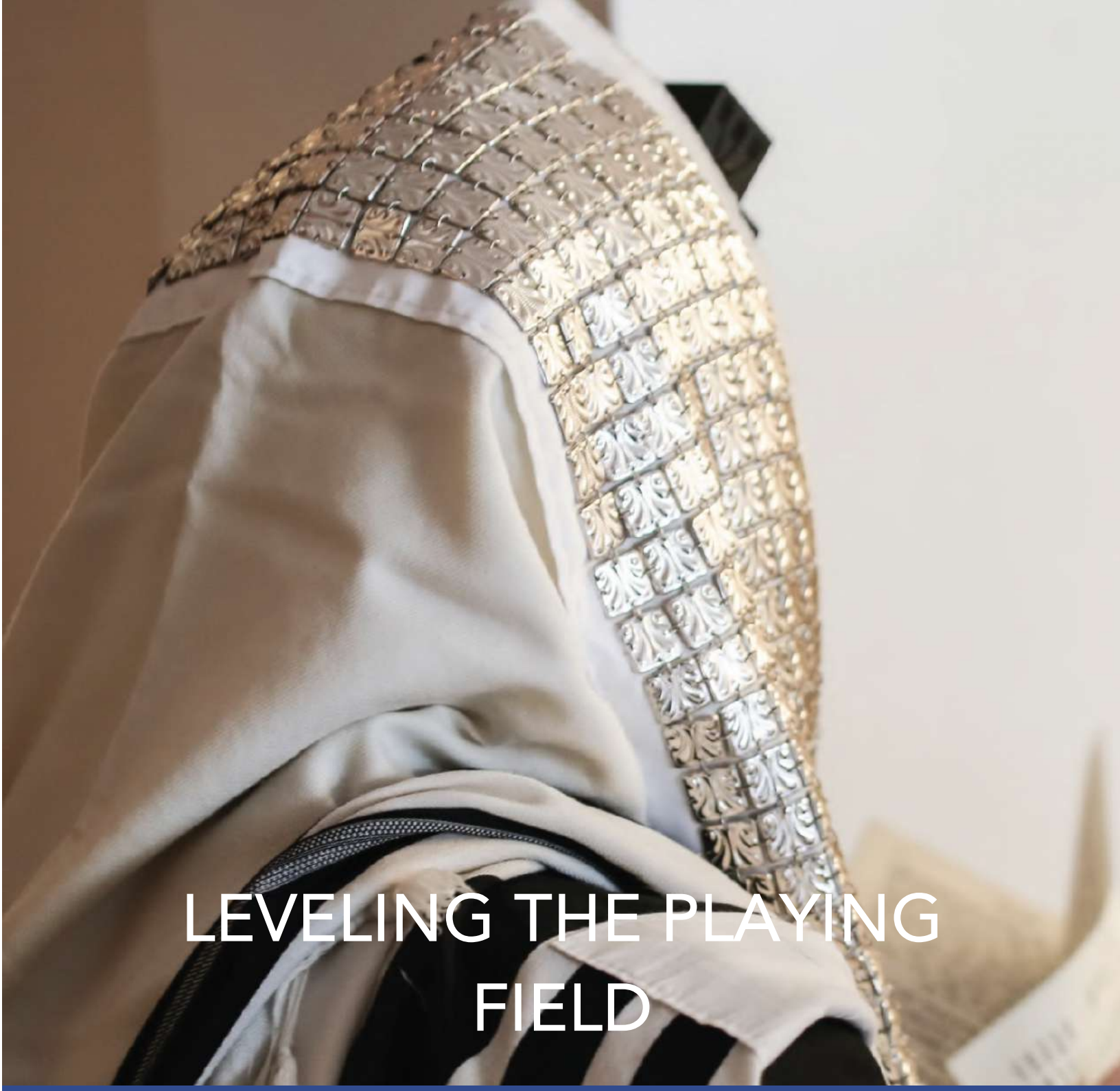

LEVELING THE PLAYING FIELD

A Guide for Synagogues, Temples and Chabads
Navigating the Religious Land Use and Zoning Process

DALTON TOMICH

Daniel P. Dalton

There are seven words that are incredibly exciting for religious leaders:

"It is time for a new building program."

