
RLUIPA AT 20: A QUANTITATIVE STUDY OF ITS IMPACT ON LAND USE AND RELIGIOUS MINORITIES

Lucien J. Dhooge*

“Perhaps in the early days of the Republic [the Constitution’s Religion clauses] were understood to protect only the diversity within Christianity, but today they are recognized as guaranteeing religious liberty and equality to ‘the infidel, the atheist, or the adherent of a non-Christian faith.’”¹

INTRODUCTION

The Religious Land Use and Institutionalized Persons Act (“RLUIPA”) consists of four separate provisions relating to land use regulations.² Initially, governments are prohibited from adopting or implementing “a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person” in the absence of a compelling interest and through utilization of the least restrictive means.³ Second, RLUIPA prohibits governments from imposing or implementing land use regulations “in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.”⁴ Third, governments are prohibited from imposing or implementing land use regulations that “discriminate against any assembly or institution on the basis of religion or religious denomination.”⁵ Finally, governments are prohibited from excluding religious assemblies from their jurisdictions or unreasonably limiting such assemblies, institutions, or structures.⁶

RLUIPA was motivated, in part, by the perceived need to protect religious minorities.⁷ Such protection assumes majoritarian governments are beholden to well-

* Sue and John Staton Professor of Law, Scheller College of Business, Georgia Institute of Technology. The author thanks Shelbi Vaughn for her assistance in the preparation of this article.

¹ *Cty. of Allegheny v. Am. Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 590 (1989) (quoting *Wallace v. Jaffree*, 472 U.S. 38, 52 (1985)).

² 42 U.S.C. §§ 2000cc–2000cc-5 (2020). For a detailed history of RLUIPA, see Timothy Houseal, *RLUIPA: Protecting Houses of Worship and Religious Liberty*, 20 DEL. LAW. 28, 28–30 (2002); Patricia E. Salkin & Amy Lavine, *The Genesis of RLUIPA and Federalism: Evaluating the Creation of a Federal Statutory Right and its Impact on Local Government*, 40 URB. LAW. 195, 196–208 (2008).

³ 42 U.S.C. §§ 2000cc(a)(1)(A–B) (2020). A “land use regulation” is defined as “a zoning or landmarking law, or the application [thereof], that limits or restricts a claimant’s use or development of land . . . if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.” *Id.* § 2000cc-5(5).

⁴ *Id.* § 2000cc(b)(1).

⁵ *Id.* § 2000cc(b)(2).

⁶ *Id.* § 2000cc(b)(3)(A–B).

⁷ See, e.g., 146 CONG. REC. S7774 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy) (noting that “new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation”); 146 CONG. REC. S 7777 (daily ed. July 27, 2000) (statement of the Coalition for the Free Exercise of Religion) (citing a survey by Brigham Young University and the law firm of Mayer, Brown & Platt concluding that “small

known and accepted religions and unable or unwilling to protect minority faiths.⁸ This inability or unwillingness requires the protections set forth in RLUIPA and a means of enforcement through judicial intervention.⁹ This approach is particularly appropriate with respect to religions, beliefs, and practices which challenge accepted cultural norms.¹⁰

While it is impossible to fully assess RLUIPA's impact upon land use decisions affecting religious minorities,¹¹ state and federal case law provides some evidence in this regard. This Article provides a study of this case law. This Article analyzes seventeen years of state and federal opinions through three different data

religious groups and nondenominational churches are greatly overrepresented in reported church zoning cases"); 146 CONG. REC. S7778 (daily ed. July 27, 2000) (statement of Sen. Reid) (describing the importance of legislation affecting land use decisions to the protection of the free exercise of religion by minority faiths). *See also* Houseal, *supra* note 2, at 34 (noting that RLUIPA "provides minority religions and small congregations leverage to assure more fair individual assessments"); Von G. Keetch & Matthew K. Richards, *The Need for Legislation to Enshrine Free Exercise in the Land Use Context*, 32 U.C. DAVIS L. REV. 725, 726, 729 (1999) (contending that "minority religions have a much harder time obtaining approval for construction of a house of worship . . . than do majority religions"); Robert W. Tuttle, *How Firm a Foundation? Protecting Religious Land Uses After Boerne*, 68 GEO. WASH. L. REV. 861, 914 (2000) (contending that "[t]hose who have argued most strongly for legislation like RLUIPA tend to focus on . . . discrimination against non-mainstream religious groups").

⁸ *See, e.g.*, Alan Brownstein, *The Religion Clauses as Mutually Reinforcing Mandates: Why the Arguments for Rigorously Enforcing the Free Exercise Clause and the Establishment Clause are Stronger When Both Clauses are Taken Seriously*, 32 CARDOZO L. REV. 1701, 1725 (2011) (arguing that majority faiths are "less likely to require judicial intervention on their behalf under the auspices of constitutional guarantees because they have sufficient political clout to protect many of their own interests from state interference . . . [whereas] [l]ess popular religions are more vulnerable to having their interests ignored or subordinated to the majority's discretionary policies"). *See also* Douglas Laycock, *A Syllabus of Errors*, 105 MICH. L. REV. 1169, 1177 (2007) (advocating for special protections for religious minorities on the basis that legislators are "hardly ever" willing to protect unpopular minorities "[and] . . . cannot afford to protect any group that is seriously unpopular with voters"). *But see* Hillel Levin, *Rethinking Religious Minorities' Political Power*, 48 U.C. DAVIS L. REV. 1617, 1624 (2015) (contending that "majoritarian institutions at every level of government offer substantial protections and accommodations for religious minority groups . . . [and] [e]lected officials are often eager to accommodate even the peculiar needs and practices of small minorities"); Michael W. McConnell, *Religious Freedom, Separation of Powers, and the Reversal of Roles*, 2001 BYU L. REV. 611, 612-13 (2001) (contending that "[l]egislatures have shown a remarkable degree of solicitude for minority religious interests").

⁹ *See, e.g.*, *Emp't Div. v. Smith*, 494 U.S. 872, 890 (1990) (Justice Scalia acknowledging that "leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in"). *See also* Thomas Berg, *Minority Religions and the Religion Clauses*, 82 WASH. U. L.Q. 919, 922 (2004) (noting that "[i]f there is a compelling case for judicial intervention in religion cases, it must rest heavily on the protection of religious minorities"). *But see* Michael Helfand, *Identifying Substantial Burdens*, 2016 U. ILL. L. REV. 1771, 1788 (2016) (contending that courts are "predisposed to favoring religious majorities, whose religious practices are more well-known and respected, as opposed to religious minorities, whose religious practices are more obscure"). *See also* Levin, *supra* note 8, at 1670 (contending that "judges do a poor job of protecting unpopular religious minority groups").

¹⁰ *See, e.g.*, Berg, *supra* note 9, at 925-26 (contending that majority religions are more protected than their minority counterparts due to the intertwining of religious, cultural, and moral values); Levin, *supra* note 8, at 1664, 1666 (noting that "when a religious practice or group is perceived to challenge or threaten the majority's cultural norms, all bets are off" and ordinary political dynamics are altered due to "fear of difference and change"); Roman P. Storz & Anthony R. Picarello, Jr., *The Religious Land Use and Institutionalized Persons Act of 2000: A Constitutional Response to Unconstitutional Zoning Practices*, 9 GEO. MASON L. REV. 929, 941 (2001) (contending that religions with practices unfamiliar or distasteful to the general public face a higher risk of discrimination in land use decisions).

¹¹ *See* Houseal, *supra* note 2, at 34 (discussing RLUIPA's unmeasurable influence upon government decision makers and the rarely reported results of their negotiations with religious land users).

points, specifically, the religious identity of claimants, the subject matter of their claims, and the outcomes.

Part I of the Article explains the methodology utilized to classify cases and determine religious identities. Part II analyzes the religious affiliations of claimants in state and federal courts. Part III breaks down state and federal claims by implicated RLUIPA section. Finally, Part IV categorizes successful, unsuccessful, and neutral outcomes by religious affiliation and RLUIPA section. The Article concludes that RLUIPA has largely succeeded in protecting the land use interests of religious minorities.

I. METHODOLOGY

The Study consists of 38 state court opinions and 150 federal court opinions. Of the 150 federal opinions, 44 were written by a court of appeals and the remaining 106 were written by a district court. The combined opinions address land use regulations in 38 states.¹² The Study spans opinions written between 2002 and 2019. Opinions were included if they addressed RLUIPA either from a procedural standpoint or on the merits. The most recent opinion, in which a claim was addressed, served as the representative for the dispute in question. The Study utilized outcomes from earlier opinions by lower courts as opposed to subsequent appellate court opinions if the appellate court did not address the RLUIPA claim.

Religious identities were derived from the text of the opinions and from a review of individual claimants' websites in instances where affiliations were unidentified. The Pew Research Center's ("PRC") report entitled *America's Changing Religious Landscape* was utilized as the source for the identification of denominations within the Protestant tradition.¹³ This Study also used the PRC report to identify the relative size of all religions as a percentage of the U.S. population.¹⁴

¹² The opinions concerned land use regulations in New York (twenty opinions); California (nineteen opinions); Illinois (eighteen opinions); Michigan (seventeen opinions); Florida and New Jersey (twelve opinions each); Maryland (eleven opinions); Pennsylvania (ten opinions); Connecticut (eight opinions); Washington (five opinions); Georgia, Tennessee, Texas, and Virginia (four opinions each); Hawaii, Minnesota, and Wisconsin (three opinions each); Alabama, Arizona, Colorado, Indiana, Kentucky, Massachusetts, Missouri, Ohio, Oregon, and South Carolina (two opinions each); and Alaska, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nevada, New Hampshire, North Carolina, West Virginia, and Wyoming (one opinion each). See Word Document, Religious Land Use and Institutionalized Persons Act Opinion Data, (Jan. 7, 2020) (on file with author) [hereafter RLUIPA Opinion Data].

¹³ See PEW RESEARCH CTR., *AMERICA'S CHANGING RELIGIOUS LANDSCAPE* 101–02, app. B (2015). The Protestant denominations identified in the PRC report were: Baptism (33%); Methodism and Pentecostalism (10% each); Lutheranism and Protestant non-specific (8% each); Presbyterianism (5%); Restorationism (4%); Episcopalian/Anglicanism (3%); Holiness (2%); Adventism, Anabaptism, Congregationalism, and other evangelical/fundamentalist (1% each); and Reformed, Pietist, and Friends (1% or less each). Non-denominational Protestantism constituted an additional thirteen percent. *Id.* at 101–02.

¹⁴ *Id.* Religions in the Protestant tradition constitute 47% of U.S. residents and include the following denominations: Baptism (15.4%); Non-denominationalism (6.2%); Methodism and Pentecostalism (4.6% each); Lutheranism (3.5%); Presbyterianism (2.2%); Restorationism (1.9%); Episcopalian/Anglicanism (1.3%); Holiness (0.8%); Congregationalism and Adventism (.6% each); Anabaptism, Friends, Pietist, Reformed, and other evangelicalism (0.3% each); and other non-specific (3.8%). *Id.* The remainder of U.S. citizens holding religious beliefs fall within other faith traditions including Catholicism (20.8%); Judaism (1.9%); other non-Christian religious traditions (1.8%); Mormonism (1.6%); Islam (0.9%); Buddhism and Hinduism (0.7% each);

The reported opinions identified ten Protestant denominations and seventeen non-Protestant religions as claimants.¹⁵ The generic classification of “Christianity” was utilized when the specific denomination of a Christian claimant could not be determined.

The determination of minority status utilized in this study is the relative size of the claimants’ membership based upon the PRC’s findings. This Study classifies Protestantism and other non-denominational Christians as majoritarian faiths and all other religions as religious minorities. However, the PRC data and descriptions collected from the opinions are not without their limitations. The data and judicial descriptions do not distinguish between orthodox and progressive strands within identified religions.¹⁶ Additionally, membership size is only one method by which to determine whether a group is a minority.¹⁷ It is possible that membership size is less important than cultural status, the social sectors in which influence is sought to be exercised, and geographic considerations.¹⁸ Such designations are also fluid given increasing diversity and evolving societal attitudes.¹⁹

Orthodox Christianity (0.5%); and other Christian religious traditions (0.4%). The percentage of the population having no religious affiliation is 22.8%. *Id.*

¹⁵ The denominations within Protestantism identified in the opinions are: Adventism (including Seventh Day Adventist); Baptism; Congregationalism; Episcopalism/Anglicanism; Lutheranism; Methodism; Non-denominationalism (including the Christian Alliance, Missionary, and Missionary Alliance); Pentecostalism (including Apostolic and the Assembly of God); Presbyterianism; and Restorationism (including the Church of Christ). The non-Protestant religions identified in the opinions are: Buddhism; Catholicism (including the Apostolate for the Eucharistic Life); Christian Science; Hinduism; Islam; Judaism; Mormonism; Nada Yoga; other non-Christian religious traditions (including Black Hebrew Israelite, the Church of Scientology, Greater Faith and Redemption, Masonic, Paganism, Santeria, and Sikhism); and Orthodox Christianity (including Armenian, Greek, Serbian, and Syrian Orthodoxy). *Id.*

¹⁶ See, e.g., James Davison Hunter, *CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA* 105 (1991) (noting that “the politically consequential divisions are those that separate the orthodox from the progressive within religious traditions”); Douglas Laycock, *Continuity and Change in the Threat to Religious Liberty: The Reformation Era and the Late Twentieth Century*, 80 MINN. L. REV. 1047, 1073 (1996) (contending that “the principal fight is no longer between Catholics and Protestants, or between Christians and Jews, or even between believers and nonbelievers [but between] ‘orthodox’ and ‘progressive’ elements of all these groups”).

¹⁷ See *McCreary Cty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 884 (2005) (O’Connor, J., concurring) (noting that “we do not count heads before enforcing the First Amendment”).

¹⁸ See Berg, *supra* note 9, at 929, 943, 946–47 (noting that “a group that is marginal in one region may dominate in another,” that “[a] group’s size often matters far less than its cultural status; some groups that are small in numbers nevertheless occupy an elite position in their society,” and that traditional Christian beliefs may predominate in the political arena but are marginalized in state universities located in such regions which reflect “a very different culture and power alignment”). See also BARRY A. KOSMIN AND SEYMOUR P. LACHMAN, *ONE NATION UNDER GOD: RELIGION IN CONTEMPORARY AMERICAN SOCIETY* ch. 3, 49 (1993) (discussing regional differences in religious preferences and concluding that “[g]eography is [d]estiny”).

¹⁹ See, e.g., ROBERT P. JONES AND DANIEL COX, *PUB. RELIGION RESEARCH INST, AMERICA’S CHANGING RELIGIOUS IDENTITY* 18–24 (2016) (describing significant trends in the national religious landscape as consisting of the decline in white Christian identity, the aging of white Christians, the growth of nonwhite Christian populations, and the rise of the religiously unaffiliated); PEW RESEARCH CTR., *AMERICANS EXPRESS INCREASINGLY WARM FEELINGS TOWARD RELIGIOUS GROUPS* 3–4 (2017) (describing increasingly positive perceptions with respect to religious minorities such as Buddhists, Hindus, Jews, Mormons, and Muslims but also noting that these perceptions are dependent upon age).

II. RELIGIOUS AFFILIATION OF CLAIMANTS

Claimants were organized by religion and by six sub-categories in the Study. These sub-categories are: (1) places of worship; (2) religious organizations other than places of worship; (3) non-profit organizations other than places of worship and religious organizations; (4) educational institutions; (5) business organizations; and (6) individuals.²⁰ The first-named party was utilized in cases in which there were multiple claimants.

A. RELIGIOUS AFFILIATION OF CLAIMANTS IN STATE COURTS

There were nine religions identified in state court opinions. More than one-third of state court claimants were affiliated with a Protestant denomination.²¹ Protestant places of worship were the single largest group of state claimants constituting 71.4% of Protestant claimants, 55.5% of claims by places of worship, and 26.3% of all state claimants.²² The remaining Protestant claimants consisted of two individuals (100% of individual claimants), a non-profit organization (25% of non-profit claimants), and a religious organization (10% of religious organization claimants).²³

An additional 23.7% of state court claimants were identified as non-denominational Christian organizations.²⁴ Christian places of worship and religious organizations were the second-largest state claimants, with both constituting 44.4% of Christian claimants and 10.5% of all state claimants.²⁵

Catholic and Jewish organizations each comprised 10.5% of the remaining state claimants.²⁶ Catholic organizations were 5.5% of place of worship claimants, 25% of non-profit claimants, and one-third of claims by educational institutions.²⁷ Jewish organizations comprised 10% of religious organization claimants, one-third of educational institution claimants, and the sole business organization claimant.²⁸

The remaining seven claimants were divided among five religions. Islamic organizations comprised 20% of claims by religious organizations.²⁹ The two claims brought by Orthodox Christian organizations were divided between places of worship

²⁰ This article utilizes the descriptions of the claimants employed by the courts. This approach remains true to the courts' own language and allows specific claims and holdings to be traced back to the original opinions.

