

Holy Ground: Religious Liberty and Religious Land Use

Religious Liberty at SCOTUS:

- *American Legion v. American Humanist Association* (2019): Ended the practice of using the Establishment Clause to remove religious symbols from public spaces, affirming their place in American tradition.
- *Carson v. Makin* (2022): Continued the trend of protecting religious organizations' participation in public benefit programs, invalidating exclusionary state actions under the Free Exercise Clause.
- *Groff v. DeJoy* (2023): Overruled *TWA v. Hardison*, enhancing religious accommodations in the workplace by requiring more than just a "de minimis" effort from employers.
- *Kennedy v. Bremerton* (2022): Explicitly overruled *Lemon v. Kurtzman*, clarifying that the Establishment Clause complements rather than competes with Free Exercise and Free Speech rights.
- *Fulton v. City of Philadelphia* (2021): Stressed that laws with mechanisms for individualized exemptions lack general applicability, thus triggering strict scrutiny for religious freedom claims.
- COVID-19 Cases (2020–21): *Roman Catholic Diocese of Brooklyn v. Cuomo* and *Tandon v. Newsom* struck down regulations preventing religious land use based on the COVID-19 pandemic, clarified that laws that treat any secular comparator better are subject to strict scrutiny

Overview and Breakdown of RLUIPA (42 USC §2000cc):

- Substantial Burden: Government cannot impose land use regulations that substantially burden religious exercise unless it's for a compelling interest using the least restrictive means.
 - *Mast v. Fillmore County* (2021): only SCOTUS case to address RLUIPA's land use provision, granted a GVR based on the lower court's failure to apply strict scrutiny in compliance with *Fulton*
- Recent examples:
 - *Anchor Stone Christian Church v. City of Santa Ana*: Court granted preliminary injunction on substantial burden claim of church based on denial of a conditional use permit

- *Church of the Rock v. Town of Castle Rock* – Court granted a preliminary injunction on substantial burden claim based on Town’s efforts to shut down a church’s temporary shelter ministry
- There is disagreement among courts regarding the requirements to establish a substantial burden
- Equal Terms: Religious assemblies must be treated on equal terms with nonreligious assemblies in zoning laws.
 - *Anchor Stone*: Court granted a preliminary injunction based on zoning code that permitted daycares, museums, and restaurants but required churches to obtain a conditional use permit
 - There is a split among courts regarding the type of comparator necessary to prove an equal terms claim
- Other RLUIPA provisions that are not as commonly analyzed by courts:
 - Nondiscrimination: Land use regulations cannot discriminate based on religion or denomination.
 - Exclusions and Limitations: Regulations cannot totally exclude or unreasonably limit religious assemblies within a jurisdiction.

Is RLUIPA Constitutional?

- *Cutter v. Wilkerson* (2005): Affirmed RLUIPA's compatibility with the Establishment Clause, focusing on alleviating government-imposed burdens on religious exercise.
- *Holt v. Hobbs* (2015): Further clarified substantial burden under RLUIPA, aligning it with RFRA interpretations.