

The Need for Legislation to Enshrine Free Exercise in the Land Use Context

Von G. Keetch and Matthew K. Richards*

TABLE OF CONTENTS

| | |
|--|-----|
| INTRODUCTION..... | 725 |
| I. CURRENT FREE EXERCISE JURISPRUDENCE IN THE LAND USE CONTEXT | 726 |
| II. THE STUDY | 729 |
| III. ANECDOTAL EVIDENCE..... | 732 |
| CONCLUSION..... | 734 |
| APPENDIX A..... | 736 |
| APPENDIX B..... | 743 |

INTRODUCTION

The need for more meaningful protection of free exercise rights than afforded by current constitutional renderings is particularly evident in the land use context. In *Employment Division v. Smith*,¹ the United States Supreme Court radically altered — indeed eviscerated — the test historically used to measure incursions on the free exercise of religion by governmental regulation.² Rather than demand strict scrutiny of the regulation, the *Smith* Court declared that “neutral” laws of “general applicability” are not entitled to any special scrutiny, regardless of their impact on religious free exercise, so long as they are not specifically aimed at, or overtly hostile

* Mr. Keetch and Mr. Richards are both attorneys at the law firm of Kirton & McConkie in Salt Lake City, where they represent various churches on religious freedom issues. Mr. Keetch is the assigned delegate for The Church of Jesus Christ of Latter-day Saints to the Coalition for the Free Exercise of Religion, the lead organization in crafting and supporting religious freedom legislation on the federal and state levels.

¹ 494 U.S. 872 (1990).

² See Michael W. McConnell, *Free Exercise Revisionism and the Smith Decision*, 57 U. CHI. L. REV. 1109, 1110-11 (1990) (describing Supreme Court as “abandoning” compelling interest test); Douglas Laycock, *The Remnants of Free Exercise*, 1990 SUP. CT. REV. 1, 54; see also, e.g., *Hobbie v. Unemployment Appeals Comm’n*, 480 U.S. 136, 141-42 (1987) (accepting strict scrutiny standard).

to, religion.³ The Court assumed that religious liberty would not be unduly trampled or would be accommodated by exemptions crafted during the legislative process.⁴ In practical effect, however, “neutral” and “generally applicable” regulations sustainable under *Smith* can have a devastating impact on religious liberty. Such regulations hamper the ability of adherents both to practice firmly held religious beliefs and to gather together with cobelievers in a place of worship where they may learn from one another, edify each other, instruct one another, and receive important rites, sacraments, and blessings.

I. CURRENT FREE EXERCISE JURISPRUDENCE IN THE LAND USE CONTEXT

For tens of millions of Americans, “worship” means worship in community — in chapels, synagogues, and temples, in the communion and strength of fellow believers. Community faith and the prayers of others are often essential to the deeply personal meaning of religion. Indeed, entire modes of worship — the sermon and the mass, for instance — can only be experienced in community. The right to erect buildings where communities of faith may gather or to make use of existing buildings to fulfill a religiously mandated mode of worship is, therefore, a fundamental and indispensable aspect of the right to worship.

Churches seeking to exercise this right and establish or expand communities of faith in neighborhoods across the nation continuously find themselves before planning commissions, city councils, boards of commissioners, and other local government entities that control land use and planning within the area. Of course, many of these government boards and officials work with churches in good faith to permit the construction of church buildings in appropriate locations. However, ignorance and even hostility toward religion sometimes operate behind the facade of ostensibly neutral land use regulations. In these instances, local communities set broad “generally applicable” and “neutral” policies and development plans without any attempt to understand the religious beliefs affected thereby, and without any attempt to craft the often minimal excep-

³ See *Smith*, 494 U.S. at 882 (holding that Free Exercise Clause does not prevent application of facially neutral laws to illegal acts conducted with religious conviction).

⁴ See *id.* at 890 (suggesting that unavoidable consequence of democratic process is to place unique religious practices at relative disadvantage).

tions necessary to allow full religious liberty.

The growth of government at all levels, combined with government's tendency to overregulate, demand additional protection for religious practice if we are to realize a full measure of religious liberty. Land use provisions, in particular, characteristically involve permit schemes which grant local officials virtually unlimited discretion to restrict the use of property owned by religious institutions. Free exercise rights are of little practical value if we permit control of a religious group's meeting place to pass from the group's members to government outsiders without any real examination of the government's asserted need for such control, as RFRA would require. Yet, unless the goals of regulatory agencies are tested against a more searching scrutiny than "neutrality" and "general applicability," agency officials have no occasion and no motivation to weigh the value of pursuing their regulatory goals against the substantial burdens this pursuit may impose on the free exercise of religion.

Under the current application of free exercise law, a claimant whose religious practice is burdened by a facially "generally applicable" and "neutral" law can obtain relief only by carrying the heavy burden of proving that there is an unconstitutional motivation behind the law and, thus, that it is not truly neutral or generally applicable.⁵ At times, antireligious bias in land use decision-making is bald and easily documented, and the constitutional protections presently in place may be adequate to protect the right of free exercise. But instances of unabashed and overt bias are comparatively rare, and the difficulty of carrying the burden of showing antireligious motivation is considerable.

Assuming that government decision makers intend the reasonably foreseeable consequences of their lawmaking actions, judges can make responsible judgments about the purpose of a law based on its language and effect. Once the inquiry ventures past these external indications of purpose to the subjective intentions of members of the lawmaking body, however, reliable conclusions about government motivations are nearly impossible. Aware of the legal ramifications, government officials rarely announce that their opposition to a project or use is rooted in religious animus. In-

⁵ See *Church of Lukumi Bablu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 524, 533 (1993) (explaining concept of neutrality used to evaluate whether law infringes on religious freedom).

stead, they offer traffic, drainage, sewage, and the environment as pretextual concerns, raise issues of compatibility with the surrounding neighborhood, change zoning ordinances, declare a structure a historic landmark, or impose prohibitively expensive design requirements. Given their wide discretion, biased officials have little trouble finding seemingly plausible grounds for delaying or denying most any project.

Additionally, in the rare instances where lawmakers overtly voice an antireligious bias, legislative histories are not always compiled, particularly in cases involving state and local legislation or discretionary administrative action. These histories are, in any event, subject to manipulation. Moreover, even when records accurately restate a bias expressed, the statements of individual officials, while highly probative of the intentions of those making the statements, are only circumstantial evidence of the motivation of the decision-making body as a whole. Finally, courts are understandably reluctant to find unconstitutional motivations because of the implicit insult such a finding directs at members of the decision-making body.⁶ This is especially true when, as is almost always the case, direct evidence of unconstitutional motivation is totally lacking.⁷

The virtual impossibility of adducing strong evidence of illicit motivation, combined with the reticence of judges to find such motivation on anything but the strongest evidentiary record, suggest that deserving religious claimants will frequently be unable to show the impermissible motivation behind facially neutral and general laws. This is true even in situations in which the government body denying a proposed project or land use in fact intended to restrict the religious practices of the claimant or consciously valued secular interests over religious ones. This suggestion is borne out starkly in the land use area, where the discretion of local entities — and the reluctance of courts to second guess the motives of those entities — are at their strongest.

⁶ See *Edwards v. Aguillard*, 482 U.S. 578, 610 (1987) (Scalia, J., dissenting) (challenging majority's conclusion that, after months of considering Establishment Clause issues, legislature must have been motivated by religious bias); Note, *Developments in the Law — Equal Protection*, 82 HARV. L. REV. 1065, 1093 (1969) (stating that courts generally avoid attempting to ascertain legislative intent).

⁷ Cf. *United States v. O'Brien*, 391 U.S. 367, 384 (1968) (observing that "the stakes are sufficiently high for us to eschew guesswork" in determining whether governmental action was unconstitutionally motivated).

II. THE STUDY

Given the difficulties described above, there is certainly no precise way to measure religious animus or antireligious motivation within the land use context. However, a 1997 study spearheaded by Professor W. Cole Durham, Jr. at Brigham Young University's J. Reuben Clark Law School, in conjunction with attorneys from the law firm of Mayer, Brown & Platt in Chicago, provides some basic guidance and understanding of religious liberty in the land use arena.⁸ The joint study analyzed all reported cases dealing with religious claims in the zoning and land use context.⁹ As its premise, the study presumed that "generally applicable" and "neutral" land use decisions and policies should impact all religions (and other land use applicants as well) in a consistent way. The study not only failed to find this anticipated consistency, but also found a huge disparity.

