

What is RLUIPA Substantial Burden on a Church, Anyway?

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The Religious Land Use and Institutionalized Persons Act (RLUIPA) makes the government meet a very tough standard for a land use regulation that imposes a substantial burden on religious exercise, including for churches. Obviously an important initial question is whether the regulation does impose a substantial burden. A Fourth Circuit case issued January 31, 2013, *Bethel World Outreach Ministries v. Montgomery County Council*, develops the “substantial burden” standard in a way that may help other churches facing zoning issues.

Bethel had grown to the point where its facilities were inadequate, even with four services each Sunday. It purchased land for a new and larger church in a rural density transfer zone. Generally, the County did not provide public water and sewer service in that area, though institutional users could request an exception. When Bethel purchased the land, such an exception had been requested by the prior owner, and was pending.

Though the County had not responded to the pending request for four years, the County Council denied the request and approved an amendment prohibiting all public water and sewer service to private institutions in that zone. Bethel challenged this action and lost.

The County then imposed a size limit on private systems. Bethel modified its plan to comply with this cap and applied for a private well and septic system in 2007. While this application was pending, the County adopted another amendment that prevented any private institutional facility from being built in that zone and “deferred” Bethel’s application until Bethel submitted a proposed use for either agriculture or single family homes, which of course would do Bethel no good. Bethel filed a lawsuit under RLUIPA and lost at the district court level.

Bethel appealed, arguing that the County had violated the “substantial burden” provision of RLUIPA, which prohibits a land use regulation that “imposes a substantial burden on the religious exercise unless the Government demonstrates that it has used the least restrictive means of furthering a compelling governmental interest.”

The district court had applied a standard for “substantial burden” where it considered whether the government action would require the church to violate its religious beliefs (the standard used for prisoner cases). But in the land use context, the Fourth Circuit stated the standard should have been whether the government regulation puts substantial pressure on the institution to modify its behavior. The district court had also required the church to show that the government was targeting its religious practices. This is a standard in First Amendment jurisprudence, but because RLUIPA is intended to be broader and does not specifically require this, the Court held that the institution does not have to show that it was targeted for discrimination.

The Court then concluded that Bethel might have had a reasonable expectation of being able to build a church, and the County had now prevented Bethel from building any church at all, not just a very large one. Not being able to build any church was a substantial burden. The County had presented no evidence that it could not support its rural density transfer zone with less restrictive means. The Court reversed the district court on the substantial burden claim and sent the case back down. (It upheld the district court on some other claims.)

This helpful explanation of “substantial burden” for religious institutions is binding only in the Fourth Circuit, but is persuasive in other cases as well.