

How Local Government Can Nip RLUIPA Claims in the Bud

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This chapter is written from the perspective of a local government lawyer (and occasional planner). It offers advice about how municipalities can protect themselves from RLUIPA claims and liability. The focus is on avoiding claims in the first instance and then, if litigation ensues, ways in which government can defend itself. RLUIPA presents a dual threat to a municipality: first, the potential for financial liability in the form of money damages and attorneys' fees paid to a prevailing religious claimant or paid to settle a claim, and second, the prospect of litigation supplanting local decision making processes whereby a court substitutes its judgment for that of local officials.¹

Know Where You Are So You Know Where You're Going

Assuming you started at the beginning of this book and have read straight through to this point, you should have a good sense of all the basic elements

of a RLUIPA claim. If you would not be comfortable giving a three-minute discourse on what could be considered “religious exercise” and another three-minute speech on the factors a court will weigh in determining whether government has imposed a “substantial burden,” you may wish to restudy those sections. They are essential to avoiding liability.

At the same time, it must be conceded that no one will feel truly comfortable answering these two critical issues because neither Congress nor the courts have defined the boundaries of either religious exercise or substantial burden. The law of RLUIPA is organic, building on incremental precedent from diverse factual and cultural settings and creating an often murky admixture of holdings, dictum, and musings. Lawyers are often asked: “What’s the chance we will win?” When it comes to RLUIPA claims, the response is almost certain to contain more “ifs” per line than most opinions.

The challenge is to put that admittedly limited knowledge to work to help you—as a governmental planner, lawyer, administrator or public official—to eliminate or minimize the potential for governmental liability. The stakes are high. A court could direct the government to approve an application contrary to the community’s plan and regulations; there is the potential for money damages (although this remains uncertain); and attorneys’ fees can be awarded even if the matter is resolved short of trial.

Practice Pointer: Don’t settle these cases in any way, including granting a partial approval under the threat of RLUIPA, without full mutual releases from all liability including attorneys’ fees.

The first reaction might be to call in the lawyers, but that could be counterproductive. As the psychologist Abraham Maslow (1908–1970) said: “When the only tool you have is a hammer, then every problem begins to look like a nail.” Get a few lawyers in a room and throw them a hunk of raw RLUIPA, and they’ll gnaw at it like, well, what they are, lawyers: burden of proof, elements of the claim, discovery, depositions, venue, subpoenas, and suddenly your head is spinning.

Listen to your mothers who, like mine, said: “An ounce of prevention is worth a pound of cure,” and “A stitch in time saves

nine.” Back up a few steps in the process and start working on your RLUIPA defense before any religious organization even thinks about wielding that sword. It’s almost always too late when the lawyers come aboard for damage control and extrication expeditions.

Plan, and Then Plan Some More

Another aphorism: the best defense is a good offense. Plan for religious uses. You plan for schools and gas stations; plan for religious uses. Conduct surveys. Know what their needs are. Your community might grow 10 percent in population over the next ten years. Presently, the religious assembly needs are being met with one thousand seats. In ten years you may need at least one hundred more seats, perhaps in different locations. Church-run schools have shown dramatic increases in enrollments. Will that trend continue? What do religious leaders foresee as their needs? Will local campuses suffice, or do they aspire to larger facilities? Are there forms of communication, such as Web-based services, which could reduce the need for public assembly space or change the peak times of use? Are they planning multiple services, or services on more days, in order to handle any increases in membership and attendance? Are they branching out into other areas, such as providing primary and secondary education, senior day care, after-school recreational programs, meals on wheels, affordable housing, and alcohol and drug rehabilitation? The list of potentially relevant planning considerations goes on and on. Don’t wait for these activities to land within the reach of RLUIPA. Treat them as a planning issue.

Practice Pointer: Generally, treat religious land use activities as you would similar secular activities, such as other places of public assembly. Never restrict religious activities more than you would restrict nonreligious activities of the same type.

Of course it would be unwise to give preference to religious uses because of the potential for being skewered by that other provision in the First Amendment—the establishment clause—which prohibits government from promoting religion or favoring

one religion over another. But you must account for them in your planning as you would any secular use with similar characteristics, such as schools, places of public assembly, and offices.