Strikingly, while minority religions¹⁰ represent just less than nine percent of the general population, the study revealed that they were involved in more than forty-nine percent of the cases regarding the right to locate a religious building at a particular site and in more than thirty-three percent of the cases seeking approval of accessory uses of an existing church site (such as sheltering or feeding the homeless). This disparity becomes even more pronounced if one takes into account cases involving nondenominational groups, or groups that cannot be classified on the basis of information in case reports. Including such cases, more than sixty-eight percent of reported location cases, and more than fifty percent of accessory use cases, involve minority and unclassified religions.

These statistical disparities are conspicuous; they lead quickly to the conclusion that minority religions have a much harder time obtaining approval for construction of a house of worship — and for utilizing that place of worship in an important religious way — than do majority religions. This is most likely because religious land uses associated with majority religions face less public opposition. Moreover, even in the face of opposition, majority religions

⁸ The study is fully reproduced in Appendix A.

⁹ See Appendix A for an explanation of the study's methodology and the universe of cases analyzed.

¹⁰ The study defined minority religions as those having adult membership of less than 1.5% of the United States population. See Appendix A.

can often marshal the public and political support needed to sway reluctant officials or overcome the lobbying efforts of biased neighbors. Additionally, the more prominent the religious group the better able it is to afford lawyers to find some "case specific" remedy or to threaten expensive litigation and, thereby, force a compromise. Minority religions, on the other hand, often least able to bear the financial costs of the process, fare significantly less well before government boards having almost unchecked discretion and an unsympathetic political constituency. Accordingly, these congregations are too often forced into the courts to defend their free exercise rights. In short, the study demonstrates that at times "neutral" and "generally applicable" land use decisions and policies are not in fact what they purport to be, but furtively target the least popular of religious institutions.

The study also demonstrates that the free exercise rights of churches were more fully preserved under the heightened constitutional protection recognized by courts prior to *Smith*, a protection no longer generally available. Of religious claims presented to courts, sixty-three percent were granted and thirty-seven percent were denied.¹¹ However, the great majority of reported cases analyzed in the study occurred before the Supreme Court's 1990 *Smith* decision, which substantially reduced the protections of the Free Exercise Clause.¹² Prior to *Smith*, government officials had to justify their actions that substantially burdened religion with a compelling governmental interest pursued through narrowly tailored means.¹³ Although courts sometimes ignored the rigor of the compelling interest test, the test was nevertheless available to strike down oppressive land use regulations when sufficient proof of unreasonableness existed. This protection is no longer available. As a consequence of *Smith*, religious land users are afforded little more constitutional protection than are run-of-the-mill commercial en-

¹¹ At the judicial level, minority groups appeared to fare slightly better than mainline groups: They won 66% of the cases in which they were involved while majority religions prevailed in 65% of the cases in which they were involved. Among other things, these figures suggest that judicial review does help remedy the problems minority groups face, and tends to be relatively impartial across groups.

¹² See Appendix B for a list of cases included in the study.

¹³ See, e.g., *Hobbie v. Unemployment Appeals Comm'n*, 480 U.S. 136, 141-42 (1987) (adopting strict scrutiny standard to evaluate Florida's refusal to award unemployment compensation to woman discharged after joining Seventh-day Adventist Church); *Sherbert v. Verner*, 374 U.S. 398 (1963) (holding that state's interest in avoiding fraudulent claims for unemployment compensation did not justify denying benefits to person who quit job because his religion prohibited Saturday work).

terprises. The study's finding that the courts were once vigilant in protecting free exercise rights in the land use context is a further reminder of the necessity of restoring, to the extent permissible under the Constitution, protections for religious uses of land.

The study, of course, has its limitations. Simply analyzing reported cases, for instance, does not capture all land use disputes between churches and government control boards. Disputes progressing far enough into litigation to yield a reported decision (very often from an appellate court) are those in which perceived violations of religious rights are not resolvable by less adversarial methods. Naturally, for a variety of practical reasons — ranging from the need to have a good working relationship with local government officials, to the sheer cost of litigation, to the availability of alternative sites — churches probably bring far fewer actions in this area than they may be entitled to bring.¹⁴ But this unaccounted for reality only underscores the fact clearly indicated by the study: religions are significantly disadvantaged in seeking land use accommodations as they deal with purportedly “generally applicable” and “neutral” laws.

¹⁴ For instance, the City of Richmond, Virginia passed an ordinance requiring places of worship wishing to feed more than 30 hungry and homeless people to apply for a conditional use permit at a cost of \$1100. The ordinance regulated only places of worship and only eating by homeless persons. The city also limited to seven days, and to the period between October 1 and April 1, the times when places of worship could feed the homeless. Trinity Baptist Church, Thirty-First Street Baptist Church, and others filed suit against the City of Richmond in order to preserve their homeless feeding programs. The groups argued that paying the four-figure fee would necessarily deplete their scarce funds and materially detract from their ability to carry out the programs for the sake of which they exist. See *Trinity Baptist Church v. City of Richmond*, C.A. No. 3:97CV637, (E.D. Va. filed Aug. 20, 1997). The case was settled however, and no written opinion was generated.

Likewise, the Christ Center Church in Chicago wasted three years and more than \$20,000 in attorneys fees, appraisal fees, zoning application charges, title charges, and other expenses in attempts to purchase property acceptable to the city's zoning board. Neighboring property owners opposed the church's first selected property because “they wanted a taxpaying commercial business in the neighborhood, not a church.” September 13, 1994 Affidavit of Theodore Wilkinson, Pastor of Christ Center, at para. 14 and 15, *Civil Liberties for Urban Believers v. City of Chicago*, 1996 WL 697630 (N.D. Ill. Nov. 20, 1996). A second property was rejected because, although the offices of another church were located across the street, the area potentially could become a “‘nightclub district’ and the presence of the church would inhibit development.” *Id.* at para. 23. The church finally obtained a special use permit for a third site. See Testimony of Douglas Laycock Before U.S. Senate Judiciary Comm., Oct. 1, 1997, available in 1997 WL 609685 USTESTIMONY (Federal Document Clearing House).

III. ANECDOTAL EVIDENCE

A sampling of contemporary post-*Smith* cases more fully illustrates the noteworthy conclusions the study sketched mathematically. Indeed, these cases demonstrate that “neutral” laws of “general applicability” now dramatically intrude upon virtually every aspect of religious life and, particularly, in the land use area. As a result of *Smith*, a religious mission for the homeless operated by the late Mother Theresa’s order has been shut down because it was located on the second floor of a building without an elevator.¹⁵ City officials prevented a New York congregation from replacing its outdated facility with a more amenable structure because the building was demarcated a historic landmark.¹⁶ And fourteen Orthodox Jews (whose religion forbids them from driving on the Sabbath) could not establish a nondescript shul in a rented Los Angeles house, even though the city counsel contemporaneously permitted a “gay sex club” to locate adjacent to another residential neighborhood.¹⁷

“Neutral” and “generally applicable” regulations have also infringed free exercise in apparently more mundane factual settings. To the affected churches — and to their congregants whose tithes and contributions underwrite the churches’ bills and who may lose access to fundamental sacraments and blessings — even these in-

¹⁵ See *Religious Freedom Restoration Act of 1991: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 102d Cong., 2d. Sess. 149 (1992) (statement of Edward Gaffney, Dean and Professor of Law, Valparaiso University School of Law); see also, e.g., *First Assembly of God, Inc. v. Collier County, Fla.*, 20 F.3d 419, 422-24 (11th Cir. 1994) (holding that application of neutral and generally applicable zoning ordinances to church homeless shelters did not violate Free Exercise Clause); *Daytona Rescue Mission, Inc. v. City of Daytona Beach*, 885 F. Supp. 1554, 1560 (M.D. Fla. 1995) (upholding planning board’s determination that homeless shelter/food bank was not accessory use of church and denying permission to operate facility because zoning code was neutral and of general applicability — zoning requirements apply regardless of whether entity is church or religious institution).

¹⁶ See *Rector, Wardens, & Members of Vestry of St. Bartholomew’s Church v. City of New York*, 914 F.2d 348, 351-52 (2d Cir. 1990) (reciting church’s efforts to obtain permit).