²¹ See RLUIPA Opinion Data, *supra* note 12. The denominational affiliations of Protestant claimants were: Methodism (three places of worship and one individual), Seventh Day Adventism (two places of worship and one non-profit organization); Baptism (two places of worship); and Congregationalism, Episcopalianism, Non-denominationalism, Pentecostalism, and Restorationism (one private individual, one place of worship, one religious organization, one place of worship, and one place of worship respectively). *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* The remaining Christian claimant was a non-profit organization constituting 25% of state court claims by such entities. *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* An individual Jewish place of worship constituted 5.5% of such claimants. *Id.*

²⁹ *Id.*

(5.5% of such claimants) and educational institutions (one-third of such claimants).³⁰ The remaining claimants were a Buddhist religious organization, a Masonic non-profit organization, and a Mormon place of worship.³¹ The identity of claimants in state court opinions by religion and type of claimant are summarized in Tables 1 and 2.³²

Table 1: Religious Affiliation of Claimants in State Court Opinions

| AFFILIATION | CLAIMS | PERCENTAGE |
|-----------------------|---------------|-------------------|
| Protestantism | 14 | 36.8% |
| Christianity | 9 | 23.7% |
| Catholicism | 4 | 10.5% |
| Judaism | 4 | 10.5% |
| Islam | 2 | 5.3% |
| Orthodox Christianity | 2 | 5.3% |
| Buddhism | 1 | 2.6% |
| Masonic | 1 | 2.6% |
| Mormonism | 1 | 2.6% |
| Totals | 38 | 100% |

³⁰ *Id.*

³¹ *Id.* The Buddhist religious organization constituted ten percent of such claimants. The claim by the Masonic non-profit organization was 25% of such claimants, and the claim by the Mormon place of worship was 5.5% of such claimants. *Id.*

³² Percentages were calculated to the tenths, and thus totals may not equal 100% in all cases.

Table 2: Religious Affiliation in State Court Opinions by Type of Claimant

| ORGANIZATION | AFFILIATION | CLAIMS | PERCENTAGE |
|--------------------------|-----------------------|-----------|-------------|
| Places of worship | Protestantism | 10 | 26.3% |
| Places of worship | Christianity | 4 | 10.5% |
| Places of worship | Catholicism | 1 | 2.6% |
| Places of worship | Judaism | 1 | 2.6% |
| Places of worship | Mormonism | 1 | 2.6% |
| Places of worship | Orthodox Christianity | 1 | 2.6% |
| Religious organizations | Christianity | 4 | 10.5% |
| Religious organizations | Islam | 2 | 5.3% |
| Religious organizations | Buddhism | 1 | 2.6% |
| Religious organizations | Catholicism | 1 | 2.6% |
| Religious organizations | Judaism | 1 | 2.6% |
| Religious organizations | Protestantism | 1 | 2.6% |
| Non-profit organizations | Catholicism | 1 | 2.6% |
| Non-profit organizations | Christianity | 1 | 2.6% |
| Non-profit organizations | Masonic | 1 | 2.6% |
| Non-profit organizations | Protestantism | 1 | 2.6% |
| Educational institutions | Catholicism | 1 | 2.6% |
| Educational institutions | Judaism | 1 | 2.6% |
| Educational institutions | Orthodox Christianity | 1 | 2.6% |
| Individuals | Protestantism | 2 | 5.3% |
| Business organizations | Judaism | 1 | 2.6% |
| Totals | 9 | 38 | 100% |

B. RELIGIOUS AFFILIATION OF CLAIMANTS IN FEDERAL COURTS

There were sixteen religions in reported federal opinions. More than 42% of federal claimants were affiliated with a Protestant denomination.³³ Protestant places of worship constituted 67.2% of Protestant claimants, 63.2% of claims by places of

³³ The denominational affiliations of Protestant claimants were: Non-denominational (nineteen places of worship, five religious organizations, four non-profit organizations, and one educational institution); Baptism (nine places of worship, three religious organizations, and one non-profit organization); Methodism (three religious organizations and two places of worship); Pentecostalism (five places of worship); Episcopalianism (one non-profit organization, one place of worship, and one religious organization); Presbyterianism (three places of worship); Restorationism (two places of worship and one religious organization); Evangelicalism (one place of worship); Lutheranism (one place of worship); and Seventh Day Adventism (one religious organization). See RLUIPA Opinion Data, *supra* note 12.

worship, and 28.7% of all federal claimants.³⁴ Protestant non-profit and religious organizations were parties to 31.6% and 30.4% of claims by non-profits and religious organizations, respectively.³⁵ The sole Protestant educational institution was 11.1% of claims by these entities.³⁶

Non-denominational Christian organizations constituted 18% of federal claimants.³⁷ Places of worship and religious organizations comprised 55.5% and 14.8% of non-denominational Christian claimants and 10% and 2.7% of all federal claimants, respectively.³⁸ Non-profit organizations and educational institutions were 14.8% and 7.4% of such claimants and 2.7% and 1.3% of federal claimants.³⁹ One-third of individual claimants identified as non-denominational Christians.⁴⁰

Fourteen different religions constituted the remaining 39.3% of all federal claimants. Jewish organizations and individuals were the largest of these claimants at 14%.⁴¹ Jewish organizations were 23.9% of religious organization claimants, 22.2% of educational institution claimants, 15.8% of non-profit organization claimants, and 5.9% of place of worship claimants.⁴²

Islamic and Catholic organizations also had a significant presence in federal courts. Islamic organizations comprise 10% of all federal claimants, 26.3% of non-profit organization claimants, 22.2% of educational institution claimants, and 15.2% of religious organization claimants.⁴³ Catholic organizations comprised 6% of all federal claimants, 22.2% of educational institution claimants, 8.7% of religious organization claimants, and 2.9% of place of worship claimants.⁴⁴

Fourteen claimants, 9.5% of all federal claimants, were affiliated with eleven other faiths. The two Hindu organizations claimants comprised 50% of business organization claimants, 5.3% of non-profit organization claimants, and 1.3% of all federal claimants.⁴⁵ The two Orthodox Christian claimants were divided between a place of worship (1.5% of place of worship claimants) and an individual (16.7% of individual claimants).⁴⁶ Religious organizations predominated among the remaining claimants, which included Black Hebrew Israelite, Buddhism, the Church of Scientology, Greater Faith and Redemption, Nada Yoga, and Sikhism.⁴⁷ Three places of worship were among this group of claimants, which included Buddhism,

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* Non-denominational Christian places of worship were 22% of such claimants. Christian religious organizations were 8.7% of such claimants. *Id.*

³⁹ *Id.* Non-denominational Christian non-profit organizations were 21% of such claimants. Christian educational institutions were 11.1% of such claimants. *Id.*

⁴⁰ *Id.* Individual claimants identifying as non-denominational Christians were 1.3% of federal claimants. *Id.*

⁴¹ *Id.*

⁴² *Id.* The sole individual Jewish claimant constituted 16.7% of such claimants. *Id.*

⁴³ *Id.* One of the two business organization claimants was affiliated with Islam. *Id.*

⁴⁴ *Id.* The sole individual Catholic claimant constituted 16.7% of such claimants. *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* Orthodox Christian claimants were 1.3% of federal claimants. *Id.*

⁴⁷ *Id.* Each organization was 2.2% of religious organization claimants and .7% of federal claimants. *Id.*

Christian Science, and Santeria.⁴⁸ The remaining claimant was an individual adhering to pagan practices.⁴⁹ The identity of claimants in federal court opinions by religion and type of claimant are summarized in Tables 3 and 4.

Table 3: Religious Affiliation of Claimants in Federal Court Opinions

| AFFILIATION | CLAIMS | PERCENTAGE |
|------------------------|------------|-------------|
| Protestantism | 64 | 42.7% |
| Christianity | 27 | 18% |
| Judaism | 21 | 14% |
| Islam | 15 | 10% |
| Catholicism | 9 | 6% |
| Buddhism | 2 | 1.3% |
| Hinduism | 2 | 1.3% |
| Orthodox Christianity | 2 | 1.3% |
| Black Hebrew Israelite | 1 | .7% |
| Christian Science | 1 | .7% |
| Church of Scientology | 1 | .7% |
| Greater Faith | 1 | .7% |
| Nada Yoga | 1 | .7% |
| Paganism | 1 | .7% |
| Santeria | 1 | .7% |
| Sikhism | 1 | .7% |
| Totals | 150 | 100% |

⁴⁸ *Id.* Each place of worship was 1.5% of such claimants and .7% of federal claimants. *Id.*

⁴⁹ *Id.* This individual was 16.7% of individual claimants and .7% of federal claimants. *Id.*

Table 4: Religious Affiliation of Claimants in Federal Court Opinions by Type of Organization

| ORGANIZATION | AFFILIATION | CLAIMS | PERCENTAGE |
|--------------------------|------------------------|--------|------------|
| Places of worship | Protestantism | 43 | 28.7% |
| Places of worship | Christianity | 15 | 10% |
| Places of worship | Judaism | 4 | 2.7% |
| Places of worship | Catholicism | 2 | 1.3% |
| Places of worship | Buddhism | 1 | .7% |
| Places of worship | Christian Science | 1 | .7% |
| Places of worship | Orthodox Christianity | 1 | .7% |
| Places of worship | Santeria | 1 | .7% |
| Religious organizations | Protestantism | 14 | 9.3% |
| Religious organizations | Judaism | 11 | 7.3% |
| Religious organizations | Islam | 7 | 4.7% |
| Religious organizations | Catholicism | 4 | 2.7% |
| Religious organizations | Christianity | 4 | 2.7% |
| Religious organizations | Black Hebrew Israelite | 1 | .7% |
| Religious organizations | Buddhism | 1 | .7% |
| Religious organizations | Greater Faith | 1 | .7% |
| Religious organizations | Nada Yoga | 1 | .7% |
| Religious organizations | Scientology | 1 | .7% |
| Religious organizations | Sikhism | 1 | .7% |
| Non-profit organizations | Protestantism | 6 | 4% |
| Non-profit organizations | Islam | 5 | 3.3% |
| Non-profit organizations | Christianity | 4 | 2.7% |
| Non-profit organizations | Judaism | 3 | 2% |
| Non-profit organizations | Hinduism | 1 | .7% |
| Educational institutions | Catholicism | 2 | 1.3% |
| Educational institutions | Christianity | 2 | 1.3% |
| Educational institutions | Islam | 2 | 1.3% |
| Educational institutions | Judaism | 2 | 1.3% |
| Educational institutions | Protestantism | 1 | .7% |
| Individuals | Christianity | 2 | 1.3% |
| Individuals | Catholicism | 1 | .7% |
| Individuals | Judaism | 1 | .7% |

| | | | |
|------------------------|-----------------------|------------|-------------|
| Individuals | Orthodox Christianity | 1 | .7% |
| Individuals | Paganism | 1 | .7% |
| Business organizations | Hinduism | 1 | .7% |
| Business organizations | Islam | 1 | .7% |
| Totals | 16 | 150 | 100% |

III. SUBJECT MATTER OF CLAIMS

A. SUBJECT MATTER OF CLAIMS IN STATE COURTS

There were 38 opinions addressing 49 separate claims in state courts. There were more claims than opinions because 9 opinions addressed multiple RLUIPA sections, 5 of which concerned religious minorities.⁵⁰ The alleged imposition of substantial burdens was the subject matter of more than 73% of state court claims. The identity of parties whose substantial burden claims were addressed in state court opinions is summarized in Table 5.

Table 5: Substantial Burden Claims in State Courts by Religious Affiliation

| AFFILIATION | CLAIMS | % OF CLAIMS | % OF ALL CLAIMS |
|-----------------------|-----------|-------------|-----------------|
| Protestantism | 13 | 36.1% | 26.5% |
| Christianity | 8 | 22.2% | 16.3% |
| Catholicism | 4 | 11.1% | 8.2% |
| Judaism | 4 | 11.1% | 8.2% |
| Islam | 2 | 5.5% | 4.1% |
| Orthodox Christianity | 2 | 5.5% | 4.1% |
| Buddhism | 1 | 2.8% | 2% |
| Masonic | 1 | 2.8% | 2% |
| Mormonism | 1 | 2.8% | 2% |
| Totals | 36 | 100% | 73.5% |

More than 36% of substantial burden claims concerned Protestant organizations.⁵¹ An additional 22.2% of substantial burden opinions were attributable

⁵⁰ See *Concerned Residents of Hancock Park v. City of L.A.*, No. B208439, 2010 WL 3672543 (Cal. Ct. App. Sept. 22, 2010) (substantial burden and equal terms); *Cty. of L.A. v. Sahag Mesrob Armenian Christian Sch.*, 116 Cal. Rptr.3d 61 (Cal. Ct. App. 2010) (substantial burden and equal terms); *Cambodian Buddhist Soc'y of Conn., Inc. v. Planning & Zoning Comm'n*, 941 A.2d 868 (Conn. 2008) (substantial burden and discrimination); *St. Gabriel's Syrian Orthodox Church v. Planning Bd.*, 2006 WL 3500965 (N.J. Super. Ct. Law Div. Dec. 5, 2006) (substantial burden and discrimination); *Islamic Cultural Ctr. of Monticello, Inc. v. Vill. of Monticello*, 920 N.Y.S.2d 241 (N.Y. Sup. Ct. 2010) (substantial burden and discrimination).

⁵¹ See *supra* Table 5. Eight opinions constituting 22.2% of substantial burden opinions concerned construction-related issues. The remaining five opinions addressed permitting and variance issues and a challenge to an eminent domain proceeding; See RLUIPA Opinion Data, *supra* note 12.

to nondenominational Christian organizations with the most common claims relating to permitting issues.⁵²

Religious minorities were parties in 41.7% of substantial burden opinions.⁵³ Catholic and Jewish organizations were the source of a combined 22.2% of substantial burden opinions.⁵⁴ Two of the four opinions addressing claims by Jewish organizations related to construction activities with the remaining opinions addressing a code violation and the denial of a permit.⁵⁵ Opinions concerning claims by Catholic organizations were divided between two denials of variances, a code violation and construction.⁵⁶ Islamic and Orthodox Christian organizations combined for an additional 11% of substantial burden opinions.⁵⁷ The opinions ruling on these claims were divided amongst a code violation, the denial of a permit, and two denials of variances.⁵⁸ Buddhist, Masonic, and Mormon organizations combined for 8.4% of substantial burden opinions divided amongst construction and permit-related claims.⁵⁹

Equal terms were at issue in 12.2% of state court claims. The identity of parties alleging equal terms claims in state court opinions is summarized in Table 6.

⁵² See *supra* Table 5. Five opinions constituting 13.9% of substantial burden opinions concerned permitting issues. The remaining three opinions addressed two construction-related issues and a code violation; See RLUIPA Opinion Data, *supra* note 12.

⁵³ See *supra* Table 5.

⁵⁴ *Id.*

⁵⁵ See *Concerned Residents of Hancock Park*, 2010 WL 3672543 (Cal. Ct. App. 2010) (neighborhood association challenge to the expansion of conditional use permit by educational institution to include religious services in a school located in a residential zone); *Cross St., LLC v. Zoning Bd. of Appeals*, No. CV-064008077, 2007 WL 448684 (Conn. Super. Ct. Jan. 26, 2007) (application to construct a synagogue by a business organization); *Shaarei Tfiloh Congregation v. Mayor of Balt.*, 183 A.2d 845 (Md. Ct. Spec. App. 2018) (assessment of stormwater fees to place of worship); *Septimus v. Bd. of Zoning Appeals*, 22 N.Y.S. 3d 815 (N.Y. Sup. Ct. 2015) (expansion of a synagogue by a religious organization).

⁵⁶ See *Parish of Jefferson v. Daughters of St. Paul, Inc.*, 12-494 (La. App. 5 Cir. 3/27/13) 113 So. 3d 371 2013 (parking code violations by a non-profit organization); *Shepherd Montessori Ctr. Milan v. Ann Arbor Charter Twp.*, 761 N.W.2d 230 (Mich. Ct. App. 2008) (denial of a variance to an educational institution to operate a school in an office zone); *St. Paul's Outreach, Inc. v. Bd. of Adjustment*, No. A-0264-1711, 2019 WL 333053 (N.J. Super. Ct. App. Jan. 28, 2019) (denial of variance for setback requirements); *St. Joseph's Korean Catholic Church v. Zoning Bd. of Adjustment*, 2006 WL 1320089 (N.J. Super. Ct. App. May 16, 2006) (construction of a place of worship in a business zone).

⁵⁷ See *supra* Table 5.

⁵⁸ See *Cty. of L.A. v. Sahag Mesrob Armenian Christian Sch.*, 116 Cal. Rptr.3d 61 (Cal. Ct. App. 2010) (failure of an educational institution to apply for a conditional use permit); *St. Gabriel's Syrian Orthodox Church v. Planning Bd.*, 2006 WL 3500965 (N.J. Super. Ct. Law Div. Dec. 5, 2006) (denial of variance for a place of worship); *Muslim Ctr. of Somerset Cty., Inc. v. Borough of Somerville Zoning Bd. of Adjustment*, 2006 WL 1344323 (N.J. Super. Ct. May 16, 2006) (variance for religious organization to use residence as a mosque); *Islamic Cultural Ctr. of Monticello, Inc. v. Vill. of Monticello*, 920 N.Y.S.2d 241 (N.Y. Sup. Ct. 2010) (delays in processing applications by religious organization for permits for mosque parking and a playground).

