No. 14-56137

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HARBOR MISSIONARY CHURCH CORPORATION,
Plaintiff-Appellant

v.

CITY OF SAN BUENAVENTURA, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the
Central District of California
Judge Manuel L. Real, District Judge
Case No. 2:14-CV-03730 R (VBK)

AMICUS BRIEF OF THE LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF CITY OF BUENAVENTURA ON HARBOR MISSIONARY CHURCH CORPORATION'S INTERLOCUTORY APPEAL FROM ORDER DENYING PRELIMINARY INJUNCTION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for the Amicus Curiae League of California Cities certify that (1) the League of California Cities does not have any parent corporations, and (2) no publicly-held companies hold 10% or more of the stock or ownership interest in the League of California Cities.

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I. INTRODUCTION

The League of California Cities ("League") submits this amicus curiae brief in support of Appellees City of San Buenaventura and its officers ("City"). The arguments made by Appellant Harbor Missionary Church Corporation ("Harbor") have broad implications that are of great importance and significance to California cities. Through the positions it takes in this case, Harbor suggests that outright denial of a land use permit is a per se violation of the Religious Land Use and Institutionalized Persons Act (42 U.S.C. § 2000cc, hereinafter "RLUIPA"). Harbor essentially argues that denial of a land use permit necessarily constitutes a substantial burden on religious exercise and cannot constitute the least restrictive means in furtherance of a compelling government interest under RLUIPA. To the contrary, RLUIPA does not abolish a city's well-established constitutional police power authority to make local land use decisions. Moreover, by bringing its RLUIPA claim before it was ripe, Harbor attempts to circumvent local administrative procedures and improperly places local land use decisions before the federal courts. For these reasons, and as set forth in greater detail below, the League respectfully requests that the Court affirm the trial court's order denying Harbor's motion for preliminary injunction.

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II. STATEMENT OF IDENTITY OF AMICUS CURIAE

The League is an association of 473 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance because the categorical rules urged by Harbor would expand liability under RLUIPA and could subject municipalities to liability under RLUIPA whenever a city denies a land use permit that a church or religious organization requests, regardless of the facts and circumstances surrounding the application. The application of RLUIPA urged by Harbor could result in abrogation of a city's constitutional police power authority over land use decisions when the permit applicant is a religious organization.

The League submits this brief to assist this Court in clarifying the intended application and limitations of RLUIPA, and to emphasize the importance of continued municipal authority and discretion over local land use matters notwithstanding RLUIPA's requirements. Neither party to the case authored this

brief, in whole or in part. In addition, neither party and no person contributed money that was intended to fund the preparation or submission of this brief.

Harbor and the City have consented to the League filing this amicus brief in support of the City.

III. STATEMENT OF FACTS

The League adopts the Statement of Facts set forth in the City's brief.

IV. ARGUMENT

A. COURTS HAVE DEFERRED TO MUNICIPALITIES TO CONTROL LOCAL LAND USE AND RLUIPA DOES NOT ELIMINATE LOCAL AUTHORITY TO REGULATE LAND USE.

Local government authority to determine, implement and enforce local land use policy is well established under State and federal law. Zoning and land use regulations are an exercise of the government's police power to protect the public's health, safety, and welfare. U.S. Const., amend. X; Cal. Const., art XI, § 7; *Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926); *Miller v. Bd. of Public Works*, 195 Cal. 477 (1925). The United States Supreme Court has recognized that "[t]he power of local governments to zone and control land use is undoubtedly broad and its proper exercise is an essential aspect of achieving a satisfactory quality of life in both urban and rural communities." *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 68 (1981). As such, "courts generally have emphasized the breadth of municipal power to control land use," and courts have deferred to municipalities in

determining and implementing land use policies. *Id.* Because "[l]and use policy customarily has been considered a feature of local government and an area in which the tenets of federalism are particularly strong," federal courts have "expressly disavowed any desire to sit as a statewide board of zoning appeals hearing challenges to actions of municipalities" and generally decline to interfere with land use regulation. *Izzo v. Borough of River Edge*, 843 F.2d 765, 769 (3d Cir. 1988).

Courts have also traditionally declined to substitute their judgment for that of local government bodies, primarily because local agencies are in the best position to address local social issues and respond to resident concerns. *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 977 (9th Cir. 2011); *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 348 (2d Cir. 2004) (noting "judiciary's appreciation that land use disputes are uniquely matters of local concern more aptly suited for local resolution"). As stated by the Third Circuit Court of Appeals, "land-use regulation generally affects a broad spectrum of persons and social interests, and … local political bodies are better able than federal courts to assess the benefits of such legislation." *Rogin v. Bensalem Tp.*, 616 F.2d 680, 698 (3d Cir. 1980). For these reasons, United States Supreme Court decisions have established procedural "barriers...against the federal courts becoming the Grand Mufti of local zoning boards." *Hoehne v. County of San*

Benito, 870 F.2d 529, 532 (9th Cir. 1988) (citing *Williamson County v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) and *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340 (1986)).