¹⁷ See Jodi Wilgoren, *Troubled House of Worship*, L.A. TIMES, July 9, 1997, at B1. As one Los Angeles “City Hall insider” commented respecting this case: “How does the council basically knock down the right of 13 or 14 people to pray together and allow a sex club to exist near a residential neighborhood? . . . What am I missing here? Praying is a bad thing and a sex club is a good thing?” Beth Shuster, *One Zoning Law, Two Outcomes Politics: The L.A. City Council Recently Voted to Close a Synagogue, but, Using the Same Rule Allowed a Sex Club to Remain open; Homeowners Question the Rationale*, L.A. TIMES, Nov. 11, 1997, at B1; see also, e.g., *Grosz v. City of Miami Beach*, 721 F.2d 729, 738-39 (11th Cir. 1983) (holding that application of local zoning ordinances without deviation constituted sufficient governmental interest to outweigh burden on plaintiff, Orthodox Jewish rabbi).

fringements are potentially cataclysmic.

- A Buddhist temple's saddle-shaped roof reached higher than allowed by the local zoning ordinance and a variance was denied after the building was already constructed. The Hawaii Supreme Court upheld the neutral ordinance, compelling major remodeling of the temple.¹⁸
- An Alabama court upheld a regulation regarding highway advertising to force demolition of a sign proclaiming the church's Pentecostal message.¹⁹
- A Minnesota town coerced a church to vacate its leased property because church hours were not compatible with the business environment the town sought to cultivate.²⁰
- A Tennessee city rejected all proposed sites for a Mormon temple under a "neutral" and "generally applicable" ordinance that prevented any new churches from entering the city besides the three already established.²¹
- An Illinois city council imposed, and a court later upheld, stiff enrollment caps on a church-run primary school as a condition for a special use permit.²²
- A California city's development plan that designated church property as open space disabled the church, whose school building was damaged by natural disaster, from selling the property to raise much needed funds.²³

These cases, drawn from across the country and displaying a variety of land use issues, show anecdotally the need for further protection of free exercise.

Indeed, the need is pervasive. The antireligious potency of "neutral" and "generally applicable" land use regulations, used shrewdly

¹⁸ See *Korean Buddhist Dae Won Sa Temple v. Sullivan*, 953 P.2d 1315, 1344-47 (Haw. 1998).

¹⁹ See *Corinth Baptist Church v. State Dep't of Transp.*, 656 So.2d 868, 869-70 (Ala. Ct. App. 1995).

²⁰ See *Cornerstone Bible Church v. City of Hastings*, 948 F.2d 464, 467 (8th Cir. 1991).

²¹ See Unpublished Order, *Findings of Fact, The Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints v. Board of Commissioners of the City of Forrest Hills*, Nos. 95-1135, 96-1421 (issued Jan. 27, 1998); see also Testimony of Von G. Keetch, House Judiciary Subcommittee on the Constitution, 105th Cong., 2d Sess., available in 1998 WL 8993925 (Mar. 26, 1998).

²² See *Bethel Evangelical Lutheran Church v. Village of Morton*, 559 N.E.2d 533, 535 (Ill. Ct. App. 1990).

²³ See *Ramona Convent of Holy Names v. City of Alhambra*, 21 Cal. App. 4th 10, 15, 26 Cal. Rptr. 2d 140, 142 (Ct. App. 1993).

by government officials, is even recognized in such extralegal forums as a best-selling novel²⁴ and the popular news.²⁵ By contrast, the salutary balm of legislation bolstering free exercise rights is demonstrated by cases decided under the Federal Religious Freedom Restoration Act ("RFRA"). In *Western Presbyterian Church v. Board of Zoning Adjustment*,²⁶ the plaintiff operated a homeless feeding program in the District of Columbia. In 1989, it determined to relocate a few blocks away in a newly constructed building, which was to include a basement kitchen. The church applied for a building permit, indicating that the facility would be used as a church, and the permit was issued. Soon however, the zoning commissioner learned of the church's feeding program and notified the church that such use of the property required a variance. The church appealed, claiming that the zoning ordinance infringed its free exercise rights because its ministry to the needy was biblically mandated. The court agreed. Despite recognizing that D.C.'s zoning ordinance was neutral and generally applicable and that the commissioner's conclusion was based in rational concerns about safety, quality of life, and property values, the court applied RFRA and a compelling interest standard to conclude that the zoning ordinance violated the church's free exercise.²⁷ As the court stated, charitable service is a central tenet of all major religions and "[i]t is difficult to imagine a more worthwhile program."²⁸

CONCLUSION

A city need not and should not merely bow to the absolute demands of a church as to where it will construct a religious building in the city, how the building will appear, or what use will be made of the building. Local governments and local citizens should have a strong say in how their community is to be developed. There is a balance to be struck here, and it is not one that should weigh totally in religion's favor. But the current status of the law leaves no

²⁴ See TOM WOLFE, *BONFIRE OF THE VANITIES* 569 (1987) (featuring New York City's landmarks law as vehicle for political retaliation against clerical official seeking to develop church property: "Mort? You know that church, St. Timothy's? . . . Right . . . LANDMARK THE [expletive]!" (ellipses in original)).

²⁵ See, e.g., Thao Hua, *Minister Tells Jurors He Is Guilty Only of Helping the Homeless*, L.A. TIMES, July 24, 1997, at A3 (recounting minister's conviction of four misdemeanor counts for persisting in housing homeless in tents on his church's property).

²⁶ 862 F. Supp. 538 (D.D.C. 1994).

²⁷ See *id.* at 545-46.

²⁸ *Id.* at 544, 546.

balance at all, vesting full decision-making power as to these land use matters in the hands of locally elected officials and demoting the constitutionally protected right to freely exercise religion. Ironically, under current First Amendment jurisprudence, many cities probably cannot zone out a sexually oriented adult book store. Yet those same cities can exclude a church that desires to erect a temple, a chapel, or a mosque for the use and edification of its religious members.²⁹ As eloquently expressed in *The Williamsburg Charter*: “Religious liberty in a democracy is a right that may not be submitted to vote and depends on the outcome of no election. A society is only as just and as free as it is respectful of this right, especially toward the beliefs of its smallest minorities and least popular [religious] communities.”³⁰ This right is “inviolable”³¹ and should not rise and fall, in any context, at the whim of the majority.

Religious freedom has long been categorized as one of the “First Freedoms” in our Republic.³² The right to religious liberty applies to all, from border to border, and throughout every state. Such freedom should never depend upon the amount of religious sensitivity in a particular community, or on the willingness of local governments to craft appropriate exemptions for religious practice. Until or unless the Supreme Court sees fit to reverse *Smith* along with its “generally applicable” and “neutral” test for religious freedom, state and federal statutory protections are essential. Without them, religion as a whole — and especially minority religions — will suffer.

²⁹ For an example, see *supra* note 14 and the congressional testimony cited therein.

³⁰ *The Williamsburg Charter* (1988), reprinted in 8 J.L. & RELIGION 1, 8 (1990). *The Williamsburg Charter* was drafted by representatives of many of America’s faiths and signed in 1988 by nearly 200 philosophically and religiously diverse national leaders of religion, politics, law, academia, business, and labor, including former presidents and sitting Supreme Court justices.

³¹ See *id.* at 7-8 (stating that religious liberty is inalienable right).

³² See *id.* at 21.

APPENDIX A

DISCRIMINATION AGAINST MINORITY CHURCHES IN ZONING CASES

In order to gain some perspective on the treatment of nonmain-line groups in zoning cases, a broad sample of zoning decisions challenged on free exercise grounds has been analyzed. A total of 196 cases was ultimately included in the study. This set of cases should include a fairly comprehensive set of reported cases in this field. It includes all cases cited in annotations that have collected cases on this topic (including cases cited in pocket part updates),³³ all cases cited in the section of a leading treatise on zoning that addresses issues of religious land uses,³⁴ and all cases identified through a Westlaw search classified under West's Constitutional Law Key Number 84.5(18), which collects religion cases involving zoning and land use.³⁵ It is conceivable that some cases involving religion-based constitutional challenges to zoning decisions may not have been captured through these sources, but it is unlikely that there are many such cases.

The cases thus collected have been classified by the type of zoning case and by the denomination involved. Essentially, the zoning issues fall into two broad categories: cases that involve zoning on property to permit a church building to be erected on a particular site ("location cases"), and cases that determine whether an accessory use (such as a homeless shelter or soup kitchen) may be allowed at the site of an existing church ("accessory use cases").

In most of the cases, the denomination involved is obvious either from the case name or from discussion of the case in the opinion. There are, however, a substantial number of cases in which either no denominational affiliation appears in the case, or the church involved is nondenominational. These cases are designated as "unclassified" in the tables below. While some of the unclassified religious associations may in fact have a denominational affiliation that simply is not evident from the cases, most of these cases ap-

³³ See Jay M. Zitter, Annotation, *What Constitutes Accessory or Incidental Use of Religious or Educational Property Within Zoning Ordinance*, 11 A.L.R.4th 1084 (1992); Jeffrey F. Ghent, Annotation, *What Constitutes "Church," "Religious Use," or the Like Within Zoning Ordinance*, 62 A.L.R.3d 197 (1967); R.P. Davis, Annotation, *Zoning Regulations as Affecting Churches*, 74 A.L.R.2d 377 (1960).

