Public Law 106–274
106th Congress

An Act

To protect religious liberty, and for other purposes.

Sept. 22, 2000
[S. 2869]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Religious Land Use and Institutionalized Persons Act of 2000.
42 USC 2000cc note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Religious Land Use and Institutionalized Persons Act of 2000".

42 USC 2000cc.

SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.

(a) SUBSTANTIAL BURDENS.—

(1) GENERAL RULE.—No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) SCOPE OF APPLICATION.—This subsection applies in any case in which—

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) DISCRIMINATION AND EXCLUSION.—

(1) EQUAL TERMS.—No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) NONDISCRIMINATION.—No government shall impose or implement a land use regulation that discriminates against

any assembly or institution on the basis of religion or religious denomination.

(3) EXCLUSIONS AND LIMITS.—No government shall impose or implement a land use regulation that—

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

42 USC 2000cc–1.

SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.

(a) GENERAL RULE.—No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) SCOPE OF APPLICATION.—This section applies in any case in which—

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

42 USC 2000cc–2.

SEC. 4. JUDICIAL RELIEF.

(a) CAUSE OF ACTION.—A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) BURDEN OF PERSUASION.—If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) FULL FAITH AND CREDIT.—Adjudication of a claim of a violation of section 2 in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) ATTORNEYS' FEES.—Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended—

(1) by inserting "the Religious Land Use and Institutionalized Persons Act of 2000," after "Religious Freedom Restoration Act of 1993,"; and

(2) by striking the comma that follows a comma.

(e) PRISONERS.—Nothing in this Act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) AUTHORITY OF UNITED STATES TO ENFORCE THIS ACT.—The United States may bring an action for injunctive or declaratory relief to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) LIMITATION.—If the only jurisdictional basis for applying a provision of this Act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

SEC. 5. RULES OF CONSTRUCTION.

42 USC 2000cc–3.

(a) RELIGIOUS BELIEF UNAFFECTED.—Nothing in this Act shall be construed to authorize any government to burden any religious belief.

(b) RELIGIOUS EXERCISE NOT REGULATED.—Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) CLAIMS TO FUNDING UNAFFECTED.—Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) OTHER AUTHORITY TO IMPOSE CONDITIONS ON FUNDING UNAFFECTED.—Nothing in this Act shall—

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.

(e) GOVERNMENTAL DISCRETION IN ALLEVIATING BURDENS ON RELIGIOUS EXERCISE.—A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) EFFECT ON OTHER LAW.—With respect to a claim brought under this Act, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption

that Congress intends that any religious exercise is, or is not, subject to any law other than this Act.

(g) BROAD CONSTRUCTION.—This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.

(h) NO PREEMPTION OR REPEAL.—Nothing in this Act shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this Act.

(i) SEVERABILITY.—If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

42 USC 2000cc–4.

SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORATION ACT.

(a) DEFINITIONS.—Section 5 of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb–2) is amended—

(1) in paragraph (1), by striking "a State, or a subdivision of a State" and inserting "or of a covered entity";

(2) in paragraph (2), by striking "term" and all that follows through "includes" and inserting "term 'covered entity' means"; and

(3) in paragraph (4), by striking all after "means" and inserting "religious exercise, as defined in section 8 of the Religious Land Use and Institutionalized Persons Act of 2000.".

(b) CONFORMING AMENDMENT.—Section 6(a) of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb–3(a)) is amended by striking "and State".

42 USC 2000cc–5.

SEC. 8. DEFINITIONS.

In this Act:

(1) CLAIMANT.—The term "claimant" means a person raising a claim or defense under this Act.

(2) DEMONSTRATES.—The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

(3) FREE EXERCISE CLAUSE.—The term "Free Exercise Clause" means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) GOVERNMENT.—The term "government"—

(A) means—

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 4(b) and 5, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) LAND USE REGULATION.—The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) PROGRAM OR ACTIVITY.—The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4a).

(7) RELIGIOUS EXERCISE.—

(A) IN GENERAL.—The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) RULE.—The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

Approved September 22, 2000.

