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Religion and Land Use: Westchester Day School v. Village of Mamaroneck

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Abstract: The Westchester Day School and the Zoning Board of Appeals (ZBA) of the Village of Mamaroneck were involved with several lawsuits stemming from a rescinded "negative" State Environmental Quality Review Act (SEQRA) determination by the ZBA after local public outcry of the school's expansion. This article explores the relationship between Religious Land Use and Institutionalized Persons Act (RLUIPA) and land use regulations, and comes to the conclusions that Congress enacted the RLUIPA to ensure religious organization landowners are not singled out to bear the burdens of the general public.

Westchester Day School v. Village of Mamaroneck, 280 F. Supp. 2d 230 (S.D.N.Y. 2003), involved a Religious Land Use and Institutionalized Persons Act ("RLUIPA") challenge to the denial of an application by an Orthodox Jewish day school for modification of its special permit. The court granted plaintiff's motion for summary judgment overturning the denial and ordering the issuance of the permit. In October 2001, Westchester Day School ("WDS") submitted an application for modification of its special permit to allow construction of a new classroom building and renovation of two existing buildings to accommodate its student population. After several months of public hearings and collecting comments from professionals, the Zoning Board of Appeals ("ZBA"), the board responsible for issuing the permit modification, unanimously voted to issue a "negative declaration" under the State Environmental Quality Review Act, finding that no significant adverse environmental impacts would result. "Shortly thereafter, an outcry of community opposition arose and ... the ZBA voted unanimously to hold a rehearing to review its 'negative declaration' determination." *Westchester Day School v. Village of Mamaroneck*, 236 F. Supp. 2d 349, 351 (S.D.N.Y. 2002). Following the rehearing and additional public hearings, the ZBA voted to rescind the negative declaration. *Id.*

WDS sued the village of Mamaroneck, the ZBA and its members (the "village") for placing unconstitutional burdens on its right to expand and improve the school and sought relief under RLUIPA. The court ruled that the rescission of the "negative declaration" was invalid because it was not based on "any change in the Project or any new evidence, but in response to belated public outcry", and therefore the "negative

declaration” was “still in full force and effect.” *Id.* at 359. In light of its holding, the court did not address the RLUIPA claims.

After the court’s order, the ZBA held several public hearings and participated in a conference before the court. At the court’s request, the ZBA gave the WDS a list of outstanding issues that might impede the issuance of the modification to the special permit and the WDS responded to all issues. Following an additional two months of deliberations, the ZBA voted 3-2 to adopt a resolution denying WDS’s application in its entirety.

The WDS again sued the village claiming that the denial constituted a substantial burden of its religious freedom in violation RLUIPA. *Westchester Day School v. Village of Mamaroneck*, 280 F. Supp. 2d 230 (S.D.N.Y. 2003). RLUIPA prevents federal, state and local governments from “imposing or implementing land use regulation in a manner that imposes a substantial burden on religious exercise”. 42 U.S.C. § 2000cc (2000). If a prima facie case is established, the government must demonstrate that its regulation furthers “a compelling governmental interest” and is the “least restrictive measure of furthering that interest.” *Id.*

The WDS claimed that the denial of its application violated RLUIPA because the existing buildings are not large enough and too decrepit to serve all of its students and carry on its mission of religious instruction: a matter involving the free exercise of their religion. The village challenged the constitutionality of RLUIPA claiming that RLUIPA does not merely enforce a constitutional right, Free Exercise, but defines it, a power reserved for the courts.

The district court held “RLUIPA does not ‘contradict vital principles necessary to maintain separation of powers and the federal balance.’” The court found that RLUIPA narrowly focuses on “low visibility decisions” such as land use actions that risk “idiosyncratic application.” *Westchester Day School*, 280 F. Supp. 2d at 237 (citing *Freedom Baptist Church of Delaware County v. Township of Middletown*, 204 F. Supp. 2d 857, 873-4 (E.D. Pa. 2002)). The court also held that RLUIPA is a permissible exercise of Congress’s power under the Commerce Clause because its power over economic activity is broad and that “religious buildings actively used as the site for a full range of activities” affect interstate commerce. *Id.* at 238. The court concluded that RLUIPA does not violate the Establishment Clause or the Tenth Amendment.

Once the court established the constitutionality of RLUIPA, it determined that the denial of the application violated the Act. As required by the Act, WDS made a prime facie showing that RLUIPA had been violated by establishing that the village’s denial of its application “(1) imposes a substantial burden; (2) on the ‘religious exercise’; (3) of a person, institute or assembly.” *Id.* at 239. A substantial burden under the Act is established when a regulation “compel[s] action or inaction with respect to a sincerely held belief; mere inconvenience to the religious institution or adherent is insufficient.” *Id.* at 240. The court concluded “the denial is a substantial burden on [WDS’s] exercise of religion because the modifications WDS seeks will enable it, for well into the

foreseeable future, to more efficiently, effectively and, most importantly, safely serve its student population and fulfill its religious and educational mission.” *Id.* at 243.

Having established a prima facie case, the burden shifted to the village to demonstrate that the regulation furthers a compelling government interest and that it is the least restrictive means of furthering that compelling interest. The village argued that the permit modification would negatively impact traffic and parking conditions in the neighborhood. However, the court found that “traffic concerns have never been deemed a compelling government interest” and nothing was presented to show that lack of parking spaces “will result in direct and immediate threat to public, health, safety or welfare.” *Id.* at 242. Finding no issues of material fact, the court granted WDS motion for partial summary judgment on its RLUIPA claim and set aside the ZBA’s denial of WDS’s application. The case is currently before the Second Circuit for review.