³⁴ See EDWARD H. ZIEGLER, JR., 4 RATHKOPF'S THE LAW OF ZONING AND PLANNING ch. 20 (4th ed. 1992).

³⁵ See Appendix B for a list of the collected cases.

pear to involve local, congregationally organized churches that are functionally similar to the organizations we have classified as minority churches.

Information on the size of various denominations was derived from tables provided in Barry A. Kosmin & Seymour P. Lachman, *One Nation Under God; Religion in Contemporary American Society*.³⁶ The data is derived from the National Survey of Religious Identification conducted by the Graduate School of the City University of New York, which surveyed a representative sample of 113,000 people across the continental United States. This is the most comprehensive poll ever conducted on the issue of religious affiliation. It provides the best available data of religious affiliation as assessed from the perspective of the believer.

The line between mainline denominations and smaller groups is difficult to draw, because one is dealing with a continuum. For purposes of this study, groups with more than 1.5% of the adult population were treated as mainline groups, whereas groups with smaller percentages were included in the minority category. The only exception in the tables that follow is Judaism, but if the statistics on Judaism were divided to reflect the major branches of that tradition, the various branches would come under the 1.5% threshold. Some smaller Protestant groups may be more analogous to mainline groups, so that the categorizations in a few cases could be questioned.

The population percentages in the tables that follow do not add up to 100% because the tables do not include data on nonreligious groups and on the portion of the population (only 2.30%) that did not respond to the survey. Many smaller religions were not covered by the study because they have no reported cases, but such religions represent only 2.22% of the population.

In analyzing the data, a basic starting assumption is that any zoning dispute that progresses far enough into litigation to yield a reported decision reflects a situation in which religious groups perceive that their religious rights are being violated. For a variety of practical reasons, ranging from the need to have a good working relationship with local government officials, to the sheer cost of litigation, to the availability of alternative sites, churches probably bring fewer actions in this area than they think they may be enti-

³⁶ BARRY A. KOSMIN & SEYMOUR P. LACHMAN, *ONE NATION UNDER GOD; RELIGION IN CONTEMPORARY AMERICAN SOCIETY* 15-17 (1993).

ted to bring. Table 1 summarizes the number of cases in the location and accessory use categories by denomination.

TABLE 1

| Zoning Cases by Denomination | | | | | |
|--|--------------------------------------|--------------------------|---------------------------|-------------------------------|--------------------------------|
| Denomination | Self-Described % of Adult Population | Number of Location Cases | % of Total Location Cases | Number of Accessory Use Cases | % of Total Accessory Use Cases |
| Larger Denominations | | | | | |
| Catholics | 26.20% | 16 | 12.80% | 13 | 20.00% |
| Major Protestants (>1.5% of Adult U.S. Population) | | | | | |
| Baptists | 19.40% | 7 | 5.60% | 7 | 10.77% |
| Episcopal | 1.70% | 4 | 3.20% | 2 | 3.08% |
| Lutheran | 5.20% | 6 | 4.80% | 3 | 4.62% |
| Methodist | 8.00% | 3 | 2.40% | 2 | 3.08% |
| Pentecostal | 1.80% | 1 | 0.80% | 0 | 0.00% |
| Presbyterian | 2.80% | 2 | 1.60% | 3 | 4.62% |
| Subtotal: | 38.90% | 23 | 18.40% | 17 | 26.15% |
| Minority Denominations (<1.5% of U.S. Population) | | | | | |
| Assemblies of God | 0.37% | 0 | 0.00% | 4 | 3.20% |
| Buddhist | 0.40% | 0 | 0.00% | 1 | 1.54% |
| Christian Science | 0.12% | 1 | 0.80% | 1 | 1.54% |
| Churches of Christ | 1.00% | 0 | 0.00% | 1 | 1.54% |
| Church of God | 0.30% | 3 | 2.40% | 1 | 1.54% |
| Church of LDS | 1.40% | 3 | 2.40% | 1 | 1.54% |
| Eastern Orthodox | 0.28% | 1 | 0.80% | 1 | 1.54% |
| Evangelical | 0.14% | 2 | 1.60% | 0 | 0.00% |
| Hare Krishna | 0.30% | 1 | 0.80% | 0 | 0.00% |
| Islam | 0.50% | 2 | 1.60% | 0 | 0.00% |
| Jehovah's Witness | 0.80% | 19 | 15.20% | 1 | 1.54% |
| Judaism | 2.20% | 25 | 20.00% | 11 | 16.92% |
| Quakers | 0.04% | 1 | 0.80% | 0 | 0.00% |
| Seventh-day Adventists | 0.38% | 1 | 0.80% | 0 | 0.00% |
| Unification Church | 0.30% | 2 | 1.60% | 1 | 1.54% |
| Unitarian | 0.30% | 1 | 0.80% | 1 | 1.54% |
| Total Minority Cases | 8.83% | 62 | 49.60% | 24 | 33.97% |
| Unclassified | 14.78% | 24 | 19.20% | 11 | 16.92% |
| Minority + Unclassified | 23.61% | 86 | 68.80% | 35 | 50.89% |
| Total Cases | | 125 | 100.00% | 65 | 100.00% |

The figures indicated in Table 1 already suggest that a substantial amount of the litigation in this area involves minority religious groups. This burden is more pronounced when compared to the percentage of groups from these denominations in the general population. Table 2 provides these comparisons.

TABLE 2

| Percentages of Zoning Cases by Denominational Group and Percentage of United States Population | | | |
|--|--------------------------------------|--------------------|-------------------------|
| Denomination | Self-Described % of Adult Population | Location Cases (%) | Accessory Use Cases (%) |
| Larger Denominations | | | |
| Catholics | 26.20% | 12.80% | 20.00% |
| Major Protestants (>1.5% of Adult U.S. Population) | | | |
| Baptists | 19.40% | 5.60% | 10.77% |
| Episcopal | 1.70% | 3.20% | 3.08% |
| Lutheran | 5.20% | 4.80% | 4.62% |
| Methodist | 8.00% | 2.40% | 3.08% |
| Pentecostal | 1.80% | 0.80% | 0.00% |
| Presbyterian | 2.80% | 1.60% | 4.62% |
| Subtotal: | 38.90% | 18.40% | 26.15% |
| Minority Denominations (<1.5% of U.S. Population) | | | |
| Assemblies of God | 0.37% | 0.00% | 3.20% |
| Buddhist | 0.40% | 0.00% | 1.54% |
| Christian Science | 0.12% | 0.80% | 1.54% |
| Churches of Christ | 1.00% | 0.00% | 1.54% |
| Church of God | 0.30% | 2.40% | 1.54% |
| Church of LDS | 1.40% | 2.40% | 1.54% |
| Eastern Orthodox | 0.28% | 0.80% | 1.54% |
| Evangelical | 0.14% | 1.60% | 0.00% |
| Hare Krishna | 0.30% | 0.80% | 0.00% |
| Islam | 0.50% | 1.60% | 0.00% |
| Jehovah's Witness | 0.80% | 15.20% | 1.54% |
| Judaism | 2.20% | 20.00% | 16.92% |
| Quakers | 0.04% | 0.80% | 0.00% |
| Seventh-day Adventists | 0.38% | 0.80% | 0.00% |
| Unification Church | 0.30% | 1.60% | 1.54% |
| Unitarian | 0.30% | 0.80% | 1.54% |
| Total Minority Cases | 8.83% | 49.60% | 33.97% |
| Unclassified | 14.78% | 19.20% | 16.92% |
| Minority + Unclassified | 23.61% | 68.80% | 50.89% |
| Total Cases | | 100.00% | 100.00% |

The data in Table 2 are not wholly satisfactory, because the relative populations of various religious groups vary over the rather lengthy period from which the cases are drawn, whereas the population figures, to the extent they are available, are quite recent. Nonetheless, the figures suffice to give a rough sense for how the percentage of cases in which a given religious society is involved

corresponds with that society's percentage representation in the population as a whole. These figures strongly suggest that a high percentage of cases are being contested by religious groups comprising a very small percentage of the total population.

