Report on the Tenth Anniversary of the Religious Land Use and Institutionalized Persons Act

United States Department of Justice

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The freedom to practice the religion of one's choosing is among the most cherished rights in our nation. It is one of our founding principles, written into our Constitution and protected by our laws. In our increasingly diverse nation, the Department of Justice continues its steadfast commitment to the defense of this basic freedom to ensure that all people are free to live according to their beliefs, free of discrimination or persecution.

For despite the guarantee of religious freedom in our founding documents, individuals and groups have faced discrimination based on religion throughout our history. And throughout our history, Congress and the federal government have repeatedly acted to protect Americans from such discrimination. In each instance, the Department has stood at the vanguard to assure that this fundamental right and the laws that secure it are vigorously enforced.

For example, while it was passed largely in response to ongoing racial tensions, the landmark Civil Rights Act of 1964 included religion along with race, color, sex and national origin as categories in which persons are protected against discrimination in a host of areas – a recognition that individuals in this country too often found themselves the victims of discrimination because of their faith. Title VII of the Civil Rights Act requires employers to accommodate workers' religious observances and practices, such as observance of the Sabbath and the wearing of religious clothing. These legal protections continue to be important today. Just last year, for example, the Department of Justice filed suit against a county in New Jersey after the county refused to allow a female correctional officer to wear a religiously mandated headscarf, and the Department has been active in a number of cases to help ensure that workers of various faiths receive reasonable accommodation for Sabbath observance and religious holidays.

The Department has similarly been active in cases involving students, for example, preventing harassment of Muslim and Jewish students based on religion in school, protecting the right of Christian and Jewish students to receive excused absences for religious holidays, and ensuring the right of Muslim and Christian students to pray during times such as lunch, when students are allowed to gather for various other student-initiated activities. And just last month, the Division reached a consent decree in a case it brought against a restaurant that had refused service to patrons who wore shirts indicating they were members of the Falun Gong spiritual movement.

In addition to enacting laws combating discrimination in the workplace, at schools and elsewhere in American society, Congress has more than once reacted to the need for protections against violence based on an individual's or group's religion. In 1968, when Congress enacted the first federal hate crimes law, it covered acts of hate-fueled violence based on a person's religion. In 1996, Congress responded quickly to a rash of arsons that

destroyed a large number of primarily African-American places of worship by passing the Church Arson Prevention Act in 1996, making it a federal crime to commit arson or vandalism against a church, synagogue, mosque, or other place of worship, or to violently interfere with a person's free exercise of religion.

And, as with the Civil Rights Act of 1964, these protections continue to be critical tools in the federal government's arsenal to combat religious animosity. The Justice Department used these tools to prosecute several men who, in 2008, vandalized and burned down the Islamic Center of Columbia, Tennessee. And in 2010, an individual pled guilty to vandalizing a synagogue in Mobile, Alabama, by spray-painting neo-Nazi markings on the building.

These crimes remind us that bigotry and hatred still exist in too many communities in our nation, and that we must continue to use the laws of the land to combat acts of discrimination and hate.

But overt discrimination and violence are not the only threats to religious liberty. Recognizing this, 10 years ago lawmakers once again came together to protect religious liberty by passing the Religious Land Use and Institutionalized Persons Act (RLUIPA), which was signed into law on September 22, 2000.[1] The law, which passed both houses of Congress unanimously and was supported by a broad coalition of religiously and ideologically diverse groups, addresses religious discrimination and government infringement of religious liberty in two areas: local land-use laws, such as zoning and landmarking ordinances, and the religious exercise of persons confined to institutions.

Upon signing the Act, President Clinton said, "Religious liberty is a constitutional value of the highest order, and the Framers of the Constitution included protection for the free exercise of religion in the very first Amendment. This Act recognizes the importance the free exercise of religion plays in our democratic society."[2]

In the ten years since its passage, RLUIPA has helped secure the ability of thousands of individuals and institutions to practice their faiths freely and without discrimination. This has come both through victories in courts as well as through government officials voluntarily modifying their behavior to comply with the law. This report highlights the successes of RLUIPA over the last decade, as well as lessons learned and challenges faced in enforcing the law. It also examines the issues that religious communities, institutionalized persons, state and local officials, and the courts might face in the decade to come.

