



A NATIONWIDE PUBLIC INTEREST RELIGIOUS CIVIL LIBERTIES LAW FIRM

1055 Maitland Center Cmns.
Second Floor
Maitland, Florida 32751
Tel: 800•671•1776
Fax: 407•875•0770
www.LC.org

1015 Fifteenth St. N.W.
Suite 1100
Washington, DC 20005
Telephone: 202•289•1776
Facsimile: 202•216•9656

100 Mountain View Road
Suite 2775
Lynchburg, Virginia 24502
Tel: 434•592•7000
Fax: 434•592•7700
liberty@LC.org

Religious Land Use Law Will Force The Government To Stop Discriminating Against Religious Institutions

**by Mathew D. Staver, Esq.
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On September 22, 2000, the Religious Land Use and Institutionalized Persons Act of 2000 (hereafter "Act") was signed into law. The Act will be a powerful tool for religious liberty. This law received unprecedented support from both liberal and conservative religious organizations and was overwhelmingly supported by both Democrats and Republicans. The law prohibits the government from discriminating against religious institutions (including place of worship) in land use regulations, such as zoning, and also protects the religious rights of prisoners.

Zoning has long been a threat to religious liberty. Zoning laws effectively give government the power to regulate religion and religious institutions. Oftentimes these zoning laws have been used to create religion-free zones. At other times, zoning laws have been used to prohibit churches from expanding their ministry.

For example, in Homestead, Florida, the City passed a law which prohibited religious institutions from locating in the downtown area for more than two years. At the end of the two year period, the religious institution was forced to leave the area. Incredibly, the location which was used by the religious institution could never again be used by any other religious organization. The law therefore created a religion-free zone. The longer the law remained in effect, the more religion-free zones occurred within the downtown area.

The southern Florida town of Surfside passed a law prohibiting churches and synagogues from locating within city limits. Members of an orthodox Jewish synagogue filed suit to obtain the right to build a synagogue within the city. Orthodox Jews do not travel on the Sabbath. Thus, Orthodox Jews must live within walking distance of the nearest synagogue. Despite the substantial burden on the Jewish congregants, the City refused to repeal the law and the court sided with the City. This new religious land use law will reverse this decision.

In Oregon, one City allowed a church to meet only if its membership did not exceed one hundred people. The City imposed additional restrictions stating that the church could not perform weddings or funerals on Saturday and must cease any church activity by 4:00 p.m. on Sunday. In Texas, a Catholic church sought to add a structure to its existing building in order to minister more

effectively to the community. The church was denied the right to build on its own property because it was located within a historical landmark district.

Many churches have been denied the right to carry out their ministry of feeding the hungry and clothing the homeless. In Wisconsin and Georgia, two couples received zoning citations threatening sanctions if they did not immediately cease conducting Bible study and prayer meetings in their homes. In Denver, Colorado, a couple was told by city zoning officials that they could meet only one time per month for a prayer meeting in their private home, because more frequent meetings were banned by the city zoning code.

The power to zone is the power to destroy. The power to grant a license to conduct worship and the power to withhold that license has often been used to stifle religious freedom. As a result of these ridiculous zoning decisions throughout the country, a wide array of religious institutions supported this new Act. The new Religious Land Use and Institutionalized Persons Act applies to any case in which (a) a substantial burden is imposed in a program or activity that receives federal financial assistance, or (b) the substantial burden affects, or the removal of that substantial burden would affect, interstate commerce, or (c) the substantial burden is imposed in the implementation of a land use regulation such as zoning.

The law defines a "program or activity" to include all of the operations of any government or private entity that receives federal funding. The term "government" under the Act includes a state, county, municipality, or any other governmental entity created under the authority of a state, or any branch, department, agency, instrumentality, or any official action on behalf of one of these entities, or acting under authority of state law. The term "government" also includes the United States and any of its branches or any person acting under federal authority. The Act therefore encompasses anything that you would normally consider to be government.

The law is very significant for several reasons. First, the act applies to religious institutions even if the same government restriction applies equally to secular institutions if the government restriction imposes a substantial burden on the religious institution. Second, the law applies in any land use or zoning regulation. Third, the law also applies to any incarcerated prisoner, whether in state or federal prison if the program or activity receives Federal funding.

Under the Religious Land Use law, the government must at a minimum treat religious institutions equal to secular institutions. Applying this to the state of Virginia would mean that Virginia law regarding churches holding property will no longer withstand challenge. The state of Virginia has an ancient law that prohibits churches from owning more than fifty acres of property. No similar restriction is imposed on secular property holders. Churches in Virginia have been forced to create separate corporations in order to put additional land in these other corporations. The problem with this approach is that it is discriminatory because the churches must pay taxes on any property over fifty acres. Moreover, Virginia law prohibits a church from selling its property without court approval. The same burden is not imposed on secular property holders.

The law also states that the government shall not impose or implement a land use regulation that "totally excludes religious assemblies from a jurisdiction." This means the situation in Homestead and Surfside where the cities created religion-free zones will no longer be permissible. The law also states that the government shall not impose or implement a land use regulation that "unreasonably limits religious assemblies, institutions, or structures within a jurisdiction." This section of the act will remedy the bizarre zoning restrictions in Oregon, where a church was allowed to exist under unreasonable restrictions. Moreover, the government will no longer be able to bully people into

shutting down their Bible studies and home prayer meetings.

The application of this Act is extremely broad -- as broad as the coalition that supported its passage. In case government officials still don't get the message after reading the Act, the Act itself states that it must be "construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution." Government officials should wake up and take notice of this new law because a new day has arrived. We have received calls from pastors all over the country concerned about starting a small church, or expanding their existing church. Many churches begin with Bible studies and prayer meetings in private homes. This new law will be a key to unlock the door which zoning officials have oftentimes shut on religious activity.

In addition to the above application, the new law also applies to protect prisoners in the exercise of their religious practices. Sometimes prisoners have been told they can't read the Bible, and missionary groups have been prohibited from visiting prisoners to minister to them. In order to uphold any restriction on a prisoner's religious activity, the government must now muster a compelling interest of the highest magnitude to justify the restriction on religious activity. Even if the government can muster such an interest, the government must achieve the interest in the least restrictive means available. As in the zoning context, prisons are no longer religion-free zones.