THE WESTERN CENTER FOR LAW & POLICY

May 26, 2009
Via Facsimile and U.S. Mail

Ms. Pam Elias, Chief, Land Use
County of San Diego
Department of Planning and Land Use
5201 Ruffin Road, Suite B
San Diego, CA 92123
Fax: (858) 694-3093

Re: Citation No. DPLU-40576 (Case No: 09-50536): Jones, David & Mary Family Trust

Dear Ms. Elias,

Thank you for your attention to the matters addressed in this letter. Please be advised that the Western Center for Law & Policy is a nonprofit organization which provides legal assistance to individuals and groups whose civil rights have been infringed by the government and its various agents. This letter is written to you on behalf of David and Mary Jones regarding their Administrative Citation DPLU-40576, dated April 14, 2009. The Citation alleges the unlawful use of their property located at Chula Vista, 91910, pursuant to Department of Planning and Land Use's Codes §§2100-2106 and §7703.

The Joneses' Citation directs them to "[c]ease/stop religious assembly on parcel or obtain a major use permit. Such use requires a major use permit." The use to which this citation refers is nothing more than a weekly Bible study and time of fellowship at the Jones' residence which the Department has singled out for religiously-based unequal treatment subsequent to the complaint of a non-resident of their neighborhood.

The facts of the case as we understand them are as follows. David and Mary Jones began hosting a weekly Bible study fellowship in his home approximately 5 years ago with attendance ranging from between five and twenty-seven people, but averaging 15. Most of the time the meeting is comprised of dinner, fellowship, and Bible study, but occasionally the meeting merely consists of a shared dinner.

Approximately two months ago, in early April 2009, a person visiting one of the Joneses' neighbors apparently complained to the County about the meetings that were occurring at their home. A few days later, on April 10, 2009, Good Friday, a female County employee came to the Joneses' residence. The County employee appeared in the front yard and proceeded to take pictures of our clients' home. She noticed the Joneses' daughters in the front yard and asked to speak with their mother. Although she did not provide any paper work or identification, subsequent information obtained by the WCLP leads us to believe that the County employee who went to the Joneses' residence was Code

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Enforcement Officer Cherie Cham. When Mrs. Jones appeared, Ms. Cham proceeded to interrogate Mrs. Jones, who was the only person home at the time. Ms. Cham asked Mrs. Jones questions such as: "Do you have a regular weekly meeting in your home?" "Do you sing?" "Do you say amen?" "Do you say 'praise the Lord?'" After Mrs. Jones answered in the affirmative, Ms. Cham informed Mrs. Jones that the Joneses must immediately stop holding "religious assemblies" in her home unless they first obtain a Major Use Permit (MUP) from the county. Ms. Cham then proceeded to tell Mrs. Jones that if they failed to comply, they would first receive a written warning. She threatened that if the Joneses continued to meet in violation of the County's orders, they would receive escalating fines of $100, $200, $500 and $1000, and then the County would aggressively pursue litigation.

In light of the County's aggressive action in issuing Administrative Citation #DPLU-40576 (hereinafter "Order"), a discussion of the Joneses' constitutional and statutory rights is required. Four things become clear when this case is legally analyzed. First, the Joneses' weekly Bible study is not a "Religious Assembly" as defined by the County's ordinances rendering the requirement of an MUP inapplicable. Second, the County's Order to stop hosting the weekly Bible study is a blatant violation of the Joneses' First Amendment right to freely exercise their religion. Third, the Order also violates their First Amendment right to peaceable assembly. Fourth, the County's action is a substantial burden on the Joneses' ability to practice their religion in violation of the Religious Land Use and Institutionalized Persons Act of 2000 (a.k.a. "RLUIPA"; 42 U.S.C. §2000cc et seq.).