The other side of planning is the allocation of present and future use demands to the exclusion of other uses. Is there a need to protect agricultural production to lower the community's carbon footprint and preserve capacity for future generations? If so, that land cannot become a parking lot, whether for a church or another nonagricultural use. Is there a need for a pedestrian friendly community, especially for the retiring boomers, and the increased, mutually supportive human and economic activity that comes from more feet on the street? If so, is there a plan for concentrating places of public assembly—secular as well as religious—in central areas?

Practice Pointer: Keep chanting the mantra: “I will plan for all future land uses comprehensively.”

No court has yet held that aesthetics alone, even historic preservation, is a compelling government interest sufficient to fend off a RLUIPA claim once a substantial burden has been shown. But compelling governmental objectives may be found in measures to protect the public's health and safety. There is a chance that a court might find, under the right circumstances, a compelling interest in protecting a community's sole source aquifer from pollution by a megachurch parking lot or preventing traffic hazards.²

Put the heavyweight governmental objectives out front.³ Identify where risks to the public's health and safety might exist. Don't bother with lightweight objectives, important as they may be to you as planner, like “scenic vistas”—they may just end up diluting the objectives that might be compelling. This is what happened in the famous *Lucas* case in 1992.⁴ The state of South Carolina restricted building on beachfronts that were especially likely to experience erosion because people could be killed and property destroyed, but the state also mentioned it was good for tourism to save these areas. The courts took note of the latter “lightweight” objective and, to some extent, lost sight of the life safety issue.

Audit Your Own Regulations as if You Were Suing Yourself

Step back from your own regulations and look at them as an outsider. If you are psychologically or politically unable to do that, then hire someone to do it for you. The objective is to drill deep into your present regulatory structure to find any underlying weaknesses that could become the basis for liability.

Ask yourself this critical question: Is there anything in your code that allows a school, day care center, or place of public assembly where you would not allow a religious land use or analogous use operated by a religious institution? If the answer is yes, you should probably eliminate the disparity by expanding the rights of religious institutions to equal those of nonsectarian organizations.

Based on your planning studies, do you have sufficient land in your community for the expansion of clearly religious activities such as worship and religious education, as well as for other activities commonly conducted by religious organizations that arguably might be claimed as part of a religious use (such as athletic facilities for church-sponsored leagues and functions on church campuses)? Remember that the market is imperfect, and many potentially developable sites may not be for sale. You might want to err on the side of zoning to provide an excess of potential sites for such uses, so that you will be better able to defend against the argument that your community has taken advantage of a constrained market to exclude new religious activities and related facilities.

Are you using the special use permit or conditional use—both of them in most jurisdictions are administrative and discretionary—for religious uses? If the answer is yes, allegations could be made that the process itself imposes an undue and substantial burden on the religious applicant, or that the discretion has been exercised in a way that disfavors religion or discriminates among denominations. It is generally better, from a RLUIPA strategy standpoint, to treat religious uses through neutral and generally applicable zoning laws than to do so through site-specific discretionary approvals.

RLUIPA is a statute of limited jurisdiction, and when a government undertakes an “individualized assessment” of a proposed religious use of a property under its land use regulations, it pulls one of the triggers for the substantial burden inquiry. Arguably, a

special use permit or similar type of administrative review would be such an “individualized assessment.” But a law of general applicability, for example, that sets performance standards for all assembly uses would not be. In many jurisdictions it may be possible to convert the conditional use or special permit process into nondiscretionary performance standards.⁵ The as-of-right use with strict standards, including traffic impacts and density limits by floor area ratio and lot coverage, can provide just about all you need without having to make a site-specific decision as to a particular use.

Practice Pointer: Classify religious uses either as permitted as of right or not permitted at all in particular districts, if you can do so without compromising your comprehensive plan for growth and development.

If you decide to rezone properties to eliminate or restrict religious uses from certain areas, be sensitive to the reality that if a religious organization owns the site it might have vested rights in the former zoning, and if you rezone property while a religious organization is considering purchasing it (or shortly after it has purchased it), the rezoning may appear to be reactionary or retaliatory.⁶ It might be more prudent to err on the side of expanding vested rights, rather than eliminating or limiting those rights.

Practice Pointer: A last resort, and one that should be avoided, is a moratorium on religious uses. Moratoria have not fared well except when there is an overarching public health and safety need, when it is applicable to all or most development, and when it is intended to be a very short “planning pause” such as six months.