Plans will be made to find land, prepare architectural drawings and renderings of the new building, and engage fundraising committees.

In all the excitement, however, there is one issue that is often overlooked during the process that can grind the building program to a halt: land use and zoning.

If you can't use the land or building... What happens next?

We have seen this scenario play out countless times. The members of a Synagogue, Temple or Chabad "get a deal" on land or a building that meets all their needs. They stretch to pay for the property and organize the move. But no one checks to see if religious assembly is a permitted use on the property.

If you find yourself in this unfortunate situation, you do have options. Litigation is one of them, but filing suit is only advisable after several other possible remedies have been exhausted. This paper discusses the steps involved in the land use process and the tools available to help you win approval to use your property, including when to litigate a religious land use case on behalf of your Synagogue, Temple or Chabad pursuant to the Religious Land Use and Institutionalized Persons Act (RLUIPA)[1] and the First Amendment. While the First Amendment dates to the founding days of the United States, RLUIPA is a much more recent federal law that can serve as an effective tool in protecting the property interests of religious organizations.

While this paper will not answer all your questions and should not be interpreted as providing legal advice, we hope you find it helpful as your Synagogue, Temple or Chabad embarks on this journey.

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The Zoning Ordinance

In general, most local communities have "master community plans" that designate certain areas zoned for residential, commercial, industrial, or agricultural uses. Within each category, the local community sets forth the types of uses that are available. The available uses will typically be a permitted use or a conditional use. A use that is neither permitted or conditional is usually barred from the zoning district.

When investigating the use of land, it is very important to determine if a religious assembly, house of worship or religious use is a permitted or conditional use in that zoning district. Every code for every city differs on the approved use of land for religious assembly.

Before communities began to institute zoning ordinances, Synagogues, Temples, Chabads and other houses of worship were in the center of residential districts. The church was built first, then the members built their homes nearby and walked to the church and school. Parking was not considered as the advent of the automobile had not occurred.

Today, many local communities do not have any zoning districts that allow religious assembly as of right. Rather, they are conditional uses that require approval of the local planning commission.

Conditional uses, or conditional use permits (CUPs), are required for certain land uses that may need special conditions to ensure compatibility with surrounding land uses.

These uses are specified under "Uses Subject to Permits" in the zones approved by the local community. To be approved, a CUP must be consistent with the existing master plan, or community plan. The proposal for conditional use must address not only consistency with the general plan but, also compatibility with a variety of factors including:

- surrounding land uses
- conditions to ensure compatibility, land suitability and physical constraints
- project design
- availability of adequate access, public services, and facilities to serve the development
- potential environmental impacts and mitigation measures

The application for conditional use will typically be considered at a public hearing and decided by the Planning Commission. The burden of proof to approve conditional use is on the applicant. The applicant must prove that the project satisfies the required criteria as provided by the zoning ordinance.

Alternatively, there may be scenarios where the use of land allows religious entities, but a characteristic of the land may make it difficult to build or operate a mosque. For example, you may find a parcel of land that allows for religious uses. However, the zoning ordinance provides that on-site parking is required and that a House of Worship requires one parking spot for every three people.

If the sanctuary holds 200 people and there is only room to park 60 on site under the parking rules of the City, the land use applicant must go to the Zoning Board of Adjustment, or Board of Appeals, and argue the reason why the Board should waive the parking requirements.

The most common standards are as follows:

- That strict compliance with the zoning ordinance regulating the minimum area, yard setbacks, frontage, height, bulk, or density, or other regulation would render conformity with those restrictions of the zoning ordinance unnecessarily burdensome.

- That granting the requested variance would do substantial justice to the applicant as well the zoning district. If a lesser relaxation than that applied for would give substantial relief to the property owner and be more consistent with justice to other property owners in the district, the board of appeals may grant a lesser variance provided the other standards are met.

- That the plight of the property owner/applicant is due to the unique circumstances of the property (e.g., an odd shape or a natural feature like a stream or a wetland) and not due to general conditions of the zoning district.

- That the practical difficulties alleged are not self-created.

Working with a professional to develop and argue these standards is essential. The reason is that when asking for a variance, you are asking the Board of Adjustment to essentially make an exception to its own laws. For example, using the parking issue, one could argue that the parking requirements should be for the sanctuary only.