I. THE JONES' FAMILY BIBLE STUDY IS NOT A "RELIGIOUS ASSEMBLY" WITHIN THE MEANING OF THE COUNTY'S RESIDENTIAL USE REGULATIONS

As a preliminary matter, the small, fifteen person Bible study hosted by the Joneses does not fit within the definition of a "Religious Assembly" as defined by the Department of Planning and Land Use's County Zoning Ordinance §1370. Section 1370 defines "Religious Assembly" as the *"use type [which] refers to religious services involving public assembly such as customarily occurs in synagogues, temples, and churches."* The small, fifteen-person, private Bible study hosted by Mr. and Mrs. Jones in their home is clearly and unmistakably not a "religious service involving public assembly such as customarily occurs in synagogues, temples, and churches," and thus does not fit within the County's own definition of a "Religious Assembly" as identified in §1370. The Administrative Citation #DPLU-40576 and the Cease and Desist Order issued to Mr. and Mrs. Jones on April 14, 2009, states that the corrections required are "cease/stop ***religious assembly*** on parcel or obtain a Major Use Permit…[emphasis added]," indicating that the Departmental agent making the individual assessment considers the Joneses' group to be a 'religious assembly.' Having clearly misapplied the term 'religious assembly' to the Joneses' private home Bible study, Administrative Citation #DPLU-40576 and the Cease and Desist Order are inappropriate and without merit.

Although these facts alone are sufficient to render Administrative Citation #DPLU-40576 invalid, in the interest of clarity and thoroughness, a discussion of the Joneses' constitutional and statutory rights with respect to the Citation is discussed below.

II. ADMINISTRATIVE CITATION #DPLU-40576 AND THE COUNTY'S ORDER TO CEASE AND DESIST VIOLATE THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT

The central issue in this case is whether the County's Administrative Citation #DPLU-40576 and the Cease and Desist Order constitute an impermissible government burden on the Joneses' free exercise of religion. The First Amendment to the United States Constitution provides, in relevant part, that "Congress shall make no law respecting an establishment of religion, **or prohibiting the free exercise thereof** . . ." (Emphasis added.). The First Amendment applies to the states via the Fourteenth Amendment. S*ee Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

The First Amendment to the Constitution provides every citizen with the right to practice his religion freely on his own property and to assemble peaceably there with other members of his faith. *Vietnamese Buddhism Study Temple In America v. City of Garden Grove*, 460 F.Supp.2d 1165, 1170-71 (C.D.Cal., 2006). James Madison, the author of the First Amendment, wrote that the "religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right." James Madison, *Memorial and Remonstrance Against Religious Assessments* (June 20, 1785), *reprinted in* 8 THE PAPERS OF JAMES MADISON 295, 299 (Robert A. Rutland et al. eds., 1973). In order to provide the necessary protection for this right, the government's power to interfere with or inhibit an individual's practice of his religious faith is highly limited. "The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg." Thomas Jefferson, NOTES ON THE STATE OF VIRGINIA 159 (Query 17) (William Peden ed., Univ. of N.C. Press 1982) (1784).

Any law burdening religious practice that is "not neutral or not of general application must undergo the most rigorous of scrutiny." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 546 (1993) ("*Lukumi* "). As the Court noted in *Lukumi*, "neutrality and general applicability are interrelated," and the failure to satisfy one requirement is a likely indication that the other has not been satisfied. *Id.* at 531-532. "A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Id.* (emphasis added).

A. Administrative Citation #DPLU-40576 and the Cease and Desist Order are Not Neutral, because they only Target Religious Conduct

The Free Exercise Clause protects individuals from laws that "discriminate against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Lukumi*, 508 U.S. at 532. "Although a law targeting religious beliefs as such is never permissible, *McDaniel v. Paty,* 435 U.S., 618, 626 (1978) (plurality opinion); *Cantwell v. Connecticut,* 310 U.S. 296, 303-304 (1940), if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral." *Lukumi,* 508 U.S. at 533 (Citing *Employment Div., Dept. of Human Resources of Oregon v. Smith,* 494 U.S. 878-879).