Prepare the Front Desk

Planners and land use administrators often cause more damage than they realize by innocently answering what seems to be a straightforward question and, in doing so, inadvertently

create unwarranted expectations. Many times such questions are not what they seem. No one at the front desk can ever really know who is speaking for whom, and what may be intended. For example, a religious group may contract secretly to purchase property for a new facility. The group may have its representative inquire of the planning and building department what is and is not permitted on the property without revealing its plans. A problem may be ahead for the municipality if the answer is incorrect, or even if it is accurate but suggests, for example, that among the range of apparently allowed uses, there is great local enthusiasm for taxpaying business uses and dislike of tax-exempt institutions.

If the inquiry is other than a run-of-the-mill question concerning an as-of-right use such as a single-family home, it may be best simply to offer a copy of the code and suggest that the individual consult with others. It might even be useful to give every person who makes any type of inquiry a one-page statement of the resources that are available through the municipal offices. In the process of providing that document, the public's accessibility to the information is increased, and there is an opportunity to give an express warning that most land use approvals involve federal, state, and local complexities and interpretations requiring professional assistance. It can also be mentioned that anyone undertaking a land development project should seek the advice of design and development professionals and legal counsel as needed.

The other side of this coin is that it is important for public servants to serve the public and it is also important that a municipality demonstrate its willingness to assist religious organizations in meeting the terms of the regulations and moving their projects through the approval process in an efficient and orderly manner. The best way to balance the need to protect casual conversations from leading to untenable expectations while still providing a high level of service is to bring the potential applicants in front of local boards and commissions as soon as possible. It is much easier to manage communications when senior staff and experienced chairpersons are present. Consider a pre-application process with a public meeting, where potential applicants can explain to the public officials their anticipated

requests. The objective is not to preempt, but to have some broader input and preserve record evidence that the potential applicant was helped in every way possible and was given the best advice by the appropriate authorities even before coming in with the application.

The pre-application meeting may be counterintuitive. Can it really help to start discussing a development project before it comes in as a formal application? In many, if not most, cases the answer is yes. Applicants often become economically and psychologically committed to detailed plans when they spend substantial money on them before getting any real feedback from decision makers. The pre-application meeting in the early stage provides a forum for give-and-take that can avert serious mistakes. Imagine a commissioner observing at such a meeting: “I see by your sketch plan that you have your major entrance on Elm Street. There is a draft amendment to the town’s Master Plan addressing the serious traffic congestion we have on that street from the recent development of the Mega Mart. If you reoriented the site plan to use Oak Street exclusively, I think it will avoid some serious problems for you.” Helpful observations such as this might circumvent a denial or conditional approval requiring a costly and extensive redesign.

Win by Avoiding the Simple Mistakes

I confess to being a poor tennis player. When forced to play, I have a simple strategy—just get the ball back over the net. Nothing fancy, no slamming or spinning, no driving the opponent to the very back corner . . . just get it over the net.

Most of the difficulty I encounter in defending RLUIPA claims arises out of a careless, thoughtless, uninformed, casual, or glib passing remark, or even a nervous attempt at humor in a highly charged situation. No, these “one off” remarks usually don’t create liability, but neutralizing them from a hearing or deposition transcript can be Sisyphean.

Some would call what needs to be done “coaching,” a pejorative term. This is better described as sensitizing and helping people understand the limits of their authority under RLUIPA.

In one case in which the municipality was ultimately held liable under RLUIPA, the decision makers rejected the reasonable advice of their planners—twice.⁷ It is not that elected officials have to do what their planners tell them, but when the expert advice is sought—twice—and rejected with no apparent overriding public policy considerations, it is reasonable and appropriate for a court to look at that process with more scrutiny.

Practice Pointer: You get what you ask for. When seeking professional advice, be careful in telling your consultant what you want reviewed. If it is only about traffic, say so.

In a recent instance regarding a synagogue proposal, which so far has not ripened into a RLUIPA suit, a member of a local historic preservation board commented that she didn't think it was a problem having the synagogue in the historic district but that the proposed Star of David on the top might not be appropriate. It is hard to imagine how the principal symbol of the Jewish faith could be excluded entirely. This type of comment at the very first pre-application meeting demonstrated a lack of knowledge about the law and a high degree of insensitivity about the applicant's religion. It was widely reported, and set the wrong tone for the commencement of the proceeding. Had this commission been briefed in advance on the essentials of RLUIPA and the importance of maintaining an appropriate public record, this rocky start could have been avoided.

Practice Pointer: If a public official makes a mistake, for example by saying something plainly wrong during a public proceeding or in a written statement, the best thing to do in most cases is to admit wrongdoing and apologize as part of an attempt to cleanse the record.