Although one purpose of RLUIPA may be to guard against unjustified restrictions on religious land uses (see *Guru Nanak Sikh Soc. of Yuba City v. County of Sutter*, 456 F.3d 978, 987, n.9 (9th Cir. 2006)), the courts continue to recognize and give substantial deference to -- even in the context of RLUIPA actions -- the authority of local governments to ultimately make local land use decisions. See, e.g., *Guatay*, 670 F.3d at 977-80; *Murphy*, 402 F.3d at 348-49. Accordingly, contrary to Harbor's suggestions, RLUIPA cannot be read so broadly as to eliminate a city's authority to appropriately consider local issues and reach fitting resolutions to a local land use dispute or to approve, conditionally approve or deny a land use application.

B. DENIAL OF A LAND USE PERMIT IS NOT NECESSARILY A "SUBSTANTIAL BURDEN" UNDER RLUIPA.

Harbor argues that the City's denial of its conditional use permit application constitutes a substantial burden on its religious exercise under RLUIPA. (Appellant's Opening Brief at pp.32-39; Appellees' Opening Brief at p.7.) The logical extension of this argument is that any denial of a land use permit to a religious organization necessarily constitutes a substantial burden.

The protections afforded by RLUIPA are not without limit, and the categorical rule suggested by Harbor would be an unprecedented expansion of RLUIPA. Courts have not adopted any definitive rule as to what is and what is not a substantial burden on religious exercise. Rather, courts determine the existence of a substantial burden on a case-by-case basis, considering the facts presented in each instance. See, e.g., *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1035-36 (city's denial of rezoning application did not constitute substantial burden on plaintiff's religious exercise when there was no evidence showing that plaintiff was precluded from using other sites); *Guru Nanak*, 456 F.3d at 989-90 (finding substantial burden on plaintiff's religious exercise where county's reasons for denying conditional use permit could apply to all future applications and plaintiff's proposed mitigation efforts proposed by plaintiff were rejected without explanation).

Further, there is no authority for the proposition that denial of a land use permit necessarily results in a substantial burden on religious exercise under RLUIPA. At least one court has specifically rejected this argument. *Williams Island Synagogue, Inc. v. City of Aventura*, 258 F.Supp.2d 1207 (S.D. Fla. 2005). Additionally, contrary to Harbor's position, courts have held in numerous cases and in various situations that outright denial of a use permit did not amount to a substantial burden on the applicant's religious exercise. In *Vision Church v.*

Village of Long Grove, the Seventh Circuit Court of Appeal found that no substantial burden on religious exercise resulted from a village's denial of a special use permit when the proposed use violated the village's assembly ordinance. *Vision Church v. Village of Long Grove*, 468 F.3d 975 (7th Cir. 2006). The Eleventh Circuit reached a similar conclusion in *Midrash Shephardi, Inc. v. Town of Surfside*, where the court found no substantial burden on religious exercise when the town's denial of a synagogue's special use permit and variance applications required congregants to walk a few additional blocks to a permitted location. *Midrash Shephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004). The court in *Grace Church of Roaring Fork Valley v. Bd. of County Commissioners* also found no substantial burden resulted from a county's denial of a church's use application when the denial was in part because of "size and operating characteristics of the proposal being out of harmony with the surrounding area." *Grace Church of Roaring Fork Valley v. Bd. of County Commissioners*, 742 F.Supp.2d 1156 (D.Colo. 2010).

Here, Harbor essentially argues that anything other than a land use permit allowing it to use the subject property in any manner it seeks constitutes a substantial burden on the exercise of religion. The Court should reject any argument that implies or seeks a ruling that the denial of a land use permit necessarily constitutes a substantial burden under RLUIPA. Such a result would

enable religious organizations to obtain permits allowing for the use of their land in ways that are wholly inconsistent with local land use policies; in essence, religious groups could seek complete exemption from land use regulations. For example, an organization could argue that its religious tenets require it to establish large-scale facilities or complexes to provide services to the needy and that as such, it is entitled to a permit allowing these uses regardless of the location of its property or the impacts on the surrounding neighborhood or area. This would unduly impair municipalities' ability to determine appropriate local land uses and implement those decisions.

The rule urged by Harbor undermines a city's well-recognized authority to determine local land use policy and make decisions on land use applications and disputes. Moreover, if Harbor's argument is accepted, a city could be subject to a RLUIPA claim any time it denies a land use permit to any applicant asserting a religious practice. No court has adopted such a rule that would so greatly undermine the ability of local governments to address issues concerning local land use, as the decision-makers that are best situated and equipped to do so.