[1] 42 U.S.C. § 2000cc et seq.

[2] Presidential Statement on Signing The Religious Land Use and Institutionalized Persons Act of 2000, 36 Comp. Pres. Doc. 2168 (September 22, 2000).

Responding to a Need

The ability to gather for worship and religious exercise is a crucial element of true religious liberty. Recognizing that this ability was often hindered, intentionally or not, by state and local government decisions, Congress held nine hearings over the course of three years to examine religious discrimination in land use decisions. The hearings unearthed "massive evidence" of widespread discrimination against religious persons and organizations by state and local officials in land-use decisions.[3] They found that religious institutions frequently faced both overt and subtle discrimination based on religion in denials of zoning approval, and that this most often impacted minority faiths and newer, smaller, or unfamiliar denominations.[4] Specifically, faith groups whose members constitute only nine percent of the population made up 50 percent of reported court cases involving zoning disputes.[5] Likewise, in addition to minority faiths and nondenominational churches being disproportionately impacted by adverse zoning actions, Congress found that "[r]eligious discrimination is sometimes coupled with racial and ethnic discrimination."[6]

Congress also learned that, as a whole, religious institutions were often treated worse in zoning decisions than comparable secular institutions. As the bill's lead sponsors, Senators Edward Kennedy and Orrin Hatch, noted in their joint statement upon the bill's passage, "Zoning codes frequently exclude churches in places where they permit theaters, meetings halls, and other places where large groups of people assemble for secular purposes. . . . Churches have been denied the right to meet in rented storefronts, in abandoned schools, in converted funeral homes, theaters and skating rinks—in all sorts of buildings that were permitted when they generated traffic for secular purposes."[7]

In other situations, Congress considered evidence that zoning codes or landmarking laws subjected religious assemblies to unbounded and highly discretionary permitting proceedings, which often resulted in discrimination or the imposition of unjustifiably high burdens on religious exercise.[8]

With regard to institutionalized persons in prisons, mental institutions, juvenile facilities, and state-run nursing homes, Congress likewise determined that legislation to protect religious freedom rights was necessary. In its fact-finding, Congress noted that "some institutions restrict religious liberty in egregious and unnecessary ways," and that "prison officials sometimes impose frivolous or arbitrary rules."[9] The legislative history cited examples such as Jewish prisoners denied matzo bread at Passover, prisoners denied the

[3] *See* H.R. Rep. No. 106-219, 18-24 (1999); 146 Cong. Rec. 16698 (2000) (Joint Statement of Senators Hatch and Kennedy).
[4] *Id.*; HR Rep. No. 106-219 at 23-24.
[5] *Id.* at 21.
[6] *Id.* at 24.
[7] Joint Statement at 16698.
[8] H.R. Rep. 106-219 at 19-24.
[9] Joint Statement at 16699.

ability to wear small religious symbols such as crosses that posed no security risk, and a Catholic prisoner whose private confession to a priest was recorded by prison officials.[10]

In response to these identified problems, both houses of Congress passed RLUIPA in July 2000 by unanimous consent. The Department of Justice strongly supported the bill, and worked closely with House and Senate Judiciary Committee staffs on the drafting and refining the bill.[11]

RLUIPA's land-use sections provide important protections for the religious freedom of persons, places of worship, religious schools, and other religious assemblies and institutions. They codify the constitutional protections for religious freedom and against religious discrimination provided under the Free Exercise Clause, the Free Speech Clause, and the Equal Protection Clause, and provide mechanisms for enforcement of these rights.[12] The land use section contains five separate provisions, which together provide comprehensive protection for individuals and religious institutions from zoning and landmarking laws that discriminate based on religion or unjustifiably infringe on religious freedom.[13]

The law's institutionalized persons provision prohibits regulations that impose a "substantial burden" on the religious exercise of persons residing or confined in an "institution," unless the government can show that the regulation serves a "compelling government interest" and is the least restrictive way for the government to further that interest.

