

*Presenting a live 90-minute webinar with interactive Q&A*

## Religious Land Use and Institutionalized Persons Act Claims

Strategies for Local Governments to Avoid or Defend RLUIPA Actions

---

TUESDAY, MARCH 13, 2012

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

---

Today's faculty features:

Dwight H. Merriam, Partner, **Robinson & Cole**, Hartford, Conn.

Hiram B. Carey, III, Partner, **Robinson & Cole**, Boston

William J. Kelleher, III, Partner, **Robinson & Cole**, Stamford, Conn.

John R. Bauer, Counsel, **Robinson & Cole**, Boston

Karla L. Chaffee, Atty, **Robinson & Cole**, Boston

Evan J. Seeman, Atty, **Robinson & Cole**, Hartford, Conn.

Marci A. Hamilton, Paul R. Verkuil Chair in Public Law, **Benjamin N. Cardozo School of Law, Yeshiva University**, New York

---

The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 10.**

## *Conference Materials*

---

If you have not printed the conference materials for this program, please complete the following steps:

- Click on the + sign next to “Conference Materials” in the middle of the left-hand column on your screen.
- Click on the tab labeled “Handouts” that appears, and there you will see a PDF of the slides for today's program.
- Double click on the PDF and a separate page will open.
- Print the slides by clicking on the printer icon.

## *Continuing Education Credits*

FOR LIVE EVENT ONLY

---

For CLE purposes, please let us know how many people are listening at your location by completing each of the following steps:

- Close the notification box
- In the chat box, type (1) your company name and (2) the number of attendees at your location
- Click the SEND button beside the box

## *Tips for Optimal Quality*

---

### Sound Quality

If you are listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.

If the sound quality is not satisfactory and you are listening via your computer speakers, you may listen via the phone: dial **1-866-871-8924** and enter your PIN -when prompted. Otherwise, please **send us a chat** or e-mail **[sound@straffordpub.com](mailto:sound@straffordpub.com)** immediately so we can address the problem.

If you dialed in and have any difficulties during the call, press \*0 for assistance.

### Viewing Quality

To maximize your screen, press the F11 key on your keyboard. To exit full screen, press the F11 key again.

**Strafford**

# **Religious Land Use and Institutionalized Persons Act Claims**

**Strategies for Local Governments to  
Avoid or Defend RLUIPA Actions**

**March 13, 2012**



# Origins and History of RLUIPA

- The RFRA
  - *Employment Div. v. Smith*
  - *City of Boerne v. Flores*
- Legislative History of RLUIPA
- Congress's Intent





# RLUIPA Basic Provisions

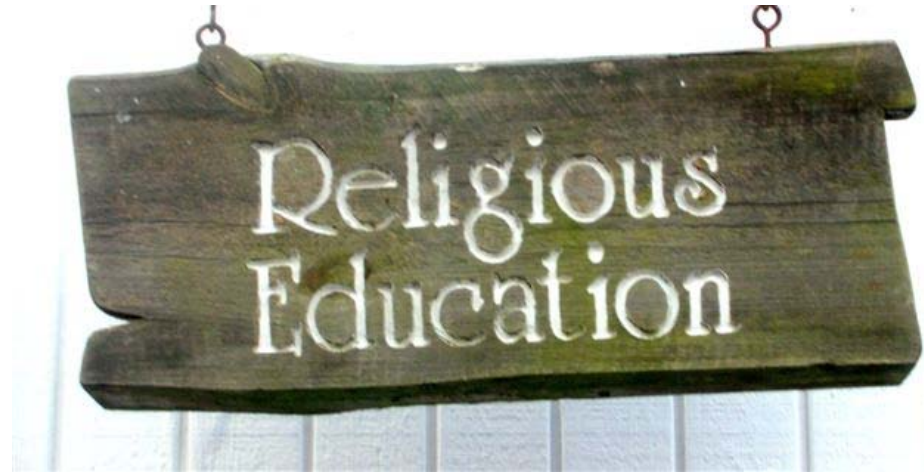
## General Rule

No government shall impose or implement a land use regulation in a manner that imposes a *substantial burden on religious exercise*, unless the government demonstrates a *compelling governmental interest* that is the *least restrictive means* of furthering that interest





# Religious Exercise



“The term ‘religious exercise’ includes any exercise of religion, ***whether or not compelled by, or central to, a system of religious belief.***”

“The use, building, or conversions of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.”