⁵⁹ See *Scottish Rite Cathedral Ass'n of L.A. v. City of L.A.*, 67 Cal. Rptr.3d 207 (Cal. Ct. App. 2007) (revocation of certificate of occupancy for a temple operated by non-profit organization); *Cambodian Buddhist Soc'y of Conn., Inc. v. Planning & Zoning Comm'n*, 941 A.2d 868 (Conn. 2008) (temple construction); *Corp. of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. City of W. Linn*, 111 P.3d 1123 (Or. 2005) (construction of a meeting house in a residential zone by a place of worship).

Table 6: Equal Terms Claims in State Courts by Religious Affiliation

| AFFILIATION | CLAIMS | % OF CLAIMS | % OF ALL CLAIMS |
|-----------------------|----------|-------------|-----------------|
| Christianity | 2 | 33.3% | 4.1% |
| Protestantism | 2 | 33.3% | 4.1% |
| Judaism | 1 | 16.7% | 2% |
| Orthodox Christianity | 1 | 16.7% | 2% |
| Totals | 6 | 100% | 12.2% |

Two-thirds of equal terms opinions concerned either Protestant or Christian organizations.⁶⁰ The remaining one-third of equal terms cases concerned religious minorities, but this percentage represents only two opinions.⁶¹ These opinions concerned claims relating to the issuance of a permit to a Jewish educational institution and a code violation by an Orthodox Christian educational institution.⁶²

Discrimination was at issue in five state court claims. The identity of parties alleging discrimination claims in state court opinions is summarized in Table 7.

Table 7: Discrimination Claims in State Courts by Religious Affiliation

| AFFILIATION | CLAIMS | % OF CLAIMS | % OF ALL CLAIMS |
|-----------------------|----------|-------------|-----------------|
| Buddhism | 1 | 20% | 2% |
| Christianity | 1 | 20% | 2% |
| Islam | 1 | 20% | 2% |
| Orthodox Christianity | 1 | 20% | 2% |
| Protestantism | 1 | 20% | 2% |
| Totals | 5 | 100% | 10.2% |

Minority claimants were parties to 60% of discrimination claims.⁶³ One of the three opinions addressed a construction-related claim,⁶⁴ while the denials of a permit and a variance were the subject matter of the remaining opinions.⁶⁵ Protestant and Christian claimants were parties to two opinions relating to a code violation and a construction issue.⁶⁶

⁶⁰ See *supra* Table 6. Two opinions addressed construction-related issues with the remaining opinions addressing permitting and a code violation; See RLUIPA Opinion Data, *supra* note 12.

⁶¹ See *supra* Table 6.

⁶² See *Sahag Mesrob Armenian Christian Sch.*, 116 Cal. Rptr.3d 61 (Cal. Ct. App. 2010); *Concerned Residents of Hancock Park v. City of L.A.*, No. B208439, 2010 WL 3672543 (Cal. Ct. App. 2010); see also *supra* note 53.

⁶³ See *supra* Table 7.

⁶⁴ See *Cambodian Buddhist Soc'y of Connecticut, Inc.*, 941 A.2d 868 (Conn. 2008); see also *supra* note 59 and accompanying text.

⁶⁵ See *Islamic Cultural Ctr. of Monticello, Inc. v. Vill. of Monticello*, 920 N.Y.S.2d 241 (N.Y. Sup. Ct. 2010); *Cambodian Buddhist Soc'y of Connecticut, Inc.*, 941 A.2d 868; *St. Gabriel's Syrian Orthodox Church v. Planning Bd.*, 2006 WL 3500965 (N.J. Super. Ct. Law Div. Dec. 5, 2006).

⁶⁶ See RLUIPA Opinion Data, *supra* note 12.

Minority claimants were absent from limitations opinions in state courts.⁶⁷ The identity of parties alleging limitations claims in state court opinions is summarized in Table 8.

Table 8: Limitations Claims in State Courts by Religious Affiliation

| AFFILIATION | CLAIMS | % OF CLAIMS | % OF ALL CLAIMS |
|---------------|----------|-------------|-----------------|
| Christianity | 1 | 50% | 2% |
| Protestantism | 1 | 50% | 2% |
| Totals | 2 | 100% | 4.2% |

B. SUBJECT MATTER OF CLAIMS BY FEDERAL COURTS

There were 150 opinions addressing 261 separate claims in federal courts. The larger number of claims was the result of 15 appellate court opinions⁶⁸ and 58 district court opinions⁶⁹ addressing multiple RLUIPA sections. Forty-six percent of

⁶⁷ *Id.*

⁶⁸ Four of these opinions addressed claims by religious minorities. *See* Temple B’Nai Zion, Inc. v. City of Sunny Isles Beach, 727 F.3d 1349 (11th Cir. 2013) (substantial burden, equal terms, and discrimination); Roman Catholic Bishop of Springfield v. City of Springfield, 724 F.3d 78 (1st Cir. 2013) (substantial burden and equal terms); Konikov v. Orange Cty., 410 F.3d 1317 (11th Cir. 2005) (substantial burden, equal terms, and discrimination); Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214 (11th Cir. 2004) (substantial burden and equal terms).

⁶⁹ Twenty-nine of these opinions addressed claims by religious minorities. *See* Friends of Lubavitch v. Balt. Cty., No. GLR-18-3943, 2019 WL 4805676 (D. Md. Sept. 30, 2019) (substantial burden, equal terms, discrimination, and limitations); OT, L.L.C. v. Harford Cty., No. GLR-17-2812, 2019 WL 4598009 (D. Md. Sept. 23, 2019) (substantial burden and discrimination); Spirit of Aloha Temple v. Cty. of Maui, No. 14-00535 SOM/RLP, 2019 WL 3294797 (D. Haw. July 22, 2019) (substantial burden and discrimination); Thai Meditation Ass’n of Alabama, Inc. v. City of Mobile, No. 1:16-cv-395-TFM-MU, 2019 WL 2250275 (S.D. Ala. May 23, 2019) (substantial burden and discrimination); Roman Catholic Archdiocese of Kansas City in Kansas v. City of Mission Woods, 385 F. Supp. 3d 1171 (D. Kan. 2019) (substantial burden, equal terms, and limitations); HIRA Educ. Servs. of N. Am. v. Augustine, 2019 WL 120729 (W.D. Pa. Jan. 7, 2019) (substantial burden and equal terms); Marianist Province v. City of Kirkwood, No. 4:17-CV-805RLW, 2018 WL 4286409 (E.D. Mo. Sept. 7, 2018) (substantial burden and equal terms); Sailak, LLC v. Forsyth Cty., No. 2:17-CV-00052-RWS, 2018 WL 3036776 (N.D. Ga. June 19, 2018) (substantial burden and discrimination); Congregation Ariel Russian Cmty. Synagogue, Inc. v. Balt. Cty., No. GLR-17-1910, 2018 WL 1535494 (D. Md. Mar. 28, 2018) (substantial burden, equal terms, and discrimination); Chabad Jewish Ctr. of Toms River, Inc. v. Twp. of Toms River, No. 3:16-01599(FLW/LHG), 2018 WL 1942360 (D.N.J. Feb. 15, 2018) (substantial burden, equal terms, discrimination, and limitations); Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona, No. 07-CV-6304 (KMK), 2017 WL 6206193 (S.D.N.Y. Dec. 7, 2017) (substantial burden and discrimination); Milosavljevic v. City of Brier, No. C16-1414RSM, 2017 WL 3917015 (W.D. Wash. Sept. 7, 2017) (substantial burden and equal terms); United States v. Cty. of Culpeper, 245 F. Supp. 3d 758 (W.D. Va. 2017) (substantial burden and discrimination); Soc’y of Am. Bosnians & Herzegovinians v. City of Des Plaines, No. 13 C 6594, 2017 WL 748528 (N.D. Ill. Feb. 26, 2017) (substantial burden, equal terms, and discrimination); Congregation Kollel, Inc. v. Twp. of Howell, No. CV 16-2457 (FLW), 2017 WL 637689 (D.N.J. Feb. 16, 2017) (substantial burden, equal terms, and discrimination); United States v. Bensalem Twp., 220 F. Supp. 3d 615 (E.D. Pa. 2016) (substantial burden, equal terms, discrimination, and limitations); Roman Catholic Diocese of Rockville Ctr., Inc. v. Vill. of Old Westbury, 128 F. Supp. 3d 566 (E.D.N.Y. 2015) (substantial burden and equal terms); Irshad Learning Ctr. v. Cty. of Dupage, 937 F. Supp. 2d 910 (N.D. Ill. 2013) (substantial burden, equal terms, and discrimination); Sheri Torah, Inc. v. Vill. of S. Blooming Grove, No. 10 Civ. 3762 (LAP), 2013 WL 1454953 (S.D.N.Y. Mar. 28, 2013) (substantial burden and discrimination); Islamic Ctr. of W. Suburbs v. Cty. of DuPage, No. 12 C 6132, 2012 WL 6605011 (N.D. Ill. Dec. 18, 2012) (substantial burden, equal terms, discrimination, and limitations); Anselmo v. Cty. of Shasta, 873 F. Supp. 2d 1247 (E.D. Cal. 2012) (substantial burden and equal terms); Church of Scientology of Ga., Inc. v. City of Sandy Springs, 843 F. Supp. 2d 1328 (N.D. Ga. 2012)

claims in federal court related to the alleged imposition of substantial burdens. The identity of parties alleging substantial burden claims in federal court opinions is summarized in Table 9.

Table 9: Substantial Burden Claims in Federal Courts by Religious Affiliation

| AFFILIATION | CLAIMS | % OF CLAIMS | % OF ALL CLAIMS |
|------------------------|------------|-------------|-----------------|
| Protestantism | 49 | 40.8% | 18.8% |
| Christianity | 21 | 17.5% | 8% |
| Judaism | 19 | 15.8% | 7.3% |
| Islam | 12 | 10% | 4.6% |
| Catholicism | 8 | 6.7% | 3.1% |
| Hinduism | 2 | 1.7% | .8% |
| Orthodox Christianity | 2 | 1.7% | .8% |
| Black Hebrew Israelite | 1 | .8% | .4% |
| Buddhism | 1 | .8% | .4% |
| Church of Scientology | 1 | .8% | .4% |
| Greater Faith | 1 | .8% | .4% |
| Nada Yoga | 1 | .8% | .4% |
| Santeria | 1 | .8% | .4% |
| Sikhism | 1 | .8% | .4% |
| Totals | 120 | 100% | 46% |

More than 58% percent of substantial burden claims concerned Protestant or Christian organizations.⁷⁰ Religious minorities were parties to 41.7% of substantial burden opinions.⁷¹ Jewish organizations and individuals were 38% of minority claimants.⁷² Construction-related opinions constituted a larger percentage of cases

(substantial burden, equal terms, discrimination, and limitations); *Islamic Ctr. of N. Fulton, Inc. v. City of Alpharetta*, No. 1:10-cv-01922-JOF, 2012 WL 13005475 (N.D. Ga. Jan. 25, 2012) (substantial burden, equal terms, and discrimination); *Congregation Etz Chaim v. City of L.A.*, No. CV10-1587CAS(Ex.), 2011 WL 12472550 (C.D. Cal. July 11, 2011) (substantial burden and equal terms); *Young Israel of Bal Harbour, Inc. v. Town of Surfside*, No. 10-24392-CIV-JORDAN, 2011 WL 13220998 (S.D. Fla. July 1, 2011) (substantial burden and equal terms); *Adhi Parasakthi Charitable, Med., Educ., & Cultural Soc’y of N. Am. v. Twp. of W. Pikeland*, 721 F. Supp. 2d 361 (E.D. Pa. 2010) (substantial burden, equal terms, discrimination, and limitations); *Albanian Associated Fund v. Twp. of Wayne*, No. 06-cv-3217 (PGS), 2007 WL 2904194 (D.N.J. Oct. 1, 2007) (substantial burden and discrimination); *Hollywood Cmty. Synagogue, Inc. v. City of Hollywood*, 430 F. Supp. 2d 1296 (S.D. Fla. 2006) (substantial burden, equal terms, and discrimination); *Williams Island Synagogue, Inc. v. City of Aventura*, 358 F. Supp. 2d 1207 (S.D. Fla. 2005) (substantial burden and discrimination).

⁷⁰ See Table 9. Twenty opinions constituting 16.7% of substantial burden claims addressed challenges to code enforcement. Eighteen opinions constituting fifteen percent of substantial burden cases concerned construction-related issues. An additional eighteen opinions addressed permitting issues. Ten opinions addressed denials of variances, and four substantial burden opinions addressed challenges to eminent domain proceedings by Protestant organizations. See RLUIPA Opinion Data, *supra* note 12.

⁷¹ See Table 9.

⁷² *Id.*

concerning Jewish organizations than Protestant and Christian claimants.⁷³ Code violations also were a larger percentage of opinions than was the case for majority religions.⁷⁴ Permit-related opinions were a smaller percentage of claims by Jewish organizations.⁷⁵ There were only two variance and condemnation-related opinions.⁷⁶

Islamic and Catholic organizations comprised 24% and 16% of minority substantial burden claimants.⁷⁷ Construction-related issues constituted 58.3% of opinions involving Islamic organizations.⁷⁸ This percentage was 50% for Catholic

⁷³ Construction-related issues were 36.8% of opinions relating to Jewish claimants. See *Temple B'Nai Zion, Inc.*, 727 F.3d 1349 (landmark designation prohibiting demolition of building used as a synagogue); *Westchester Day School v. Vill. of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007) (denial of permit to educational institution to construct school); *Congregation Ariel Russian Cmty. Synagogue*, 2018 WL 1535494 (denial of permit to place of worship for construction of a synagogue); *Congregation Rabbinical Coll. of Tartikov, Inc.*, 2017 WL 6206193 (denial of permit to religious organization to construct student housing); *Chabad Lubavitch of Litchfield Cty., Inc. v. Borough of Litchfield*, No. 3:09-CV-1419 (JCH), 2017 WL 5015624 (D. Conn. Nov. 2, 2017) (denial of certificate to religious organization for building addition); *Congregation Kollel, Inc.*, 2017 WL 637689 (D.N.J. Feb. 16, 2017) (denial of permit to religious organization to construct school); *Young Israel of Bal Harbour, Inc.*, 2011 WL 13220998 (S.D. Fla. July 1, 2011) (denial of permit to religious organization to construct a synagogue). See also cases cited in note 70 and accompanying text.

⁷⁴ Code violations were 31.6% of opinions relating to Jewish claimants. See *Konikov v. Orange Cty.*, 410 F.3d 1317 (11th Cir. 2005) (single family residence serving as place of worship); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004) (exclusion of places of worship from business district); *Friends of Lubavitch*, 2019 WL 4805676 (enforcement of setbacks in expansion of Chabad); *Chabad Jewish Ctr. of Toms River, Inc.*, 2018 WL 1942360 (use of single family home as Chabad); *Twersky v. Town of Hempstead*, No. 10 CV 4573 (MKB), 2012 WL 4928901 (E.D.N.Y. Oct. 16, 2012) (erection of ohel in cemetery); *East End Eruv Ass'n, Inc. v. Vill. of Westhampton Beach*, 828 F. Supp. 2d 526 (E.D.N.Y. 2011) (attachment of lechis by non-profit organization in violation of sign code). See also *supra* Table 9.

⁷⁵ Permitting issues were 21% of opinions relating to Jewish claimants. See *Sheri Torah, Inc. v. Vill. of S. Blooming Grove*, No. 10 Civ. 3762 (LAP), 2013 WL 1454953 (S.D.N.Y. Mar. 28, 2013) (operation of yeshiva by educational institution); *Congregation Etz Chaim v. City of L.A.*, No. CV10-1587 CAS (Ex.), 2011 WL 12472550 (C.D. Cal. July 11, 2011) (services in private residence conducted by place of worship); *Hollywood Cmty. Synagogue, Inc. v. City of Hollywood*, 430 F. Supp. 2d 1296 (S.D. Fla. 2006) (services conducted by place of worship in single family residence); *Williams Island Synagogue, Inc. v. City of Aventura*, 358 F. Supp. 2d 1207 (S.D. Fla. 2005) (denial of permit to religious organization for relocation of a synagogue). See also cases cited in note 70 and accompanying text.

⁷⁶ See *Congregation Adas Yereim v. City of New York*, 673 F. Supp. 2d 94 (E.D.N.Y. 2009) (objection by religious organization to taking of property for county garage); *Bikur Cholim, Inc. v. Vill. of Suffern*, 664 F. Supp. 2d 267 (S.D.N.Y. 2009) (variance for non-profit organization to operate guesthouse).

⁷⁷ *Supra* Table 9.

