

From: Donald Bach [<mailto:docboc7957@ameritech.net>]
Sent: Sat 9/27/2008 8:35 AM
To: Everette M. Hill
Cc: Jim Hock; Howard Frimark
Subject: Fw: Re: Legal Case Law on Infringement of Religious Practice

Buzz,
Could you please read this and render your opinion?
Is the case Mr. Chevlin cites applicable to our current situation?

From: Everette M. Hill <EMHill@KTJNET.com>
Subject: RE: Re: Legal Case Law on Infringement of Religious Practice
To: docboc7957@ameritech.net
Cc: "Jim Hock" <jhock@parkridge.us>, "Howard Frimark" <hfrimark@parkridge.us>, "Kathie T. Henn" <KTHenn@KTJNET.com>
Date: Saturday, September 27, 2008, 9:37 AM

All,

Unfortunately, Mr. Chevlin's focus is wrong. The legality of the 500' rule has nothing to do with its content neutrality. It has nothing to do with whether or not the 500' prohibition places a substantial burden on the free exercise of religion. Our concern over the 500' rule has nothing at all to do with the law and religious exercise, as expressed in the Hialeah case or otherwise. Our concern is the longstanding zoning principle that a city can't effectively prohibit, under the guise of zoning regulations, an otherwise lawful use. This principle was most dramatically iterated in the adult use cases.

In the early 70s courts ruled that it was an unconstitutional restraint on free speech for a city to prohibit adult bookstores and adult movie houses. In reaction to this, many cities removed the prohibition language from their codes and adopted regulations preventing the adult uses from locating within certain distances of certain institutions or zoning districts. The effect of these distance regulations was to make it virtually impossible for these uses to operate. The courts then said that they were not going to allow a city to indirectly prohibit a use which the city could not directly prohibit.

Sleeping shelters are not an inherently unlawful use any more than an adult movie house. Our proposed 500' rule might leave some pockets of areas where the sleeping shelters might be located in PR. However, I am concerned that the practical effect of the rule will be to keep sleeping shelters out of PR altogether. I think the courts will find this to be an illegal zoning restriction.

The 500' rule is a "poison pill" as to both sides of this issue. For the opponents of sleeping shelters, it probably means that sleeping shelters will not be able to locate in PR. For the advocates of the shelters, it probably guarantees the city will lose an otherwise winnable case in court. However, I can't emphasize enough that my skepticism of the legality of the 500' rule has nothing to do with the content neutrality cases, it has everything to do with a basic zoning principle.

Buzz