RLUIPA allows aggrieved persons to bring lawsuits under both its land use provisions and its institutionalized persons provision. In addition, RLUIPA authorizes the Attorney General to bring suits to enforce it. The Department of Justice may bring suit under RLUIPA for declaratory or injunctive relief, but not for monetary damages.

The bill's House and Senate sponsors were ideologically diverse, but all shared a commitment to protecting religious freedom and preventing religious discrimination.[14] RLUIPA was supported by more than seventy religious and civil rights groups representing a

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[10] H.R. Rep. 106-219 at 9-10; Joint Statement at 16699.

[11] 146 Cong. Rec. S7776 (daily ed. July 27, 2000) (letter from Assistant Attorney General Robert Raben).

[12] *Id.* at 16699-7.

[13] **Section 2(a)** addresses land use regulations that impose a "substantial burden" on religious exercise of a person or institution, unless the government can show that it has a "compelling interest" for imposing the restriction and that the restriction is the least restrictive way for the government to further that interest; **Section 2(b)(1)** provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions; **Section 2(b)(2)** bars discrimination "against any assembly or institution on the basis of religion or religious denomination;" **Section 2(b)(3)(A)** provides that governments must not totally exclude religious assemblies from a jurisdiction; and **Section 2(b)(3)(B)** provides that government must not unreasonably limit "religious assemblies, institutions, or structures within a jurisdiction."

[14] The sponsors included, in addition to Senators Hatch and Kennedy, Senators Charles Schumer, Mike Crapo, Joe Lieberman, and Robert Bennett, former Senators Gordon Smith, Tom Daschle and Tim Hutchinson, Representatives Jerrold Nadler, Barney Frank, Sanford Bishop, Lee Terry, Roy Blunt and Chet Edwards, and former Representatives Charles Canady, Merrill Cook and Robert Wexler.

great diversity of religious and ideological viewpoints such as the Leadership Conference on Civil Rights, the American Civil Liberties Union, the Baptist Joint Committee, the American Jewish Committee, the Union of Orthodox Jewish Congregations, and the Christian Legal Society.[15]

Ten Years Later: RLUIPA's Impact

Land Use

RLUIPA has had a dramatic impact in its first ten years on protecting the religious freedom of and preventing religious discrimination against individuals and institutions seeking to exercise their religions through construction, expansion, and use of property. The lawsuits under RLUIPA that have been successfully brought in these first ten years have defended the rights of a wide range of religious groups, including Christians, Jews, Muslims, Sikhs, and many others. And courts have issued orders protecting religious exercise in a wide range of settings, including:

- Places of worship;[16]
- Religious schools;[17]
- Prayer meetings and similar activities in private homes;[18] and
- Faith-based social services such as homeless shelters,[19] group homes,[20] and soup kitchens.[21]

Courts have awarded substantial damage awards under RLUIPA, including a $3.7 million compensatory damages award to a congregation that was barred from building a church on property it had purchased based on a county's animus toward the church.[22]

The Department of Justice has used the full array of available enforcement tools to ensure the protection of religious freedom. Since the enactment of RLUIPA, the Department has:

- Opened 51 RLUIPA investigations, including seven so far in 2010;

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[15] Joint Statement at 16701-02.

[16] *See, e.g., Guru Nanak Sikh Society v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006) (Sikh temple or Gurdwara); *Saints Constantine and Helen Greek Orthodox Church v. City of New Berlin,* 396 F.3d 895 (7th Cir. 2005).

[17] *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338 (2nd Cir. 2007).

[18] *See Konikov v. Orange County*, 410 F.3d 1317 (11th Cir. 2005) (meetings in rabbi's home); *DiLaura v. Township of Ann Arbor*, 112 F. App'x 445 (6th Cir 2004) (using home for religious retreats).