⁷⁸ See *OT, L.L.C. v. Harford Cty.*, No. GLR-17-2812, 2019 WL 4598009 (D. Md. Sept. 23, 2019) (denial of construction permit for community center); *United States v. Cty. of Culpeper*, 245 F. Supp. 3d 758 (W.D. Va. 2017) (denial of permit to religious organization to construct a mosque); *United States v. Bensalem Twp.*, 220 F. Supp. 3d 615 (E.D. Pa. 2016) (denial of variance to non-profit organization to construct a mosque); *Muslim Cmty. Ass'n of Ann Arbor v. Pittsfield Charter Twp.*, No. 12-CV-10803, 2015 WL 5131797 (E.D. Mich. Mar. 20, 2015) (denial of application to educational institution for school construction); *Islamic Ctr. of W. Suburbs v. Cty. of DuPage*, No. 12 C 6132, 2012 WL 6605011 (N.D. Ill. Dec. 18, 2012) (denial of permit to religious organization to construct a mosque); *Islamic Ctr. of N. Fulton, Inc. v. City of Alpharetta*, No. 1:10-cv-01922-JOF, 2012 WL 13005475 (N.D. Ga. Jan. 25, 2012) (denial of permit to religious organization to expand a mosque); *Albanian Associated Fund v. Twp. of Wayne*, No. 06-cv-3217 (PGS), 2007 WL 2904194 (D.N.J. Oct. 1, 2007) (denial of site plan application to religious organization to construct a mosque).

claimants.⁷⁹ The remaining nine opinions were divided among permit issues, variances, and code violations.⁸⁰

Another eleven substantial burden opinions were divided among nine religions.⁸¹ Construction-related claims constituted 63.6% of these opinions.⁸² The remaining four opinions were divided between variances and code violations.⁸³

The failure to apply equal terms was at issue in 27.2% of federal court claims. The identity of parties alleging equal terms claims in federal court opinions is summarized in Table 10.

⁷⁹ See *Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78 (1st Cir. 2013) (challenge to requirement of demolition permit for renovation of place of worship); *Anselmo v. Cty. of Shasta*, 873 F. Supp. 2d 1247, 1250 (E.D. Cal. 2012) (denial of permit to individual to construct place of worship); *Acad. of Our Lady of Peace v. City of San Diego*, No. 09cv962-WQH-AJB, 2010 WL 1329014 (S.D. Cal. Apr. 1, 2010) (denial of permits to educational institution for school renovation); *Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp. 2d 309 (D. Mass. 2006) (issuance of building permit to place of worship for parish center).

⁸⁰ See *DiLaura v. Twp. of Ann Arbor*, 112 Fed. Appx. 445 (6th Cir. 2004) (operation of retreat by Catholic religious organization); *Roman Catholic Archdiocese of Kansas City in Kansas v. City of Mission Woods*, 385 F. Supp. 3d 1171 (D. Kan. 2019) (denial of permit to operate meeting house in residential zone); *Adam Cmty. Ctr. v. City of Troy*, 381 F. Supp. 3d 887 (E.D. Mich. 2019) (denial of variance to use building as a mosque); *HIRA Educ. Servs. of N. Am. v. Augustine*, 2:18-CV-00486, 2019 WL 120729 (W.D. Pa. Jan. 7, 2019) (prohibition upon operation of an Islamic boarding school); *Garden State Islamic Ctr. v. City of Vineland*, 358 F. Supp. 3d 377 (D.N.J. 2018) (denial of certificate of occupancy for a mosque); *Marianist Province v. City of Kirkwood*, No. 4:17-CV-805RLW, 2018 WL 4286409 (E.D. Mo. Sept. 7, 2018) (denial of variance to Catholic educational institution for lighting of athletic field); *Soc'y of Am. Bosnians & Herzegovinians v. City of Des Plaines*, No. 13 C 6594, 2017 WL 748528 (N.D. Ill. Feb. 26, 2017) (rezoning request to operate a mosque by Islamic religious organization); *Irshad Learning Ctr. v. Cty. of Dupage*, 937 F. Supp. 2d 910 (N.D. Ill. 2013) (religious and educational uses); *Roman Catholic Diocese of Rockville Ctr., Inc. v. Vill. of Old Westbury*, 128 F. Supp. 3d 566 (E.D.N.Y. 2015) (cemetery).

⁸¹ *Supra* Table 9.

⁸² See *Guru Nanak Sikh Soc'y of Yuba City v. Cty. of Sutter*, 456 F. 3d 978 (9th Cir. 2006) (denial of permit to religious organization to construct a temple); *Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F. 3d 895 (7th Cir. 2005) (denial of application to place of worship to construct church); *Spirit of Aloha Temple v. Cty. of Maui*, No. 14-00535, 2019 WL 3294797 (D. Haw. July 22, 2019) (denial of permit to construct place of worship to Nada Yoga religious organization); *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, No. 1:16-cv-395-TFM-MU, 2019 WL 2250275 (S.D. Ala. May 23, 2019) (denial of application to construct meditation center in residential district); *Sailak, LLC v. Forsyth Cty.*, No. 2:17-CV-00052-RWS, 2018 WL 3036776 (N.D. Ga. June 19, 2018) (denial of permit to Hindu business organization to construct temple); *Milosavljevic v. City of Brier*, No. C16-1414RSM, 2017 WL 3917015 (W.D. Wash. Sept. 7, 2017) (denial of variance to Serbian Orthodox individual to construct personal chapel); *Adhi Parasakthi Charitable, Med., Educ., & Cultural Soc'y of N. Am. v. Twp. of W. Pikeland*, 721 F. Supp. 2d 361 (E.D. Pa. 2010) (denial of permit to Hindu non-profit organization to construct a temple).

⁸³ See *Merced v. Kasson*, 577 F. 3d 578 (5th Cir. 2009) (keeping and slaughter of animals by Santeria place of worship); *Harris v. City of Clearlake*, No. 17-cv-05126-YGR, 2017 WL 6343466 (N.D. Cal. Dec. 12, 2017) (cannabis cultivation by Greater Faith and Redemption religious organization); *Israelite Church of God in Jesus Christ, Inc. v. City of Hackensack*, No. 11-5960 (SRC), 2012 WL 3284054 (D.N.J. Aug. 10, 2012) (variance for operation of school for priests by Black Hebrew Israelite religious organization); *Church of Scientology of Georgia, Inc. v. City of Sandy Springs*, 843 F. Supp. 2d 1328 (N.D. Ga. 2012) (restrictions on size of facility to be constructed by religious organization).

Table 10: Equal Terms Claims in Federal Courts by Religious Affiliation

| AFFILIATION | CLAIMS | % OF CLAIMS | % OF ALL CLAIMS |
|-----------------------|-----------|-------------|-----------------|
| Protestantism | 28 | 39.4% | 10.7% |
| Christianity | 15 | 21.1% | 5.7% |
| Judaism | 10 | 14.1% | 3.8% |
| Catholicism | 6 | 8.4% | 2.3% |
| Islam | 6 | 8.4% | 2.3% |
| Buddhism | 1 | 1.4% | .4% |
| Christian Science | 1 | 1.4% | .4% |
| Church of Scientology | 1 | 1.4% | .4% |
| Hinduism | 1 | 1.4% | .4% |
| Orthodox Christianity | 1 | 1.4% | .4% |
| Paganism | 1 | 1.4% | .4% |
| Totals | 71 | 100% | 27.2% |

More than 60% of equal terms opinions concerned Protestant or Christian organizations.⁸⁴ Religious minorities were parties to 39.5% of equal terms opinions.⁸⁵ Jewish organizations were 35.7% of minority claimants.⁸⁶ Code-related claims constituted 40% of opinions relating to Jewish organizations.⁸⁷ Construction-related opinions were also 40% of equal terms claims by Jewish organizations.⁸⁸ The remaining two opinions ruling on claims brought by Jewish organizations related to permitting issues.⁸⁹

Islamic and Catholic organizations were both 21.4% of minority equal terms claimants.⁹⁰ Construction claims were dominant amongst this group of claimants. Fifty percent of opinions concerning Islamic claimants and one-third of opinions

⁸⁴ See Table 10. Twenty-six opinions constituting 60.5% of these cases addressed construction-related claims or code violations. An additional nine opinions related to the denial of permits, and eight opinions addressed the denial of variances. See RLUIPA Opinion Data, *supra* note 12.

⁸⁵ See Table 10.

⁸⁶ *Id.*

⁸⁷ See *Konikov v. Orange Cty.*, 410 F. 3d 1317 (11th Cir. 2005); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F. 3d 1214 (11th Cir. 2004); *Friends of Lubavitch v. Balt. Cty.*, No. GLR-18-3943, 2019 WL 4805676 (D. Md. Sept. 30, 2019); *Chabad Jewish Ctr. of Toms River, Inc. v. Twp. of Toms River*, No. 3:16-01599 (FLW)(LHG), 2018 WL 1942360 (D.N.J. Feb. 15, 2018). See also note 74 and accompanying text.

⁸⁸ See *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349 (11th Cir. 2013); *Congregation Kollel, Inc. v. Twp. Of Howell*, 2017 WL 637689 (D.N.J. Feb. 16, 2017); *Young Israel of Bal Harbour, Inc. v. Town of Surfside*, 2011 WL 13220998 (S.D. Fla. July 1, 2011). See also cases cited in note 73 and accompanying text.

⁸⁹ See *Congregation Etz Chaim v. City of L.A.*, No. CV10-1587 CAS (Ex.), 2011 WL 12472550 (C.D. Cal. July 11, 2011); *Hollywood Cmty. Synagogue, Inc. v. City of Hollywood*, 430 F. Supp. 2d 1296 (S.D. Fla. 2006). See also *Williams Island Synagogue, Inc. v. City of Aventura*, 358 F. Supp. 2d 1207 (S.D. Fla. 2005) (denial of permit to religious organization for relocation of a synagogue).

⁹⁰ See Table 10.

concerning Catholic claimants related to construction issues.⁹¹ Code, permit and variance claims constituted the remaining 50% of opinions for Islamic organizations and two-thirds of opinions for Catholic organizations.⁹²

Six opinions constituting 21.4% of minority claims were divided among six religions.⁹³ One-third of these opinions addressed permit-related claims.⁹⁴ The remaining opinions addressed two construction claims issues: a denial of a variance and a code violation.⁹⁵

Discrimination was at issue in 16.8% of federal court claims. The identity of parties alleging discrimination claims in federal court opinions is summarized in Table 11.

Table 11: Discrimination Claims in Federal Courts by Religious Affiliation

| AFFILIATION | CLAIMS | % OF CLAIMS | % OF ALL CLAIMS |
|-----------------------|-----------|-------------|-----------------|
| Protestantism | 13 | 29.5% | 5% |
| Islam | 11 | 25% | 4.2% |
| Judaism | 11 | 25% | 4.2% |
| Christianity | 4 | 9.1% | 1.5% |
| Hinduism | 2 | 4.5% | .8% |
| Buddhism | 1 | 2.3% | .4% |
| Church of Scientology | 1 | 2.3% | .4% |
| Nada Yoga | 1 | 2.3% | .4% |
| Totals | 44 | 100% | 16.8% |

⁹¹ See Roman Catholic Bishop of Springfield, 724 F.3d 78 (5th Cir. 2013); United States v. Bensalem Twp., 220 F. Supp. 3d 615 (E.D. Pa. 2016); Islamic Ctr. of W. Suburbs v. Cty. of DuPage, No. 12 C 6132, 2012 WL 6605011 (N.D. Ill. Dec. 18, 2012); Anselmo v. Cty. of Shasta, 873 F. Supp. 2d 1247, 1250 (E.D. Cal. 2012); Islamic Ctr. of N. Fulton, Inc. v. City of Alpharetta, No. 1:10-cv-01922-JOF, 2012 WL 13005475 (N.D. Ga. Jan. 25, 2012). See also the cases cited in notes 78–79 and accompanying text.

⁹² See Roman Catholic Archdiocese of Kansas City in Kansas v. City of Mission Woods, 385 F. Supp.3d 1171 (D. Kan. 2019); HIRA Educ. Servs. of N. Am. v. Augustine, 2019 WL 120729 (W.D. Pa. Jan. 7, 2019); Marianist Province v. City of Kirkwood, No. 4:17-CV-805RLW, 2018 WL 4286409 (E.D. Mo. Sept. 7, 2018); Soc’y of Am. Bosnians & Herzegovinians v. City of Des Plaines, No. 13 C 6594, 2017 WL 748528 (N.D. Ill. Feb. 26, 2017); Roman Catholic Diocese of Rockville Ctr., Inc. v. Vill. of Old Westbury, 128 F. Supp. 3d 566 (E.D.N.Y. 2015); Corp. of the Catholic Archbishop of Seattle v. City of Seattle, 28 F. Supp.3d 1163 (W.D. Wash. 2014) (light poles at athletic field operated by religious organization); Irshad Learning Ctr. Cty. of DuPage, 937 F.Supp.2d 910 (N.D. Ill. 2013); see also cases cited in note 80 and accompanying text.

⁹³ See Table 10.

⁹⁴ See Third Church of Christ Scientist of N.Y.C. v. City of N.Y., 626 F.3d 667 (2d Cir. 2008) (hosting of private events by place of worship); Vietnamese Buddhism Study Temple in Am. v. City of Garden Grove, 460 F. Supp. 2d 1165 (C.D. Cal. 2006) (operation by place of worship in office zone).

⁹⁵ See Yetto v. City of Jackson, No. 1:17-cv-01205-STA-jay, 2019 WL 2715545 (W.D. Tenn. June 28, 2019) (meetings of paganists in private residence); Milosavljevic v. City of Brier, No. C16-1414RSM, 2017 WL 3917015 (W.D. Wash. Sept. 7, 2017); Church of Scientology of Georgia, Inc. v. City of Sandy Springs, 843 F. Supp.2d 1328 (N.D. Ga. 2012); Adhi Parasakthi Charitable, Med., Educ., & Cultural Soc’y of N. Am. v. Twp. of W. Pikeland, 721 F. Supp. 2d 361 (E.D. Pa. 2010). See also cases cited in notes 82–83 and accompanying text.

Claims by Protestant and Christian organizations constituted 38.6% of discrimination opinions.⁹⁶ The majority of discrimination opinions, constituting 61.4% of such cases, involved minority claimants.⁹⁷ Opinions addressing claims by Islamic and Jewish organizations' constituted 81.5% of these opinions.⁹⁸ Construction-related issues were 81.8% of the opinions concerning Islamic organizations.⁹⁹ The remaining two Islamic organization opinions related to denials of permits and variances.¹⁰⁰

Permitting issues constituted 36.4% of claims brought by Jewish organizations.¹⁰¹ The remaining opinions were divided between four construction issues and three code violations.¹⁰² The remaining 18.5% of minority discrimination opinions addressed claims by four religions.¹⁰³ Four of these opinions were construction-related, and a single opinion concerned the denial of a variance.¹⁰⁴

⁹⁶ See Table 11. Six opinions accounting for 35.3% of such claims related to permitting issues. An additional six opinions concerned construction-related issues. The remaining five opinions involved only Protestant claimants and addressed code violations and a variance. See RLUIPA Opinion Data, *supra* note 12.

⁹⁷ See Table 11.

⁹⁸ *Id.*

⁹⁹ See *Islamic Ctr. for Mid Westchester v. City of Yonkers Landmark Pres. Bd.*, 742 F. App'x 521 (2d Cir. 2018) (landmark designation preventing mosque construction by non-profit organization); *OT, LLC v. Harford Cty.*, No. GLR-17-2812, 2019 WL 4598009 (D. Md. Sept. 23, 2019); *Youkhanna v. City of Sterling Heights*, 332 F. Supp.3d 1058 (E.D. Mich. 2018) (challenge by adjoining landowners to consent decree allowing construction of a mosque); *United States v. Cty. of Culpeper*, 245 F. Supp. 3d 758 (W.D. Va. 2017); *Islamic Soc'y of Basking Ridge v. Twp. of Bernards*, 226 F. Supp. 3d 320 (D.N.J. 2016) (denial of site plan to religious organization for mosque construction); *United States v. Bensalem Twp.*, 220 F. Supp. 3d 615 (E.D. Pa. 2016); *Islamic Ctr. of W. Suburbs v. Cty. of DuPage*, No. 12 C 6132, 2012 WL 6605011 (N.D. Ill. Dec. 18, 2012); *Islamic Ctr. of N. Fulton, Inc. v. City of Alpharetta*, No. 1:10-cv-01922-JOF, 2012 WL 13005475 (N.D. Ga. Jan. 25, 2012); *Albanian Associated Fund v. Twp. of Wayne*, No. 06-cv-3217 (PGS), 2007 WL 2904194 (D.N.J. Oct. 1, 2007). See also cases cited in note 78 and accompanying text.

¹⁰⁰ See *Soc'y of Am. Bosnians & Herzegovinians v. City of Des Plaines*, No. 13 C 6594, 2017 WL 748528 (N.D. Ill. Feb. 26, 2017); *Irshad Learning Ctr. v. Cty. of Dupage*, 937 F.Supp.2d 910 (N.D. Ill. 2013). See also cases cited in note 80 and accompanying text.

¹⁰¹ See *Chabad Lubavitch of the Quad Cities, Inc. v. City of Bettendorf*, 389 F. Supp. 3d 590 (S.D. Iowa 2019) (denial of permit to operate chabad in residential zone); *Sheri Torah, Inc. v. Vill. of S. Blooming Grove*, No. 10 Civ. 3762 (LAP), 2013 WL 1454953 (S.D.N.Y. Mar. 28, 2013); *Hollywood Cmty. Synagogue, Inc. v. City of Hollywood*, 430 F. Supp. 2d 1296 (S.D. Fla. 2006); *Williams Island Synagogue, Inc. v. City of Aventura*, 358 F. Supp. 2d 1207 (S.D. Fla. 2005). See also cases cited in note 75 and accompanying text.

