

No. 20-14

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In the  
**Supreme Court of the United States**

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CONGREGATION RABBINICAL COLLEGE OF TARTIKOV,  
INC., ET AL.,

*Petitioners,*

v.

VILLAGE OF POMONA, NEW YORK, ET AL.,

*Respondents.*

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**On Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Second Circuit**

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**MOTION FOR LEAVE TO FILE AND BRIEF *AMICI  
CURIAE* OF THE NATIONAL JEWISH  
COMMISSION ON LAW AND PUBLIC AFFAIRS  
("COLPA") AND OTHER ORTHODOX JEWISH  
ORGANIZATIONS IN SUPPORT OF PETITIONERS**

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August 2020

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## MOTION FOR LEAVE TO FILE

Pursuant to Rule 37(2)(b) of the Rules of this Court, the National Jewish Commission on Law and Public Affairs (“COLPA”) and other Orthodox Jewish organizations hereby move for leave to file the attached Brief *Amici Curiae* in support of petitioners and hereby declare:

1. On July 24, 2020, undersigned counsel for the movants sent an e-mail requesting consent to file a brief *amici curiae* supporting petitioners to counsel for petitioners and counsel for respondents.
2. On July 27, 2020, respondents’ counsel, Thomas J. Donlon, Esq., responded in an email as follows: “Mr. Lewin – After consulting with our client, I wish to advise you the Respondents do NOT consent to your request to file an amicus brief in support of the Petitioners.” (CAPITALS IN THE ORIGINAL)
3. On August 4, 2020, petitioners’ counsel sent an email consenting to the filing of the brief.
4. All the *amici curiae* have filed *amicus* briefs in this Court on many past occasions.
5. The *amici curiae* represent America’s Orthodox Jewish community.

6. This case is of substantial interest to the *amici curiae*. It is the culmination of years of effort by an Orthodox Jewish institution to establish a rabbinical school over extensive local opposition.
7. The issue presented by the petition – whether the rabbinical school has standing to complain of a substantial burden to its religious exercise if it has not submitted a plan that is demonstrably futile and pointless – is of importance to many other existing and prospective Orthodox Jewish institutions.
8. The proposed brief of the *amici curiae* brings to the attention of the Court “relevant matter not already brought to its attention by the parties,” including a list of RLUIPA cases initiated by Orthodox Jewish entities and reasons why consideration of this case by the Court is important at this time.
9. The tone of the emphatic and intense refusal to consent by respondents’ counsel demonstrates the religious bias of the respondents and proves the validity of the district court’s factual finding that the respondents have harbored religious animus against Orthodox Jews and Hasidim since 2001.

WHEREFORE this Court should grant the motion of the *amici curiae* and grant leave to file the attached Brief *Amici Curiae* in Support of Petitioners.

Respectfully submitted,

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**BRIEF *AMICI CURIAE* OF THE NATIONAL  
JEWISH COMMISSION ON LAW AND PUBLIC  
AFFAIRS (“COLPA”) AND OTHER ORTHODOX  
JEWISH ORGANIZATIONS IN SUPPORT OF  
PETITIONERS**

**INTEREST OF THE *AMICI CURIAE*<sup>1</sup>**

The National Jewish Commission on Law and Public Affairs (“COLPA”) has spoken on behalf of America’s Orthodox Jewish community for more than half a century. COLPA’s first amicus brief in this Court was filed in 1967 in *Board of Education v. Allen*, 392 U.S. 236 (1968). Since that time, COLPA has filed more than 40 amicus briefs to convey to this Court the position of leading organizations representing Orthodox Jews in the United States. The following national Orthodox Jewish organizations join this amicus brief:

▪ Agudath Israel of America, founded in 1922, is a national grassroots Orthodox Jewish organization that articulates and advances the position of the Orthodox Jewish community on a broad range of issues affecting religious rights and liberties in the United States.

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, amici certify that no counsel for a party authored this brief in whole or in part. No person or party other than the amici has made a monetary contribution to this brief’s preparation or submission. The parties received timely notice of the intent to file this brief. Petitioner has consented to the filing of this amicus brief. Respondent has denied consent.