Practice Makes Perfect

A board or commission with land use decision making authority should be put through its paces to educate the members about

RLUIPA compliance. Prepare a hypothetical application and conduct a mock hearing. Stir the pot. Egg them on; taunt them a little, from all sides. Don't forget a gaggle of angry neighbors. Nothing pushes the buttons of public officials more than getting caught in crossfire.

Test their anger management. See if they know how far RLUIPA reaches. Ask, for example, for a bowling alley for a religious group to provide recreational opportunities for its members. Take that up a notch by saying that it will be a refuge for troubled teenagers. See if the officials ask for information on the religious group's mission. During the later critique, elicit a discussion about whether a bowling alley is an integral part of the religious expression, and then challenge the officials to think about whether they were tougher on the religious group than they might have been on a for-profit bowling alley or a nonreligious charitable group that used bowling as therapy. The military uses extensive post-exercise briefings to provide constructive criticism. It is much better to ferret out problems when the stakes are no more than a little rush of embarrassment.

Another approach, one that we use in procedural due process training, is to completely script a religious use hearing, and have public officials, staff, and other volunteers read the parts. Build as many problems and errors into the script as you can. The obvious ones will bring laughter. The subtle ones can stimulate discussion during the post-exercise critique.

Make the Record

Nothing is more important in successfully defending against a RLUIPA claim than a complete, comprehensive, and compelling record of rational decision making based on the pursuit of legitimate governmental objectives. Once the RLUIPA claimant gets past the "substantial burden" hurdle, the government must assert and prove "compelling" interests for its action. One example of how *not* to do it is provided by the case of *Guru Nanak Sikh Society of Yuba City v. County of Sutter*, a Ninth Circuit decision from 2006.⁸ In the end, the Ninth Circuit held that the county had imposed a substantial burden on Guru Nanak because the stated reasons

and history behind the denial at issue, and the fact that there had been a previous denial of Guru Nanak's application to build a temple on a parcel of land zoned "residential," "lessened to a significantly great extent the possibility of Guru Nanak constructing a temple in the future."⁹ Moreover, the court said the county did not assert, nor prove, that there was any compelling interest for its denial of the proposal for the temple. The real story lies in the details of the process, and the failure to create a supportive record.

Guru Nanak first applied for a conditional use permit for a temple on 1.89 acres. The county planning division recommended approval of the application subject to conditions consistent with the general plan, but the planning commission voted unanimously to deny the permit. "The denial was based on fears voiced by residents that the resulting noise and traffic would interfere with the existing neighborhood."¹⁰ In response to the denial, and mindful of the concerns expressed about the perceived conflicts between the temple use and a residential neighborhood, Guru Nanak went looking for another site. It found 28.79 acres in an agricultural district, and proposed converting an existing 2,300-square-foot single-family residence and increasing the size of the building by about five hundred square feet to a temple of about 2,850 square feet. This building was intended to serve no more than seventy-five members and was to be used as a place of religious celebration, an assembly hall, and for weddings. It applied for a conditional use permit for this purpose. Churches are allowed nowhere in the county as of right. Nonetheless, various boards and agencies ultimately approved the proposal subject to numerous conditions, and the planning division issued a "mitigated negative declaration," which, freely translated, means that the proposed temple would not create a significant environmental impact because the mitigation measures would reduce any impacts to insignificant levels.

After a public hearing, the planning commission approved the application by a vote of four to three. The four-member board of supervisors held a hearing on appeals brought by several neighbors, reversed the planning commission's approval, and denied Guru Nanak's application. The supervisors gave various reasons for the reversal, including that the property was agricultural and

should remain so, that it was “too far away from the city” and would not promote orderly growth, that the use would be detrimental to surrounding agricultural uses, and that Guru Nanak should locate a church closer to other existing churches. Two of the commissioners characterized the proposal as “leapfrog development” given its location away from existing infrastructure.

In a lengthy decision, the Ninth Circuit analyzed the decision making process in detail and found it lacking. The court affirmed the trial court’s order granting summary judgment for Guru Nanak, and enjoined the county to immediately approve the conditional use permit application. Because the interpretation and application of the county’s regulations in denying the application a second time was found to have imposed a substantial burden on Guru Nanak, the county was obligated to prove, which it did not, that there were “narrowly tailored, compelling reasons” to deny the application.

