Church and Worship Regulation

• *First Covenant Church of Seattle v. City of Seattle*
• *Civil Liberties for Urban Believers v. City of Chicago*

---


**Free Exercise Clauses**

• *Employment Division v. Smith*
• General applicability or—
  • targeting religious activity
  • “hybrid” right
• Exception for liturgy
Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752 (7th Cir. 2003), p. 362

RLUIPA & Siting Churches
• RFRA & City of Boerne v. Flores
• Substantial burden
• Nondiscrimination

Alternative Methods for Land Use Decisionmaking

• **Today**
  • Legislative and Adjudicative
    • Referenda and Initiatives
  • Private Law
    • CC&Rs

• **Tomorrow**
  • Bargaining
    • Development Agreements
    • Mediation
  • Free Market
    • Houston
    • Deregulation
Direct Democratic Devices: Initiatives and Referenda

Initiatives

• Legislation is drafted by individual citizens and is circulated among the voters by a petition.

• If a certain number of signatures is obtained, the initiative is placed on the ballot at the next election.

Direct Democratic Devices: Initiatives and Referenda Cont’d

Referenda

• These occur after the local elected body has adopted legislation.

• Voters circulate a petition to repeal the legislation.

• If enough signatures are obtained, the local elected body may voluntarily rescind the legislation or put it on the ballot.

Initiatives and Referenda

- Delegation of legislative power to—
  - the people
  - an agency
- Delegation without standards
- Reservation of power
- *Fasano* (zoning is adjudicative)


Covenants, Conditions, & Restrictions

- Nuisance
- Property may be reasonably and normally used for *residential use only*
- Construction of the covenant if ambiguous
  - Dictionary
  - Context
  - “Construed strictly against the covenant”

“S. B. No. 507, 77th Legislature, Regulation Session, 2001, is enacted in honor of Wenonah Blevins and may be unofficially referred to as the Wenonah Blevins Residential Property Owners Protection Act.”

Wenonah Blevins
Poster Child in the Battle for Homeowner Rights

• 83-year old widow.
• Fell behind in fees to HOA equaling $814.50.
• Legal fees and penalties equaled $3,756.
• Foreclosure and auction of Blevins’ home lead to sale for $5,000 (valued at $150,000).
Wenonah Blevins Cont’d

• Blevins sued. Parties settled.
• Blevins received $300,000 and her home back.
• Bidder who bought the home received $95,000 when he sold it back to the HOA so that it could give it back to Blevins.

Texas Residential Property Owners Protection Act

1. A “reasonable period” for the homeowner to “cure” the violation (of which the association must give notice).

2. A homeowner’s right to a hearing before the association’s board to discuss, verify, and resolve the issue (of which the association must give notice).
Texas Residential Property Owners Protection Act Cont’d

3. **Prohibition of any charges** for attorney’s fees before this cure period and hearing opportunity are completed.

4. **Right of redemption** on the part of the homeowner for 180 days following foreclosure sale, allowing the homeowner to pay the debt and obtain re-conveyance of the property after its sale.

• Changes 1 and 2 may lead to higher legal costs for the association which will be borne by the members who are paying in compliance with the CC&Rs according to Change 3.

• Change 4 means that a purchaser cannot obtain a secure title at a foreclosure sale, possibly causing foreclosure prices to decrease because of the uncertainty.