TABLE 3

| Zoning Cases by Denomination | | | | | | |
|--|-------------------|------------------------------------|--------------------------------------|------------------|-----------------------------------|-------------------------------------|
| Denomination ("Denom") | Claims Granted | % of Total Claims Granted | % of Denom's Claims Granted | Claims Denied | % of Total Claims Denied | % of Denom's Claims Denied |
| Larger Denominations | | | | | | |
| Catholics | 19 | 10.00% | 65.52% | 10 | 5.26% | 34.48% |
| Major Protestants (>1.5% of Adult U.S. Population) | | | | | | |
| Baptists | 4 | 2.11% | 28.57% | 10 | 5.26% | 71.43% |
| Episcopal | 6 | 3.16% | 100.00% | 0 | 0.00% | 0.00% |
| Lutheran | 6 | 3.16% | 66.67% | 3 | 1.58% | 33.33% |
| Methodist | 4 | 2.11% | 80.00% | 1 | 0.53% | 20.00% |
| Pentecostal | 1 | 0.53% | 100.00% | 0 | 0.00% | 0.00% |
| Presbyterian | 5 | 2.63% | 100.00% | 0 | 0.00% | 0.00% |
| Subtotal: | 26 | 13.68% | 65.00% | 14 | 7.37% | 35.00% |
| Minority Denominations (<1.5% of U.S. Population) | | | | | | |
| Assemblies of God | 0 | 0.00% | 0.00% | 4 | 2.11% | 100.00% |
| Buddhist | 1 | 0.53% | 100.00% | 0 | 0.00% | 0.00% |
| Christian Science | 1 | 0.53% | 50.00% | 1 | 0.53% | 50.00% |
| Churches of Christ | 1 | 0.53% | 100.00% | 0 | 0.00% | 0.00% |
| Church of God | 2 | 1.05% | 50.00% | 2 | 1.05% | 50.00% |
| Church of LDS | 2 | 1.05% | 50.00% | 2 | 1.05% | 50.00% |
| Eastern Orthodox | 0 | 0.00% | 0.00% | 2 | 1.05% | 100.00% |
| Evangelical | 1 | 0.53% | 50.00% | 1 | 0.53% | 50.00% |
| Hare Krishna | 0 | 0.00% | 0.00% | 1 | 0.53% | 100.00% |
| Islam | 2 | 1.05% | 100.00% | 0 | 0.00% | 0.00% |
| Jehovah's Witness | 11 | 5.79% | 55.00% | 9 | 4.74% | 45.00% |
| Judaism | 30 | 15.79% | 83.33% | 6 | 3.16% | 16.67% |
| Quakers | 1 | 0.53% | 100.00% | 0 | 0.00% | 0.00% |
| Seventh-day Adventists | 1 | 0.53% | 100.00% | 0 | 0.00% | 0.00% |
| Unification Church | 2 | 1.05% | 66.67% | 1 | 0.53% | 33.33% |
| Unitarian | 2 | 1.05% | 100.00% | 0 | 0.00% | 0.00% |
| Minority Cases | 57 | 30.00% | 66.28% | 29 | 33.72% | 33.72% |
| Unclassified | 17 | 8.95% | 4.00% | 18 | 9.47% | 51.43% |
| Minority + Unclassified | 74 | 38.95% | 61.16% | 47 | 24.74% | 38.84% |
| Total Cases | 119 | 62.63% | 62.63% | 71 | 37.37% | 37.37% |

According to Table 3, sixty-three percent of religious claims were granted, and thirty-seven percent were denied. At the judicial level, minority groups appear to fare slightly better than mainline groups: they won fifty-seven cases, or sixty-six percent of the cases in which they were involved; majority religions prevailed in twenty-six cases, or sixty-five percent of the cases in which they were involved. Among other things, these figures suggest that judicial review does help remedy the problems minority groups face, and tends to be impartial across groups. Because the data do not indicate that the higher percentage of cases in which minority religions are involved reflect higher levels of ungrounded claims, Table 2s data showing that minority groups face a substantially greater level of problems in the zoning area than mainline churches seems sound.

The percentage of cases in which various denominations' religious challenges to zoning decisions have been won and lost is summarized in Table 4. The figures show the number of claims won and lost both as percentages of the total number of cases and as percentages of the total number of claims in which each denomination (or group of denominations) is involved.

TABLE 4

| Percentages of Zoning Cases Won and Lost by Denominational Groups and Percentages of United States Population | | | |
|---|--------------------------------------|-------------------------------|--------------------------------|
| Denomination | Self-Described % of Adult Population | Cases won as % of Total Cases | Cases Lost as % of Total Cases |
| Larger Denominations | | | |
| Catholics | 26.20% | 10.00% | 5.26% |
| Major Protestants (>1.5% of Adult U.S. Population) | | | |
| Baptists | 19.40% | 2.11% | 5.26% |
| Episcopal | 1.70% | 3.16% | 0.00% |
| Lutheran | 5.20% | 3.16% | 1.58% |
| Methodist | 8.00% | 2.11% | 0.53% |
| Pentecostal | 1.80% | 0.53% | 0.00% |
| Presbyterian | 2.80% | 2.63% | 0.00% |
| Subtotal: | 38.90% | 13.68% | 7.37% |
| Minority Denominations (<1.5% of U.S. Population) | | | |
| Assemblies of God | 0.37% | 0.00% | 2.11% |
| Buddhist | 0.40% | 0.53% | 0.00% |
| Christian Science | 0.12% | 0.53% | 0.53% |
| Churches of Christ | 1.00% | 0.53% | 0.00% |
| Church of God | 0.30% | 1.05% | 1.05% |
| Church of LDS | 1.40% | 1.05% | 1.05% |
| Eastern Orthodox | 0.28% | 0.00% | 1.05% |

TABLE 4 — CONTINUED

| | | | |
|-------------------------|--------|--------|--------|
| Evangelical | 0.14% | 0.53% | 0.53% |
| Hare Krishna | 0.30% | 0.00% | 0.53% |
| Jehovah's Witness | 0.80% | 5.79% | 4.74% |
| Judaism | 2.20% | 15.79% | 3.16% |
| Quakers | 0.04% | 0.53% | 0.00% |
| Seventh-day Adventists | 0.38% | 0.53% | 0.00% |
| Unification Church | 0.30% | 1.05% | 0.53% |
| Unitarian | 0.30% | 1.05% | 0.00% |
| Minority Cases | 8.83% | 30.00% | 15.26% |
| Unclassified | 14.78% | 8.95% | 9.47% |
| Minority + Unclassified | | 38.95% | 24.74% |
| Total Cases | | 62.63% | 37.37% |

APPENDIX B

The foregoing data contained in Appendix A suggest that a variety of factors are operating in the zoning area in the United States that lead to de facto discrimination against smaller religious groups. This confirms that behind the surface of ostensibly neutral zoning laws, a variety of discriminatory and prejudicial factors may be operational that have the effect of violating the religious rights of minority groups.

To facilitate access to the data provided in Appendix A, the cases reviewed are listed below, classified as they have been categorized in the study. Within each denominational category, the citations appear alphabetically by jurisdiction (with federal cases preceding state cases) in reverse chronological order. The parenthetical following the citations include how the case was classified for purposes of the study. The letters in the parentheticals have the following meanings:

- G = The religious organization prevailed on the religious claim asserted.
- D = The religious claim asserted was denied.
- L = The case was a "location" case.
- A = The case was an "accessory use" case.

