

RATIONALE FOR RFRA/RLUIPA CONFORMANCE AMENDMENTS

The rationale for proceeding with RFRA/RLUIPA conformance amendments is to take the discussion away from the volatile historic preservation realm and return the dispute to a religious freedom issue. The federal Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §§ 2000bb *et seq.*, and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc *et seq.*, were enacted to ensure that local land use or landmark laws do not substantially burden the free exercise of religion, as guaranteed by the First Amendment, unless the government demonstrates a compelling interest and the law is the least restrictive means of achieving that compelling interest. As set forth on this website, the mere act of landmarking the Third Church has substantially burdened the congregation's practice of religion.

RFRA was enacted in 1993 to restore the "compelling government interest" test to local, state or federal laws that are challenged because of governmental interference with the free exercise of religion. The law provides that governments shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except when the government demonstrates the burden is in furtherance of a compelling governmental interest and it is the least restrictive means of furthering that compelling interest.

In 1997, the Supreme Court held that RFRA was unconstitutional as applied to the states under the Fourteenth Amendment. *City of Boerne v. Flores*, 521 U.S. 507 (1997). Because the District of Columbia is a political entity created by the federal government, however, RFRA is still effective in this jurisdiction. It is also subject to RLUIPA, which was enacted to correct the deficiencies of RFRA and is applicable to the states. RLUIPA's scope is narrower than RFRA and is limited to laws affecting land use, zoning, and landmarks, and institutionalized people. Both RFRA and RLUIPA allow plaintiffs to recover attorneys fees from an offending governmental entity if that entity has substantially burdened a religious institution without a compelling government interest.

Significantly, a government can avoid the preemptive effect of RLUIPA if it institutes its own versions of the laws. Section 5(e) of RLUIPA provides that "a government may avoid the preemptive force of this Act by changing the policy or practice that results in a substantial burden on 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." 42 U.S.C.A. § 2000cc-3(e).

The proposed amendments will allow the District to avoid the preemptive force of RLUIPA and the potential award of attorneys' fees to a successful plaintiff. Without the amendments, the District is exposed to potential litigation and costly legal fees. The amendments are thus an attractive alternative for the city and consistent with other jurisdictions, such as Chicago and Pittsburgh, that exempt religious properties from landmark status.