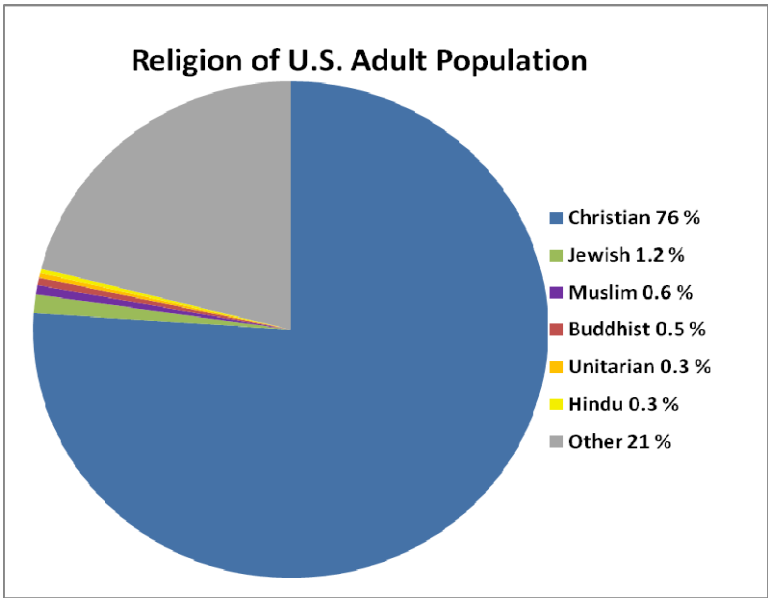
[19] *City of Woodinville v. Northshore United Church of Christ*, 211 P.3d 406 (Wash. 2009).

[20] *World Outreach Conf. Ctr. v. City of Chicago*, 591 F.3d 531 (7th Cir 2009); *Open Homes Fellowship v. Orange County*, 325 F. Supp. 2d 1349 (M.D. Fl. 2004).

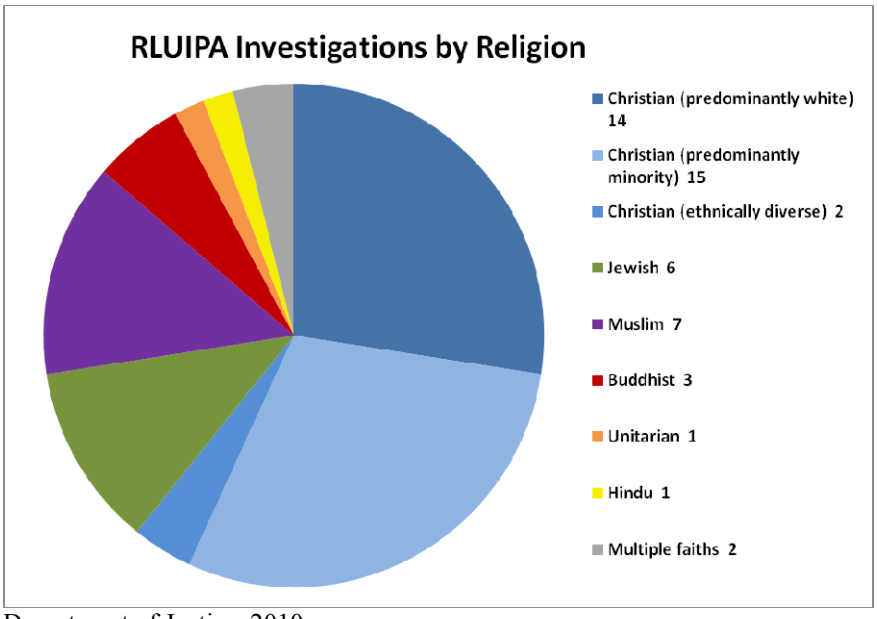
[21] *Lighthouse Inst. for Evangelism v. City of Long Branch*, No. 00-3366, 2010 U.S. Dist. LEXIS 36193 (D. N.J. 2010).

[22] *Reaching Hearts Int'l, Inc. v. Prince George's Cty.*, 584 F. Supp. 2d 766 (D. Md. 2008), *aff'd*, 368 F. App'x 370, 372 (4th Cir. 2010).

- Filed seven RLUIPA lawsuits involving land use;
- Filed 10 *amicus* briefs in private cases to inform the court about its interpretation of the law's provisions; and
- Intervened in private lawsuits to defend the constitutionality of RLUIPA in 30 land-use cases.