In evaluating the neutrality requirement, the first step is to look at the text, "for a minimum requirement of neutrality is that a law may not discriminate on its face." *Id.* The law in this case is Administrative Citation #DPLU-40576 and the Cease and Desist Order, which in pertinent part states that the corrections required are that the Joneses "Cease/Stop ***religious assembly*** on parcel or obtain a major use permit. Such use requires a major use permit." The Citation specifically orders the homeowner to "cease/stop religious assembly," as opposed to all other types of assembly, such as holding a secular (non-religious) meetings, parties or events. Therefore, pursuant to well established legal precedent, the Order is not neutral because is specifically targets only religious meetings.

In addition, even if the Order were somehow neutral, which it is not, that would not end the inquiry. The Free Exercise Clause "extends beyond facial discrimination" and "forbids subtle departures from neutrality . . . and covert suppression of particular religious beliefs." *Id.* at 534. (citations and internal quotations omitted). Courts will "survey meticulously the circumstances of governmental categories to eliminate as it were, religious gerrymanders." *Id.* (citation and internal quotations omitted).

In *Lukumi* for example, the Court found that the ordinance at issue constituted an impermissible "religious gerrymander" because the law was drafted to achieve the suppression of the religious activity at issue, and because the religious participants "alone [were] the exclusive legislative concern." *Id.* at 535-36. The Court also found it significant that the law "proscribe[d] more religious conduct than was necessary to achieve their stated ends." *Id.* at 538. Furthermore, the Court noted that "[t]he neutrality of the law is suspect if First Amendment Freedoms are curtailed to prevent isolated collateral harms not themselves prohibited by direct regulation." *Id.* at 539. The concerns noted by the Supreme Court in *Lukumi* are applicable to this case.

Administrative Citation #DPLU-40576 and the Cease and Desist Order in this case do not even pretend to be laws of general applicability, since they were directed solely towards the Joneses' religious activity. Although it may be debatable whether the Citation is a "religious gerrymander," nonetheless the Citation was indisputably specifically intended to limit **only** religious activity, since both Ms. Cham's interrogation of Mrs. Jones and the text of the Citation itself focus squarely on the **religious nature** of the Joneses' meetings. Specifically, the Joneses were not asked to stop hosting any kind of assembly generally, they were ordered to stop "Religious Assembly." Indeed, if the County was not targeting religious activity *per se*, it would presumably have to forbid any and all secular events where friends and neighbors are invited to a resident's home on a regular basis, including, but not limited to in-home poker games, book club meetings, Monday night football parties, girl and boy scout meetings, Tupperware parties, Bunco nights, bridge clubs, etc.

Moreover, Administrative Citation #DPLU-40576 and the Order impermissibly prescribe more religious conduct than necessary to achieve the County's stated ends. Any legitimate concern the County might have regarding the Joneses' Bible study, such as traffic and safety related to the number of vehicles parked in the street, could certainly be met by means other than a total ban on all religious assembly at the Joneses' home. The

Joneses have, on average, 15 persons at their home on Tuesday evenings, resulting in only 7 or 8 additional vehicles. The Joneses, whose home is on a large lot, could for example be asked to have their guests park their cars on their property and completely off of the street. Or, the Joneses could have their guests park elsewhere and shuttle them in via carpool or van or bus. A complete ban on religious assembly is neither reasonable nor necessary in this case. Therefore, Administrative Citation #DPLU-40576 and the Order proscribe more religious conduct than is necessary to achieve the County's stated ends.

The neutrality of the Cease and Desist Order is further suspect because the Joneses' First Amendment freedoms are curtailed to prevent isolated collateral harms not themselves prohibited by direct regulation. Specifically, the Joneses are not aware of any express County regulation limiting the number of visitors who are permitted to park at or near single family homes. Consequently, the Order is suspect because there are no regulations limiting the number of vehicles parked on the street when visiting a home, which would appear here to be the primary concern of the County.

