

## A GUIDE TO THE RELIGIOUS LAND USE AND THE CHURCH VIRTUAL ROUNDTABLE

### Segment 1: Introduction

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This five-part video series on the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) aims to help churches understand how the Act may help them avoid or navigate legal skirmishes related to the purchase or use of property for worship and other religious purposes.

RLUIPA was enacted as a federal law to protect religious liberty from arbitrary and discriminatory action by the federal, state, and local government.

#### Moderator

**Attorney Midgett S. Parker**, an editorial advisor for [Church Law & Tax](#), has practiced law in Maryland since 1985 and specializes in land use, zoning, and real estate, through the [Law Office of Midgett S. Parker](#).

#### Host

**Attorney Matthew J. Branaugh** is the content editor for Church Law & Tax and creator of two supplemental [case studies](#) for the RLUIPA video series.

#### Roundtable panelists

**Attorney John W. Mauck**, a founding partner of [Mauck & Baker](#), testified in 1998 before the US House Subcommittee on the Constitution concerning church zoning problems, and in 2000 he was instrumental in drafting portions of the legislation that would become RLUIPA. Mauck is the author of [\*Jesus in the Courtroom: How Believers Can Engage the Legal System for the Good of His World\*](#).

**Attorney Noel W. Sterett**, a partner at [Dalton & Tomich](#), advises religious groups on civil rights matters and how best to secure zoning for religious land uses.

**Attorney Eric Treene** recently retired from the federal government where he served in the US Department of Justice as Special Counsel for Religious Discrimination for 19 years overseeing the administration of RLUIPA. He is currently senior counsel at [Storzer and Associates](#) and an instructor at Reformed Theological Seminary in Vienna, Virginia.

## Segment 2: The History of RLUIPA

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### John Mauck: from Ezra to US zoning restrictions

- The Book of Ezra (Ch. 4) recounts the first zoning case in which counselors were hired to prevent the Jews from rebuilding the temple.
- The advent of US zoning laws in the early 1900s led to some restrictions but churches still experienced a lot of freedom to build.
- Near the latter half of the 20th century, zoning codes increased and became more restrictive, making it increasingly difficult for churches to build in many neighborhoods and communities.

### Eric Treene: congressional hearings and development of RLUIPA

- Hearings before US Congress in the late 1990s regarding land use discrimination addressed:
  - Unreasonable expectations by local officials on construction and expansion of places of worship.
  - Minority faiths and minority populations disproportionately affected by adverse government action.
  - Local officials who showed preference to businesses that would produce jobs and tax revenue.
- “The right to assemble for worship” and the need for “physical space” to fulfill “theological requirements” was affirmed by the bipartisan cosponsors of RLUIPA.
- What RLUIPA does:
  - Creates a private right of action—meaning a church may file a lawsuit.
  - The DOJ may sue for injunctive or declaratory (nonmonetary) relief to enforce compliance on behalf of churches.
- Five reasons for applying RLUIPA:
  - Substantial burdens on religious exercise.
  - Unequal treatment between a religious assembly and a nonreligious assembly.
  - Discrimination based on the type or kind of religion.
  - Total exclusion of religious assemblies by municipalities.
  - Unreasonable exclusion of religious assembly.

### Noel Sterett: the scope of RLUIPA

- It only protects religious land uses.
- Important question: Do you have a religious exercise that’s being burdened by a local zoning code or ordinance?
- A church’s property plans must be motivated by religious beliefs.
- Examples of when RLUIPA might apply:
  - A church wants to use its parking lot to evangelize.
  - A church wants to use its facility to house the homeless on its property.
- Both religious exercise and land use must be in play for RLUIPA to apply.

- When it comes to land use, RLUIPA seeks to ensure that the rights of religious organizations are not being violated and that they are being treated the same as nonreligious organizations.

## Segment 3: Key Provisions of RLUIPA

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### Noel Sterett: alternatives to litigation

- Before moving forward with a lawsuit, the church's attorney should apprise the local municipality of the requirements of RLUIPA and in what ways the zoning code may be in violation of the law.
- Communicating with the local government officials could take the form of a legal brief or a letter from the church's attorney explaining what the law requires and why the church should be allowed to proceed.
- If alternatives don't work, litigation may be necessary to help ensure that the community is served and that the kingdom of God is advanced.

### John Mauck: pursuing litigation

- Hire an attorney who understands zoning, land use, and the various dynamics of RLUIPA.
- Determine if the case would be straightforward (e.g., discrimination appears easy to prove) or if the case is fact intensive and could involve lengthy litigation (e.g., must prove "substantial burden" on its ministry if it is unable to build or expand).
- Make sure the elders and church membership are fully aware of any plans to apply RLUIPA, in agreement with plans to litigate, and willing to persevere through the possibility of a lengthy process.
- The church needs to be united and spiritually prepared to move forward with the litigation process.
- Understand "fee shifting" (i.e., if a church wins the case, costs shift to the defendant) and how it could be a means of avoiding litigation.
- The amount of time necessary to decide a case varies. Many cases are settled in a short period of time (three to six months), quite a few take longer, and appealed cases could add a year or two to the time frame.