¹⁰² See *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349 (11th Cir. 2013); *Konikov v. Orange Cty.*, 410 F.3d 1317 (11th Cir. 2005); *Friends of Lubavitch v. Balt. Cty.*, No. GLR-18-3943, 2019 WL 4805676 (D. Md. Sept. 30, 2019); *Congregation Ariel Russian Cmty. Synagogue, Inc. v. Balt. Cty.*, No. GLR-17-1910, 2018 WL 1535494 (D. Md. Mar. 28, 2018); *Chabad Jewish Ctr. of Toms River, Inc. v. Twp. of Toms River*, No. 3:16-01599 (FLW)(LHG), 2018 WL 1942360 (D.N.J. Feb. 15, 2018); *Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*, No. 07-CV-6304 (KMK), 2017 WL 6206193 (S.D.N.Y. Dec. 7, 2017); *Congregation Kollel, Inc. v. Twp. of Howell*, No. CV 16-2457 (FLW), 2017 WL 637689 (D.N.J. Feb. 16, 2017). See also cases cited in notes 73-74 and accompanying text.

¹⁰³ See Table 11.

¹⁰⁴ See *Spirit of Aloha Temple v. Cty. of Maui*, No. 14-00535, 2019 WL 3294797 (D. Haw. July 22, 2019); *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, No. 1:16-cv-395-TFM-MU, 2019 WL 2250275 (S.D. Ala. May 23, 2019); *Sailak, LLC v. Forsyth Cty.*, No. 2:17-CV-00052-RWS, 2018 WL 3036776 (N.D. Ga. June 19, 2018); *Church of Scientology of Ga., Inc. v. City of Sandy Springs*, 843 F. Supp.2d 1328 (N.D. Ga. 2012); *Adhi Parasakthi Charitable, Med., Educ. & Cultural Soc'y of N. Am. v. Twp. of W. Pikeland*, 721 F. Supp.2d 361 (E.D. Pa. 2010). See also cases cited in notes 82-83 and accompanying text.

The imposition of limitations was the subject matter of 10% of federal court claims. The identity of parties alleging limitations claims in federal court opinions is summarized in Table 12.

Table 12: Limitations Claims in Federal Courts by Religious Affiliation

| AFFILIATION | CLAIMS | % OF CLAIMS | % OF ALL CLAIMS |
|-----------------------|-----------|-------------|-----------------|
| Protestantism | 15 | 57.7% | 5.7% |
| Christianity | 3 | 11.5% | 1.1% |
| Judaism | 3 | 11.5% | 1.1% |
| Islam | 2 | 7.7% | .8% |
| Catholicism | 1 | 3.8% | .4% |
| Church of Scientology | 1 | 3.8% | .4% |
| Hinduism | 1 | 3.8% | .4% |
| Totals | 26 | 100% | 10% |

Claims by Protestant and Christian organizations constituted 69.2% of limitations opinions.¹⁰⁵ Claims by religious minorities were 30.8% of opinions reflecting eight cases.¹⁰⁶ Three of these opinions related to construction claims by Islamic organizations and one Hindu organization.¹⁰⁷ Jewish organizations were represented in three opinions relating to code violations.¹⁰⁸ Denials of a variance and a permit were the subject matter of the remaining opinions.¹⁰⁹

IV. OUTCOMES

Outcomes were organized in three categories. Successful outcomes consisted of opinions in which a court granted a claimant's motion for summary judgment, ruled in favor of a claimant on an appeal of an administrative order, or held in favor of a claimant at a hearing or trial. Unsuccessful outcomes consisted of opinions terminating claims pursuant to motions to dismiss or for summary judgment,

¹⁰⁵ See table 12. One-third of these opinions concerned construction-related issues. An additional five opinions, accounting for 27.8% of opinions, related to code violations. The remaining seven opinions concerned six Protestant claimants and one Christian claimant and related to denials of permits and variances. See RLUIPA Opinion Data, *supra* note 12.

¹⁰⁶ See table 12.

¹⁰⁷ See *United States v. Bensalem Twp.*, 220 F. Supp. 3d 615 (E.D. Pa. 2016); *Islamic Ctr. of W. Suburbs*, 2012 WL 6605011 (N.D. Ill. Dec. 18, 2012); *Adhi Parasakthi Charitable, Med., Educ., & Cultural Soc'y of N. Am.*, 721 F. Supp. 2d at 361. See also cases cited in notes 78, 82, and accompanying text.

¹⁰⁸ See *Friends of Lubavitch v. Balt. Cty.*, No. GLR-18-3943, 2019 WL 4805676 (D. Md. Sept. 30, 2019); *Chabad Jewish Ctr. of Toms River, Inc. v. Twp. of Toms River*, No. 3:16-01599 (FLW)(LHG), 2018 WL 1942360 (D.N.J. Feb. 15, 2018); *Chabad of Nova, Inc. v. City of Cooper City*, 575 F. Supp. 2d 1280 (S.D. Fla. 2008) (restrictions upon operation of place of worship in residential zone). See also cases cited in note 74 and accompanying text.

¹⁰⁹ See *e.g.*, *Roman Catholic Archdiocese of Kansas City in Kansas v. City of Mission Woods*, 385 F. Supp. 3d 1171 (D. Kan. 2019); *Church of Scientology of Ga., Inc. v. City of Sandy Springs*, 843 F. Supp. 2d 1328 (N.D. Ga. 2012). See also cases cited in notes 80, 83, and accompanying text.

denying an appeal of an administrative order, or denying relief to a claimant at a hearing or trial. Claims for which the ultimate resolution could not be determined due to the absence of later reported case law were designated as neutral. This category consisted of opinions denying an opposing party's motion to dismiss or motion for summary judgment.

A. OUTCOMES IN STATE COURTS

There were six successful outcomes in state court opinions resulting in an overall success rate of 15.8%.¹¹⁰ The overall success rates for Protestant, Christian, and minority claimants were 28.6%, 0%, and 13.3% respectively.¹¹¹ The overall success rate increased to 16.3% when analyzed from the perspective of implicated RLUIPA sections.¹¹²

The success rates by RLUIPA section for Protestant, Christian, and minority claimants were 29.4%, 0%, and 15% respectively.¹¹³ The outcomes in state courts by religious affiliation and RLUIPA sections are summarized in Tables 13 and 14.

Table 13: Outcomes in State Courts by Religious Affiliation

| AFFILIATION | SUCCESSFUL | UNSUCCESSFUL | SUCCESS RATE |
|-----------------------|------------|--------------|--------------|
| Judaism | 2 | 2 | 50% |
| Protestantism | 4 | 10 | 28.6% |
| Buddhism | 0 | 1 | 0% |
| Masonic | 0 | 1 | 0% |
| Mormonism | 0 | 1 | 0% |
| Islam | 0 | 2 | 0% |
| Orthodox Christianity | 0 | 2 | 0% |
| Catholicism | 0 | 4 | 0% |
| Christianity | 0 | 9 | 0% |
| Totals | 6 | 32 | 15.8% |

Table 14: Outcomes in State Courts by RLUIPA Section

| AFFILIATION | RLUIPA | SUCCESSFUL | UNSUCCESSFUL | SUCCESS RATE |
|---------------|--------------------|------------|--------------|--------------|
| Judaism | Equal terms | 1 | 0 | 100% |
| Judaism | Substantial burden | 2 | 2 | 50% |
| Protestantism | Equal terms | 1 | 1 | 50% |
| Protestantism | Substantial burden | 4 | 9 | 30.8% |

¹¹⁰ See *infra* table 13.

¹¹¹ *Id.*

¹¹² See *infra* table 14.

¹¹³ *Id.*

| | | | | |
|-----------------------|--------------------|----------|-----------|--------------|
| Protestantism | Discrimination | 0 | 1 | 0% |
| Protestantism | Limitations | 0 | 1 | 0% |
| Buddhism | Discrimination | 0 | 1 | 0% |
| Buddhism | Substantial burden | 0 | 1 | 0% |
| Masonic | Substantial burden | 0 | 1 | 0% |
| Mormonism | Substantial burden | 0 | 1 | 0% |
| Islam | Discrimination | 0 | 1 | 0% |
| Islam | Substantial burden | 0 | 2 | 0% |
| Orthodox Christianity | Discrimination | 0 | 1 | 0% |
| Orthodox Christianity | Equal terms | 0 | 1 | 0% |
| Orthodox Christianity | Substantial burden | 0 | 2 | 0% |
| Catholicism | Substantial burden | 0 | 4 | 0% |
| Christianity | Discrimination | 0 | 1 | 0% |
| Christianity | Limitations | 0 | 1 | 0% |
| Christianity | Equal terms | 0 | 2 | 0% |
| Christianity | Substantial burden | 0 | 8 | 0% |
| Totals | - | 8 | 41 | 16.3% |

State court outcomes present a mixed view of RLUIPA with respect to minority religions. Four of the six successful outcomes involved Protestant claimants,¹¹⁴ but Jewish claimants had the highest success rate of any religious group.¹¹⁵ Claims by Jewish organizations represented one-third of successful outcomes, and such organizations were more than one and one-half times as

¹¹⁴ See *Yagemann v. Planning & Zoning Comm'n*, No. CV 0301936358, 2004 WL 1098438S (Conn. Super. Ct. Apr. 26, 2004) (objection by adjoining landowners to site plan and permit for construction of a Congregationalist place of worship denied on substantial burden grounds); *Farmington Ave. Baptist Church v. Town of Farmington Planning & Zoning Comm'n*, No. CV-010811563S, 2004 WL 303699 (Conn. Super. Ct. Jan. 27, 2004) (permit reducing size of place of worship and preventing operation of a school modified on substantial burden grounds); *Vill. of W. Dundee v. First United Methodist Church*, 74 N.E.3d 144 (Ill. App. Ct. 2017) (denial of demolition permit for place of worship overturned on substantial burden and equal terms grounds); *Ward v. Metro. Gov't of Nashville*, No. M2018-00633-COA-R3-CV, 2019 WL 1753053 (Tenn. Ct. App. Apr. 17, 2019) (objection by adjoining landowners to construction of homeless shelter by Methodist place of worship denied on substantial burden grounds).

¹¹⁵ See *Concerned Residents of Hancock Park v. City of L.A.*, No. B208439, 2010 WL 3672543 (Cal. Ct. App. Sept. 22, 2010); *Septimus v. Bd. of Zoning Appeals*, 22 N.Y.S. 3d 815 (N.Y. Sup. Ct. 2015). See also cases cited in note 55 and accompanying text.

successful as Protestant claimants.¹¹⁶ However, the two instances in which Jewish organizations were successful did not concern the assertion of rights by the claimants themselves. Instead, these two rulings denied objections to religious uses by adjoining landowners.¹¹⁷ RLUIPA did serve its purpose in these cases by shielding these organizations from communal opposition. Claims by other minority religions were uniformly unsuccessful.¹¹⁸

The need for such protection is evidenced by other opinions in which adjoining landowners successfully prevented religious uses of properties by Protestant and Christian organizations.¹¹⁹ The opinions representing instances in which adjoining landowners attempted to prevent or restrict religious land uses constituted 18.4% of state court opinions, a notable number and certainly sufficient to demonstrate some degree of hostility to religious land users.¹²⁰ Hostility may also be evident in instances in which local governments acted on behalf of their constituents to prevent land usages deemed harmful to the community such as apartment complexes, homeless shelters, and halfway houses.¹²¹ However, the source of opposition to religious land uses should not be overemphasized. RLUIPA protects land use by majority and minority faiths regardless of whether the source of opposition originates from the government or adjoining property owners (even though governmental action was at issue in only two opinions).¹²²

Despite RLUIPA's protections, the high number of unsuccessful outcomes possibly shows that land use planning remains a significant obstacle towards the free exercise rights of all religions, regardless of the number of believers.¹²³ The absence of successful claims by minority faiths may be indicative of skepticism with respect

¹¹⁶ See *supra* table 13.

¹¹⁷ See *Concerned Residents of Hancock Park*, 2010 WL 3672543 (denying writ of mandate to neighborhood association challenging expansion of a use permit to include religious services at an educational institution located in a residential zone); *Septimus*, 22 N.Y.S. 3d 815 (denying petition by landowner objecting to a permit allowing expansion of a synagogue). Two of the successful outcomes for Protestant claimants were similar in this regard. See *Yagemann*, 2004 WL 1098438; *Ward*, 2019 WL 1753053. See also cases cited in note 114 and accompanying text.

¹¹⁸ See *supra* notes 55–59 and accompanying text.

¹¹⁹ See *Michos v. Planning & Zoning Comm'n*, 96 A.3d 575 (Conn. App. Ct. 2014) (challenge by adjoining landowners to use permit for parking lot for Christian place of worship); *Lyster v. Woodford Cty. Bd. of Adjustment Members*, No. 2005-CA-001336-MR, 2007 WL 542719 (Ky. Ct. App. Feb. 23, 2007) (objection by adjoining landowner to granting of permit for construction of Methodist place of worship); *Schmitz v. Denton Cty. Cowboy Church*, 550 S.W.3d 342 (Tex. App. 2018) (challenge to construction of an arena by Christian place of worship).

¹²⁰ See *supra* notes 117, 119 and accompanying text.

¹²¹ See, e.g., *Westgate Tabernacle, Inc. v. Palm Beach Cty*, 14 So. 3d 1027 (Fla. Dist. Ct. App. 2009) (denial of permit to Christian religious organization to operate a homeless shelter); *Greater Bible Way Temple of Jackson v. City of Jackson*, 733 N.W.2d 734 (Mich. 2007) (construction of apartment complex by Protestant religious organization); *Libolt v. Town of Irondequoit Zoning Bd. of Appeals*, 885 N.Y.S.2d 806 (N.Y. App. Div. 2009) (operation of halfway house in a residential district by Christian religious organization).

¹²² See *Farmington Ave. Baptist Church v. Town of Farmington Planning & Zoning Comm'n*, No. CV 010811563S, 2004 WL 303699 (Conn. Super. Ct. Jan. 27, 2004); *Vill. of W. Dundee v. First United Methodist Church*, 74 N.E.3d 144 (Ill. App. Ct. 2017). See also cases cited in note 114 and accompanying text.

¹²³ See, e.g., *Keetch & Richards, supra* note 7, at 726 (contending that land use regulations “hamper the ability of adherents to both practice firmly held religious beliefs and to gather together with co-believers 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”).

to their claims. The bias alleged to exist within local governments may extend to state courts which have largely turned a blind eye to free exercise rights, in general, and minority rights, in particular.¹²⁴

However, low success rates are far from conclusive with respect to hostility or discrimination against minority religions. Majoritarian faiths were more unsuccessful in state courts than their minority counterparts. Protestant and Christian organizations had the largest number of unsuccessful outcomes which constituted 59.4% of all such outcomes and 50% of all state court opinions.¹²⁵ Christian organizations were the most unsuccessful state court claimants with nine opinions resulting in unsuccessful outcomes.¹²⁶ Judicial skepticism towards religious claims, if any, were apparently shared between minority faiths and Christian claimants.

The absence of a pattern of hostility directed toward minority religions is further reflected in the outcomes when viewed from the perspective of implicated RLUIPA sections. Substantial burden claims prevailed on six of thirty-six occasions.¹²⁷ One-third of successful substantial burden outcomes were attributable to religious minorities.¹²⁸ These two outcomes resulted in a success rate of 13.3% for substantial burden claims brought by religious minorities.¹²⁹ Although this success rate is lower than that for Protestant claimants, it is greater than that for Christian claimants who had no successful outcomes.¹³⁰

This pattern is somewhat repeated in equal terms claims, in which religious minorities represented 50% of successful opinions.¹³¹ However, the small number of equal terms opinions—thirteen in all when combined with discrimination—and limitations opinions, render suspect any broad conclusions. The lack of successful claims may not demonstrate governmental hostility to religious land uses but rather be indicative of other factors such as: their relative weakness, the inability of claimants to overcome evidentiary obstacles like the substantial evidence rule governing judicial review of administrative decisions,¹³² judicial deference to local

¹²⁴ *Id.* at 726–27, 741 (contending that “ignorance and even hostility toward religion sometimes operate behind the façade of ostensibly neutral land use regulations” and describing the negative impact of land use planning upon religious minorities and the creation of new churches). See also Roman P. Storz & Blair Lazarus Storz, *Christian Parking, Hindu Parking: Applying Established Civil Rights Principles to RLUIPA’s Nondiscrimination Provision*, 16 RICH. J.L. & PUB. INT. 295, 324 (2013) (describing attitudes of some local governments toward religion as “[t]orches and [p]itchforks discrimination”).

¹²⁵ See *supra* Table 13.