Data from the American Religious Identification Survey, 2008



Department of Justice, 2010

In some cases, the Department has opened investigations in order to inform local government officials about the law and their responsibilities under it. Additionally, through the Community Relations Service, the Department has worked directly with communities to diffuse tensions and resolve conflicts involving places of worship that might be unfamiliar to communities.

Excluding investigations currently pending, in more than two thirds of cases where the Department's Civil Rights Division opened an investigation, the relevant local government has subsequently modified its ordinance or its actions toward the complainant to remedy the potential RLUIPA violation.

The Department's cases have fallen into three basic categories: cases involving allegations of religious or racial animus by a jurisdiction against a place of worship or religious school; cases in which houses of worship have been barred in zones where secular assemblies such as clubs, lodges, or community centers are permitted; and cases where local governments have placed substantial burdens on the religious exercise of congregations, religious schools, or faith-based social service providers.

Examples of cases or investigations in which the Division has been involved include:

- *United States v. City of Walnut, California:*
  This month the Justice Department filed suit against the City of Walnut, California over its denial of a conditional use permit to the Chung Tai Zen Center to allow it to build a Buddhist house of worship. The suit alleges that the city had approved similar permits for other places of worship, and until it denied the Zen Center's application, the city had not denied any application for a conditional use permit to build, expand or operate a house of worship since at least 1980.

- *United States v. Suffern, New York:*
  In June 2010, the Department obtained a consent decree in this case, permitting the continued operation of a "Shabbos house" next to a hospital in a New York village. The facility provides food and lodging to Sabbath-observant Jews to enable them to visit sick relatives at the hospital on the Sabbath.

- *United States v. Metropolitan Government of Davidson County and Nashville, Tennessee:*
  After a Christian group, Teen Challenge, purchased land to build a residential substance abuse center, the defendants amended the zoning code in order to keep the facility from locating there. The Civil Rights Division investigated and filed suit, and reached a settlement in 2009 under RLUIPA and the Fair Housing Act, permitting Teen Challenge to move forward with its plans to build its residential treatment center.

- *United States v. City of Hollywood, Florida*:
  The Division filed suit in April 2005 against the City of Hollywood, Florida, after it denied a permit to an Orthodox Jewish synagogue located in a residential neighborhood,

a permit that the suit alleged was routinely granted to other houses of worship. The suit alleged that the denial and subsequent enforcement actions taken by the city against the synagogue were a result of discrimination toward Orthodox Jews. On the eve of the trial, the Division reached a consent decree with the city and the synagogue that permits the synagogue to continue to operate at the location and to expand in the neighborhood in the future, and requires training for city officials. A separate agreement signed at the same time required the city to pay $2 million in damages and attorneys' fees to the synagogue.

- *United States v. Village of Airmont, New York*:
  The United States alleges in this suit, that a New York village enacted a ban on boarding schools specifically to keep Hasidic Jews, who educate their young men in boarding schools called yeshivas, from settling in the village. A federal court rejected the village's motion to dismiss in 2008, and the case is moving forward.

- *United States v. City of Waukegan, Illinois:*
  The United States brought suit against the City of Waukegan, Illinois in 2008, over its exclusion of places of worship in districts that permitted clubs, lodges, meetings halls, and theaters, and its imposition of notices of violation to several small churches operating in these districts. The United States reached a consent decree with the city on February 25, 2008 requiring it to treat places of worship equally with other assemblies.

- *United States v. Maui County, Hawaii*:
  The Civil Rights Division sued the county of Maui in 2003, after the county denied a permit for Hale O Kaula, a small, nondenominational Christian church that has held services on Maui since 1960, to build a church on 5.85 acres of land in an agricultural district. The church encourages practitioners to grow food in accordance with Biblical principles and live in harmony with the land, and being in an agricultural district was integral to its worship needs. The county permitted various secular assemblies in the district, including rodeo facilities, petting zoos, and sports fields. The county subsequently settled with the church, permitting it to build and paying it damages and attorney's fees.

