

Obamacare and churches RLUIPA outcomes will affect churches

by Randy Bright <http://www.tulsabeacon.com/?p=6013>

This month we should be hearing of the decision by the U.S. Supreme Court regarding the individual mandate to purchase insurance under Obamacare.

Last month, a number of Catholic Churches and institutions filed suit against the federal government over the requirement to provide contraception and abortions imposed by Obamacare. In U.S. history, never have rights and religious rights of the American people been under greater assault than they are now, and while most of us are hopeful that it will be overturned and that Obamacare will be completely repealed, there is no assurance that it will.

Last year, religious rights were under assault by Boulder County, Colorado, when they took Rocky Mountain Christian Church to the US Supreme Court, hoping that the Court would overturn every previous court that had held that the church's rights had been violated under the Constitution and RLUIPA, the Religious Land Use and Institutionalized Persons Act. Fortunately, the Court refused to hear the case.

I say fortunately because I believe that there would have been a good chance that it could have led to RLUIPA's demise, given the increasing population of liberal judges on the bench. RLUIPA has been instrumental in protecting the rights of numerous churches since its passage in 2000. Its main purpose was to protect churches from abuse by municipalities that used zoning codes and procedures to impede or prevent churches from exercising their rights to use their property, including the construction of new facilities.

RLUIPA is not a term that the general public hears every day, and comparatively few people even know of its existence. That's unfortunate, given that it is the most important law (aside from the Constitution itself) that churches can rely upon to protect themselves from cities or counties that use zoning as a weapon against them.

RLUIPA was enacted after an earlier law, the Religious Freedom Restoration Act (RFRA) of 1993, was declared unconstitutional by the 1997 Supreme Court case of *City of Boerne v. Flores*. In that case, the city had refused a permit for the expansion of a church in an historic district, and the Court ruled Congress was only empowered to enforce the Fourteenth Amendment (due process and equal protection of the law), and that specific treatment of religion had not been identified in the RFRA.

RLUIPA was more specific, stating that "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 interest.”

As such, RLUIPA prohibits a church from receiving less favorable treatment than other institutions. It also prohibits banning churches from any jurisdiction, or from imposing unreasonable requirements on churches.

The constitutionality of the land use portion of the RLUIPA has still not been confirmed by the Supreme Court, but it has been upheld by the U.S. Court of Appeals for the Seventh Circuit and by the majority of the lower district courts.

Passage of RLUIPA was timely, because only a few years later the US Supreme Court essentially gave carte blanche to municipalities to take property, using eminent domain, that it deemed necessary for economic purposes.

Since then, churches have come under increased risk for taking because of their tax-exempt status.

Had the Court taken the Rocky Mountain Christian Church case, and had they ruled in favor of Boulder County instead of the church, I believe it would have significantly weakened RLUIPA if it would not eliminate it completely.

The outcome of the individual mandate in Obamacare and the outcome of the lawsuits by the Catholics are critical to the long-term religious rights of all Americans.

If the individual mandate is upheld, it will signal to the federal government that it can impose any thing it wishes upon the public, and if the Catholics do not prevail in their lawsuits, it will tell the federal government that it can force Christians and churches to act against their religious beliefs and their consciences.

The importance of these two cases cannot be understated. A bad outcome may well be the beginning of an all-out political war against Christianity in America.

Something to think about when we vote next November.

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