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C. THIS COURT SHOULD NOT EFFECTIVELY ENDORSE A CATEGORICAL RULE THAT THE OUTRIGHT DENIAL OF A LAND USE PERMIT CANNOT BE THE LEAST RESTRICTIVE MEANS TO FURTHER A COMPELLING GOVERNMENT INTEREST.

Assuming that denial of a land use permit substantially burdens religious exercise, Harbor further argues that denial of a land use permit is never the least restrictive means of advancing a city's compelling governmental interest. (See Appellant's Opening Brief at p.40.) The Court should reject this argument to avoid effectively implementing a sweeping, categorical rule that would potentially implicate RLUIPA and undermine local government land use authority whenever an applicant asserts that its permit application is in some way related to religious exercise. There is no authority for the broad, categorical rule that Harbor urges. Rather than adopting any such bright-line rule, courts engage in a fact-based inquiry and consider the evidence before it to determine whether a local government's action constitutes the least restrictive means in furtherance of a compelling government interest. See, e.g., *U.S. v. Wilgus*, 538 F.3d 1274, 1289

The City is not required to consider and reject every potential alternative that may be available to Harbor. *Id.*, at 1288-89 (government can never conclusively prove that "no matter how long one were to sit and think about the question, one could never come up with an alternative regulation"). Because a city cannot identify or define a land use applicant's religious exercise, it is incumbent upon the

applicant to cooperate with the city in an attempt to reach a compromise that allows for the applicant's religious exercise in a manner consistent with the local land use policies and the community's needs. *Fowler v. Crawford*, 534 F.3d 931, 939-40 (8th Cir. 2008) (burden of production shifted to plaintiff after government showed that it had proposed other means by which plaintiff could practice his faith and that plaintiff had rejected those alternatives); contrast with *Guru Nanak* at 989-90 (plaintiff readily agreed to county's proposed mitigation measures). Accordingly, the position Harbor takes here -- that outright denial of a land use permit cannot constitute the least restrictive means to further a compelling government interest that burdens religious exercise -- is unsupported by any precedent.

The authority and discretion to approve, or when appropriate to deny or condition, land use permits are essential to local government's ability to implement land use policies and to protect citizens from incompatible and dangerous land uses. In order to preserve local discretion in making land use decisions, municipalities must have the option of denying a land use permit. This is particularly true where, as here, the applicant proposes a use that is incompatible with the public health and safety of the city's residents. In this case, Harbor refused to cooperate with the City to identify land use conditions that would appropriately accommodate its religious exercise, unequivocally objecting to the

conditions proposed by the City and failing to provide any alternative options. (Appellees' Opening Brief at 7-8, 27-31.) Additionally, Harbor refused to accept responsibility for the serious negative impacts directly resulting from its homeless services, and was loath to change its program to safeguard the wellbeing of residents near the property. (Appellees' Brief at p.8.)

As demonstrated by this case, a city must have the option of denying a land use permit application when the applicant proposes uses that are unreasonable, impracticable or threaten the public health and safety. If a city cannot outright deny a land use permit application without risking a RLUIPA claim, it would be forced to select ineffective means of achieving its compelling interest in protecting the public's health, safety, and welfare. Were the Court to effectively adopt a rule that outright denial of a land use permit can never be the least restrictive means for furthering a compelling state interest, municipalities would be coerced into accepting untenable land use proposals or risk defending RLUIPA claims. Such a rule would overturn well-established jurisprudence. Rather than respecting the constitutional power of local agencies to determine appropriate land use in the community, applicants would be able to secure approval of permits that allow unlimited and unconditional land use. The League takes no position on what activity or practice qualifies as religious exercise. Rather, the League urges this

Court to reaffirm that traditional local control over land use decisions must be preserved and complied with, regardless of the proposed use.

RLUIPA is not without limitation and does not guarantee unrestricted religious land use. Local governments must be able to retain their authority to determine appropriate land uses, and issuance of land use permits is a critical mechanism through which that authority is exercised. By adopting the rule urged by Harbor, the Court would undermine local governments' discretion to deny land use permits and significantly diminish local agencies' ability to make land use decisions, and to protect the health, safety, and welfare of their residents. Accordingly, the Court should decline to endorse a rule that outright denial of a land use permit cannot qualify as the least restrictive means for furthering a compelling government interest under RLUIPA.

D. HARBOR'S RLUIPA CLAIM SHOULD BE DENIED OUTRIGHT, AS IT IS NOT RIPE AND ATTEMPTS TO CIRCUMVENT THE CITY'S ADMINISTRATIVE PROCESSES.