- *Gainesville, Florida*:
  The Civil Rights Division opened an investigation of the City of Gainesville, Florida after the city denied a permit to Fire of God Ministries to operate a church in a building formerly used as a Moose Lodge. As a result of the investigation, the city agreed to allow the church to operate on the site, and changed its zoning code to treat religious uses the same as other assembly uses. The Civil Rights Division closed its investigation in April 2008.

- *Berkeley, Illinois*:
  A mosque had operated in a former school building on a 4.5 acre parcel in the Village of Berkeley, Illinois for more than 20 years. The mosque sought to build a 13,000 square

foot addition to accommodate its congregation, which had grown to the point that worshipers spilled into the hallways during services, and to make exterior changes to give the building a more mosque-like appearance, including adding a minaret. The expansion project faced community opposition and repeated permit denials. The Civil Rights Division opened an investigation under RLUIPA in 2007. In March 2008, as a result of the investigation, the Village agreed to allow the mosque's project to move forward.

- *Albanian Associated Fund v. Township of Wayne, New Jersey*:
  A New Jersey Township allegedly delayed a mosque's building application for more than three years, then tried to stop the building project by seizing the property under eminent domain. The mosque filed suit under RLUIPA and various state and federal claims. The Division filed a friend-of-the-court brief against the Township's motion for summary judgment. The United States' brief contended that the mosque produced sufficient evidence to show that the Township deliberately thwarted the mosque's application for a conditional use permit for discriminatory reasons through its exercise of its power of eminent domain. The court agreed with the Division that the use of eminent domain power to bypass zoning regulations could violate RLUIPA. The parties ultimately settled the case, and the Division closed its investigation earlier this year.

- *Village of Morton Grove, Illinois*:
  A Muslim school in Morton Grove, Illinois, encountered community opposition to its plans to build a mosque on its property, much of which appeared to be driven by animus against Muslims. The Civil Rights Division opened a RLUIPA investigation, and, after mediation by the Department of Justice's Community Relations Service, the village reached an agreement that permitted the school to build the mosque subject to certain conditions.

- *Brighton Township, Pennsylvania*:
  Brighton Township denied a permit for an Assemblies of God church to build on a 3.25-acre lot, because the zoning code had a five-acre minimum for churches. However, the zoning code specifically stated that there was no minimum acreage requirement for adult movie theaters, cabarets, assembly halls, and fraternal organizations. The Civil Rights Division opened an investigation, and the Township amended its zoning code.

- *Midrash Sephardi v. Town of Surfside*:
  Two Orthodox Jewish Congregations were barred from meeting in space they had rented above a bank in the Florida city's commercial district. The city's zoning code permitted private clubs, lodge halls, dance studios, music studios, and language schools in the district, but excluded houses of worship. The Department filed an amicus brief in the U.S. Court of Appeals for the Eleventh Circuit, and a brief as intervenor defending the constitutionality of RLUIPA. The court ruled that the exclusion of houses of worship from the commercial district violated RLUIPA, and that RLUIPA did not exceed Congress's constitutional authority to enforce the Fourteenth Amendment.

- *Guru Nanak Sikh Society v. County of Sutter, California*:
  A Sikh congregation in a California county that only permits houses of worship in residential and agricultural districts first purchased land in a residential district, was denied a permit, and then purchased land in an agricultural district, only to be denied a permit there as well. The United States, participating as amicus, argued that the congregation's rights under RLUIPA had been violated, and the court of appeals agreed.

- *West Mifflin, Pennsylvania:*
  The Civil Rights Division opened an investigation of West Mifflin after an African American Christian congregation was denied a use permit for a church building it purchased from a predominantly white congregation. After the investigation began, officials reversed their decision and granted the use permit.

- *Douglas County, Georgia:*
  The Division opened an investigation of Douglas County after Victory Family Life Church was denied the ability to build a new sanctuary on land it had occupied for 20 years because its 2.8 acres were below the 3-acre minimum newly required for churches, despite comparable assemblies being permitted on small plots. The County amended its code to treat churches equally, and the Division closed its investigation.

- *Garden Grove, California:*
  The United States opened an investigation of the City of Garden Grove, California in 2007 over its denial of approval for a Buddhist group to convert a commercial building formerly used as a medical building into a temple in the city's office-professional zone. The United States closed its investigation earlier this year, after the city agreed to allow the group to locate its temple on the site.