The remaining square footage of the building being used for classrooms should not be included in the parking calculation because young children occupy the classrooms. Other arguments need to be more fully developed. It is critical to address these issues properly prior to starting a federal case.

You may be asking,

"Why even bother applying for a CUP or variance when the local community has signaled that they will deny your request?"

The reason for this is that there is a large body of case law that requires a land use applicant to "exhaust administrative remedies and obtain a final decision from the municipality. While it seems costly and time consuming to go through this process, if you do not, the Court may dismiss your case, finding that it is not "ripe" for consideration.

One exception to this rule is if you attack the zoning ordinance on its face. A "facial" challenge of a zoning ordinance, meaning a challenge that the ordinance itself is unconstitutional or violates a federal statute (such as RLUIPA), does not require the land use applicant to exhaust administrative remedies.

Case Study:

Chabad Lubavitch vs. Litchfield, Connecticut

More than a decade ago, Chabad Lubavitch of Litchfield, Connecticut was denied the Certificate of Appropriateness it required for necessary expansions to its building. The local government denied the certificate even though churches in the community had been approved for similar and larger requests. In the summer of 2017, the law firm of Dalton & Tomich, PLC was retained to litigate the case. After a trial on the merits, the United States District Court ruled in favor of the Chabad and ordered permits to be issued. This allowed the Chabad to move forward with its renovations. The Court also awarded the Chabad nearly a million dollars in attorney fees and costs.

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The Litigation Timetable

So, you have gone through the Planning Commission or Zoning Board of Adjustment and your use has been denied. You can now go to Court to file a lawsuit.

At this point, it is important to note that there is no typical religious land use case, no matter how many a lawyer litigates. However, in our experience, the general timeframe for the filing of a religious land use lawsuit until a trial date is 18 months.

These months will be neither easy nor predictable. Litigation is akin to riding a rollercoaster—there are high points and low points, but not many level points. Much of the case depends on factors out of the control of the mosque use. That is, the judge assigned to the case has a tremendous impact on how the case proceeds. The law changes as well. Simply put, there are no guarantees.

Before you File: Pre-Suit Strategy

To decide whether to take a religious land use matter into litigation, it is crucial for the lawyer to have a full under- standing of the mosque, its goals, and the situation it faces. That is why the steps one takes before filing suit will have a great impact on what transpires after one has filed a complaint.

Once a ministry has decided to move forward with litigation, there are number of steps to take before filing a complaint. Some of these are discussed in greater detail later, but it is important to remember these topics at this crucial juncture.

1. Gathering Information through a Public Record Request

The typical process of information gathering begins with submitting a records request to the governmental entity that denied the use permit for the religious land use applicant. The Freedom of Information Act (FOIA) is a great tool that can provide facts and context that can assist in the construction of a blueprint of the case, as well as central facts for the complaint. These records can include material relating to investigations, administrative records or previous complaints received by the agency. There will likely be slight differences between various state versions of FOIA, so it is important to plan according to the person or entity's location.

2. Sending Demand Letters

Once information is gathered, and prior to filing suit, the church, ministry, or other religious institution should think about having its lawyer send a demand letter to the governmental entity who denied the use of land. The most effective demand letter are letters sent to counsel for the local government agency outlining the facts as one knows them, as well as provide a discussion of RLUIPA and the constitutional claims one intends to file in a complaint against the government unless the issue is remedied. Not only does this serve as a warning shot to the government, but it is also a good practice run in putting potential claims onto paper. Once this is done, the lawyer can begin to identify the strengths and weaknesses of the arguments.

3. Drafting the Complaint

Drafting a complaint alleging violations of RLUIPA involves many of the same concepts involved in writing other complaints. Naturally, the complaint needs to spell out how the case fulfills every element of each RLUIPA claim alleged. However, a few additional things can help make the complaint more effective.