### Eric Treene: the DOJ's RLUIPA enforcement program

- The DOJ's Civil Rights Division has a RLUIPA enforcement program authorized to investigate and bring lawsuits on behalf of churches.
- Three steps of an investigation:
  1. Open a preliminary inquiry—can be initiated by filing complaint.
  2. Open a formal investigation to seek additional information.
  3. File a lawsuit or a statement of interest (a brief) to assist the church's own lawsuit.
- A DOJ investigation is discretionary and only for injunctive (not monetary) relief.
- The DOJ's criteria for taking a case:
  - Is it a recurring problem or important issue?

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- Does a church already have adequate representation?
  - How egregious is the violation?
  - How does it fit with civil rights enforcement?
  - How well resourced is the DOJ to provide time and assistance in a particular case?
- How to file a complaint:
  - Go to the DOJ's [RLUIPA website](#) (press the "Report religious discrimination under RLUIPA" button).
- For additional information:
  - Go to the [Place to Worship Initiative website](#) to receive a free downloadable brochure.

## Segment 4: RLUIPA Resources

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### Eric Treene: through the DOJ

- Go to the DOJ's [RLUIPA website](#) to report a religious discrimination issue related to zoning and land use.
- The [Place to Worship Initiative website](#) offers the free *Federal Religious Land Use Protections* educational brochure.
- The downloadable [Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act](#) offers information that can be used to educate local municipalities and government officials on RLUIPA.
- The downloadable [Statement of the Department of Justice on the Land Use Provisions of the Religious Land Use and Institutionalized Persons Act \(RLUIPA\)](#) answers 18 common questions that can help a church discuss RLUIPA with its local zoning board.
- Church leaders may contact Treene directly with questions about RLUIPA at [etreene@gmail.com](mailto:etreene@gmail.com).

### Noel Sterett: through Dalton & Tomich

- [7 Steps to Starting a New Ministry at Your Church: What Every Church Needs to Know About Their Zoning & Land Use Rights](#) is a free downloadable guide from Sterett's firm.
- [The Definitive RLUIPA Book: Litigating Religious Land Use Cases](#) is a book by the firm's founder and partner, Daniel P. Dalton, which is published by the American Bar Association.

### John Mauck: finding an attorney

- Christian Legal Society offers a [Find a Christian Lawyer](#) page.
- The Alliance Defending Freedom has attorneys who do zoning work, and it also [may provide grants](#) to attorneys who provide legal help for churches and ministries.

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## Matthew Branaugh: from Church Law & Tax

- Supplemental case studies:
  - A zoning board sought to shut down City Walk Urban Mission in Tallahassee, Florida, through the enforcement of zoning code. This [case study](#) shows how Pastor Renee Miller, the executive director of City Walk, worked with attorney Noel Sterett to successfully navigate the issue and continue the ministry's work in Tallahassee.
  - Christian Fellowship Center - Canton, led by Pastor Jamie Sinclair, sought to purchase a building in upstate New York but faced opposition from the local zoning board. In this [case study](#), attorney John Mauck helped Sinclair work through the legal issues so that Christian Fellowship Center could purchase the property.
- Attorney Richard Hammar's [RLUIPA](#) section in Church Law & Tax's Legal Library provides pertinent background information, case synopses, and examples to help a church determine if their rights under RLUIPA have been violated.
- In his article "[Eleven Things Churches Should Know About Zoning](#)," attorney John Mauck details what church leaders should consider when buying or building their next facility.

## Segment 5: How RLUIPA May Help Your Church in the Future

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### Noel Sterett: RLUIPA—a tool for growing, dynamic church ministries

- The increasing complexity and proliferation of zoning and land use ordinances are on a collision course with what churches want to do to serve their communities and congregations.
- RLUIPA becomes a critical tool for creating dynamic ministries that appear to operate outside the traditional church model.
- RLUIPA helps churches, for example, defend the right to serve the homeless or create a pregnancy care center.
- Qualified attorneys are equipped to find alternatives to litigation, but they will also move forward with litigation as needed.

### Eric Treene: trends that may indicate the need for RLUIPA

- Larger churches often have little community connections and end up having limited influence on city officials.
- Increasing numbers of church planters want to open churches in nontraditional spaces (such as closed retail stores).
- Churches want to start nontraditional outreach ministries in a community, such as coffee shops.
- Christian schools are expanding in size and moving into new communities.

### John Mauck: encouraging the discouraged

- Churches and church leaders discouraged by local government opposition should be encouraged by the help they can receive through RLUIPA and qualified attorneys.