Institutionalized Persons

In the institutionalized persons context, as with the land use context, courts have applied RLUIPA to protect the rights of a broad spectrum of religious traditions, including Buddhism, Christianity, Hinduism, Islam, Judaism, Native American religions, and Sikhism.

Since the enactment of RLUIPA, the Department of Justice has opened nine investigations and conducted numerous other informal investigations pursuant to RLUIPA's institutionalized persons provisions. In the institutional context, the Division is often able to address and rectify restrictions on religious exercise prior to formal initiation of a full investigation or court action.

The Division's efforts to informally intervene in a situation to alleviate a substantial burden on religious practice are particularly crucial in the institutionalized persons context, where the individual's efforts to honor his or her religious convictions can lead to significant health concerns or serious disciplinary action and thus prompt action is critical. For example, the

Division has received allegations in several cases that an individual has been denied a diet that is consistent with his religious practices, and has lost significant weight after refusing to consume food that violates his religious beliefs, placing his health at significant risk. After contacting such jurisdictions, the Division has been able to collaborate with State or local officials to ensure that the individual's health is monitored and that an appropriate diet is being provided.

The Department of Justice also has been active in defending challenges to the constitutionality of the institutionalized persons section of RLUIPA. Since the enactment of RLUIPA, the Department of Justice has intervened to defend the constitutionality of this section in 41 cases.

- *Utah State Prison*
  A prisoner in Utah State Prison filed a complaint in federal court alleging that he was denied access to a diet that would permit adherence to his Hindu faith. Specifically, he alleged that the main and alternative diet plans offered by the prison included meat and egg products that are prohibited by his religion. After the initiation of an investigation by the Civil Rights Division, earlier this year, Utah State Prison modified its policies to accommodate the inmate's religious practice and began providing a vegan meal consistent with his Hindu faith.

- *Oakley and Columbia Training Schools in Raymond and Columbia, Mississippi*:
  After a CRIPA investigation, the Special Litigation Section issued a findings letter reporting our finding that the schools had unconstitutionally required students to participate in religious activities against their will. The findings letter stressed that while religious activities can help further a juvenile facility's rehabilitative mission, and indeed that juveniles confined to a facility have a right under RLUIPA and the Constitution to engage in religious activities, forcing them to do so violates the Constitution. The facilities subsequently agreed to change their practices.

- *Alexander Youth Services Center, Alexander, Arkansas*:
  This case raised the same issues as the Oakley and Columbia Training Schools case. After the Department set forth these issues in a findings letter, the facility also agreed to change its practices.

- *Indiana Department of Corrections:*
  A Buddhist inmate at Westville Correctional Facility filed a complaint alleging that he was being denied an adequate protein substitute in the vegetarian diet supplied to him by the prison to accommodate his religious beliefs. Shortly after the Division initiated its investigation in 2008, the Indiana Department of Corrections began providing the prisoner with an appropriate diet.

- *Taylor Care Center, Westchester, New York*:
  The Department received allegations that staff members at Taylor Care Center, a nursing home, failed to accommodate a Sikh resident's religious practices, resulting in the

resident being fed an inappropriate diet and his hair being trimmed, both in violation of his religious beliefs. The resident's family had filed a private suit against the facility, and shortly after the Department initiated its investigation, the family was able to obtain a settlement that required the distribution of guidelines and training provided on religious accommodations. The Department in 2009 reached an agreement with the facility that ensured that the settlement agreement with the family would be honored.

The Next Decade and Beyond

A decade ago, Congress recognized a critical need to provide new protections for one of our oldest and most cherished freedoms. RLUIPA has proven to be the valuable tool that lawmakers and the religious and civil rights communities believed it would be for protecting the fundamental right of religious freedom and preventing religious discrimination. The breadth of contexts in which it has been applied, and the range of faith groups whose rights have been protected, is as diverse as the country in which we live.