First, the fact section of the complaint takes on increased importance in a RLUIPA matter. Once the complaint has established jurisdiction and similar household matters, the statement of facts should not be glossed over. As the previous case discussions make clear, RLUIPA cases can be incredibly fact sensitive. Thus, one must make sure to include every fact that might show how the land use regulation or denial is burdening the house of worship's religious exercise or treating it unequally. This could include statements from neighbors or government officials, evidence of an undue delay, and proof that a religious organization has in fact suffered a substantial burden on its religious exercise. In this regard, it is critical to describe the specific religious practice of the applicant and note every way in which the governmental action has affected the applicant's religious practices.

Second, particularly with equal terms challenges, one must be sure to include the portion of the land use regulation that one believes treats religious organizations on less than equal terms compared to similar secular land uses. The fact patterns, combined with the cumbersome language of RLUIPA claims, can be difficult to decipher. The complaint is a great opportunity to cut through the jargon and acronyms and cleanly state the pertinent facts.

Finally, one must be sure to write the complaint in a manner that contemplates the relief sought for the client. The lawyer should keep in mind that he or she is likely alleging that the client's First Amendment rights are being harmed due to some action—or inaction—on the part of the local government. To that end, the relief one seeks might be more focused on obtaining an injunction instead of a large damage award. In fact, there might not even be significant economic damages. The lawyer should be sure to stress the harm that is now ongoing to the client's First Amendment religious freedoms. This will hopefully give the court an increased interest in the case based on the need to quickly remedy any First Amendment violations.

Case Study:
Pastor Phil and North Jersey Vineyard Church

The Atlantic magazine recently published the story of North Jersey Vineyard Church's religious land use fight against South Hackensack, New Jersey. It's a must-read for any religious leader looking to buy, lease or rent property for worship assembly. Dalton & Tomich litigated the case on behalf of Pastor Phil Chorlian's church. After multiple suits and a year of litigation, a settlement allowed the church to build a 717-seat sanctuary with the township paying for damages and attorney fees.

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The Litigation Process

In terms of process, there are generally five stages of a federal lawsuit

Stage 1: Investigation and Filing

The first stage occurs with the investigation of the claim and the filing of the lawsuit. Filing a document called a "complaint" with the court begins a lawsuit. In this document, the party bringing the suit (the "plaintiff") must set forth a "legal story" that meets the substantive requirements for the claim being brought. This could be a claim of a violation of RLUIPA, the U.S. Constitution, federal statutes, state constitutional provisions, state laws or a combination of all the aforementioned claims. Once filed with the court, the governmental entity is served with the complaint and a "summons," which directs the governmental entity (called "defendants") to appear and answer the allegation.

Stage 2: Disclosure and Conference

The second stage involves initial disclosures and a conference with the Court. After the complaint and answer are filed, the parties are instructed to appear for a conference with the court, called a Rule 16 conference after Federal Rules of Civil Procedure 16. During the conference, the court will discuss the nature of the claims and defenses, set forth a scheduling order identifying dates for when litigation matters need to be accomplished, and inquire into settlement.

The court will also order the parties to comply with Federal Rule 26 and provide initial disclosures: that is, the names of witnesses, a summary of their testimony, and contact information for the witnesses. Additionally, the parties are to provide a description or copy of all documents, both hard copy and electronic, that support the claims and defenses of the case. The and the defendant is to provide proof of insurance.

Video: How much time and money will this cost?

One of the most common questions we get about religious land use litigation is "How much time and money is this going to cost?" In this installment of the Dalton & Tomich, PLC RLUIPA video series, Daniel P. Dalton discusses parameters for timelines and costs in cases involving RLUIPA, as well as the law's provision allowing prevailing religious entities to have their attorney fees paid for by the opposing city or municipality.

Click to watch video.

Stage 3: Discovery

The third stage is discovery. Discovery is the pretrial process for finding out what the other side and third parties know about the facts of the case. One party typically submits written questions, called interrogatories, to the other. The Federal Rules of Civil Procedure limit each party to 25 questions including subparts unless the parties stipulate to additional questions, or the court allows a party to submit another question. Other "discovery tools" that are used include Requests for Admission of Facts and Requests for Production of Records.

When third-party records are subpoenaed, there are certain protections against disclosure of confidential personal and financial information. Once this occurs, the defendant has a right to obtain relevant information on these subjects. However, this does not necessarily mean that this information, once disclosed, is available to the whole world. There are ways to seek limited disclosure or protect private information.