# Over a Decade of Litigation

## Principle Claims

- Challenge to Zoning Regulations
- Challenge to Individual Decisions

## Outcomes

## What Have we Learned?

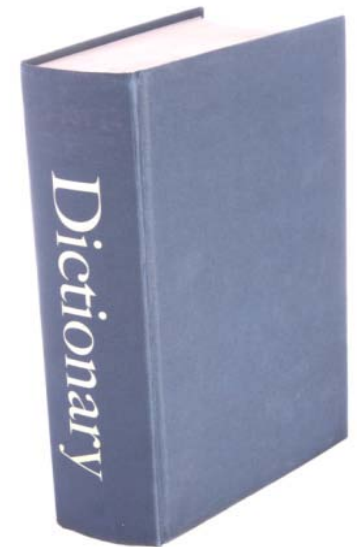
- Trial Strategies





# Substantial Burden

- Term is Undefined
- Patterns:
  - Financial Hardship, Alone, Not Enough
  - Adequacy of Current Facilities
  - Other Suitable Property
  - “Mere Inconvenience” Not Enough
  - Issues of Fairness
  - Likelihood Permit Will be Granted with Little Modification





# Compelling Governmental Interest

- What “compelling governmental interests” warrant a substantial burden on religious exercise?
  - Health?
  - Safety?
  - Maintaining Zoning Scheme?



# Other RLUIPA Considerations

- What Constitutes an “Individualized Assessment?”
- What Constitutes Treating a Religious Assembly on “Less than Equal Terms?”
- When Are Religious and Secular Assemblies “Similarly Situated?”

# Planning Perspective: Avoiding RLUIPA Claims

- Plan for Religious Uses
- Regulate for a Broad Class
- Heavyweight Objectives
- Be Your Own Critic
- Bring Gov't Staff Up to Speed
- Electronically Stored Information
- Discretionary Zoning
- Develop Winning Record



# Time for Trial – (Un)Ripeness

- Finality Requirement
  - Religious Institutions and Assemblies Must Exhaust All Local Quasi-Judicial Appellate Avenues to Establish Ripeness
  - Motion to Dismiss



# Time for Trial

## Strategies

- Choice of Forum
- Jury or Bench Trial
- Discovery
- Dispositions Short of Trial

# Time for Trial

## More Strategies

- Expert Witnesses
- Focus Groups/Mock Trials
- Post-Trial Matters
- Finding the Right Balance
  - Aggressive Defense vs.  
Respect for Religion





# Time for Trial

- Proving Restrictions do Not Target Religious Uses
- Proving No Substantial Burden
- Proving Compelling Governmental Interest



# Origins & Constitutionality of RLUIPA

- Is RLUIPA Unconstitutional?
  - Strict Scrutiny
  - Devaluing Deference
  - “Religious Exercise”
- Congress’s Intent
  - Actual or Willful Ignorance?



# More (Un)Ripeness

- Failure and Refusal of Religious Institutions to File Land Use Applications
  - *Congregation Anshei Roosevelt v. Borough of Roosevelt* (3d Cir. 2009)



# City of San Leandro

- *Int'l Church of the Foursquare Gospel v. City of San Leandro* (9th Cir. 2011)
  - Substantial Burden
    - Cost and Inconvenience
  - Individualized Assessment
    - Neutral & Generally Applicable
    - Discretion
    - Case-by-Case

# Remedies & Attorneys' Fees

- Declaratory Judgment
- Remand
- Injunctive Relief
- Damages
- Attorneys' Fees

Dwight H. Merriam  
Robinson & Cole, Hartford, Conn.  
[dmerriam@rc.com](mailto:dmerriam@rc.com)

Hiram B. Carey, III  
Robinson & Cole, Boston  
[tcarey@rc.com](mailto:tcarey@rc.com)

William J. Kelleher, III  
Robinson & Cole, Stamford, Conn.  
[wkelleher@rc.com](mailto:wkelleher@rc.com)

John R. Bauer  
Robinson & Cole, Boston  
[jbauer@rc.com](mailto:jbauer@rc.com)

Karla L. Chaffee  
Robinson & Cole, Boston  
[kchaffee@rc.com](mailto:kchaffee@rc.com)

Evan J. Seeman  
Robinson & Cole, Hartford, Conn.  
[eseeman@rc.com](mailto:eseeman@rc.com)

Marci A. Hamilton  
Benjamin N. Cardozo School of  
Law, Yeshiva University, New York  
[hamilton02@aol.com](mailto:hamilton02@aol.com)