B. The Cease and Desist Order is Not "Generally Applicable" Because It Involves Individualized Governmental Assessments

The second requirement of the Free Exercise Clause is that "laws burdening religious practice must be of general applicability. *Lukumi*, 508 U.S. at 542 (Citing *Smith*, 494 U.S. at 879-81). Of course, "all laws are selective to some extent, but categories of selection are of paramount concern when a law has the incidental effect of burdening religious practice." *Id.* The Free Exercise Clause prohibits government from deciding "that the government interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation." *Id.*

The issue of general applicability is rather straightforward in this case because the "law" at issue is Administrative Citation #DPLU-40576 and the Cease and Desist Order which are directed only to Mr. and Mrs. Jones. The Citation and Order are not directed or applicable to the general population. The Joneses have engaged in certain conduct which has a purely religious motivation and the County has decided to advance the governmental interests they have identified only against the Joneses' conduct.

Indeed, this case presents a sharp contrast to *Smith*, where the law in question had general applicability. *See Smith* 494 U.S. at 879-83. The Supreme Court recognized the important distinction between laws of general application and those involving "individualized government assessment[s]." *Id.* at 884. The *Smith* Court cited with approval the plurality's decision in *Bowen v. Roy*, 476 U.S. 693, 708 (1986), recognizing the "proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason." *Smith*, 494 U.S. at 884. *See also Lukumi*, 508 U.S. at 537 (relying on Smith for the proposition that the individualized governmental assessment requirement in that case supported a finding of non-neutrality).

This case is specifically about individualized governmental assessments on exemptions from a general requirement. The Order mentions "Unlawful use of land as described" in County Use Regulations "2100-2106." While not specifically listing the

section purportedly violated by the Joneses, the only possible section dealing with "Religious Assemblies" and "Major Use Permits" is Section 2105. Section 2105's title is "USES SUBJECT TO MAJOR USE PERMIT." Section 2105 subsection (a) discusses "Civic Uses" and lists "Religious Assembly" under uses requiring a Major Use Permit. However, as discussed above, Section 1370 of the County's land use regulations defines "Religious Assembly" as the *"use type [which] refers to religious services involving public assembly such as customarily occurs in synagogues, temples, and churches."* The small, fifteen-person, private Bible study hosted by Mr. and Mrs. Jones is clearly and unmistakably not a religious service involving public assembly such as that which customarily occurs in synagogues, temples, and churches, and thus does not fit within the County's definition of a "Religious Assembly" as defined in Code §1370. Therefore, it is inherently unreasonable to apply the use regulations identified in section 2105 to a person's home, where approximately fifteen people are gathering for a private, informal Bible study.

What is clear in this case is that the uses which constitute a "Religious Assembly" and are therefore subject to a Major Use Permit depend at least in part on a subjective interpretation of the County's Use Regulations on a case by case basis. This fact vests virtually unbridled discretion in County employees to determine whether a use is or is not a "Religious Assembly." For example, there is nothing in the County's Use Regulations describing how large a meeting can be or how regularly scheduled the meeting is before the activity is considered a "Religious Assembly." Therefore, Administrative Citation #DPLU-40576 and the Cease and Desist Order are not generally applicable laws. Furthermore, in light of the highly subjective nature of these individualized assessments, the court would also conclude that it is not neutral as is discussed above.

C. Administrative Citation #DPLU-40576 and the Order Would Not Survive Strict Scrutiny as they are Not Narrowly Tailored to Serve a Compelling Government Interest.

The *Lukumi* court explicitly held that "[a] law failing to satisfy [the requirements of neutrality and general applicability] must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." 508 U.S. at 531. As is discussed above, the Cease and Desist Order is neither neutral nor generally applicable, and the Court would therefore apply "the most rigorous of scrutiny." *Id.* at 546.

The Joneses concede generally that the County has a compelling interest in enforcing its zoning regulations and ensuring the safety of neighborhoods. However, Mr. and Mrs. Jones object to the County's application of the term "Religious Assembly" to their home Bible study in light of section 1370 of the Use Regulations. A small home Bible study is by no stretch of the imagination a Religious Assembly. As such, our clients assert that the County does not have a compelling interest in regulating the use of their home when only approximately15 people visit per week with only 6-8 extra vehicles.