LEGISLATIVE HISTORY—S. 2869:

CONGRESSIONAL RECORD, Vol. 146 (2000):
July 27, considered and passed Senate and House.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 36 (2000):
Sept. 22, Presidential statement.

○

Strategies encouraging uniform application of land use regulations

- Decisions should be based upon the impacts of the land use, not the religious beliefs of the applicant
- Apply the City's regulatory standards equally and objectively
- Determine whether the City has sufficient locations to accommodate the types of public assembly, or other, uses in an application
- Remember that religious institutions are not exempt from land use regulations *and* the City can differentiate between small public assembly uses (X capacity or less) allowed by right in certain zones and larger ones allowed in other zones or by CUP in certain zones
- Ensure that land use regulations are not being selectively enforced based upon the religious beliefs, or lack of religious beliefs, for any particular land use (which could form the basis for a discriminatory treatment claim or equal protection claim)

Strategies cont.

- Do not separately identify religious uses as a distinct land use within the City's regulations, e.g., for development standards or locations.
- Ensure regular training regarding RLUIPA – ignorance of the law can form the basis for a RLUIPA violation.
- Refrain from making any remarks regarding an applicant's religious beliefs or land use that are, or could be viewed as, discriminatory.
- Do not engage in deciding whether a land use is religious; objective application of regulations is desirable regardless of the underlying religious beliefs of the applicant.
- Create an administrative record that is based only upon the application of sound land use standards and considerations rather than the religious beliefs of the applicant. Assist all applicants with redesign, reapplications, or relocations if the uses identified in an application merit such consideration, e.g., if a particular location is too small for a large public assembly, help the applicant find alternatives.

About Karl H. Berger

Karl Berger is the City Attorney for the City of Bellflower; the Assistant City Attorney for the cities of El Segundo and Monterey Park; and serves as Deputy City Attorney for Port Hueneme. Mr. Berger currently provides special counsel services for the cities of Brentwood, Goleta, Santa Paula, and Simi Valley. Between 2003 and 2012, Mr. Berger served as City Attorney for the City of Santa Paula. He previously served as an Assistant City Attorney for the cities of Camarillo, San Buenaventura, and Santa Clarita. He also served as an attorney for the El Cajon City Attorney's office.

Mr. Berger's entire career is dedicated to representing public clients either as a contract city attorney or public employee (Jenkins & Hogin, LLP; Burke, Williams & Sorensen; City of San Buenaventura; McDougal, Love, Eckis and Grindle, LLP; and D. Dwight Worden & Associates, APC). Mr. Berger served as a member of the Legal Advocacy Executive Committee with the League of California Cities. He also served on the Housing, Community & Economic Development Policy Committee with the League of California Cities. In addition, he is a contributing author for Institute for Local Government, Charter City Project and the Municipal Law Handbook. In 2006, 2007, and 2008, Mr. Berger was recognized as a "Rising Star" by SuperLawyer Magazine.

Mr. Berger is a member of the California State Bar; the Ventura County Bar Association; the Tri-Counties Local Government Attorneys' Association; and the City Attorney's Association of Los Angeles County. He earned a B.A. (1991) from the University of California at Davis and a J.D. (1995) from Creighton University School of Law.

Mark D. Hensley founded the Hensley Law Group ("HLG") in 2014 with the help of Mr. Berger. HLG is a municipal law firm comprised of seasoned attorneys who dedicated their careers to representing public agencies. HLG does not represent any private parties including, without limitation, land developers. Our philosophy of only representing public agencies ensures that our clients have no concerns about any potential conflicts between public and private clients. We currently provide city attorney services for five California cities: Bellflower, Chino Hills, El Segundo, Monterey Park and Port Hueneme. HLG also provides special counsel services for several cities in California including Brentwood, Goleta, Long Beach, Santa Paula, and Simi Valley.

HLG lawyers have practiced together for many years: Mr. Hensley and Mr. Berger have practiced together since 2001. All of the attorneys previously practiced together at other law firms before joining together at HLG. This familiarity and camaraderie allows for efficient and effective representation of our clients.