The lawyers in the lawsuit will also conduct depositions, which is the process of asking questions of witnesses about the facts of the case. The federal rules limit depositions to 10 per side. A deposition is held before a court reporter, who takes down all questions and answers in full. The lawyer for the party requesting the deposition is entitled to ask the party or witness questions. These questions are subject to limited objections, which can be stated on the record. Or, in cases in which protected information is requested, a "privilege" may be asserted, and the witness may be instructed by the lawyer not to answer (unless later compelled by the court). Lawyers representing all parties to the case have a right and opportunity to ask questions during the deposition, again, subject to appropriate objections. The deposition is a key tool in the trial lawyer's kit for developing evidence, assessing witness impression, and evaluating the case.

During the course of a deposition, a lawyer is not permitted to (1) interrupt the examination with objections designed to help the witness testify, (2) make speeches at will, (3) speak directly to opposing counsel in an effort to intimidate or distract the examining lawyer from the line of questioning being pursued, or (4) have conferences at will with a client or witness to discuss the "proper" answers to questions.

The court also has periodic "status conferences" at which it checks in to confirm that the case is proceeding. At some point, the court may direct the parties to attend a facilitation or mediation. During this process, a magistrate, or lawyer hired by the parties, will supervise negotiations and work with the parties to settle a case.

Discovery Strategy

Initial discovery requests should target several things. First and not surprisingly, most discrimination, no matter the target, is surreptitious and not likely to be contained in city council minutes. We have litigated matters where a council member has said at public meetings that he denied a religious organization a necessary permit because of noncompliance with a community plan, but discovery elicited e-mails showed the council member simply caved to neighbors who did not want him to vote to approve the permit. Additional e-mails showed he had been told the permit should be granted because the project did comply with the community plan.

Second, one must cast a broad net. Decisions of a local government on whether to grant a permit often involve a myriad of government offices—planning, zoning, building, commissions on planning and appeals, and executive officeholders. The lawyer should look for documents from all those entities pertaining to the client, including e-mails that might reveal what government officials thought about the project when they might have been communicating more freely.

Finally, one must begin initial discovery as promptly as possible. In the likely scenario of suing a local government, city lawyers often seek to throw up as many municipal roadblocks as possible. These can include attempts to make key witnesses unavailable for depositions and trying to completely prevent the depositions of elected officials. One must begin moving the discovery process along as soon as possible to flesh out one's claims ahead of the dispositive motion deadline.

Stage 4: Dispositive Motions

The fourth stage is dispositive motions. Either party may decide to file a Motion for Summary Judgment at the close of discovery if there are genuine issues of material fact. For example, if one has a car accident and each witness at a four-corner intersection testifies that the traffic light allowed him to proceed and all four cars crash into one another at the center of the intersection, this is a fact question.

Motion for Preliminary Injunction

In many RLUIPA cases, filing a Motion for Preliminary Injunction at the outset is a valuable tool for several reasons and may help bring a quicker resolution to the case when successful. With little variation between the federal courts, the same four factors must be shown to win the issuance of a preliminary injunction:

- Whether the movant (the party making the motion) has a likelihood of success on the merits;
- Whether the movant would otherwise suffer irreparable injury;
- Whether issuance of a preliminary injunction would cause substantial harm to others; and
- Whether the public interest would be served by issuance of a preliminary injunction.

Such a motion in a case involving the exercise of religion has the added weight of seeking to protect First Amendment freedoms. Significant case law throughout the nation holds that harm to First Amendment freedoms always constitutes irreparable harm, thereby making such a motion much stronger3. In most instances, the motion will seek to enjoin a particular decision of a local municipality that the plaintiff believes is affecting its religious exercise.

Stage 5: Trial

The fifth and final stage is trial. If a Motion for Summary Judgment is denied and questions of fact remain, the case will head to trial. Prior to the trial date, the court will have a final conference to discuss how the case will proceed. There may be pretrial motions that need to be heard and resolved by the trial judge.

If a jury trial, prospective jurors will have been questioned by the lawyers during "voir dire." The jury is then selected and sworn, the lawyers make and then the witnesses begin testifying and documents are introduced. The plaintiff, with the burden of initially proving the case, starts first. The defendant goes next. Each side puts on a "case-in-chief." Then each side can "rebut" the other side's case. They then "rest," the judge gives "instructions" on the law to the jury, and the jury deliberates until it reaches a "verdict."

