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A Non-Intent Based Challenge to Exclusionary Zoning: Why RLUIPA Can Help One Religious Community When Constitutional Challenges Fail

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?Does a religious community have a remedy when a municipality's intent-neutral zoning ordinance acts to completely exclude that group from living within its borders by prohibiting the only type of housing the religious group will use? That the zoning ordinance acts to discriminate against this group, excluding them from living within the municipality's border by excluding their housing, there can be little question. However, where the zoning ordinance is neutral on its face, and no intent to either interfere with the community's free exercise of religion, or intent to discriminate against them in violation of the Fourteenth Amendment equal protection clause is evidenced, courts will only apply rational basis review to a facial challenge of the ordinance in order to determine if the zoning ordinance is arbitrary and capricious. Application of rational basis usually means that where a religious group cannot prove that the municipality's intent to discriminate against that group was a motivating factor in the decision to zone as it did, the possibility of constitutional challenge is foreclosed, and the group is left without remedy because the rational basis test favors the power of municipalities to zone as they see fit. ?

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