¹²⁶ *Id.*

¹²⁷ See *supra* Table 14.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² See, e.g., *Scottish Rite Cathedral Ass’n of L.A. v. City of L.A.*, 67 Cal. Rptr. 3d 207 (Cal. Ct. App. 2007); *New England Prayer Ctr., Inc. v. Planning & Zoning Comm’n*, No. CV-106012793-S, 2012 WL 6846551 (Conn. Super. Ct. Dec. 13, 2012) (use permit for Christian place of worship); *Cross St., L.L.C. v. Zoning Bd. of Appeals*, No. CV-064008077, 2007 WL 448684 (Conn. Super. Ct. Jan. 26, 2007); *Upper Columbia Corp. of Seventh Day Adventists v. Kootenai Cty.*, No. CV-20051270, 2006 WL 620368 (Idaho Dist. Ct. Jan. 30, 2006) (remodeling and expansion of camp facility operated by non-profit organization); *City of Elgin v. All Nations Worship Ctr.*, 860 N.E.2d 853 (Ill. App. Ct. 2006) (unauthorized operation by Seventh Day Adventist place of worship); *House of Prayer Ministries v. Rush Cty. Bd. of Zoning Appeals*, 91 N.E.3d 1053 (Ind. Ct. App. 2018) (objection to permit granted to operate dairy farm adjacent to Christian youth camp); *Trinity Assembly of God*

governments in instances implicating important public policy considerations,¹³³ or the absence of a religious usage.¹³⁴

The absence of judicial hostility to claims by religious minorities is also reflected in the stage of proceedings at which unsuccessful claims were resolved. Unsuccessful claims by religious minorities were rarely subject to dismissal but instead failed after consideration of the evidence at the summary judgment stage or at trial. State courts dismissed only a single claim by a religious minority and granted summary judgment on two additional claims constituting 7.7% and 15.4% of such claims.¹³⁵ By comparison, unsuccessful claims by Christian organizations were subject to dismissal or summary judgment on 22.2% of occasions each.¹³⁶ Unsuccessful claims by minority religious organizations were far more likely to be resolved at trial than claims by their majoritarian counterparts.¹³⁷ Appeals of administrative decisions were the most common unsuccessful resolutions in state

of Balt. City, Inc. v. People's Counsel for Balt. Cty., 962 A.2d 404 (Md. 2008) (denial of sign code variance to Pentecostal place of worship); Shaarei Tfiloh Congregation v. Mayor of Balt., 183 A.3d 845 (Md. Ct. Spec. App. 2018); St. Paul's Outreach, Inc. v. Bd. of Adjustment, No. A-0264-1711, 2019 WL 333053 (N.J. Super. Ct. App. Div. Jan. 28, 2019); Muslim Ctr. of Somerset Cty., Inc. v. Borough of Somerville Zoning Bd. of Adjustment, 2006 WL 1344323 (N.J. Super. Ct. May 16, 2006); Davis v. Lockland Zoning Bd. of Appeals, 797 N.E.2d 548 (Ohio Ct. App. 2003) (denial of variance to Restorationist place of worship to utilize building as a place of worship); Timberline Baptist Church v. Wash. Cty., 154 P.3d 759 (Or. Ct. App. 2007) (denial of permit to operate school by place of worship); Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. City of W. Linn, 111 P.3d 1123 (Or. 2005); Rector Church Wardens v. City of Phila. Historical Comm'n, 215 A.3d 1038 (Pa. Commw. Ct. 2019) (denial of demolition permit to Episcopalian place of worship); City of Hope v. Sadsbury Twp. Zoning Hearing Bd., 890 A.2d 1137 (Pa. Commw. Ct. 2006) (denial of permit to Christian place of worship to operate campground). See also cases cited in notes 55–56, 58–59 and accompanying text.

¹³³ This deference is apparent in the denial of relief in eleven opinions addressing code enforcement and variances, eight of which involved minority claimants. See *Cty. of L.A. v. Sahag Mesrob Armenian Christian Sch.*, 116 Cal. Rptr. 3d 61 (Cal. Ct. App. 2010); *Par. of Jefferson v. Daughters of St. Paul, Inc.*, 113 So.3d 371 (La. Ct. App. 2013); *Shaarei Tfiloh Congregation*, 183 A.3d 845; *Shepherd Montessori Ctr. Milan v. Ann Arbor Charter Twp.*, 761 N.W.2d 230 (Mich. Ct. App. 2008); *St. Paul's Outreach, Inc.*, 2019 WL 333053; *St. Gabriel's Syrian Orthodox Church v. Planning Bd.*, 2006 WL 3500965 (N.J. Super. Ct. Law Div. Dec. 5, 2006); *St. Joseph's Korean Catholic Church v. Zoning Bd. of Adjustment*, 2006 WL 1320089 (N.J. Super. Ct. App. May 16, 2006); *Muslim Ctr. of Somerset Cty., Inc.*, 2006 WL 1344323. See also *supra* notes 55–56, 58–59 and accompanying text; Salkin & Lavine, *supra* note 2, at 220–21, 223, 255 (discussing the exclusion of condemnation and public health considerations from RLUIPA's reach and expressing concern about RLUIPA's effect on the ability of local governments to "ensure that community character is preserved and that public health, safety, and welfare is protected").

¹³⁴ See, e.g., *N. Pac. Union Conference Ass'n of Seventh Day Adventists v. Clark Cty.*, 74 P.3d 140 (Wash. Ct. App. 2003) (construction of administrative office building by place of worship).

¹³⁵ See *Parish of Jefferson v. Daughters of St. Paul, Inc.*, 12-494 (La. App. 5 Cir. 3/27/13) (summary judgment); *Shepherd Montessori Ctr. Milan v. Ann Arbor Charter Twp.*, 761 N.W.2d 230 (Mich. Ct. App. 2008) (summary judgment); *Islamic Cultural Ctr. of Monticello, Inc. v. Vill. of Monticello*, 920 N.Y.S.2d 241 (N.Y. Sup. Ct. 2010) (dismissal). See also cases cited in notes 56, 58 and accompanying text.

¹³⁶ See RLUIPA Opinion Data, *supra* note 12. Summary judgment motions terminated 10% of unsuccessful Protestant claims. *Id.*

¹³⁷ See *Sahag Mesrob Armenian Christian Sch.*, 116 Cal. Rptr. 3d 61; *Cambodian Buddhist Soc'y of Conn., Inc. v. Planning & Zoning Comm'n*, 941 A.2d 868 (Conn. 2008); *St. Gabriel's Syrian Orthodox Church*, 2006 WL 3500965. See also cases cited in notes 58–59 and accompanying text. Unsuccessful results at trial resolved 11.1% of unsuccessful Christian claims and 10% of claims by Protestant organizations as compared to 23.1% of unsuccessful minority claims. See RLUIPA Opinion Data, *supra* note 12.

courts constituting 80% of Protestant claims, 53.8% of minority claims, and 44.4% of Christian claims.¹³⁸

This conclusion is bolstered by the stage at which unsuccessful claims were resolved by RLUIPA section. Substantial burden, equal terms, and discrimination claims by religious minorities were far more likely to be resolved at trial than similar claims by Protestant and Christian claimants. For example, three unsuccessful substantial burden claims by religious minorities proceeded to trial as compared to 12.5% of similar claims by Christian organizations and 11.1% of claims by Protestant organizations.¹³⁹ The sole equal terms claim and two of the three unsuccessful discrimination claims also were allowed to proceed to trial.¹⁴⁰ The same pattern holds true for successful minority claims which prevailed on both occasions as a result of trial proceedings.¹⁴¹ Whatever the outcome, state courts treated claims by religious minorities in a careful and thorough manner.

State court opinions are few and represent a small percentage of religious land use issues that confronted local governments in the time frame covered by this study. The lack of opinions may be indicative of an absence of substantial barriers necessitating resort to the judicial branch. The low success rate in state courts also may be attributable to factors other than governmental hostility to minority religions. It is possible that more meritorious claims were entrusted to the federal courts, the results of which are analyzed in the next section.

B. OUTCOMES IN FEDERAL COURTS

There were thirty-seven successful outcomes in the reported federal case law resulting in an overall success rate of 24.7%.¹⁴² The overall success rates for Protestant, Christian, and minority claimants were 28.1%, 14.8%, and 25.4% respectively.¹⁴³ The overall success rate decreased to 16.8% when analyzed from the perspective of implicated RLUIPA sections.¹⁴⁴ The success rates by RLUIPA section for Protestant, Christian, and minority claimants were 20%, 9.3%, and 16.8% respectively.¹⁴⁵ The outcomes in federal courts by religious affiliation of the claimants and by RLUIPA section are summarized in Tables 15 and 16.

¹³⁸ See RLUIPA Opinion Data, *supra* note 12. For examples of unsuccessful appeals of administrative decisions by minority claimants, see *supra* notes 132–33 and accompanying text. See also RLUIPA Opinion Data, *supra* note 12.

¹³⁹ See *supra* note 137 and accompanying text. See also RLUIPA Opinion Data, *supra* note 13.

¹⁴⁰ See *supra* note 137 and accompanying text.

¹⁴¹ See *Concerned Residents of Hancock Park v. City of L.A.*, No. B208439, 2010 WL 3672543 (Cal. Ct. App. Sept. 22, 2010); *Septimus v. Bd. of Zoning Appeals*, 22 N.Y.S.3d 815 (N.Y. Sup. Ct. 2015). See also *supra* note 53 and accompanying text. The four successful claims by Protestant organizations were the result of judicial review of three administrative orders and one trial. See RLUIPA Opinion Data, *supra* note 12.

¹⁴² See *infra* Table 15.

¹⁴³ *Id.*

¹⁴⁴ See *infra* Table 16.

¹⁴⁵ *Id.*

Table 15: Outcomes in Federal Courts by Religious Affiliation

| AFFILIATION | SUCCESSFUL | UNSUCCESSFUL | NEUTRAL | SUCCESS RATE |
|------------------------|-------------------|---------------------|----------------|---------------------|
| Christian Scientist | 1 | 0 | 0 | 100% |
| Sikhism | 1 | 0 | 0 | 100% |
| Buddhism | 1 | 1 | 0 | 50% |
| Catholicism | 4 | 4 | 1 | 44.4% |
| Protestantism | 18 | 31 | 15 | 28.1% |
| Judaism | 5 | 7 | 9 | 23.8% |
| Islam | 3 | 4 | 8 | 20% |
| Christianity | 4 | 14 | 9 | 14.8% |
| Black Hebrew Israelite | 0 | 0 | 1 | 0% |
| Church of Scientology | 0 | 0 | 1 | 0% |
| Hinduism | 0 | 0 | 2 | 0% |
| Orthodox Christianity | 0 | 1 | 1 | 0% |
| Greater Faith | 0 | 1 | 0 | 0% |
| Nada Yoga | 0 | 1 | 0 | 0% |
| Paganism | 0 | 1 | 0 | 0% |
| Santeria | 0 | 1 | 0 | 0% |
| Totals | 37 | 66 | 47 | 24.7% |

Table 16: Outcomes in Federal Courts by RLUIPA Section

| AFFILIATION | RLUIPA | SUCCESS -FUL | UN- SUCCESSFUL | NEUTRAL | SUCCESS RATE |
|-----------------|----------------|-----------------|-------------------|-----------|-----------------|
| Chr. Scientist | Equal terms | 1 | 0 | 0 | 100% |
| Sikhism | Subst. burden | 1 | 0 | 0 | 100% |
| Buddhism | Equal terms | 1 | 0 | 0 | 100% |
| Buddhism | Discrimination | 0 | 1 | 0 | 0% |
| Buddhism | Subst. burden | 0 | 1 | 0 | 0% |
| Catholicism | Equal terms | 2 | 4 | 0 | 33.3% |
| Catholicism | Subst. burden | 2 | 4 | 2 | 25% |
| Catholicism | Limitations | 0 | 1 | 0 | 0% |
| Protestantism | Equal terms | 9 | 11 | 8 | 32.1% |
| Protestantism | Subst. burden | 10 | 28 | 11 | 20.4% |
| Protestantism | Discrimination | 1 | 6 | 6 | 7.7% |
| Protestantism | Limitations | 1 | 12 | 2 | 6.7% |
| Judaism | Limitations | 2 | 1 | 0 | 66.7% |
| Judaism | Subst. burden | 4 | 9 | 6 | 21% |
| Judaism | Equal terms | 2 | 2 | 6 | 20% |
| Judaism | Discrimination | 1 | 5 | 5 | 9.1% |
| Islam | Discrimination | 2 | 3 | 6 | 18.2% |
| Islam | Subst. burden | 1 | 3 | 8 | 8.3% |
| Islam | Limitations | 0 | 0 | 2 | 0% |
| Islam | Equal terms | 0 | 3 | 3 | 0% |
| Christianity | Equal terms | 4 | 6 | 5 | 26.7% |
| Christianity | Discrimination | 0 | 1 | 3 | 0% |
| Christianity | Limitations | 0 | 3 | 0 | 0% |
| Christianity | Subst. burden | 0 | 15 | 6 | 0% |
| Bl. Hebrew Isr. | Subst. burden | 0 | 0 | 1 | 0% |
| Scientology | Discrimination | 0 | 0 | 1 | 0% |
| Scientology | Subst. burden | 0 | 0 | 1 | 0% |
| Scientology | Equal terms | 0 | 1 | 0 | 0% |
| Scientology | Limitations | 0 | 1 | 0 | 0% |
| Hinduism | Discrimination | 0 | 0 | 2 | 0% |
| Hinduism | Subst. burden | 0 | 1 | 1 | 0% |
| Hinduism | Equal terms | 0 | 1 | 0 | 0% |
| Hinduism | Limitations | 0 | 1 | 0 | 0% |
| Orth. Chr. | Subst. burden | 0 | 1 | 1 | 0% |
| Orth. Chr. | Equal terms | 0 | 1 | 0 | 0% |
| Greater Faith | Subst. burden | 0 | 1 | 0 | 0% |
| Nada Yoga | Discrimination | 0 | 1 | 0 | 0% |
| Nada Yoga | Subst. burden | 0 | 1 | 0 | 0% |
| Paganism | Equal terms | 0 | 1 | 0 | 0% |
| Santeria | Subst. burden | 0 | 1 | 0 | 0% |
| Totals | - | 44 | 131 | 86 | 16.8% |

Federal court outcomes are somewhat different than their state court counterparts. Although the success rate by outcome is significantly higher in federal courts, the success rate by RLUIPA section differs by only one-half percentage

point.¹⁴⁶ Buddhist, Catholic and Islamic claimants were unsuccessful in state courts but succeeded in federal courts.¹⁴⁷ Other minority religions absent from state court opinions were also successful.¹⁴⁸ However, the success rate of Jewish claimants

¹⁴⁶ See *supra* Tables 13–16.

¹⁴⁷ See *DiLaura v. Twp. of Ann Arbor*, 112 F. App'x 445 (6th Cir. 2004) (affirming trial verdict); *Roman Catholic Archdiocese of Kan. City in Kan. v. City of Mission Woods*, 385 F. Supp. 3d 1171 (D. Kan. 2019) (trial verdict); *Youkhanna v. City of Sterling Heights*, 332 F. Supp. 3d 1058 (E.D. Mich. 2018) (summary judgment); *Islamic Soc'y of Basking Ridge v. Twp. of Bernards*, 226 F. Supp. 3d 320 (D.N.J. 2016) (judgment on the pleadings); *Corp. of the Catholic Archbishop of Seattle v. City of Seattle*, 28 F. Supp. 3d 1163 (W.D. Wash. 2014) (summary judgment); *Irshad Learning Ctr. v. Cty. of Dupage*, 937 F. Supp. 2d 910 (N.D. Ill. 2013) (summary judgment); *Vietnamese Buddhism Study Temple in Am. v. City of Garden Grove*, 460 F. Supp. 2d 1165 (C.D. Cal. 2006) (granting preliminary injunction); *Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp. 2d 309 (D. Mass. 2006) (summary judgment). See also cases cited in notes 79–80, 92, 94, 99 and accompanying text.

Claims by Islamic organizations resulted in unsuccessful or neutral outcomes in twelve opinions. See *Islamic Ctr. for Mid Westchester v. City of Yonkers Landmark Pres. Bd.*, 742 F. App'x 521 (2d Cir. 2018) (dismissal); *OT, L.L.C. v. Harford Cty.*, No. GLR-17-2812, 2019 WL 4598009 (D. Md. Sept. 23, 2019) (denial of summary judgment); *Adam Cmty. Ctr. v. City of Troy*, 381 F. Supp. 3d 887 (E.D. Mich. 2019) (denial of dismissal); *HIRA Educ. Servs. of N. Am. v. Augustine*, No. 2:18-CV-00486, 2019 WL 120729 (W.D. Pa. Jan. 7, 2019) (trial verdict); *Garden State Islamic Ctr. v. City of Vineland*, 358 F. Supp. 3d 377 (D.N.J. 2018) (denial of dismissal); *United States v. Cty. of Culpeper*, 245 F. Supp. 3d 758 (W.D. Va. 2017) (denial of dismissal); *Soc'y of Am. Bosnians & Herzegovinians v. City of Des Plaines*, No. 13 C 6594, 2017 WL 748528 (N.D. Ill. Feb. 26, 2017) (denial of summary judgment); *United States v. Bensalem Twp.*, 220 F. Supp. 3d 615 (E.D. Pa. 2016) (denial of dismissal); *Muslim Cmty. Ass'n of Ann Arbor v. Pittsfield Charter Twp.*, No. 12-CV-10803, 2015 WL 1286813 (E.D. Mich. Mar. 20, 2015) (summary judgment); *Islamic Ctr. of W. Suburbs v. Cty. of DuPage*, No. 12 C 6132, 2012 WL 6605011 (N.D. Ill. Dec. 18, 2012) (denial of dismissal); *Islamic Ctr. of N. Fulton, Inc. v. City of Alpharetta*, No. 1:10-cv-01922-JOF, 2012 WL 13005475 (N.D. Ga. Jan. 25, 2012) (summary judgment); *Albanian Associated Fund v. Twp. of Wayne*, No. 06-cv-3217 (PGS), 2007 WL 2904194 (D.N.J. Oct. 1, 2007) (denial of summary judgment). See also cases cited in notes 78, 80, 99, and accompanying text.