Furthermore, the County cannot reasonably assert that the Cease and Desist Order and requirement that Mr. and Mrs. Jones obtain a Major Use Permit is narrowly tailored to protect the health and safety of the County. Although the County's primary concern would appear to be parking issues and potentially increased traffic on the street, the County's

actions do nothing to address, either generally or specifically, the amount of minimal increased traffic or any parking concerns generated by the Bible studies. Specifically, the Citation does not mention (1) the number of people permitted to meet; (2) the number of cars permitted ingress and egress; (3) the number of cars permitted to park on the street; and, (4) the relevance of the frequency or regularity of the meetings. The only relevant criterion on the face of the Citation appears to be whether religious topics are discussed; a distinction that incontrovertibly fails constitutional scrutiny.

Perhaps even more germane is that the County does not make any attempt whatsoever to explain at what point a small home Bible study transforms into a "Religious Assembly" requiring a Major Use Permit. Rather, Administrative Citation #DPLU-40576 and the Cease and Desist Order mistakenly assume that the Joneses' Bible study constitutes a "Religious Assembly." The requirement of an MUP for a small in-home Bible study is not even a "rationally related" restriction, let alone a narrowly tailored one. Moreover, the County in all probability cannot show that a limitation of off-street parking is narrowly tailored (or even rationally related) to the neighbors concerns about on-street parking.

In essence, the County's rather bizarre message via Administrative Citation #DPLU-40576 and the Cease and Desist Order is that all San Diego County residents are completely forbidden to ever invite anyone into their home if they pray or discuss religious topics, **unless** they have first obtained an MUP. Simply put, under the county's rationale, all in-home religious discussions with more than one person present require a County MUP. This is truly absurd. Because the County cannot justify, under the relevant standard, the substantial burdens imposed on the Joneses' free exercise of their religion, Administrative Citation #DPLU-40576 and the Cease and Desist Order are clearly unconstitutional.

III. ADMINISTRATIVE CITATION #DPLU-40576 AND THE COUNTY'S ORDER TO CEASE AND DESIST VIOLATE THE JONESES RIGHT TO PEACEABLY ASSEMBLE UNDER THE FIRST AMENDMENT

The right to assemble peaceably is among the most precious of the liberties safeguarded by the Bill of Rights, and is intimately connected both in origin and in purpose with the other First Amendment rights. See *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967). The right to "expressive association" protects the right of individuals to associate for purposes of engaging in activities protected by the First Amendment, such as speech, assembly, the exercise of religion, or petitioning for the redress of grievances. See *Sanitation and Recycling Industry, Inc. v. City of New York,* 107 F.3d 985, 996 (2d Cir. 1997); *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984) ("implicit in the right to engage in activities protected by the First Amendment [is] a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends").

Whenever the state restricts the right of assembly, there is no presumption of constitutionality; the state must have a compelling interest in the subject matter to justify abridgment, and the scope of the abridgment itself must not be greater than reasonably

necessary to serve the state interest. *Blasecki v. City of Durham*, 456 F.2d 87, 91 (4th Cir. 1972)(citing, inter alia, *Thomas v. Collins*, 323 U.S. 516, 530(1945)).

In this case, as the facts identified above clearly demonstrate, Administrative Citation #DPLU-40576 and the Cease and Desist Order clearly constitute a restriction on the Joneses right to assemble peaceably and privately in their home for the purpose of religious worship. In addition, the prohibition of the Joneses holding a weekly Bible study in their home without first obtaining an Major Use Permit is "greater than reasonably necessary to serve [the county's] interest[s]" because lesser limitations (for example, limiting the number of vehicles parked on the street) are reasonably available. As such, Administrative Citation #DPLU-40576 and the Cease and Desist Order also violate the Joneses' First Amendment Right to peaceable assembly.