Once this part is concluded, the parties review the "verdict" and can make various post-trial motions. Following these, a "judgment" is entered by the court, from which appeals can be taken.

The Components of RLUIPA

In 2000, Congress enacted RLUIPA's land use provisions to enforce, by statutory right, four different constitutional prohibitions that Congress found states and localities were frequently violating in that context[2]. Familiarity with these prohibitions and the entirety of the RLUIPA law is essential to the success of many religious land use cases.

1. Substantial Burden Claims

Section (a)(1)of RLUIPA provides that no state or local 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 im- position of the burden on that person, assembly, or institution is both "in furtherance of a compelling governmental interest" and "the least restrictive means" of furthering that interest[3].

This requirement has three separate jurisdictional hooks. First, Section (a)(1) applies in any case 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.[4]" Congress enacted Section (a)(1), as made applicable by Section (a)(2)(C), to codify the Free Exercise Clause "individualized assessments" doctrine set forth in Employment Div. v. Smith[5].

Second, Section (a)(1) applies where "the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.[6]" This "juris- dictional element" requires a case-by-case analysis of the effect of the substantial burden on interstate commerce, and it is designed to ensure that this part of RLUIPA extends only as far as the Commerce Clause permits[7].

Of important note is that Congress deliberately chose not to define the term "substantial burden" but rather intended the term to be defined by applicable Supreme Court decisions. The effect of not defining the term was that courts were left to decide which definition of "substantial burden" they wanted to apply to a pending matter. As a result, there is no uniformity across the United States as to what a "substantial burden" on religious exercise is. This, in turn, has resulted in many different definitions across the federal and state courts, which have led to confusing and contradicting decisions.

Congress did provide an affirmative defense to a governmental body when a religious use meets its burden under Section (a)(2)(B) of demonstrating an effect on commerce. The governmental entity may demonstrate that the statute is inapplicable because the type of burden does not have a substantial effect on commerce.[8]

Third, Section (a)(1) applies where "the substantial burden is imposed in a program or activity that receives Federal financial assistance.[9]" Examples where this jurisdictional hook might apply include religious soup kitchens that receive federal financial assistance.

2. Equal Terms Claims

Section (b)(1), commonly known as the "equal terms" prong of RLUIPA, prohibits governmental entities from imposing or implementing land use regulations "in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.[10]" The intent of this provision is to codify the Supreme Court's decision that the Free Exercise Clause forbids the government to pursue its interests only against conduct that is motivated by religious belief.[11]

3. Nondiscrimination Claims

Section (b)(2), commonly known as the "nondiscrimination" prong of RLUIPA, prohibits governmental entities from imposing or implementing land use regulations in a manner that "discriminates against any assembly or institution on the basis of religion or religious denomination.[12]" Congress enacted this section to codify the anti-discrimination principles of the Free Exercise, Establishment, and Equal Protection Clauses, with the understanding that this section will overlap to some degree with Section (b)(1).[13]

4. Exclusions and Unreasonable Limitations Claims

Section (b)(3), known as the "exclusions and unreasonable limitations" prong of RLUIPA, prohibits governmental entities from imposing or implementing a land use regulation that "totally excludes religious assemblies from a jurisdiction" or "unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.[14]" Congress included this part of RLUIPA with the intent that it would codify decisions prohibiting both total or effective exclusions of First Amendment activity from an entire jurisdiction and unreasonable restrictions on First Amendment activities in that jurisdiction.[15]

5. Miscellaneous Components of RLUIPA

It is very important to review the statute in its entirety when evaluating a RLUIPA claim or defending the same. For example, Congress provided in section 2000cc-2 for judicial relief to an aggrieved person and sets forth burdens of persuasion and other standing considerations. RLUIPA Section 2000cc-3 sets forth the mandate that the act be given broad rules of construction, while Section 2000cc-5 provides a list of definitions applicable to the act. Congress further provided, in Section 2000cc-4, that RLUIPA does not affect the First Amendment's Establishment Clause.