Practice Pointer: First, eliminate any legitimate basis for claiming that a site-specific review and denial will create a substantial burden by clearly identifying other alternatives including, as appropriate, scaled-back or redesigned development on the same site, or development on other more suitable sites in specified areas. Second, if there is concern the court will find the denial or conditional approval to be a substantial burden, then make sure the record is replete with evidence detailing which safety or other compelling governmental interests were furthered by the denial or conditional approval, and why that outcome was the least restrictive means of addressing those interests.

Don’t imagine that government will lose simply because it denied a conditional use permit. The Supreme Court of Oregon, in *Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. City of West Linn*,¹¹ held that the denial of a conditional use permit to build a new meeting house did not constitute a “substantial burden” even though the denial had “several adverse consequences for the church’s effort to build a meeting house.”¹² The city had directed the church to submit a new permit application to use a greater portion of the available lot, to provide additional buffering, and to submit required noise studies. This process imposed additional

expenses on the church but was not a “substantial burden” because it appeared the conditions could be met and “nothing in the record indicated that the city would not approve a revised application.”

If *Guru Nanak* is the violet of the visible spectrum, the 2008 decision of the Connecticut Supreme Court in *Cambodian Buddhist Society of Connecticut, Inc. v. Planning and Zoning Commission of the Town of Newtown* is at the far end, hundreds of nanometers away.¹³

In 1999 the society purchased a ten-acre tract with two acres of wetlands and a five-acre pond, and a home in which four Buddhist monks took up residence. The site was in a farming and residential zone where religious institutions are allowed by special exception. The local land use agency denied an application for approval of a 7,618-square-foot building (1,618-square-foot meditation temple and 6,000-square-foot meeting hall) with 148 parking spaces to accommodate 450 society members. Its reasons for denial included that it would be inconsistent with a “quiet single-family residential neighborhood with a rural setting,” health treatment uses rumored to be conducted on site were not permitted, the existing volume of traffic would double or triple, the temple design was not in harmony with the neighborhood, and the water and septic system did not meet regulations.

The Connecticut Supreme Court held that RLUIPA didn’t apply. The court reached that determination by first holding that “the substantial burden provision of RLUIPA does not apply to neutral and generally applicable land use regulations that are intended to protect the public health and safety, such as those at issue in the present case.”¹⁴

After a long march through First Amendment jurisprudence and its relationship to interpreting “substantial burden” in RLUIPA, the court settled on case law determinations as to “when the substantial burden provision applies to government conduct in the first instance.” That, in turn, forced the court to analyze what an “individualized assessment” might be because RLUIPA, by its express terms, limits applicability of the substantial burden provision to those instances where there are individualized assessments.

In a precedent-setting act of prestidigitation that won the day for Newtown, the court concluded that while Newtown’s regulations gave the agency some discretion, they did not permit the agency to

apply them to religious facilities differently than they were applied to other special exception uses such as clubs, hospitals, landfills, and private schools. Therefore, the special exception regulations did not allow for an “individualized assessment” and, consequentially the substantial burden analysis was never reached. Importantly, the land use agency had the discretion in the regulations to apply them in a discriminatory manner, but it did not. It was not the regulations *per se* or the procedural nature of the discretionary special exception authority, but the decision made by the agency (“motivated not by religious bigotry but by neutral considerations”) that defined whether it was an individualized assessment. Court watchers and RLUIPA aficionados will be standing by to see if other courts follow this line of reasoning. Until then, local governments will be citing this decision every chance they get.

Preserve the Evidence

The hot button issues in complex RLUIPA civil litigation cases are spoliation and electronic discovery (e-discovery). “Spoliation” looks like a typographic error, doesn’t it? Spoliation is derived from an Anglo-French word of the fifteenth century meaning to plunder. In the wild and wonderful world of discovery it means the willful destruction of evidence that otherwise should be preserved and potentially available to a litigation opponent. The short version of the big problem is that if any documentation (letter, report, meeting note, phone record, and even e-mail and other electronic documentation) is prepared or received in the normal course of business, or is potential evidence relative to an issue that it is reasonably probable would be subject to litigation, then whoever has that evidence should not destroy it.

Practice Pointer: If you do not already have a records-retention policy consistent with federal and state law that permits you to destroy documents and requires you to preserve others for express periods of time, you should develop one to make sure that everyone knows the rules and follows them.