IV. ADMINISTRATIVE CITATION #DPLU-40576 AND THE COUNTY'S ORDER TO CEASE AND DESIST VIOLATE THE RELIGIOUS LAND USE AND INSTUTIONALIZED PERSONS ACT OF 2000 ("RLUIPA")

In addition to the important constitutional principles identified above with respect to the Joneses' First Amendment right to free exercise and peaceable assembly, Administrative Citation #DPLU-40576 and the Cease and Desist Order also violate federal law, namely the Religious Land Use and Institutionalized Persons Act of 2000.

Primarily in response to the ways by which cities and counties had been unjustly using their land use and zoning powers to restrict religious institutions within their jurisdictions, the federal government, via the United States Congress and Office of the President, enacted the Religious Land Use and Institutionalized Persons Act of 2000 (a.k.a. "RLUIPA"; 42 U.S.C. §2000cc et seq.).[1] The remarkable success of RLUIPA in the legislative process can be attributed to the strong support that was given to its passage from a coalition of religious and civil rights groups that span the theological and ideological spectrum. Such groups include the American Civil Liberties Union, People for the American Way, the National Association of Evangelicals, and the Union of Orthodox Jewish Congregations of America.

In addition, in their joint statement to the Senate regarding the purpose of RLUIPA, co-sponsors Senators Orrin Hatch and Edward Kennedy also observed that "[t]he right to assemble for worship is at the very core of the free exercise of religion." 146 Cong. Rec. S7774 (July 27, 2000) (emphasis added). The need for legislation, the Senators explained, was demonstrated by the "massive evidence that this right is frequently violated." *Id.*

Concerned that "[c]hurches in general and new, small, or unfamiliar churches in particular, are frequently discriminated against . . . in the highly individualized and discretionary processes of land use regulation," the Senators described evidence that some

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[1] The Ninth Circuit has upheld the constitutionality of RLUIPA as "*a congruent and proportional exercise of congressional power pursuant to the Fourteenth Amendment.*" *Guru Nanak Sikh Society of Yuba v. County of Sutter*, 456 F.3d 978, 985 (9th Cir.2006)("*Guru Nanak*"); see, also, *Mayweathers v. Newland*, 314 F.3d 1062, 1066 (9th Cir.2002).

"[zoning] codes permit churches only with individualized permission from the zoning board, and zoning boards use that authority in discriminatory ways." *Id.* The Senators further described evidence that: "[s]ometimes, zoning board members or neighborhood residents explicitly offer race or religion as the reason to exclude a proposed church. . . . More often, discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics, or *'not consistent with the city's land use plan.'" Id.* (emphasis added). RLUIPA was signed into law on September 22, 2000, after unanimously passing both houses of Congress. *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp.2d 1203, 1220 (C.D. Cal. 2002). While the Joneses' Bible study is clearly and importantly not a "church," as will be discussed in the next section, the terms of RLUIPA protect the religious practices of individuals or groups, including persons like the Joneses.

As generally applied, RLUIPA prohibits any government agency or agent from adopting or imposing any land use regulation that may: 1) impose a substantial burden on the religious practices of a person or group (42 U.S.C. §2000cc 2(a)(1)); 2) treat a religious assembly on less than equal terms than a non-religious assembly (42 U.S.C. §2000cc 2(b)(1)); and 3) discriminate against an assembly or institution on the basis of religion or religious denomination (42 U.S.C. §2000cc 2(b)(2)). Exemption from these general prohibitions is extremely narrow. More specifically, in order for a government land use regulation to avoid violating RLUIPA, the government must not only be furthering a compelling state interest, the means for furthering that interest must be the least restrictive upon the rights of a religious person or institution.[2] 42 U.S.C. §2000cc 2(a)(1)(A)-(B). These statutory principles essentially reflect the U.S. Supreme Court's conclusion, as originally outlined in *Sherbert v. Verner*, 374 U.S. 398 (1963), and reaffirmed in *Church of the Lukumi Babalu v. City of Hialeah*, 508 U.S. 520 (1993), that government-imposed burdens on religious exercise must be subjected to the strictest form of scrutiny, especially in instances where those burdens are the direct result of government assessments that have been made on an individual or case-by-case basis. *See Freedom Baptist Church v. Township of Middletown*, 204 F.Supp.2d 857, 868 (E.D. Pa. 2002).