In addition, Congress specifically defines a "land use regulation" as: "a zoning or land marking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.[16]"

Under this definition, a government entity or agency implements a land use regulation when it acts pursuant to a zoning law that limits the way a claimant may develop or use property in which the claimant has an interest.[17] In addition, Congress provided the following definition of "religious exercise" as:

In general. The term "religious exercise" includes any exercise of religion, whether compelled by, or central to, a system of religious belief.

Rule. The use, building, or conversion of real property for the purpose of religious exercise shall be religious exercise of the person or entity that uses or intends to use the property for that purpose.[18]

Finally, Congress provided a "safe harbor" defense for communities under the act within Section (3)(e). Although governments sometimes use the safe harbor provision to correct violations and escape liability, the provision has been rarely interpreted and applied by the courts.

Remedies: Damages, Equitable Relief and Attorney Fees

The interests and goals of the religious organization that puts forward RLUIPA claims are usually much broader than those of a typical client seeking monetary damages. In fact, many RLUIPA clients might not have suffered a significant economic loss. That is why being familiar with RLUIPA's remedies is integral.

1. Appropriate Relief

RLUIPA's provision that authorizes a cause of action states that "[a] person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.19" While the phrase "appropriate relief" may seem simple enough, these two words have turned out to be more problematic than one would imagine.

2. Injunctive Relief

It appears to be universally accepted that RLUIPA's remedy provision that provides for "appropriate relief" includes injunctive relief. The question that many courts have is whether it includes damages.

3. Money Damages

Because there is such a great conflict among federal district courts regarding the availability of damages in a RLUIPA action, the only truly reliable reasoning can be found in Congress's legislative history. When it enacted the controversial statute in 2000. Congress's use of the term of art "appropriate relief" in RLUIPA, enacted against the backdrop of Franklin and Burlington[20], can only mean that Congress intended monetary damages to be one of the remedies available to successful RLUIPA plaintiffs. Indeed, it would be especially ironic if Congress's use of a term of art that underscores the breadth of available relief prompted the courts instead to narrow the scope of that relief.

Although Congress' use of a term of art that encompasses damages, particularly in the context of other reinforcing statutory provisions, provides sufficient clarity about Congress's intent to allow for damages, RLUIPA's legislative history provides additional confirmation. The detailed analysis of RLUIPA's provisions included in the Congressional Record states that the remedy provisions "track RFRA, creating a private cause of action for damages, injunction, and declaratory judgment, and creating a defense to liability, and providing for attorneys' fees.[21]"

Measuring Money Damages

The calculation of damages may prove to be a challenge. Naturally, out-of-pocket expenses that are incurred due to the denial of land use are recoverable. However, one can look at the corresponding constitutional claims for damage claims. Compensatory damages for emotional injuries are recoverable under § 198324. Damages under § 1983 are intended to compensate for actual injuries caused by constitutional violations; therefore, a § 1983 plaintiff alleging emotional distress must demonstrate that the emotional duress resulted from the constitutional violation itself.[22] A plaintiff must adduce sufficient evidence "that such distress did in fact occur and that its cause was the constitutional deprivation itself and cannot be attributable to other causes.[23]" Indeed, any anxiety, stress, or other unpleasantness experienced as a by-product of litigation (the grievance process) is not caused by "the constitutional deprivation itself" and thus is not recoverable.[24]

4. Recovery of Attorney Fees in Religious Land Use Cases

Under 42 U.S.C. § 1988(b), courts can award reasonable attorney fees to the prevailing party in an action that seeks to protect the plaintiff's civil rights. The statute specifically states that successful Religious Land Use and Institutionalized Persons Act (RLUIPA) plain- tiffs are entitled to recover their attorney fees from liable defendants.[25]

More RLUIPA Case Studies

The Religious Land Use & Institutionalized Persons Act is the great equalizer in religious land use law, leveling the playing field for churches and other houses of worship as they seek equal treatment from municipalities and other local governments. The attorneys of Dalton & Tomich, PLC have collaborated with church leaders across the country to secure legal victories that enabled congregations to grow and to thrive in the face of adversity.

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Conclusion

Unfortunately, there are a lot of misunderstandings, and perhaps hostility, around how mosques and other religious entities should be handled when it comes to land use. At Dalton & Tomich, PLC, we help mosques navigate the path of approval of a religious use, or in the event the use is denied, and the community violates the law, litigate land use claims on behalf of mosques throughout the United States.

