

Christians need to know of the erosion of property rights

by Randy Bright <http://www.tulsabeacon.com/?p=4779>

I have been writing lately about a case involving Rocky Mountain Christian Church in Boulder County, Colorado, whose six-year old court battle to secure a building permit may now be headed to the U.S. Supreme Court in what may be a fight to the death, figuratively speaking of course, for the Religious Land Use and Institutionalized Persons Act (RLUIPA).

This is a law that was specifically designed to protect churches from abuse from zoning laws and jurisdictions, and it is enforced by the U.S. Department of Justice.

Since its passage in 2000, it has only been appealed to the U.S. Supreme Court once before. In the *St. John's United Church of Christ v. Chicago* case, the Seventh Circuit petitioned the U.S. Supreme Court in 2007, but fortunately it declined to hear the case.

RLUIPA has been used successfully to defend the property rights of churches many times since its passage, and for the most part judges have upheld its constitutionality. In that regard it has been invaluable.

However, RLUIPA is limited in its ability to help all churches in all cases. For example, it may not be useful in cases involving eminent domain. This is because zoning laws and eminent domain are legally considered to be conceptually unrelated.

Authority in zoning matters comes from the state's police powers, while the authority to exercise eminent domain comes from the Takings Clause of the Fifth Amendment.

The only time that RLUIPA can be an effective law in eminent domain cases is when eminent domain is made a part of a particular zoning law. An example of this situation can be found in the *Cottonwood Christian Center v. Cypress Redevelopment Agency*, in which the church won their case.

RLUIPA has also not been effective in situations where zoning codes affect market conditions by reducing the amount of available land caused by the implementation urban growth boundaries. This was demonstrated in the *C.L.U.B v. City of Chicago* case, where a large group of churches lost their case because the judge said that the market conditions that were causing them problems affected everyone else as well, and therefore there was no discrimination by the city against churches.

Before discrimination against churches and others in zoning matters began to be a significant problem, churches could rely upon the Free Exercise Clause in the First Amendment and upon the Due Process and Equal Protection Clauses in the Fourteenth Amendment.

In 1963, the case of *Sherbert v. Verner* was heard by the U.S. Supreme Court. This involved a Seventh Day Adventist who had been fired because she refused to work on Saturday, and had been denied unemployment benefits.

The result was that the Court prohibited laws that would burden the religious rights of individuals. Also, the Sherbert Test was instituted, which required that strict scrutiny (a legal term meaning the highest level of legal review) be used in any case involving the Free Exercise Clause in religious freedom cases.

But in the 1980's the courts began to ignore those rulings. When the U.S. Forest Service tried to build a road through land that several Indian tribes considered sacred, the tribes sued to stop it, asserting that their religious rights were being violated. Their case (*Lyng v. Northwest Indian Cemetery Protective Association*) was eventually heard by the U.S. Supreme Court, who ruled against the tribes, ruling that their rights had not been violated because they were not being "punished" because of their religious beliefs.

In a 1990 case, *Employment Division v. Smith*, two Indian employees were fired by the State of Oregon and were refused unemployment benefits after testing positive for the drug found in peyote, an illegal substance used in Indian religious ceremonies. The U.S. Supreme Court upheld the State of Oregon's actions.

The outcry against the violation of religious rights in these and other cases led to the passage of the Religious Freedom Restoration Act (RFRA) of 1993, which reinstated the Sherbert Test and forced the government to prove a "compelling interest" in cases that could violate religious rights. This was significant because it put the burden on the government to prove that it "(should) not substantially burden religious exercise without compelling justification".

When the RFRA was struck down four years later, RLUIPA took its place in 2000. Now, with a majority of liberal judges in the U.S. Supreme Court, we may see it struck down.

This is why Christians need to pay particular attention to Rocky Mountain Christian Church's case. Its outcome could affect churches and individual religious rights for generations to come.

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