Claims by Catholic organizations resulted in unsuccessful or neutral outcomes in five opinions. See *Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78 (1st Cir. 2013) (summary judgment); *Marianist Province v. City of Kirkwood*, No. 4:17-CV-805RLW, 2018 WL 4286409 (E.D. Mo. Sept. 7, 2018) (summary judgment); *Roman Catholic Diocese of Rockville Ctr., Inc. v. Vill. of Old Westbury*, 128 F. Supp. 3d 566 (E.D.N.Y. 2015) (denial of summary judgment); *Anselmo v. Cty. of Shasta*, 873 F. Supp. 2d 1247, 1250 (E.D. Cal. 2012) (dismissal and summary judgment); *Acad. of Our Lady of Peace v. City of San Diego*, No. 09cv962-WQH-AJB, 2010 WL 1329014 (S.D. Cal. Apr. 1, 2010) (summary judgment). See also cases cited in notes 79–80 and accompanying text. There was one unsuccessful claim by a Buddhist organization. See *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, No. 1:16-cv-395-TFM-MU, 2019 WL 2250275 (S.D. Ala. May 23, 2019) (summary judgment and verdict at trial). See also cases cited in note 82 and accompanying text.

¹⁴⁸ See *Third Church of Christ Scientist of N.Y.C. v. City of N.Y.*, 626 F.3d 667 (2d Cir. 2008) (affirming trial verdict); *Guru Nank Sikh Soc'y of Yuba City v. Cty. of Sutter*, 456 F.3d 978 (9th Cir. 2006) (affirming entry of summary judgment). See also cases cited in notes 82, 94, and accompanying text.

declined by more than 26%.¹⁴⁹ Additionally, the remaining opinions relating to minority religions resulted in either unsuccessful¹⁵⁰ or neutral outcomes.¹⁵¹

All told, fifteen of the thirty-seven successful outcomes, representing 40.5% of such opinions and 10% of all federal opinions, involved minority claimants.¹⁵² The rise in success rates for some minority religions was accompanied by a slight decrease in the success rate for Protestant claimants¹⁵³ and a significant increase for Christian

¹⁴⁹ Compare Table 13, with 15. Jewish claimants were successful on five occasions. See *Westchester Day School v. Vill. of Mamaroneck*, 504 F. 3d 338 (2d Cir. 2007) (affirming trial verdict); *Chabad Jewish Ctr. of Toms River, Inc. v. Twp. of Toms River*, No. 3:16-01599 (FLW)(LHG), 2018 WL 1942360 (D.N.J. Feb. 15, 2018) (trial verdict); *Chabad Lubavitch of Litchfield Cty., Inc. v. Borough of Litchfield*, No. 3:09-CV-1419 (JCH), 2017 WL 5015624 (D. Conn. Nov. 2, 2017) (granting preliminary injunction); *Congregation Etz Chaim v. City of L.A.*, No. CV10-1587CAS(CFEx.), 2011 WL 12472550 (C.D. Cal. July 11, 2011) (summary judgment); *Chabad of Nova, Inc. v. City of Cooper City*, 575 F. Supp. 2d 1280 (S.D. Fla. 2008) (summary judgment). See also cases cited in notes 72, 75, 108 and accompanying text.

Claims by Jewish organizations resulted in unsuccessful or neutral outcomes in sixteen opinions. See *Temple B’Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F. 3d 1349 (11th Cir. 2013) (affirming denial of dismissal); *Konikov v. Orange Cty.*, 410 F.3d 1317 (11th Cir. 2005) (affirming denial of summary judgment); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1236 (11th Cir. 2004) (reversing order of summary judgment); *Friends of Lubavitch v. Balt. Cty.*, No. GLR-18-3943, 2019 WL 4805676 (D. Md. Sept. 30, 2019) (dismissal); *Chabad Lubavitch of the Quad Cities, Inc. v. City of Bettendorf*, 389 F. Supp. 3d 590 (S.D. Iowa 2019) (dismissal); *Congregation Ariel Russian Cmty. Synagogue, Inc. v. Balt. Cty.*, No. GLR-17-1910, 2018 WL 1535494 (D. Md. Mar. 28, 2018) (denial of dismissal); *Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*, 138 F. Supp. 3d 352 (S.D.N.Y. 2017) (denial of summary judgment); *Congregation Kollel, Inc. v. Twp. of Howell*, No. CV 16-2457 (FLW), 2017 WL 637689 (D.N.J. Feb. 16, 2017) (denial of dismissal); *Sheri Torah, Inc. v. Vill. of S. Blooming Grove*, No. 10 Civ. 3762 (LAP), 2013 WL 1454953 (S.D.N.Y. Mar. 28, 2013) (dismissal); *Twersky v. Town of Hempstead*, No. 10 CV 4573(MKB), 2012 WL 4928901 (E.D.N.Y. Oct. 16, 2012) (summary judgment); *East End Eruv Ass’n, Inc. v. Vill. of Westhampton Beach*, 828 F. Supp. 2d 526 (E.D.N.Y. 2011) (trial verdict); *Young Israel of Bal Harbour, Inc. v. Town of Surfside*, No. 10-24392-CIV-JORDAN, 2011 WL 13220998 (S.D. Fla. July 1, 2011) (denial of dismissal); *Congregation Adas Yereim v. City of N.Y.*, 673 F. Supp. 2d 94 (E.D.N.Y. 2009) (dismissal); *Bikur Cholim, Inc. v. Vill. of Suffern*, 664 F. Supp. 2d 267 (S.D.N.Y. 2009) (denial of summary judgment); *Hollywood Cmty. Synagogue, Inc. v. City of Hollywood*, 430 F. Supp. 2d 1296 (S.D. Fla. 2006) (denial of summary judgment); *Williams Island Synagogue, Inc. v. City of Aventura*, 358 F. Supp. 2d 1207 (S.D. Fla. 2005) (summary judgment). See also cases cited in notes 73–76, 101 and accompanying text.

¹⁵⁰ See e.g., *Merced v. Kasson*, 577 F.3d 578 (5th Cir. 2009) (affirming summary judgment); *Spirit of Aloha Temple v. Cty. of Maui*, 409 F. Supp. 3d 889 (D. Haw. 2019) (summary judgment); *Yetto v. City of Jackson*, No. 1:17-cv-01205-STA-jay, 2019 WL 2715545 (W.D. Tenn. June 28, 2019) (trial verdict); *Harris v. City of Clearlake*, No. 17-cv-05126-YGR, 2017 WL 6343466 (N.D. Cal. Dec. 12, 2017) (dismissal); *Milosavljevic v. City of Brier*, No. C16-1414RSM, 2017 WL 3917015 (W.D. Wash. Sept. 7, 2017) (summary judgment). See also cases cited in notes 82–83, 95 and accompanying text.

¹⁵¹ See *Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F. 3d 895 (7th Cir. 2005) (reversing entry of summary judgment); *Sailak, LLC v. Forsyth Cty.*, No. 2:17-CV-00052-RWS, 2018 WL 3036776 (N.D. Ga. June 19, 2018) (denial of summary judgment); *Church of Scientology of Ga., Inc. v. City of Sandy Springs*, 843 F. Supp. 2d 1328 (N.D. Ga. 2012) (denial of summary judgment); *Israelite Church of God in Jesus Christ, Inc. v. City of Hackensack*, No. 11-5960(SRC), 2012 WL 3284054 (D.N.J. Aug. 10, 2012) (denial of dismissal); *Adhi Parasakthi Charitable, Med., Educ., & Cultural Soc’y of N. Am. v. Twp. of W. Pikeland*, 721 F. Supp. 2d 361 (E.D. Pa. 2010) (denial of summary judgment). See also cases cited in notes 82–83 and accompanying text.

¹⁵² See *supra* Table 15.

¹⁵³ Compare Table 13, with Table 15. See *Harbor Missionary Church Corp. v. City of San Buenaventura*, 642 F. App’x 726 (9th Cir. 2016) (reversing denial of preliminary injunction relating to operation of homeless ministry by Missionary place of worship on substantial burden grounds); *Opulent Life Church v. City of Holly Springs*, 697 F. 3d 279 (5th Cir. 2012) (affirming trial verdict relating to ban on Protestant place of worship in historic district as a failure to accord equal terms); *Reaching Hearts Int’l, Inc. v. Prince George’s Cty.*, 368 F. App’x 370 (4th Cir. 2010) (affirming trial verdict relating to denial of water and sewer permits for construction of place of worship by Seventh Day Adventist religious organization on substantial burden and discrimination

claimants.¹⁵⁴ These Christian claimants constituted 59.4% of successful outcomes with 48.6% of such outcomes from the Protestant tradition.¹⁵⁵

It is unclear whether the higher success rates in federal courts are evidence of governmental hostility to religious land usages in general and usages by religious minorities in particular.¹⁵⁶ Unlike their state court counterparts, some degree of hostility may be found in the fact that thirty-five of the thirty-seven successful outcomes in federal courts concerned actions of local governments rather than challenges by adjoining landowners.¹⁵⁷ Although adjoining landowners were undoubtedly interested parties, there were only two opinions, both of which resulted

grounds); *Covenant Christian Ministries, Inc. v. City of Marietta*, 654 F. 3d 1231 (11th Cir. 2011) (affirming trial verdict relating to construction by Protestant place of worship in residential zone as a failure to accord equal terms); *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F. 3d 1163 (9th Cir. 2011) (reversing trial verdict relating to denial of permit to operate Baptist place of worship on substantial burden and equal terms grounds); *Fortress Bible Church v. Feiner*, 694 F. 3d 208 (2d Cir. 2010) (affirming trial verdict relating to denial of permit to Pentecostal place of worship to construct worship center and school on substantial burden grounds); *Rocky Mountain Christian Church v. Bd. of Cty. Comm'rs*, 613 F. 3d 1229 (10th Cir. 2010) (affirming entry of permanent injunction regarding expansion of operations by Protestant place of worship on equal terms and limitations grounds); *Digrugilliers v. Consol. City of Indianapolis*, 506 F.3d 612 (7th Cir. 2007) (reversing denial of preliminary injunction regarding exclusion of Baptist place of worship from office zone as a failure to accord equal terms); *Elsinore Christian Ctr. v. City of Lake Elsinore*, 197 F. App'x 718 (9th Cir. 2006) (affirming trial verdict relating to operation of place of worship by Protestant non-profit organization on substantial burden grounds); *First Lutheran Church v. City of St. Paul*, No. 18-cv-954 (JRT/KMM), 2018 WL 3762560 (D. Minn. Aug. 8, 2018) (granting preliminary injunction relating to operation of a day shelter on substantial burden grounds); *Christian Assembly Rios De Agua Viva v. City of Burbank*, 237 F. Supp. 3d 781 (N.D. Ill. 2017) (summary judgment relating to operation by Pentecostal place of worship in commercial zone as a failure to accord equal terms); *Hope Rising Cmty. Church v. Municipality of Penn Hills*, No. 15-1165, 2015 WL 7720380 (W.D. Pa. Oct. 28, 2015) (granting preliminary injunction regarding conduct of services by Protestant place of worship in light industrial zone as a failure to accord equal terms); *Church of Our Savior v. City of Jacksonville Beach*, 69 F. Supp. 3d 1299 (M.D. Fla. 2014) (trial verdict relating to denial of permit to Anglican non-profit organization to construct place of worship as a failure to accord equal terms); *Layman Lessons, Inc. v. City of Millersville*, 636 F. Supp. 2d 620 (M.D. Tenn. 2008) (summary judgment relating to delay in granting certificate of occupancy to Baptist religious organization for thrift store on substantial burden grounds); *Grace Church of N. Cty. v. City of San Diego*, 555 F. Supp. 2d 1126 (S.D. Cal. 2008) (summary judgment relating to time limitation on religious usage by Protestant religious organization on substantial burden grounds); *Lighthouse Cmty. Church of God v. City of Southfield*, No. 05-40220, 2007 WL 30280 (E.D. Mich. Jan. 3, 2007) (summary judgment relating to parking variance for Protestant place of worship on substantial burden grounds); *New Life Ministries v. Charter Twp. of Mt. Morris*, No. 05-74339, 2006 WL 2583254 (E.D. Mich. Sept. 7, 2006) (summary judgment relating to rezoning request allowing Protestant non-profit organization to operate in commercial zone as a failure to accord equal terms); *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203 (C.D. Cal. 2002) (granting preliminary injunction to Protestant place of worship relating to taking of property for commercial retail center on substantial burden grounds).

¹⁵⁴ Compare Table 13, with Table 15. See *Dorman v. Charter Twp. of Clinton*, No. 15-cv-12552, 2019 WL 3322352 (E.D. Mich. July 24, 2019) (summary judgment regarding code enforcement banning relocation of Christian place of worship as a failure to accord equal terms); *Christian Fellowship Ctrs. of N.Y., Inc. v. Vill. of Canton*, 377 F. Supp. 3d 146 (N.D.N.Y. 2019) (granting preliminary injunction relating to prohibition upon operation of place of worship in commercial district as a failure to accord equal terms); *Summit Church v. Randolph Cty. Dev. Auth.*, No. 2:15-CV-82, 2016 WL 865302 (N.D.W. Va. Mar. 2, 2016) (summary judgment relating to refusal to sell property zoned for commercial use to Christian place of worship as a failure to accord equal terms); *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 272–73 (3d Cir. 2007) (summary judgment regarding relocation of operations of Christian religious organization on basis as a failure to accord equal terms).

¹⁵⁵ See *supra* Table 15.

¹⁵⁶ See cases cited in notes 8, 10, and accompanying text.

¹⁵⁷ See cases cited in notes 117, 119 and accompanying text.

in successful outcomes for religious organizations, in which such landowners were the lead litigants.¹⁵⁸

Evidence of hostility also may be found in the outcomes in equal terms opinions which, at 26.8%, had the highest success rate of RLUIPA sections.¹⁵⁹ Minority faiths were represented in six of the nineteen successful outcomes.¹⁶⁰ The overall success rate for equal terms claims by religious minorities was 21.4%, which represented six successful outcomes, thirteen unsuccessful outcomes, and nine neutral outcomes.¹⁶¹ By comparison, Protestant claimants achieved greater success at 32.1%.¹⁶² Minority claimants were also less successful than Christian organizations who prevailed in four of fifteen claims.¹⁶³ These differences may support arguments relating to governmental and judicial preferences for majority faiths.¹⁶⁴

Opposition to minority religious land usage is better supported by outcomes in discrimination and limitations opinions. Discrimination claims had a federal success rate of 9.1%, which represents four cases out of forty-four reported opinions.¹⁶⁵ Twenty-seven of these opinions, representing 61.4% of such opinions, concerned minority religions—three of which resulted in a successful outcome for the claimant.¹⁶⁶ As a group, minority claimants had a success rate of 11.1% which exceeded that of majority religious claimants.¹⁶⁷

The 18.2% success rate for Islamic claimants, and the fact that 50% of all discrimination opinions and 81.5% of opinions relating to religious minorities concerned Islamic and Jewish claimants, supports a conclusion of governmental bias against these two minorities.¹⁶⁸ However, a conclusion of bias against minorities in general may be overbroad. The absence of success by other minority claimants may be indicative of the difficulty in proving bias. That said, federal courts are more

¹⁵⁸ See *Youkhanna v. City of Sterling Heights*, 332 F. Supp. 3d 1058 (E.D. Mich. 2018); *Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp. 2d 309 (D. Mass. 2006). See also cases cited in note 147 and accompanying text.

¹⁵⁹ See *supra* Table 16.

¹⁶⁰ See *e.g.*, *Third Church of Christ Scientist of N.Y.C. v. City of N.Y.*, 626 F. 3d 667 (2d Cir. 2008); *Roman Catholic Archdiocese of Kan. City in Kan. v. City of Mission Woods*, 385 F. Supp. 3d 1171 (D. Kan. 2019); *Chabad Jewish Ctr. of Toms River, Inc. v. Twp. of Toms River*, No. 3:16-01599 (FLW)(LHG), 2018 WL 1942360 (D.N.J. Feb. 15, 2018); *Corp. of the Catholic Archbishop of Seattle v. City of Seattle*, 28 F. Supp. 3d 1163 (W.D. Wash. 2014); *Congregation Etz Chaim v. City of L.A.*, No. CV10-1587CAS(CFEx.), 2011 WL 12472550 (C.D. Cal. July 11, 2011); *Vietnamese Buddhism Study Temple in Am. v. City of Garden Grove*, 460 F. Supp. 2d 1165 (C.D. Cal. 2006). See also cases cited in notes 147–49 and accompanying text.

¹⁶¹ See cases cited in notes 147–51 and accompanying text. See also *supra* Tables 15–16.

¹⁶² See cases cited in note 153 and accompanying text.

¹⁶³ See cases cited in note 154 and accompanying text.