The League agrees with the City's argument that Harbor's RLUIPA claim is not ripe and therefore not properly before this Court, pursuant to *Williamson,* 473 U.S. 172, and *Guatay*, 670 F.3d 957. Harbor's claim is not ripe for at least two reasons. First, Harbor failed to seek reconsideration of its conditional use permit application before the full City Council. Second, Harbor failed to submit a revised use permit application that addressed and attempted to mitigate the concerns raised

by the City and the community during the review of the initial permit application. As such, the City has not yet been able to consider potential conditions on Harbor's land use that would both allow Harbor's requested activities and conform with the City's land use policies.

Allowing Harbor and similarly situated plaintiffs to proceed with a RLUIPA claim in federal court enables them to remove land use decisions from local governments and place them before the courts. This result places a significant burden on the federal courts and constitutes the inefficient use of judicial resources.

Further, making judicial remedies available before an applicant has submitted a complete and meaningful land use application deprives cities of their authority and control over land use matters. It also allows applicants to avoid addressing concerns raised by the local agency and the community. Indeed, one reason for requiring ripeness of claims, particularly in the land use context, is to give deference to local decision-making. See, e.g., *Murphy*, 402 F.3d at 348. As this Court has stated, ensuring that claims are ripe before they are heard by a court "accords with principles of federalism because, by encouraging resolution of land use disputes at the local level, it 'evinces the judiciary's appreciation that land use disputes are uniquely matters of local concern.'" *Guatay*, 670 F.3d at 977.

Local bodies, like the City's Planning Commission and City Council, are best equipped to consider land use proposals and make decisions consistent with the needs of the local community. Administrative hearings and processes exist to enable local agencies to thoroughly consider factual evidence and address local concerns and issues. In this case, for example, the City held a total of six public hearings, three before the Planning Commission and three before the City Council. More than 150 residents appeared before the Planning Commission and dozens of neighbors appeared before the City Council to communicate their concerns and perspectives to the decision-makers. (Appellees' Opening Brief at pp.7-8.) Allowing a land use challenge to proceed in court before it is ripe ultimately deprives the community of its full opportunity to be heard and deprives the local government agency of its authority to make the final determination of how its land use regulations apply to each application. It also improperly deprives local agencies, which are best situated to address community concerns and arrive at appropriate resolutions, of their authority to implement local land use policy. See *Eide v. Sarasota County*, 908 F.2d 716, 726, n.17 (11th Cir. 1990) ("zoning is a delicate area where a county's power should not be usurped without giving the county an opportunity to consider concrete facts on the merits prior to a court suit").

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V. CONCLUSION

Contrary to Harbor's suggestions, outright denial of a conditional use permit cannot be considered a per se substantial burden on religious exercise or a failure on the part of the government to use the least restrictive means to further a compelling interest under RLUIPA. Such a broad application of RLUIPA would improperly diminish local government police power and authority over land use matters and shift those decisions to the federal courts. Local land use has long been a matter of local concern with which courts have traditionally declined to interfere. Accordingly, the Court should affirm the trial court decision in this case. It should find that no substantial burden has been placed on Harbor's religious exercise and that, in any event, the City used the least restrictive means of furthering the compelling government interest of preserving the public health and

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safety of its residents. Alternatively, the Court should find that Harbor's RLUIPA challenge is unripe because it did not submit a meaningful land use application or even attempt to amend and resubmit the application to address or mitigate the legitimate concerns raised during the first permit application administrative review process.

Respectfully submitted,

RICHARD DOYLE, City Attorney

Dated: September 15, 2014

By: s/ Elisa T. Tolentino
ELISA T. TOLENTINO
Deputy City Attorney

Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

VI. STATEMENT OF RELATED CASES

Counsel for Amicus Curiae, League of California Cities, hereby certify that there are no cases related to this appeal known to be currently pending in this Court at this time.

Respectfully submitted,

RICHARD DOYLE, City Attorney

Dated: September 15, 2014

By: s/ Elisa T. Tolentino
ELISA T. TOLENTINO
Deputy City Attorney

Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

VII. CERTIFICATE OF COMPLIANCE

I, Elisa T. Tolentino, counsel for Amicus Curiae, League of California Cities, hereby certify, under Federal Rules of Appellate Procedure, Rules 29(d) and 32, that this brief is proportionately spaced, has a typeface of 14 points, and the word count for this Amicus Brief of the League Of California Cities in Support of City of Buenaventura on Harbor Missionary Church Corporation's Interlocutory Appeal from Order Denying Preliminary Injunction, exclusive of tables, cover sheet, and certificate of service, according to my computer program is 3,428 words.

Respectfully submitted,

RICHARD DOYLE, City Attorney

Dated: September 15, 2014

By: s/ Elisa T. Tolentino
ELISA T. TOLENTINO
Deputy City Attorney

Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

9th Circuit Case Number(s) 14-56137

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