The primary tool that we rely upon is RLUIPA—the Religious Land Use and Institutionalized Persons Act. According to the legislative history, this law was passed to protect religious organizations from a real or perceived trend of being treated differently than secular land use. This was likely motivated by the fact that most religious land use is tax-exempt. RLUIPA is the great equalizer in land use law; it truly levels the playing field for religious entities.

About the Author

Daniel P. Dalton is one of a handful of attorneys in the United States who specialize in religious land use matters. He is the author of the book Litigating Religious Land Use Cases, the sole authority on religious land use issues. Dan litigates these types of cases for most religious organizations throughout the United States.
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References

[1] 42 U.S.C. § 2000cc et seq. (2000).
[2] ACLU of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd., 557 F.3d 1177, 1198
[3] See Joint Statement, supra n. 42, 146 Cong. Rec. at S7775.
[4] 42 U.S.C. § 2000cc (a)(1), (a)(1)(A), (a)(1)(B).
[5] 42 U.S.C. § 2000cc (a)(2)(C).
[6] See Joint Statement, supra n. 42, 146 CONG. REC. at S7775. See also House Judiciary COMM., RELIGIOUS LIBERTY PROTECTION ACT OF 1999, H.R. REP. NO. 106- 219, at 17.
[7] 42 U.S.C. § 2000cc (a)(2)(B).
[8] See Joint Statement, supra n. 42, 146 CONG. REC. at S7774; 146 CONG. REC. at E1563 (Sept. 22, 2000) (daily ed.) (statement of Rep. Canady); H.R. REP. NO. 106-219, at 16.
[9] 42 U.S.C. § 2000cc-2(g).
[10] 42 U.S.C. § 2000cc(a)(2)(A).
[11] 42 U.S.C. § 2000cc(b)(1).
[12] See 146 CONG. REC. E1563 (Sept. 22, 2000) (daily ed.) (statement of Rep. Canady); H.R. REP. NO. 106- 219, at 17.
[13] 42 U.S.C. § 2000cc(b)(2).
[14] 146 CONG. REC. E1563 (daily ed.)(remarks of Rep. Canady).
[15] 42 U.S.C. § 2000cc(b)(3)(A) (the exclusions provisions), (b)(3)(B) (the unreasonable limitations provisions).
[16] 146 CONG. REC. at S7775; H.R. REP. NO. 106-219, at 17.
[17] 42 U.S.C. § 2000cc-5(5).
[18] Prater v. City of Burnside, 289 F.3d 417, 434 (6th Cir. 2002).
[19] 42 U.S.C. § 2000cc-7.
[20] 42 U.S.C. § 2000cc-2(a) (2000).
[21] Sch. Comm. of Burlington, Mass. v. Dep't of Educ. of Mass., 471 U.S. 359, 369 (1996) (defining "appropriate" relief to include compensatory damages).

[22] Id. at 307 ("Compensatory damages may include not only out-of-pocket loss and other monetary harms, but also such injuries as impairment of reputation . . . , personal humiliation, and mental anguish and suffering."). See also Carey, 435 U.S. at 263–64.

[23] Carey, 435 U.S. at 263.

[24] Price v. City of Charlotte, N.C., 93 F.3d 1241, 1250 (4th Cir. 1996).

[25] Sch. Dist. No. 1, Multnomah Cnty.v. Nilsen, 271 Ore. 461, 534 P.2d 1135, 1146 (Or. 1975); Stoleson v United States, 708 F.2d 1217, 1223 (7th Cir. 1983) ("It would be strange if stress induced by litigation could be attributed in law to the tortfeasor. An alleged tortfeasor should have the right to defend himself in court with- out thereby multiplying his damages. . ."); Blakey v. Cont'l Airlines, Inc., 992 F. Supp. 731, 736 n.3 (D.N.J. 1998); Picogna v. Bd. of Educ., 143 N.J. 391, 671 A.2d 1035, 1038–39(N.J. 1996) (collecting cases).

[26] Id.

[27] Farrar v. Hobby, 506 U.S. 103, 111 (1992) (internal citations omitted).