

Boulder County's denied appeal in church expansion garners national attention

Case raises questions about mega-churches, jury verdicts

By Laura Snider Camera Staff Writer
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The federal Religious Land Use and Institutionalized Persons Act of 2000

Some of the key land-use provisions of the act, which was passed to protect churches and other places of worship from discrimination:

Substantial burden: Local governments cannot use a land-use regulation to impose a substantial burden on the religious exercise of a person.

Equal terms: Religious assemblies must be treated on equal terms with a non-religious institution.

Nondiscrimination: Local governments cannot impose any land-use law that discriminates based on religion.

On Monday afternoon, e-mails "from all over the place" started filling up Patricia Salkin's inbox.

Everyone wanted to know: Had Salkin, an expert on land-use law at the Albany Law School in New York, heard about the decision of the 10th U.S. Circuit Court of Appeals? Boulder County had lost its appeal in a long battle with Rocky Mountain Christian Church in Niwot over a proposed expansion.

"This does have national implications," Salkin said. "There are a number of things about this particular case that are unique or not common."

In 2006, the Boulder County commissioners denied the Rocky Mountain Christian Church's request to nearly double the size of its campus on 95th Street, which would have brought the total square footage of the buildings to 240,000. At the time, the commissioners said the proposed expansion would constitute an over-intense use of the land, which is agriculturally zoned.

In response, the church sued the county, arguing that the commissioners had violated the federal Religious Land Use and Institutionalized Persons Act of 2000, which forbids local governments from discriminating against religious institutions with their land-use laws. In late 2008, a jury sided with the church, and in 2009, a judge ordered the commissioners to allow the expansion. The commissioners appealed, and on Monday, their appeal was denied.

The denial caught the attention of land-use experts across the country, who were particularly surprised that such a decision would be handed down in a case related to Boulder County, which is known for its rigorous land-use rules.

"Boulder has a very good reputation for being a community that is solid when it comes to comprehensive planning land-use regulations. They are often held up as a model community," Salkin said. "The eyebrows are raised because people think that Boulder has a plan, and they stick with their plan. The perception is that Boulder's land-use decision making is not ad hoc -- it's not haphazard."

So denial of an expansion request -- from a church or any other institution -- didn't seem surprising to the land-use community outside of Boulder County, and therefore, seemed less likely to be discriminatory.

"When one thinks about successful RLUIPA challenges, one thinks about a municipality that is clearly discriminatory," Salkin said. "And that doesn't add up in Boulder."

Salkin said the decision was also interesting because it deals with a "mega-church," and therefore, begs the question as to whether any limitation in size -- no matter how big -- also constitutes a burden on a person's ability to worship.

"This brings the issue of scale to the table," she said, "which is not common in the recorded decisions."

Eric Rassbach, national litigation director of the Becket Fund for Religious Liberty, agrees with Salkin that the case has national significance, but he sees the outcome differently.

Rassbach, who served as co-counsel for the Rocky Mountain Christian Church during the legal process, sees the case as a wake-up call for land-use planners everywhere that it's time to begin considering fundamental rights -- like practicing religion -- as part of land-use code.

"In many cases, they're not used to having to take into account the civil rights of people who are coming before them on an application," said Rassbach, who has worked to help a wide range of religious institutions bring lawsuits under RLUIPA. "They're elected officials -- it tends to be a more political process."

Rassbach said that RLUIPA, which is just now beginning to be litigated in federal circuit courts across the country, is like any federal law that supercedes local land-use rules -- such as federal regulations that protect wetlands -- and it takes a while to get used to.

"You cannot treat a wetland in the same way you treat every other piece of property," he said. "The ability to worship is a really important thing, so you can't treat those properties exactly the same way as you might treat other pieces of property."

Boulder County is now deciding whether to appeal the case to the U.S. Supreme Court.

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