Catholic:

- Keeler v. Mayor & City Council*, 940 F. Supp. 879 (D. Md. 1996) (D) (A)
- Ellsworth v. Gercke*, 156 P.2d 242 (Ariz. 1945) (G) (L)
- Ramona Convent of Holy Names v. City of Alhambra*, 21 Cal. App. 4th 10, 26 Cal. Rptr. 2d 140 (Ct. App. 1993) (D) (A)
- Tustin Heights Ass'n v. Board of Supervisors*, 170 Cal. App. 2d 619, 339 P.2d 914 (Dist. Ct. App. 1959) (D) (L)
- St. John's Roman Catholic Church Corp. v. Town of Darien*, 184 A.2d 42 (Conn. 1962) (D) (L)
- Daughters of St. Paul, Inc. v. Zoning Bd.*, 549 A.2d 1076 (Conn. App. Ct. 1988) (G) (A)
- Hull v. Miami Shores Village*, 435 So. 2d 868 (Fla. Dist. Ct. App. 1983) (D) (A)
- Diakonian Soc'y v. City of Chicago*, 380 N.E.2d 843 (Ill. App. Ct. 1978) (G) (L)

- Board of Zoning Appeals v. Wheaton*, 76 N.E.2d 597 (Ind. Ct. App. 1948) (G) (A)
- Society of Jesus of New England v. Boston Landmarks Comm'n*, 564 N.E.2d 571 (Mass. 1990) (G) (L)
- Sisters of Holy Cross of Mass. v. Town of Brookline*, 198 N.E.2d 624 (Mass. 1964) (G) (L)
- Mooney v. Village of Orchard Lake*, 53 N.W.2d 308 (Mich. 1952) (G) (L)
- City of Minneapolis v. Church Universal & Triumphant*, 339 N.W.2d 880 (Minn. 1983) (G) (L)
- Association for Educ. Dev. v. Hayward*, 533 S.W.2d 579 (Mo. 1976) (G) (A)
- Black v. Town of Montclair*, 167 A.2d 388 (N.J. 1961) (G) (A)
- Andrews v. Board of Adjustment*, 143 A.2d 262 (N.J. Super. Ct. Law Div. 1958) (G) (A)
- Diocese of Rochester v. Planning Bd.*, 136 N.E.2d 827 (N.Y. 1956) (G) (L)
- Diocese of Buffalo v. Buczkowski*, 446 N.Y.S.2d 1015 (Sup. Ct. 1982) (D) (L)
- Province of Meribah Soc'y of Mary, Inc. v. Village of Muttontown*, 538 N.Y.S.2d 850 (App. Div. 1989) (D) (A)
- American Friends of the Soc'y of St. Pius, Inv. v. Schwab*, 417 N.Y.S.2d 991 (App. Div. 1979) (G) (L)
- People v. Kalayjian*, 352 N.Y.S.2d 115 (App. Div. 1973) (D) (L)
- Franciscan Missionaries of Mary v. Herdman*, 184 N.Y.S.2d 104 (App. Div. 1959) (G) (A)
- Hayes v. Fowler*, 473 S.E.2d 442 (N.C. Ct. App. 1996) (G) (A)
- Allen v. City of Burlington Bd. of Adjustment*, 397 S.E.2d 657 (N.C. Ct. App. 1990) (G) (L)
- Archdiocese of Portland v. County of Washington*, 458 P.2d 682 (Or. 1969) (D) (L)
- O'Hara v. Board of Adjustment*, 131 A.2d 587 (Pa. 1957) (D) (L)
- Stark's Appeal*, 72 Pa. D. & C. 1681 (Pa. 1950) (G) (A)
- In re Appeal of Hoffman*, 444 A.2d 764 (Pa. Commw. Ct. 1982) (G) (A)
- State ex rel. Roman Catholic Bishop v. Hill*, 90 P.2d 217 (Nev. 1939) (G) (L)

Major Protestant:

Baptist:

- Messiah Baptist Church v. County of Jefferson*, 859 F.2d 820 (10th Cir. 1988) (D) (L)
- Messiah Baptist Church v. County of Jefferson*, 697 F. Supp. 396 (D. Colo. 1987) (D) (L)
- Ex Parte Fairhope Bd. of Adjustment and Appeals*, 567 So. 2d 1353 (Ala. 1990) (D) (A)

- Corinth Baptist Church v. State Dep't of Transp.*, 656 So. 2d 868 (Ala. Civ. Ct. App. 1995) (D) (A)
- Cochise County v. Broken Arrow Baptist Church*, 778 P.2d 1302 (Ariz. Ct. App. 1989) (D) (L)
- Abram v. City of Fayetteville*, 661 S.W.2d 371 (Ark. 1983) (D) (A)
- City of Chico v. First Ave. Baptist Church*, 108 Cal. App. 2d 297, 238 P.2d 587 (Dist. Ct. App. 1951) (D) (L)
- East Side Baptist Church v. Klein*, 487 P.2d 549 (Colo. 1971) (D) (A)
- Parkview Baptist Church v. City of Pueblo*, 336 P.2d 310 (Colo. 1959) (D) (A)
- North Syracuse First Baptist Church v. Village of N. Syracuse*, 524 N.Y.S.2d 894 (App. Div. 1988) (G) (A)
- Yocum v. Power*, 157 A.2d 368 (Pa. 1960) (G) (L)
- Antrim Faith Baptist Church v. Commonwealth*, 460 A.2d 1228 (Pa. Commw. Ct. 1983) (D) (L)
- City of Sumner v. First Baptist Church*, 639 P.2d 1358 (Wash. 1982) (G) (A)
- State ex rel. Lake Drive Baptist Church v. Bayside Bd. of Trustees*, 108 N.W.2d 288 (Wis. 1961) (G) (L)

Episcopal:

- Rector, Wardens, & Members of the Vestry of St. Bartholomew's Church v. City of New York*, 914 F.2d 348 (2d Cir. 1990) (G) (A)
- O'Brien v. City of Chicago*, 105 N.E.2d 917 (Ill. App. Ct. 1952) (G) (L)
- State v. Cameron*, 498 A.2d 1217 (N.J. 1985) (G) (L)
- Greentree at Murray Hill Condominium v. Good Shepherd Episcopalian Church*, 550 N.Y.S.2d 981 (Sup. Ct. 1989) (G) (A)
- Diocese of Central New York v. Schwarzer*, 199 N.Y.S.2d 939 (Sup. Ct. 1960) (G) (L)
- Heard v. City of Dallas*, 456 S.W.2d 440 (Tex. Civ. App. Ct. 1970) (G) (L)

Lutheran:

- Miami Beach United Lutheran Church of the Epiphany v. City of Miami Beach*, 82 So. 2d 880 (Fla. 1955) (D) (L)
- Johnson v. Evangelical Lutheran Church of Messiah*, 54 S.E.2d 722 (Ga. Ct. App. 1949) (G) (L)
- Bethel Evangelical Lutheran Church v. Village of Morton*, 559 N.E.2d 533 (Ill. App. Ct. 1990) (D) (A)
- Our Saviour's Evangelical Lutheran Church v. City of Naperville*, 542 N.E.2d 1158 (Ill. App. Ct. 1989) (G) (A)
- Schueller v. Board of Adjustment*, 95 N.W.2d 731 (Iowa 1959) (G) (L)

Zion Evangelical Lutheran Church v. City of Detroit Lakes, 21 N.W.2d 203 (Minn. 1945) (D) (L)

St. John's Evangelical Lutheran Church v. City of Hoboken, 479 A.2d 935 (N.J. Super. Ct. Law Div. 1983) (G) (L)

Lutheran Church in America v. City of New York, 316 N.E.2d 305 (N.Y. 1974) (G) (A)

State ex rel. Synod of Ohio of United Lutheran Church in America v. Joseph, 39 N.E.2d 515 (Ohio 1942) (G) (L)

Methodist:

West Hartford Methodist Church v. Zoning Bd. of Appeals, 121 A.2d 640 (Conn. 1956) (D) (A)

Keeling v. Board of Zoning Appeals, 69 N.E.2d 613 (Ind. Ct. App. 1946) (G) (L)

Linden Methodist Episcopal Church v. City of Linden, 173 A. 593 (N.J. 1934) (G) (L)

Cash v. Brookshire United Methodist Church, 573 N.E.2d 692 (Ohio Ct. App. 1988) (G) (A)

First United Methodist Church v. Hearing Examiner for the Seattle Landmarks Preservation Bd., 916 P.2d 374 (Wash. 1996) (G) (L)

Pentecostal:

Pentecostal Holiness Church v. Dunn, 27 So. 2d 561 (Ala. 1946) (G) (L)

Presbyterian:

Western Presbyterian Church v. Board of Zoning Adjustment, 862 F. Supp. 538 (D.D.C. 1994) (G) (A)

Synod of the Chesapeake, Inc. v. City of Newark, 254 A.2d 611 (Del. Ch. 1969) (G) (A)

City of Richmond Heights v. Richmond Heights Presbyterian Church 764 S.W.2d 647 (Mo. 1989) (G) (A)

First Westminister Presbyterian Church v. City Council, 393 N.Y.S.2d 180 (App. Div. 1977) (G) (L)

State ex rel. Westminister Presbyterian Church v. Edgecomb, 189 N.W. 617 (Neb. 1922) (G) (L)

Minority Denominations:

Assemblies of God:

First Assembly of God v. Collier County, 20 F.3d 419 (11th Cir. 1994) (D) (A)

First Assembly of God v. City of Alexandria, 739 F.2d 942 (4th Cir. 1984) (D) (A)

First Assembly of God v. Collier County, 775 F. Supp. 383 (M.D. Fla. 1991) (D) (A)