A. The Substantial Burden Prong

Under RLUIPA, "[t]he term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §2000cc 5(7)(A). As previously mentioned, Mr. and Mrs. Jones desire to exercise their religious beliefs by hosting a weekly Bible study group at their home. Though not specifically required, the Joneses have taken steps to minimize any possible negative parking effects of that meeting by having their visitors park only on their property.

By prohibiting the Joneses from hosting their in-home Bible study, the County of San Diego is imposing an unlawful "substantial burden" upon the Joneses fundamental right to the free exercise of religion. *See, e.g., Murphy v. Zoning Commission of Town of New Milford*, 148 F.Supp.2d 173, 189 (D. Conn. 2001) ["[f]oregoing or modifying the practice of one's religion because of governmental interference...is precisely the type of

[2] Since the provisions in the RLUIPA parallel the protections provided by the First Amendment and Equal Protection Clause of the Fourteenth Amendment, violation of the RLUIPA necessarily entails violations of the United States Constitution.

'substantial burden' Congress intended to trigger RLUIPA's protections; indeed it is the concern which impelled adoption of the First Amendment].

In the same fashion as the First Amendment analysis discussed above, RLUIPA requires any government-imposed restriction on religious exercise to serve a compelling governmental interest that is of the highest order. *See Church of the Lukumi Babalu, supra*, at 546. Among such high order interests are those that are directed toward the prevention of a clear and present or grave and immediate danger to the public's health, peace, and welfare. *See, e.g., Cam v. Marion County, Or.*, 987 F.Supp. 854, 864-865 (D. Or. 1997).[3] When held up to this standard, it is clear that simply not being in conformity with a zoning designation falls well short of the compelling state interest that RLUIPA requires.

Moreover, even if the County could argue that non-conformity with a zoning designation is a compelling interest, the present circumstances do not suggest that the County of San Diego is pursuing its interest in the most narrowly tailored or least restrictive manner. For purposes of clarity and comprehension, it might be helpful for the County to think of the "compelling interest" requirement here as being the same requirement that applies when a government attempts to rely on a racial classification in its decision-making. Just as a government's proffer of an interest in preserving the zoning designation of an area would fall well short of the compelling interest required to justify a racial classification, so too is such an interest insufficient to justify imposing a substantial burden on the Joneses free exercise rights.

B. The Equal Terms Prong

In addition to its prohibitions regarding the imposition of a substantial burden on religious exercise, RLUIPA also prohibits government agencies from treating religious assemblies on less than equal terms than equivalent non-religious assemblies (42 U.S.C. §2000cc 2(b)(1)). As lower courts have held, the Equal Terms provision codifies "existing Supreme Court decisions under the Free Exercise and Establishment Clauses of the First Amendment as well as under the Equal Protection Clause of the Fourteenth Amendment." *Ventura County Christian High School v. City of San Buenaventura*, 233 F. Supp. 2d 1241, 1246 (C.D. Cal. 2002) (quotations omitted). *See Freedom Baptist Church v. Twp. Of Middletown*, 204 F. Supp. 2d 857, 869 (E.D. Pa. 2002) (same). "The purpose of this section is to forbid governments from prohibiting religious assembly uses while allowing equivalent, and often more intensive, non-religious assembly uses." *Ventura County Christian*, 233 F. Supp. 2d at 1246 (quotation omitted).

