

Congress responded to *Boerne* by enacting a new law purporting to rest on its commerce and spending powers. The Religious Land Use and Institutionalized Persons Act (RLUIPA)³⁵⁹ imposes the same strict scrutiny test struck down in *Boerne* but limits its application to certain land use regulations and to religious exercise by persons in state institutions.³⁶⁰ In *Cutter v. Wilkinson*,³⁶¹ the Court upheld RLUIPA's prisoner provision against a facial challenge under the Establishment Clause, but it did not rule on congressional power to enact RLUIPA. The Court held that RLUIPA "does not, on its face, exceed the limits of permissible government accommodation of religious practices."³⁶² Rather, the provision "fits within the corridor" between the Free Exercise and Establishment Clauses, and is "compatible with the [latter] because it alleviates exceptional government-created burdens on private religious exercise."³⁶³

Corporations.—The issue of what free exercise rights are available to corporations came before the Court in *Burwell v. Hobby Lobby*.³⁶⁴ In 2010, Congress passed the Patient Protection and Affordable Care Act ("ACA"),³⁶⁵ which requires employers with fifty or more employees to provide their employees with a minimum level of health insurance, including, under agency guidelines, "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity."³⁶⁶ The plaintiffs in this case included three closely-held corporations, one owned by a family who are members of the Mennonite Church and two owned by members of a Pentecostal Christian family. Based on their religious beliefs, the plain-

Bureau of Prisons, 349 F.3d 399 (7th Cir. 2003) (RFRA may be applied to require the Bureau of Prisons to accommodate religious exercise by prisoners); *Kikumura v. Hurley*, 242 F.3d 950 (10th Cir. 2001) (RFRA applies to Bureau of Prisons).

³⁵⁸ *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418 (2006) (affirming preliminary injunction issued under RFRA against enforcement of the Controlled Substances Act to prevent the drinking of a sacramental tea that contains a hallucinogen regulated under the Act).

³⁵⁹ Pub. L. 106-274, 114 Stat. 804 (2000); 42 U.S.C. §§ 2000cc *et seq.*

³⁶⁰ The Act requires that state and local zoning and landmark laws and regulations which impose a substantial burden on an individual's or institution's exercise of religion be measured by a strict scrutiny test, and applies the same strict scrutiny test for any substantial burdens imposed on the exercise of religion by persons institutionalized in state or locally run prisons, mental hospitals, juvenile detention facilities, and nursing homes. Both provisions apply if the burden is imposed in a program that receives federal financial assistance, or if the burden or its removal would affect commerce.

³⁶¹ 544 U.S. 709 (2005).

³⁶² 544 U.S. at 714.

³⁶³ 544 U.S. at 720.

³⁶⁴ 573 U.S. ___, No. 13-354, slip op. (2014).

³⁶⁵ Pub. L. No. 111-148 (2010).

³⁶⁶ 77 Fed. Reg. 8725, 8725 (Feb. 15, 2012) (alterations in original) (internal quotation marks omitted).