Lakeshore Assembly of God Church v. Village Bd., 508 N.Y.S.2d 819 (App. Div. 1986) (D) (A)

Buddhist:

Moore v. Trippe, 743 F. Supp. 201 (S.D.N.Y. 1990) (G) (A)

Christian Science:

Bright Horizon House, Inc. v. Zoning Bd. of Appeals, 469 N.Y.S.2d 851 (Sup. Ct. 1983) (D) (L)

Mahart v. First Church of Christ, Scientist, 142 N.E.2d 678 (Ohio Ct. App. 1955) (G) (A)

Church of Christ:

Church of Christ v. Metropolitan Bd. of Zoning Appeals, 371 N.E.2d 1331 (Ind. Ct. App. 1978) (G) (A)

Church of God:

Church of God v. Monroe-Ouachita Reg'l Planning Comm'n, 404 F. Supp. 175 (W.D. La. 1975) (G) (A)

Jernigan v. Smith, 126 S.E.2d 678 (Ga. 1962) (D) (L)

City of Sherman v. Simms, 183 S.W.2d 415 (Tex. 1944) (D) (L)

State ex rel. Howell v. Meador, 154 S.E. 876 (W. Va. 1930) (G) (L)

The Church of Jesus Christ of Latter-day Saints:

The Church of Jesus Christ of Latter-day Saints v. Jefferson County, 741 F. Supp. 1522 (N.D. Ala. 1990) (G) (L)

Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. City of Porterville, 90 Cal. App. 2d 656, 203 P.2d 823 (Dist. Ct. App. 1949) (D) (L)

Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Ashton, 448 P.2d 185 (Idaho 1968) (G) (A)

City of Las Cruces v. Huerta, 692 P.2d 1331 (N.M. Ct. App. 1984) (D) (L)

Eastern Orthodox:

Macedonian Orthodox Church v. Planning Bd., 636 A.2d 96 (N.J. Super. Ct. App. Div. 1994) (D) (L)

Appeal of the Russian Orthodox Church of the Holy Ghost, 152 A.2d 489 (Pa. 1959) (D) (A)

Evangelical:

State ex rel. Covenant Harbor Bible Camp v. Steinke, 96 N.W.2d 356 (Wis. 1959) (G) (L)

Cornerstone Bible Church v. City of Hastings, 740 F. Supp. 654 (D. Minn. 1990) (D) (L)

Marsland v. International Soc'y for Krishma Consciousness, 657 P.2d 1035 (Haw. 1983) (D) (L)

Islam:

Islamic Center v. City of Starkville, 840 F.2d 293 (5th Cir. 1988) (G) (L)

Islamic Soc'y v. Foley, 464 N.Y.S.2d 844 (App. Div. 1983) (G) (L)

Jehovah's Witnesses:

Lakewood, Ohio Congregation of Jehovah's Witnesses, Inc. v. City of Lakewood, 699 F.2d 303 (6th Cir. 1983) (D) (L)

Galfas v. City of Atlanta, 193 F.2d 931 (5th Cir. 1952) (D) (L)

Jehovah's Witnesses Assembly Halls v. City of Jersey City, 597 F. Supp. 972 (D.N.J. 1984) (G) (L)

Matthews v. Board of Supervisors, 203 Cal. App. 2d 800, 21 Cal Rptr. 914 (Dist. Ct. App. 1962) (D) (L)

Garden Grove Congregation of Jehovah's Witnesses v. City of Garden Grove, 176 Cal. App. 2d 136, 1 Cal. Rptr. 65 (Dist. Ct. App. 1959) (D) (L)

Redwood City Co. of Jehovah's Witnesses v. City of Menlo Park, 167 Cal. App. 2d 686, 335 P.2d 195 (Dist. Ct. App. 1959) (G) (L)

Minney v. City of Azusa, 164 Cal. App. 2d 12, 330 P.2d 255 (Dist. Ct. App. 1958) (D) (L)

State ex rel. Tampa Co. of Jehovah's Witnesses v. City of Tampa, 48 So. 2d 78 (Fla. 1950) (G) (L)

Rogers v. Mayor of Atlanta, 137 S.E.2d 668, (Ga. Ct. App. 1964) (G) (L)

Columbus Park Congregation of Jehovah's Witnesses, Inc. v. Board of Appeals, 182 N.E.2d 722 (Ill. 1962) (G) (L)

Board of Zoning Appeals v. Decatur Co. of Jehovah's Witnesses, 117 N.E.2d 115 (Ind. 1954) (D) (A)

Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svec, 226 N.W.2d 306 (Minn. 1975) (G) (L)

Allendale Congregation of Jehovah's Witnesses v. Grosman, 152 A.2d 569 (N.J. 1959) (D) (L)

Jehovah's Witnesses Assembly Hall v. Woolwich Township, 532 A.2d 276 (N.J. Super. Ct. Law Div. 1987) (G) (L)

State ex rel. Wiegel v. Randall, 116 N.E.2d 300 (Ohio 1953) (G) (L)

- Libis v. Board of Zoning Appeals*, 292 N.E.2d 642 (Ohio Ct. App. 1972) (G) (L)
- Milwaukie Co. of Jehovah's Witnesses v. Mullen*, 330 P.2d 5 (Or. 1958) (D) (L)
- Appeal of Trustees of the Congregation of Jehovah's Witnesses*, 130 A.2d 240 (Pa. Super. Ct. 1957) (D) (L)
- Congregation Comm. N. Fort Worth Congregation, Jehovah's Witnesses v. City Council*, 287 S.W.2d 700 (Tex. Civ. App. Ct. 1956) (G) (L)
- State ex rel. Wenatchee Congregation of Jehovah's Witnesses v. City of Wenatchee*, 312 P.2d 195 (Wash. 1957) (G) (L)

Judism:

- Grosz v. City of Miami Beach*, 721 F.2d 729 (11th Cir. 1983) (D) (L)
- Village of Univ. Heights v. Cleveland Jewish Orphan's Home*, 20 F.2d 743 (6th Cir. 1927) (G) (L)
- Lucas Valley Homeowners Ass'n v. County of Marin*, 233 Cal. App. 3d 130, 284 Cal. Rptr. 427 (Ct. App. 1991) (G) (L)
- Stoddard v. Edelman*, 4 Cal. App. 3d 544, 84 Cal. Rptr. 443 (Ct. App. 1970) (G) (L)
- Beit Havurah v. Zoning Bd. of Appeals*, 418 A.2d 82 (Conn. 1979) (G) (A)
- Garbaty v. Norwalk Jewish Ctr., Inc.*, 171 A.2d 197 (Conn. 1961) (G) (L)
- Lubavitch Chabad House v. City of Evanston*, 445 N.E.2d 343 (Ill. App. Ct. 1982) (G) (L)
- Wolbach v. Zoning Bd. of Appeals*, 226 N.E.2d 679 (Ill. App. Ct. 1967) (G) (L)
- Schwartz v. Congregation Powolei Zeduck*, 131 N.E.2d 785 (Ill. App. Ct. 1956) (G) (L)
- Congregation Dovid Ben Nuchim v. City of Oak Park*, 199 N.W.2d 557 (Mich. Ct. App. 1972) (G) (L)
- Congregation Temple Israel v. City of Creve Coeur*, 320 S.W.2d 451 (Mo. 1959) (G) (L)
- Kali Bari Temple v. Board of Adjustment*, 638 A.2d 839 (N.J. Super. Ct. App. Div. 1994) (G) (L)
- Lakewood Residents Ass'n v. Congregation Zichron Schneur*, 570 A.2d 1032 (N.J. Super. Ct. Law Div. 1989) (G) (L)
- Farhi v. Commissioners of the Borough of Deal*, 499 A.2d 559 (N.J. Super. Ct. Law Div. 1985) (G) (L)
- Sexton v. Bates*, 85 A.2d 833 (N.J. Super. Ct. Law Div. 1951), *aff'd sub nom.*
- Sexton v. Essex County Ritualarium*, 91 A.2d 162 (N.J. Super. Ct. App. Div. 1952) (D) (L)

