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## Court of Appeal Holds That Selling Cannabis As Sacrament Is Not Religious Exercise Protected By RLUIPA

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### INTRODUCTION

In *County of San Bernardino v. Mancini* (September 13, 2022) –Cal.App.5th - [— Cal.Rptr.3d —, 2022 WL 5142441, 2022 Daily Journal D.A.R. 10,510], the Court of Appeal recently upheld a judgment granting a permanent injunction against a church, whose adherents consumed cannabis blessed by pastors as sacrament, and church owner, in an action brought by San Bernardino County (County) alleging violation of a County ordinance prohibiting commercial cannabis activity on unincorporated county land. This case is helpful to cities and counties seeking to enforce cannabis regulations against churches or other religious organizations as the Court of Appeal found the County ordinance and injunction did not impose substantial burden on religious exercise of the church or owner, for purposes of Religious Land Use and Institutionalized Persons Act (RLUIPA) because the Court determined that the sale of cannabis was not a religious exercise.

### FACTUAL BACKGROUND AND TRIAL COURT PROCEEDINGS

Ms. Mancini was the owner of the Jah Healing Kemetic Temple of the Divine Church, Inc. (the Owner). Adherents of the Jah Healing Kemetic Temple of the Divine Church, Inc. (the Church) asserted that they consumed cannabis blessed by Church pastors as “sacrament.”

Because the Church appeared to be operating an illegal dispensary, the County sought a preliminary injunction. The trial court issued a preliminary injunction enjoining the Owner from using the Church’s premises as a commercial cannabis dispensary.

Despite the injunction, during later inspections County code enforcement personnel observed that there were still cannabis products at the Church, a glass display cabinet, mason jars filled with marijuana and labels identifying the strain names, a sales computer tablet, a cash box, a small digital scale, a tip jar, and small brown paper bags. During one inspection, the County observed what appeared to be the sale of cannabis.

The County applied for an order holding the Owner in contempt for violating the preliminary injunction, and the Court found her in

contempt. Later, County personnel conducted another inspection of the premises, and observed a glass display case with various cannabis products. The Owner explained that the Church had made certain changes, such as asking new members to recite a videotaped prayer in order to receive the “blessed sacrament.” According to the Owner, Church members did not need to donate any funds to receive the sacrament, but donations were encouraged. And if a member wanted to give a donation, the member placed the donation in an envelope and could take change from a bowl if necessary. Once the money is placed in a “tithing bowl,” Mancini counted the money and used it for Church expenses.

The County applied for another order holding appellants in contempt for violating the preliminary injunction. County employees stated that they consistently observed people entering the Church through the front door and exiting through the back door while carrying a brown paper bag, and that the Church did not have an appropriate state license to sell cannabis yet it was identified as a cannabis dispensary on various websites. County employees also testified that they conducted an undercover delivery purchase. The trial court then heard testimony from two Church members, who testified that they received “blessed sacrament” from the Church for years without paying or donating anything. The Owner also testified that Church members may receive sacrament for free. The trial court found appellants had again violated the preliminary injunction and held them in contempt for a second time.

At trial (which the Owner and her counsel did not attend or appear at) the trial court entered a permanent injunction, fined appellants \$50,000 each, ordered the Owner to appear in two weeks to be taken into custody, and awarded the County attorney’s fees and costs.

### **RULING BY THE COURT OF APPEAL**

The appellate court rejected each argument advanced by the Owner on appeal, and ruled as follows:

- Church and Owner failed to establish excusable neglect;
- Church and Owner failed to establish that counsel’s failure to file trial brief and his and Owner’s failure to attend hearing affected trial court’s ruling;
- State law did not preempt the County ordinance;
- The County ordinance and injunction did not impose substantial burden on religious exercise of the Church or Owner, for purposes of Religious Land Use and Institutionalized Persons Act (RLUIPA) because the sale of blessed cannabis was not a religious exercise;
- Church and Owner failed to establish that county enforced

ordinance for discriminatory reasons, in violation of constitutional provision; and

- The County ordinance applied to Church’s not-for-profit quid pro quo scheme.

## TAKEAWAY

Not every activity by a church constitutes a “religious exercise” for purposes of RLUIPA. Although California case law has been willing to look closely at whether a given activity constitutes a religious exercise protected by RLUIPA, and to answer the question negatively, federal court case law has in many instances been more generous to churches’ views on that question.

## CONCLUSION

The *Mancini* decision is helpful for cities and counties in applying regulations to some church activities against challenges under RLUIPA. However, as noted above, the federal case law is not always nearly so helpful. Attorneys at Burke—including Thomas B. Brown and Gregory Aker — have substantial experience advising and litigating under RLUIPA.