

EASTERN DISTRICT OF MICHIGAN CHAPTER

Panel Demystifies RLUIPA

by Robin B. Wagner



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On the day when the first of the victims of the mass killing at the Tree of Life Synagogue in Pittsburgh were laid to rest, it was somehow appropriate timing that 40 or so attorneys, judges, and law clerks gathered in the Detroit Room at the Theodore Levin U.S. Courthouse in Detroit, Mich., to learn more about the Religious Land Use and Institutionalized Persons Act (RLUIPA).

U.S. Attorney for the Eastern District of Michigan Matthew Schneider moderated a panel featuring Hon. Stephen J. Murphy III of the U.S. District Court for the Eastern District of Michigan; Eric Treene, special counsel for religious discrimination at the U.S. Department of Justice (DOJ), Civil Rights Division; Thomas Meagher of Foster Swift Collins & Smith; Carolyn Normandin, regional director, Anti-Defamation League (ADL); and Rev. Stancy Adams of Russell Street Missionary Baptist Church.

Treene started the conversation by providing a brief history of RLUIPA and addressed the act's protection of religious communities seeking to build or expand places of worship and other buildings of religious use from restricting zoning and landmarking laws. Treene explained that the DOJ may bring suits for injunctive or declaratory relief under RLUIPA, and he discussed several important cases brought under the act. These examples illustrated some of the hallmarks of a RLUIPA violation—where other organizations like unions or clubs have been granted zoning variances, for instance, a religious organization was denied the same request, or where the zoning denial burdens religious exercise by leaving a congregation with few or no viable options.¹

One example familiar to many in Michigan was the proposed Michigan Islamic Academy in Pittsfield Township, which both Treene and Meagher discussed. Meagher represented Pittsfield Township in the matter and shared his insights from the case and other RLUIPA cases he has litigated. He stressed that RLUIPA is pretty foreign to most people sitting on municipal zoning boards, which means there's a lot of basic education about the law and its requirements. For instance, he explained that the act's "substantial burden" language extends favorable treatment to reli-

gious institutions in a way that zoning board members can find difficult to grasp, seeing as they are used to being told to apply their zoning regulations even-handedly. Adding to this first challenge of grasping the requirements of the law, both sides in a RLUIPA dispute can be challenged by the need to understand the other side's position. The zoning board members may not appreciate the strictures of the religious group's faith, while the applicant religious group may not have invested in getting to know and understand the board members and the community in which they wish to establish a congregation.

Adding on to Meagher's observations about the gap in what each side tends to understand about each other, the ADL's Normandin explained that "not in my backyard" sentiments are behind most of the RLUIPA cases her organization sees. She agreed with Meagher's points that each side needs to ensure that it has an appropriate spokesperson for these often-public disputes so that the issues focus on practicability and the benefits of diversity to a community, rather than having the discourse devolve into mean-spirited arguments. Rev. Adams called for the protections of RLUIPA to go further than they currently do because small congregations can be constructively denied their rights through unaffordable local taxes on land usage and storm drainages. Of course, another concern several panelists mentioned was that these cases are within a community and both sides need to remain good neighbors at all stages of the litigation.

Judge Murphy discussed two recent Sixth Circuit decisions, one addressing a challenge brought under the "substantial burden" portion and the other on the "equal terms" provision. In evaluating the differences among the circuits regarding evaluation of what "substantial burden" means, the Sixth Circuit ultimately rejected adoption of a strict test and instead chose a fact-driven evaluation of whether the zoning decision created an allowable "mere inconvenience" or a substantial burden.² The second case Judge Murphy discussed is quite recent. After reviewing its sister circuits' approaches to the equal-terms provision, the Sixth Circuit adopted different circuits' tests for different portions of the burden-shifting evaluation



and rejected the use of a “compelling state interest” standard for analyzing the challenged regulation.³ Murphy advised litigants to be very explicit with their facts and which facts they believe support which arguments, given the different provisions of RLUIPA and the different tests applied by the courts.

The panel was presented by the Civil Rights Law Section and the Civil Rights Committee of the Eastern District of Michigan Chapter, along with the U.S. Attorney’s Office and ADL. ☺

Endnotes

¹Treene referenced the following “substantial burden” cases: *Chabad Lubavitch of Litchfield Cty. v. Town of Litchfield*, 768 F.3d 183 (2d

Cir. 2014); *Bethel World Outreach Ministries v. Montgomery Cty.*, 706 F.3d 548 (4th Cir. 2013); *Guru Nanak Sikh Soc’y of Yuba City v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006); *Sts. Constantine & Helen Greek Orthodox Church Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005).

²*Livingston Christian Sch. v. Genoa Charter Twp.*, 858 F.3d 996 (6th Cir. 2017).

³*Tree of Life Christian Sch. v. City of Upper Arlington*, 905 F.3d 357 (6th Cir. 2018).



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