The Civil Rights Division's efforts under RLUIPA are part of the broader effort to protect the ability of communities to practice their faiths in peace. RLUIPA has been a valuable addition to the federal law enforcement arsenal. Going forward, the Division will continue to use the wide range of tools in that arsenal to combat religious discrimination and protect religious liberty – whether it involves prosecuting acts of violence at houses of worship, protecting the rights of individuals to be free from discrimination in the workplace, or ensuring that students can receive a quality education no matter their faith.

Vigilance on all of these fronts remains critical in 2010 and beyond. While our nation has achieved great progress in advancing civil rights, many individuals and communities continue to face discrimination and hate. For example, nearly a decade after the attacks of September 11, 2001, Muslim Americans continue to struggle for acceptance in many communities, and still face discrimination. Of 18 RLUIPA matters involving possible discrimination against Muslims that the Department has monitored since September 11, 2001, eight have been opened since May of 2010. This fact is a sober reminder that, even in the 21st century, challenges to true religious liberty remain.

As we move into RLUIPA's second decade, we should applaud the progress made, while also acknowledging these remaining challenges: issues to be resolved by the courts, a continued need to educate and inform officials of their obligations under the law, and persistent patterns of prejudice that must be met and overcome.

The Justice Department continues to receive complaints about zoning codes that bar places of worship where secular assemblies like fraternal organizations and meeting halls are permitted. The Department still receives allegations of minority faiths experiencing bias-based opposition to their building or expanding places of worship. And the Department still regularly learns of

substantial burdens placed on religious land use for less-than-compelling reasons, such as generating extra tax revenue for a local jurisdiction or the personal preferences of officials.

In the institutional setting, prisoners are often denied basic religious accommodations such as access to clergy and religious materials, and the religious rights of persons in mental institutions are too often ignored. There remains much to be done going forward for the courts, private litigants, and the Department of Justice to enforce the basic provisions of RLUIPA and continue to educate government officials about their obligations under the law.

In the coming years, the courts will likely clarify a number of unsettled legal issues as more cases proceed through the judicial system. For instance, different courts currently use different tests to determine when a religious assembly is treated on less than equal terms than a nonreligious assembly or institution under RLUIPA Section 2(b)(1). Likewise, there have been very few cases decided under RLUIPA's prohibition against unreasonable limitation of religious assemblies. On the issue of relief, the Supreme Court this year will rule on whether monetary damages are available to plaintiffs under the institutionalized persons section of RLUIPA,[23] and this decision likely will frame the issue for the land-use provision as well.

However, one issue no longer active in the courts is the constitutionality of RLUIPA. The Supreme Court held in *Cutter v. Wilkinson*[24] that the institutionalized persons section of RLUIPA did not violate the Establishment Clause. Similarly, federal appeals courts have uniformly rejected arguments that RLUIPA violates the Spending Clause of the Constitution or exceeds Congress's power under the 14th Amendment. Indeed, since June 2006, the Department of Justice is aware of only one land-use case and one institutionalized persons case that have even raised RLUIPA's constitutionality as an issue.[25]

As the courts clarify remaining legal issues, the Department of Justice's Civil Rights Division will continue to fulfill an important role in enforcing RLUIPA, investigating potential violations, bringing lawsuits, participating as amicus in significant cases, providing technical assistance, and educating the public and government officials.

Animus-based discrimination remains a priority. Jewish synagogues and schools, African-American churches, and, increasingly, Muslim mosques and schools are particularly vulnerable to discriminatory zoning actions taken by local officials, often under community pressure. Increasing hostility and misunderstanding requires vigilant enforcement of the law to prevent such actions and ensure officials understand their responsibilities.

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[23] *Sossamon v. Texas*, No. 08-1438.

[24] 544 U.S. 709 (2005).

[25] *Merced v. City of Euless*, 4:06-cv-00891 (N.D. Tex.) (Motion to intervene filed April 2, 2007) (land use); *Sisney v. Reisch, et al.*, 03-cv-4260 (D. S.D) (Motion to intervene on September 27, 2007) (institutionalized persons).

The right to be free from such discrimination is among our most basic civil rights. The Department of Justice will continue to use RLUIPA, and all of our nation's civil rights laws, to ensure that every individual can enjoy the freedoms guaranteed by the Constitution.