- Jewish Reconstructionist Synagogue v. Village of Roslyn Harbor*, 342 N.E.2d 534 (N.Y. 1975) (G) (L)
- Westchester Reform Temple v. Brown*, 239 N.E.2d 891 (N.Y. 1968) (G) (A)
- Community Synagogue v. Bates*, 136 N.E.2d 488 (N.Y. 1956) (G) (L)
- Slevin v. Long Island Jewish Medical Ctr.*, 319 N.Y.S.2d 937 (Sup. Ct. 1971) (G) (A)
- Westbury Hebrew Congregation, Inc. v. Downer*, 302 N.Y.S.2d 923 (Sup. Ct. 1969) (G) (A)
- Westchester Reform Temple v. Griffin*, 276 N.Y.S.2d 737 (Sup. Ct. 1966) (D) (A)
- Application of Garden City Jewish Center*, 155 N.Y.S.2d 523 (Sup. Ct. 1956) (G) (L)
- Harrison Orothodox Minyan, Inc. v. Town Bd.*, 552 N.Y.S.2d 434 (App. Div. 1990) (G) (L)
- Yeshiva and Mesiuta Toras Chaim v. Rose*, 523 N.Y.S.2d 907 (App. Div. 1988) (D) (L)
- Siegert v. Luney*, 491 N.Y.S.2d 15 (App. Div. 1985) (G) (A)
- North Shore Hebrew Academy v. Wegman*, 481 N.Y.S.2d 142 (App. Div. 1984) (G) (A)
- Congregation Gates of Prayer v. Board of Appeals*, 368 N.Y.S.2d 232 (App. Div. 1975) (D) (L)
- Seaford Jewish Ctr., Inc. v. Board of Zoning Appeals*, 368 N.Y.S.2d 40 (App. Div. 1975) (G) (L)
- Ginsberg v. Yeshiva of Far Rockaway*, 358 N.Y.S.2d 477 (App. Div. 1974) (D) (A)
- Shaffer v. Temple Beth Emeth*, 190 N.Y.S. 841 (App. Div. 1921) (G) (A)
- Young Israel Org. v. Dworkin*, 133 N.E.2d 174 (Ohio Ct. App. 1956) (G) (L)
- Overbrook Farms Club v. Zoning Bd. of Adjustment*, 40 A.2d 423 (Pa. 1945) (G) (A)
- Appeal of Floersheim*, 34 A.2d 62 (Pa. 1943) (G) (A)
- Orthodox Minyan v. Cheltenham Township Zoning Hearing Bd.*, 552 A.2d 772 (Pa. Commw. Ct. 1989) (G) (L)
- Berlant v. Zoning Hearing Bd.*, 279 A.2d 400 (Pa. Commw. Ct. 1971) (G) (L)
- State ex rel. B'Nai B'Rith Found. v. Walworth County Bd. of Adjustment*, 208 N.W.2d 113 (Wis. 1973) (G) (L)

Quakers:

- Milharcic v. Metropolitan Bd. of Zoning Appeals*, 489 N.E.2d 634 (Ind. Ct. App. 1986) (G) (L)

Seventh-day Adventists:

Application of Faith for Today, Inc., 204 N.Y.S.2d 751 (App. Div. 1960) (G) (L)

Unification Church:

New Educ. Dev. Sys. Inc. v. Boitano, 573 F. Supp. 594 (N.D. Cal. 1983) (G) (L)

Holy Spirit Ass'n for the Unification of World Christianity v. Town of New Castle, 480 F. Supp. 1212 (S.D.N.Y. 1979) (D) (L)

Holy Spirit Ass'n for the Unification of World Christianity v. Brush, 469 N.Y.S.2d 196 (App. Div. 1983) (G) (A)

Unitarian:

North Shore Unitarian Soc'y v. Village of Plandome, 109 N.Y.S.2d 803 (Sup. Ct. 1951) (G) (L)

Unitarian Universalist Church v. Shorten, 314 N.Y.S.2d 66 (Sup. Ct. 1970) (G) (A)

Unclassified:

Cornerstone Bible Church v. City of Hastings, 948 F.2d 464 (8th Cir. 1991) (G) (L)

Christian Gospel Church, Inc. v. City & County of San Francisco, 896 F.2d 1221 (9th Cir. 1990) (D) (L)

Daytona Rescue Mission, Inc. v. City of Daytona Beach, 885 F. Supp. 1554 (M.D. Fla. 1995) (D) (A)

Alpine Christian Fellowship v. County Comm'rs, 870 F. Supp. 991 (D. Colo. 1994) (Alpine Christian Fellowship) (G) (A)

Nichols v. Planning & Zoning Comm'n, 667 F. Supp. 72 (D. Conn. 1987) (G) (L)

Love Church v. City of Evanston, 671 F. Supp. 508 (N.D. Ill. 1987) (D) (L)

Seward Chapel, Inc. v. City of Seward, 655 P.2d 1293 (Alaska 1982) (D) (A)

City of Colorado Springs v. Blanche, 761 P.2d 212 (Colo. 1988) (D) (L)

Grace Community Church v. Town of Bethel, 622 A.2d 591 (Conn. App. Ct. 1993) (G) (L)

Grace Community Church v. Planning & Zoning Comm'n, 615 A.2d 1092 (Conn. Super. Ct. 1992) (G) (L)

Town v. State ex rel. Reno, 377 So. 2d 648 (Fla. 1979) (Ethiopian Zion Coptic Church) (D) (L)

Pylant v. Orange County, 328 So. 2d 199 (Fla. 1976) (First Apostolic) (D) (L)

State v. Maxwell, 617 P.2d 816 (Haw. 1980) (Hula Hau) (D) (A)

- Hope Deliverance Ctr., Inc. v. Zoning Bd. of Appeals*, 452 N.E.2d 630 (Ill. App. Ct. 1983) (Nondenominational) (G) (L)
- South Side Move of God Church v. Zoning Bd. of Appeals*, 365 N.E.2d 118 (Ill. App. Ct. 1977) (D) (A)
- Twin-City Bible Church v. Zoning Bd. of Appeals*, 365 N.E.2d 1381 (Ill. App. Ct. 1977) (G) (A)
- Coston Chapel A.M.E. Church v. Chaddick*, 292 N.E.2d 215 (Ill. App. Ct. 1972) (D) (L)
- Family Christian Fellowship v. County of Winnebago*, 503 N.E.2d 367 (Ill. App. Ct. 1986) (G) (L)
- Board of Zoning Appeals v. New Testament Bible Church*, 411 N.E.2d 681 (Ind. Ct. App. 1980) (G) (A)
- Portage Township v. Full Salvation Union*, 29 N.W.2d 297 (Mich. 1947) (D) (A)
- Yanow v. Seven Oaks Park, Inc.*, 94 A.2d 482 (N.J. 1953) (Eastern Christian Institute) (D) (L)
- Covenant Community Church, Inc. v. Town of Gates Zoning Bd. of Appeals*, 444 N.Y.S.2d 415 (Sup. Ct. 1981) (G) (L)
- Duallo Realty Corp. v. Silver*, 224 N.Y.S.2d 55 (Sup. Ct. 1962) (Temple Emanuel) (G) (A)
- Holy Sepulchre Cemetary v. Town of Greece*, 79 N.Y.S.2d 683 (Sup. Ct. 1947) (D) (L)
- Neddermeyer v. Town of Ontario Planning Bd.*, 548 N.Y.S.2d 951 (App. Div. 1989) (The Healing Church) (G) (L)
- Holy Spirit Ass'n for the Unification of World Christianity v. Rosenfeld*, 458 N.Y.S.2d 920 (App. Div. 1983) (Holy Spirit Ass'n) (D) (L)
- Independent Church of the Realization of the Word of God, Inc. v. Board of Zoning Appeals*, 437 N.Y.S.2d 443 (App. Div. 1981) (D) (L)
- State ex rel. Anshe Chesed Congregation v. Bruggemeir*, 115 N.E.2d 65 (Ohio Ct. App. 1953) (Anshe Chesed Congregation) (G) (L)
- Damascus Community Church v. Clackamus County*, 610 P.2d 273 (Or. Ct. App. 1980) (D) (A)
- Christian Retreat Ctr. v. Board of County Comm'rs*, 560 P.2d 1100 (Or. Ct. App. 1977) (D) (A)
- Church of the Savior v. Zoning Hearing Bd.*, 568 A.2d 1336 (Pa. Commw. Ct. 1989) (G) (L)
- Conversion Center, Inc. v. Zoning Bd. of Adjustment*, 278 A.2d 369 (Pa. Commw. Ct. 1971) (G) (L)
- City of Rapid City v. Kahler*, 334 N.W.2d 510 (S.D. 1983) (Conerston Rescue Mission) (G) (L)

Fountain Gate Ministries, Inc. v. City of Plano, 654 S.W.2d 841 (Tex. Ct. App. 1983) (D) (A)

First Covenant Church v. City of Seattle, 840 P.2d 174 (Wash. 1992) (G) (L)