¹⁶⁴ See *supra* notes 7–10 and accompanying text.

¹⁶⁵ See *supra* Table 16.

¹⁶⁶ *Id.* See also *Youkhanna v. City of Sterling Heights*, 332 F. Supp. 3d 1058 (E.D. Mich. 2018); *Chabad Jewish Ctr. of Toms River, Inc. v. Twp. of Toms River*, No. 3:16-01599 (FLW)(LHG), 2018 WL 1942360 (D.N.J. Feb. 15, 2018); *Islamic Soc’y of Basking Ridge v. Twp. of Bernards*, 226 F. Supp. 3d 320 (D.N.J. 2016). See also cases cited in notes 147, 149, and accompanying text.

¹⁶⁷ See *supra* Table 16. The success rate for majority religious claimants was 5.9% consisting of one claim by a Protestant religious organization. See *Reaching Hearts Int’l, Inc. v. Prince George’s Cty.*, 368 F. App’x 370 (4th Cir. 2010). See also cases cited in note 153 and accompanying text.

¹⁶⁸ *Id.* See also cases cited in notes 9–10, 98–102 and accompanying text.

willing to find bias as demonstrated by the difference between success rates for discrimination claims in state and federal courts.¹⁶⁹

The same conclusions are applicable to limitations claims. Limitations claims had a federal success rate of 11.5% which represents three of twenty-six opinions.¹⁷⁰ As a group, minority claimants had a success rate of 25% compared to 6.7% for Protestant claimants, and 0% for Christian claimants.¹⁷¹

In a manner similar to discrimination, 62.5% of minority limitations opinions involved Jewish or Islamic claimants.¹⁷² This prevalence is, however, a far weaker indication of bias as it represents only five opinions.¹⁷³ The same holds true for the remaining three minority religions which were represented by one opinion each.¹⁷⁴ The small number of opinions and successful outcomes prevents attaching undue significance to the findings with respect to limitations claims. However, as in the case of discrimination, limitations claims were more prevalent and successful in federal courts than in state courts.¹⁷⁵

Unsurprisingly, local governments are most commonly alleged to restrict land uses by minority religions through the imposition of substantial burdens.¹⁷⁶ Minority claimants were successful on eight occasions constituting 44.4% of successful substantial burden opinions, and an overall success rate of 16%.¹⁷⁷ Catholic organizations were successful in 25% of their substantial burden claims.¹⁷⁸ Jewish organizations were successful in 21% of their substantial burden claims.¹⁷⁹ Islamic and Sikh organizations had success rates of 8.3% and 100% respectively; however, these rates represented only two opinions.¹⁸⁰ These success rates were offset by a large number of unsuccessful and neutral outcomes.¹⁸¹

¹⁶⁹ Compare Table 14, with 16.

¹⁷⁰ See *supra* Table 16.

¹⁷¹ See *Chabad Jewish Ctr. of Toms River, Inc. v. Twp. of Toms River*, No. 3:16-01599 (FLW)(LHG), 2018 WL 1942360 (D.N.J. Feb. 15, 2018); *Chabad of Nova, Inc. v. City of Cooper City*, 575 F. Supp. 2d 1280 (S.D. Fla. 2008). The sole successful limitations claim by a majority religion concerned a Protestant place of worship. See *Rocky Mountain Christian Church v. Bd. of Cty. Comm'rs*, 613 F.3d 1229 (10th Cir. 2010). See also cases cited in note 153 and accompanying text.

¹⁷² See *supra* Table 16. See also cited cases in notes 107–08 and accompanying text.

¹⁷³ *Id.*

¹⁷⁴ See cited cases in notes 107, 109 and accompanying text.

¹⁷⁵ Compare Table 14, with 16.

¹⁷⁶ See cases cited in notes 70–83 and accompanying text.

¹⁷⁷ See *supra* Table 16.

¹⁷⁸ See *DiLaura v. Twp. of Ann Arbor*, 112 F. App'x 445 (6th Cir. 2004); *Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp. 2d 309 (D. Mass. 2006). See also cases cited in note 147 and accompanying text.

¹⁷⁹ See generally *Westchester Day School v. Vill. of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007); *Chabad Jewish Ctr. of Toms River, Inc. v. Twp. of Toms River*, No. 3:16-01599 (FLW)(LHG), 2018 WL 1942360 (D.N.J. Feb. 15, 2018); *Chabad Lubavitch of Litchfield Cty., Inc. v. Borough of Litchfield*, No. 3:09-CV-1419 (JCH), 2017 WL 5015624 (D. Conn. Nov. 2, 2017); *Congregation Etz Chaim v. City of Los Angeles*, No. CV10-1587CAS (Ex.), 2011 WL 12472550 (C.D. Cal. July 11, 2011). See also cases cited in note 149 and accompanying text.

¹⁸⁰ See *Guru Nanak Sikh Soc'y of Yuba City v. Cty. of Sutter*, 456 F.3d 978 (9th Cir. 2006); *Irshad Learning Ctr. v. Cty. of Dupage*, 937 F. Supp. 2d 910 (N.D. Ill. 2013). See also cases cited in notes 147–48 and accompanying text.

¹⁸¹ See cases cited in notes 147, 149–51 and accompanying text.

These success rates also must be placed in context. First, although the overall success rate is significant, it represents only eight opinions concerning four faiths.¹⁸² Claims by eight minority religions were unsuccessful or resulted in neutral outcomes.¹⁸³ Additionally, 55.5% of successful substantial burden claims concerned Protestant claimants who had an overall success rate of 20.4%.¹⁸⁴ The success rate for religious minorities did exceed the rate for Christian claimants who were unsuccessful on twenty-one occasions.¹⁸⁵ The success rate for religious minorities also exceeded the overall success rate of 15% for substantial burden claims.¹⁸⁶

Federal courts were far more likely to grant summary judgment or dismiss claims than their state court counterparts. However, such results were shared by minority, Protestant and Christian claimants. For example, 52.4% of unsuccessful outcomes for minority religious claimants were the result of summary judgment with an additional 28.6% of such outcomes the result of dismissal.¹⁸⁷ Protestant organizations had similar percentages at 45.2% for summary judgment and 32.2% for dismissal.¹⁸⁸ Notably, minority and Protestant organizations experienced unsuccessful outcomes in 19% and 16.1% of trials, respectively.¹⁸⁹ Only Christian organizations had a lower percentage of unsuccessful outcomes resulting from summary judgment (28.6%) and a higher percentage of such outcomes resulting from trial proceedings (42.8%).¹⁹⁰ The percentage of unsuccessful outcomes for Christian claimants as a result of dismissal was identical to the percentage for minorities.¹⁹¹

The utilization of summary judgment and dismissal by federal courts is also evident in a review of unsuccessful outcomes by RLUIPA section. However, analysis from this perspective is skewed in favor of majority religions. For example, 90.9% of unsuccessful substantial burden claims by minorities were subject to dismissal or summary judgment, compared to 75% for Protestant organizations and 73.3% for Christian organizations.¹⁹² Unsuccessful substantial burden claims by minorities proceeded to trial in only 9.1% of claims compared to 17.8% and 26.7% for Protestant and Christian litigants, respectively.¹⁹³

Similar patterns exist with respect to discrimination and limitations claims. Ninety percent of discrimination claims by minorities were resolved through

¹⁸² See cases cited in notes 178–80 and accompanying text.

¹⁸³ See cases cited in notes 150–51 and accompanying text.

¹⁸⁴ See cases cited in note 153 and accompanying text.

¹⁸⁵ See *supra* Table 16.

¹⁸⁶ *Id.* See also cases cited in notes 178–80 and accompanying text.

¹⁸⁷ See cases cited in notes 147, 149–51 and accompanying text.

¹⁸⁸ See RLUIPA Opinion Data, *supra* note 12.

¹⁸⁹ See cases cited in notes 147, 149–51 and accompanying text. See also RLUIPA Opinion Data, *supra* note 12.

¹⁹⁰ See RLUIPA Opinion Data, *supra* note 12.

¹⁹¹ *Id.*

¹⁹² See cases cited in notes 147, 149–51 and accompanying text. See also RLUIPA Opinion Data, *supra* note 12. Substantial burden claims by Protestant organizations were terminated as a result of summary judgment in 46.4% of opinions and by dismissal in 28.6% of opinions. *Id.* The rates for Christian organizations were 40% and 33.3% respectively. *Id.*

¹⁹³ RLUIPA Opinion Data, *supra* note 12.

dismissal or summary judgment compared to 66.7% for Protestant organizations.¹⁹⁴ The four limitations claims brought by minorities were similarly resolved compared to 75% for Protestant organizations and 66.6% for Christian organizations.¹⁹⁵ Equal terms claims were an outlier as dismissal and summary judgment rates for minority and Protestant claimants were 84.6% and 81.8%, respectively.¹⁹⁶

The cause of these disparities is ultimately unknowable. Contributing factors may include judicial favoritism and discounting claims by religious minorities, but conclusions in this regard cannot be stated with any degree of certainty. At the very least, the reluctance of federal courts to permit claims to proceed to trial and readiness to wield their collective dismissal and summary judgment pens demonstrates a greater degree of skepticism toward RLUIPA proceedings and deference to local land use regulators than their state court counterparts.

The success rates change significantly if neutral outcomes, which were absent from state court opinions, are assumed to be or ultimately resulted in success for minority claimants.¹⁹⁷ The success rate for minority claimants increases to 56.6% in such circumstances.¹⁹⁸ This rate reflects significant increases for six minority religions including three religions with success rates of 100% and two with success rates in excess of 65%.¹⁹⁹ The increased success rate for minority claimants exceeds the combined success rate for all claimants as well as the rates for Protestant and Christian claimants.²⁰⁰

¹⁹⁴ See cases cited in notes 147, 149–51 and accompanying text. Discrimination claims by Protestant organizations were terminated as a result of summary judgment in 50% of opinions and by dismissal in 16.7% of opinions. *Id.* The sole unsuccessful discrimination claim by a Christian organization was terminated as a result of summary judgment. See RLUIPA Opinion Data, *supra* note 12.

¹⁹⁵ See cases cited in notes 147, 149–51 and accompanying text. Limitations claims by Protestant organizations were terminated as a result of summary judgment in 50% of opinions and by dismissal in 25% of opinions. *Id.* The rates for Christian organizations were both 33.3%. See RLUIPA Opinion Data, *supra* note 12.

¹⁹⁶ See cases cited in notes 147, 149–51 and accompanying text. Equal terms claims by Protestant organizations were terminated as a result of summary judgment in 63.6% of opinions and by dismissal in 18.2% of opinions. *Id.* The rates for Christian organizations were both 16.7%. See RLUIPA Opinion Data, *supra* note 12.

¹⁹⁷ See, e.g., *United States v. Cty. of Culpeper*, No. 3:16-cv-00083, 2017 WL 3835601 (W.D. Va. Sept. 1, 2017) (approving settlement in favor of Islamic religious organization); *World Outreach Conference Ctr. v. City of Chi.*, 787 F.3d 839 (7th Cir. 2015) (approving settlement totaling \$25,001 in damages and \$467,973.45 in attorneys' fees relating to operation of community center and single room housing by Protestant religious organization); *Martin v. Houston*, 196 F. Supp. 3d 1258 (M.D. Ala. 2016) (noting repeal of zoning law prohibiting sex offenders from residing on property operated by Christian place of worship); *Bikur Cholim, Inc. v. Vill. of Suffern*, No. 7:05-cv-10759(WWE), 2011 WL 2893071 (S.D.N.Y. June 29, 2011) (approving settlement totaling \$286,387.26 in attorneys' fees and costs payable to Jewish non-profit organization); *Church of Scientology of Ga., Inc. v. City of Sandy Springs*, 843 F. Supp. 2d 1328 (N.D. Ga. 2012) (resulting in construction of temple upon the property in question). See also cases cited in notes 147, 149, 151 and accompanying text. See also RLUIPA Opinion Data, *supra* note 12.

¹⁹⁸ See *supra* Table 15. See also cases cited in notes 147, 149, 151, and accompanying text.

¹⁹⁹ See *supra* Table 15. Success rates were 100% for Black Hebrew Israelite, Church of Scientology, and Hindu organizations. *Id.* See also *supra* note 149 and accompanying text. The success rates for Islamic and Jewish claimants increased to 73.3% and 66.7% respectively. See *supra* Table 15. See also cases cited in notes 147, 149 and accompanying text. The success rate was 50% for Orthodox Christian claimants. See *supra* Table 15. See also cases cited in note 151 and accompanying text.

²⁰⁰ See *supra* Table 15. The success rates for Protestant and Christian claimants were 51.6% and 48.1%, respectively. *Id.* The success rate for all claims was 56%. *Id.*

The success rates by RLUIPA section are also subject to significant increases. Minority rates compare favorably with the overall rate, as well as rates for Protestant and Christian claimants. For example, the success rate for equal terms claims advanced by religious minorities increased from 21.4% to 53.6%.²⁰¹ Jewish organizations were successful in 80% of equal terms opinions, and Islamic organizations increased their success rate from 0% to 50%.²⁰² The equal terms success rate for religious minorities was only slightly lower than Protestant and Christian claimants and the overall success rate.²⁰³

The same results are applicable to discrimination and limitations claims. The success rate for minority religions alleging discrimination claims increased from 11.1% to 63%.²⁰⁴ This rate reflected increases for four religious minorities.²⁰⁵ This rate exceeded that of Protestant claimants and the overall success rate.²⁰⁶ Limitations claims followed a similar pattern. The success rate for minority claimants increased from 25% to 50% due to a 100% increase for Islamic organizations.²⁰⁷ This rate exceeded that for Protestant and Christian claimants as well as the overall success rate.²⁰⁸

Success rates in substantial burden opinions utilizing this measure of success were similar. The success rate for minority claimants increased from 16% to 56%.²⁰⁹ This increase was the result of substantial increases for seven minority claimants with such increases ranging from 50% to 100%.²¹⁰ The success rate for minority religions exceeded that of Protestant and Christian claimants as well as the overall success rate for such claims.²¹¹

²⁰¹ See *supra* Table 16. See cases cited in notes 147, 149, 151, 160–61 and accompanying text.

²⁰² *Id.*

²⁰³ See *supra* Table 16. The success rate for Protestant claimants increased from 32.1% to 60.7%. *Id.* The success rate for Christian claimants increased from 26.7% to 60%. *Id.* The overall success rate for equal terms claims increased from 25.3% to 59.1%. *Id.*

²⁰⁴ *Id.* See also cases cited in notes 147, 149, 151, 166 and accompanying text.

²⁰⁵ See *supra* Table 16. The success rates for Hindu and Scientology claimants increased from 0% to 100%. *Id.* The rate for Jewish claimants increased from 9.1% to 54.5%. *Id.* The rate for Islamic claimants increased from 18.2% to 72.7%. *Id.* See also cases cited in notes 147, 149, 151 and accompanying text.

²⁰⁶ See *supra* Table 16. The success rate for Protestant claimants increased from 7.7% to 53.8%. *Id.* The success rate for Christian claimants increased from 0% to 75%. *Id.* The overall success rate for discrimination claims increased from 9.1% to 61.4%. *Id.*

²⁰⁷ See *supra* Table 16. See also cases cited in note 147 and accompanying text.

²⁰⁸ The success rate for Protestant claimants increased from 6.7% to 20%. There were no successful Christian claimants utilizing either method of determining success. The overall success rate for limitation claims increased from 11.5% to 26.9%. See *supra* Table 16.

²⁰⁹ See *supra* Table 16. See also cases cited in notes 147, 149, 151 and accompanying text.

²¹⁰ The success rates for Black Hebrew Israelite and Scientology claimants increased from 0% to 100%. The rate for Islamic claimants increased from 8.3% to 75%, and the rate for Hindu and Orthodox Christian claimants increased from 0% to 50%. The rate for Jewish claimants increased from 21% to 52.6%. The rate for Catholic claimants increased from 25% to 50%. See *supra* Table 16. See also *supra* notes 147, 149, 151 and accompanying text.

²¹¹ The success rate for Protestant claimants increased from 20.4% to 42.8%. The success rate for Christian claimants increased from 0% to 28.6%. The overall success rate increased from 15% to 40.8%. See *supra* Table 16.

V. CONCLUSION

RLUIPA has largely satisfied the intent of its drafters with respect to the protection of religious minorities. RLUIPA has been utilized in state and federal courts by a diverse set of religious groups. This diversity is more pronounced in federal court, but this is unsurprising given the greater number of opinions.

State and federal implementations part ways with respect to outcomes. RLUIPA has proven to be a less effective protector of minority land uses in state courts given the dismal success rates for claimants. However, low success rates were not confined to religious minorities but also included Christian, and to a lesser degree, Protestant claimants. RLUIPA's record in federal courts with respect to religious minorities is far more robust. The inclusion of neutral outcomes within the definition of successful claims significantly increased success rates across the board especially those of minority religions whose claims more often resulted in neutral outcomes.

The reported opinions are evidence that RLUIPA has provided an effective degree of protection despite greater degrees of hostility and skepticism surrounding minority religions. Concerns about potential bias toward religious minorities has been largely addressed by the judicial record of RLUIPA's enforcement. This is a welcomed development in a country marked by increasing religious diversity and the resultant enhanced potential for conflict.