The newly amended Federal Rules of Civil Procedure expressly refer to the discovery of “electronically stored information,” commonly referred to as ESI in “electronic discovery.”¹⁵ Electronically stored information includes “writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, . . .” and parties in federal litigation may “inspect, copy, test, or sample any designated documents or electronically stored information . . .” The sheer volume of electronically stored information, not to mention the sometimes damaging content found within, has created an almost incalculable burden on litigants. The cost of organizing and producing electronically stored information in a single case can be several million dollars. A formal records-retention policy and organized electronic document storage and retrieval system can protect government from unnecessary liability.

Practice Pointer: Start with two simple steps. First, put all of your local government computer systems on a single server with adequate backup so that records can be more easily retrieved. Second, establish governmental e-mail accounts for all elected and appointed officials and staff, and prohibit anyone from using their personal e-mail accounts for any government-related communications. This latter step will avoid the need to potentially produce personal computers and data files in the discovery process.

In the End . . .

In the end, what you do at the beginning can make the difference between success and failure. Good planning (taking into account forecasting space needs, religion-neutral regulations, and adequately trained staff and decision makers), decisions based on substantial evidence, and proper records management can eliminate a large part of the potential liability for local governments. Our doctors tell us to eat right and exercise, but we still have nearly 25,000 cardiologists in the country.¹⁶ It is similarly unlikely that the RLUIPA defense bar will soon disappear.

Notes

1. I draw on many sources in this chapter and cite them specifically where it is appropriate. Otherwise, the text reflects the case law and literature generally. I want to expressly acknowledge that I draw extensively on two useful sources that apparently are not generally in the public domain, but which I can make available to the reader if they send me an electronic mail message to dmeriam@rc.com. The first of these articles is by Jeffrey T. Melching of Rutan & Tucker LLP and was presented to the City Attorneys Association of Los Angeles County at its spring 2003 retreat. That paper is entitled, “The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA): What’s a City to Do When a Church Comes to Town?” The second is a recent short presentation by a lawyer who has labored in the RLUIPA trenches, most recently in an important case against a municipality, *Westchester Day Sch. v. Vill. of the Mamaroneck*, 504 F.3d 338 (2d Cir. 2007). That paper is by Kevin J. Plunkett of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, and was presented to the New York State Bar Association Municipal Law Section’s annual meeting on October 20, 2007. It is entitled, “Religious Land Use and Institutionalized Persons Act (RLUIPA): Dos and Don’ts for Municipal Attorneys When Advising Municipal Board Members, Staff and Consultants.”
2. See *Mont. Envtl. Info. Ctr. v. MDEC*, 296 Mont. 207 (1999).
3. See *Westchester Day Sch. v. Vill. of the Mamaroneck*, 280 F. Supp. 2d 242, 230 (S.D.N.Y. 2003) (“traffic concerns have never been deemed compelling government interests”); *Murphy v. New Milford Zoning Comm’n*, 402 F.3d 342 (2d Cir. 2005); *Trinity Assembly of God of Baltimore City, Inc. v. People’s Counsel for Baltimore County*, 2008 WL 314717 (Md. App. 2008).
4. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992).
5. For a case on point discussing the ins and outs of conditional use permits as compared with the alternative of the legislative planned unit development in a safe haven of the as-of-right approach, see *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005).

6. See *Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846 (7th Cir. 2007); see also *Cypress Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203 (C.D. Cal. 2002).
7. *Guru Nanak Sikh Soc’y of Yuba City v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006).
8. *Id.*
9. *Id.* at 981.
10. *Id.* at 982.
11. 338 Or. 453, 111 P.3d 1123 (2005).
12. 338 Or. at 467, 111 P.3d at 1130. “For the purposes of this opinion, we assume without deciding that the city’s denial of the CUP constituted an individualized assessment as that term is used in 42 USC § 2000cc(a)(2)(C).” 338 Or. at 463 n.5, 111 P.3d at 1128 n.5.
13. 285 Conn. 381 (2008).
14. *Id.* at 400.
15. FED. R. CIV. P. 34(a).
16. W. Bruce Frye, *Cardiology Workforce: A Shortage, Not a Surplus*, HEALTH AFFAIRS, Feb. 4, 2004, available at <http://content.healthaffairs.org/cgi/reprint/hlthaff.w4.64v1>; Locumtenens.com, Cardiology Career and Resource Center, <http://www.locumtenens.com/cardiology-careers/main.aspx> (last visited Mar. 17, 2009).