Regardless of whether a nonreligious assembly is commercial or non-commercial, profit or non-profit, a City may not afford it better treatment than a religious assembly. What matters is that the uses to be compared are both "assemblies"; the language of RLUIPA does not further limit what uses may be compared. *See* 42 U.S.C. §

[3] "Group prayer by itself does no harm to agricultural resource land, and a prohibition against prayer meetings on farms by itself does nothing to preserve agricultural resource land, especially where the state permits similar meetings of a secular nature. The asserted justification by the state for the application of the regulation in this case is not only less than compelling, it does not exist."

2000cc(2)(b)(1). The legislative history of RLUIPA confirms this clear legislative mandate by listing myriad nonreligious assemblies to be compared with religious ones: "*banquet halls*, clubs, community centers, funeral parlors, fraternal organizations, *health clubs*, *gyms*, places of amusement, recreation centers, lodges, libraries, museums, *municipal buildings*, *meeting halls*, and *theaters*," H.R. REP. No. 106-219, 106th Cong., 1st Sess. 19 (1999) (emphasis added); and "recreation centers [and] *health clubs*," 146 CONG. REC. S7774-01 at S7777 (daily ed. July 27, 2000) (emphasis added); *see also id.* at S7775 ("[T]he hearing record reveals a widespread pattern of discrimination against churches as compared to secular places of assembly . . . .").

Under the current circumstances, the County permits such weekly secular assemblies as cub scout meetings, friends gathering each week to watch sports on TV, book clubs, sewing clubs, poker nights, etc. in residential zones. The fact that such secular groups are not also warned to cease and desist their regular meetings is evidence of clearly unequal treatment of the Joneses by the Department, and any argument over the fact that the activities engaged by the Joneses' group are religious rather than secular is without merit. *See, e.g., Love Church v. City of Evanston*, 671 F.Supp. 515, 518-19 (N.D. Ill. 1987) [zoning ordinance permitting meeting halls, but not churches, in commercial district impermissibly favored secular assemblies over religious ones],[4] *vacated on other grounds*, 896 F.2d 1082 (7th Cir. 1990). Thus, the County is in clear violation of the Equal Terms provision of RLUIPA.

V. CONCLUSION

In light of the above factual summary and analysis of law, the WCLP hereby demands that the County of San Diego agree in writing to rescind Administrative Citation #DPLU-40576 and the accompanying Cease and Desist Order. The Joneses have been told that they will be fined and penalized by the County if they continue to hold their weekly Bible study in their home. The United States Supreme Court has held, however, that "*the loss of First Amendment freedoms, even for* ***minimal*** *periods of time, unquestionably constitutes* ***irreparable harm***." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). As a result, time is of the essence, and both the Joneses and the WCLP respectfully demand that written confirmation of the County's agreement to permit the Joneses to continue holding their regularly scheduled Bible study in their home without further threat of sanction be provided within five business days of the date of this letter. Should the County fail or refuse to comply, the Joneses are prepared to pursue all available legal remedies, including litigation.

On behalf of Mr. and Mrs. Jones, the Western Center for Law & Policy thanks you

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[4] "Suppose, for example, a group of people wished to assemble on a regular basis in Evanston to discuss and hear lectures on classical literature. This group might also wish to have seminars for young people after school or on weekends to expose them to "great books." These people could rent a building in any business or commercial zone and have their meetings. But if that same group of people wished to assemble for the purpose of religious worship and to hold classes for its young people to educate them about religion, they would have to get special permission from Evanston."

for your prompt attention to the above stated matters. Should you or anyone else with the County of San Diego have any questions, please feel free to contact us at the address and phone number on the letterhead.

Sincerely,

Dean R. Broyles, Esq.
President, The Western Center for Law & Policy

Cc: Pastor and Mrs. David Jones
San Diego County Board of Supervisor Chairwoman Diane Jacob
San Diego County Board of Supervisor Vice Chairwoman Pam Slater-Price
San Diego County Board of Supervisor Greg Cox
San Diego County Board of Supervisor Ron Roberts
San Diego County Board of Supervisor Bill Horn
San Diego County Counsel John Sansone