Background of RLUIPA

In 1990, the U.S. Supreme Court ruled in *Employment Division Services v. Smith*, 494 U.S. 872 (1990), that the government need not show a compelling basis for burdening a religious organization or person engaged in obeying religious dictates when it imposes a facially neutral requirement of general applicability. This meant that laws of general applicability, like zoning codes, would be analyzed under the lenient rational basis test. This decision prompted religious and political groups to lobby Congress to restore the religious protections the *Smith* decision had removed, in their opinion

Three years later, the Supreme Court, in *Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993), ruled that *Smith* applies only when the law is both neutral and generally applicable, and “a law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest.” This ruling did not appease those that sought to overturn *Smith* and, in that same year, Congress enacted the Religious Freedom Restoration Act (“RFRA”). 42 U.S.C. § 2000bb (1993). RFRA applied a strict scrutiny test to all laws burdening religious practice.

In the *City of Boerne v. Flores*, 521 U.S. 507 (1997), the Supreme Court struck down the sweeping, popularly supported RFRA statute as an attempt by Congress to interpret the substantive rights protected by the Constitution and to decide cases and controversies, a power reserved to the courts. Justice Kennedy writing for a 6-3 majority, labeled RFRA’s strict scrutiny language “the most demanding test known to constitutional law,” which in this context reflects “a lack of proportionality or congruence between the means adopted and the legitimate end to be achieved.” *Id.* at 534. Congressional hearings attending the adoption of RFRA had not revealed recent evidence of laws targeting religious practice or motivated by discriminatory intent. “RFRA,” Kennedy wrote, “was designed to control cases and controversies, such as the one before us; but as the provisions of the federal statute here invoked are beyond congressional authority, it is this Court’s precedent, not RFRA, which must control.” *Id.* at 536.

In response to *Boerne*, Congress adopted the Religious Land Use and Institutionalized Persons Act ("RLUIPA") which was more narrowly focused than RFRA and which was based on significant fact finding by Congress. According to the hearing record - "[c]hurches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation." It found that recent trends in the manner that Americans worship have resulted in increased disputes over the application of local zoning ordinances to religious uses of property. These findings are significant because, as the *Boerne* court admitted, Congress may enforce Constitutional guarantees when it has "reason to believe that many of the laws affected by the congressional enactment have a significant likelihood of being unconstitutional." *City of Boerne*, 521 U.S. at 532.

RLUIPA applies to local land use decisions that involve individualized assessments of proposals by religious institutions for a variety of permits and approvals. It requires local governments to implement land use regulations in a manner that treats religious assembly or institution on equal terms, is nondiscriminatory, and does not exclude or unreasonably limit religious assembly within a jurisdiction. 42 U.S.C. § 2000cc (2000).

The *Westchester Day School* case is one of a number of recent federal court cases that involve challenges to local land use decisions. In *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752 (7th Cir. 2003), the Seventh Circuit interpreted the application of RLUIPA's substantial burden requirement narrowly holding that the time and expense required to meet land use permit requirements cannot constitute a violation because such a finding "would require municipal governments not merely to treat religious land uses on an equal footing, but rather to favor them in the form of an outright exemption from land use regulations." *Id.* at 762. In the opinion of the *Urban Believers* majority, the outcome of RLUIPA challenges will rest on whether the court interprets RLUIPA's substantial burden element broadly, subjecting any burden to the strict scrutiny test, or narrowly limiting applicability to burdens that render religious exercise "impracticable". *Id.* at 761.

To date, there are no federal appellate court rulings on the constitutionality of RLUIPA as that statute deals with the protection of land use as religious exercise. The few district court cases that have ruled on the constitutionality of RLUIPA's Land Use provisions have addressed the "individualized assessment" jurisdictional element, which invokes Congress's power under the Section 5 of the Fourteenth Amendment, and the Commerce Clause jurisdictional element. In *Freedom Baptist Church of Delaware County*, the court ruled that RLUIPA's provisions are more narrowly directed than those of RFRA. 204 F. Supp. 2d at 873-4. RLUIPA is confined to the Spending and Commerce Clauses, except for those cases where the government makes individual assessments, and this is consistent with *Smith*. "[T]he statute draws the very line Smith itself drew when it distinguished neutral laws of general applicability from those 'where the State has in place a system of individual exemptions,' but nevertheless 'refuses to

extend that system to cases of “religious hardship.”” *Id.* (quoting *Smith*, 494 U.S. at 884). In contrast, the court in *Elsinore Christian Ctr. v. City of Lake Elsinore*, 291 F. Supp. 2d 1083 (C.D. Cal. 2003) held that RLUIPA does more than codify the Supreme Court’s “individualized assessment” jurisprudence and exceeds the scope of the Commerce Clause because it regulates land use *laws* and not economic activity. The Commerce Clause authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments’ regulation of interstate commerce. According to the *Elsinore* court, “[b]ecause Section 2(a) of RLUIPA regulates the way States regulate private parties, Congress’s Commerce Clause authority is an inappropriate basis upon which to predicate its enactment.” *Id.* at 1104.

Conclusion

The lesson learned from the *Westchester Day School* case has to do with fairness. The courts have exhibited hostility to locals land use decisions that single out particular land owners to bear particular burdens that are not based on facts on the record of the proceedings, or that respond solely to citizen opposition. In adopting RLUIPA, Congress was concerned that vociferous opponents hold too much sway in decisions on individual land use applications by religious institutions. The *Westchester Day School* court was moved by evidence that the Mamaroneck ZBA’s denial was not based on any compelling governmental interest or on a fair balancing of environmental concerns with the rights of WDS to the reasonable use of its property and that defendants’ abrupt reversal of its prior approval and its 3-2 vote to deny plaintiff’s Application was a reaction to belated public outcry, a paradigm of what has been referred to as the NIMBY (Not In My Back Yard) syndrome. *Westchester Day School*, 280 F. Supp. 2d at 243.