- Agudas Harabbonim of the United States and Canada is the oldest Jewish Orthodox rabbinical organization in the United States. Its membership includes leading scholars and sages, and it is involved with educational, social and legal issues significant to the Jewish community.
- Coalition for Jewish Values (“CJV”) is a national rabbinic public policy organization that represents more than 1,500 traditional Orthodox rabbis and advocates for classical Jewish ideas and standards in matters of American public policy.
- National Council of Young Israel is a coordinating body for more than 300 Orthodox synagogue branches in the United States and Israel that is involved in matters of social and legal significance to the Orthodox Jewish community.
- Orthodox Jewish Chamber of Commerce is a global umbrella of businesses of all sizes, bridging the highest echelons of the business and governmental worlds together stimulating economic opportunity and positively affecting public policy of governments around the world.
- Rabbinical Alliance of America is an Orthodox Jewish rabbinical organization with more than 950 members that has, for many years, been involved in a variety of religious, social and educational causes affecting Orthodox Jews.
- Rabbinical Council of America (“RCA”) is the largest Orthodox Jewish rabbinic membership organization in the United States comprised of nearly one

thousand rabbis throughout the United States and other countries. The RCA supports the work of its member rabbis and serves as a voice for rabbinic and Jewish interests in the larger community.

- Torah Umesorah (National Society for Hebrew Day Schools) serves as the preeminent support system for Jewish Day Schools and yeshivas in the United States providing a broad range of services. Its membership consists of over 675 day schools and yeshivas with a total student enrollment of over 190,000.
- Union of Orthodox Jewish Congregations of America (“Orthodox Union”) is the nation’s largest Orthodox Jewish umbrella organization, representing nearly 1,000 congregations coast to coast. The Orthodox Union has participated in many cases before this Court which have raised issues of importance to the Orthodox Jewish community.

### **SUMMARY OF ARGUMENT**

The primary petitioner is an Orthodox Jewish educational institution that has been trying for almost two decades to build a rabbinical school on 100 acres of land in Rockland County, New York. This case concerns the hostile response of the Village of Pomona planning board to petitioners’ plan. At issue as the case reaches this Court is the validity of laws passed by the Village in 2004 and 2007 to prevent student family housing, to restrict building space for student housing, and to prevent access to the property. The district court found that laws Pomona passed in 2001,

2004, and 2007 were prompted by religious animus against Orthodox and Hasidic Jews. The court of appeals reversed the district court's conclusion of discriminatory intent regarding the 2001 and 2004 laws but affirmed the finding that a "significant factor" in Pomona's adoption of the 2007 laws was religious animus.

The court of appeals enjoined enforcement of the 2007 ordinances. It held, however, that petitioners lacked standing to assert a claim that the challenged ordinances imposed a "substantial burden" under the Religious Land Use and Institutionalized Persons Act ("RLUIPA") because they had not "submitted a formal proposal for the building project, applied for a permit, or engaged in any other conduct that would implicate or invoke the operation of the challenged zoning laws."

This petition asks this Court to decide whether federal law provides meaningful and real-world judicial protection for religious exercise. The ruling of the Second Circuit means that even after 20 years of bitter controversy in the halls of local government and in courts of law petitioners cannot effectively vindicate and implement the federal law securing religious observance because they failed to fill out and submit futile, petty, and meaningless forms.

The Question Presented is an important one that currently divides federal courts of appeals. In addition to the split in circuits discussed in the Petition, we note a ruling by the Seventh Circuit and

an opinion by Judge Posner that is analogous to the facts of record in this case.

We represent the American Orthodox Jewish community. It has a vital interest in vigorous enforcement of the “substantial burdens” provision of RLUIPA and of RLUIPA’s other clauses that safeguard religious institutions against religious animus in the implementation of local zoning laws. We list some of the many reported decisions in lawsuits that have been brought to enforce the religious exercise of Orthodox Jews.

We note finally that this is an appropriate time in the history of the United States for this Court to bring into public view the shield that American law provides for religious freedom. Popular currents have jeopardized religious rights and potentially brought this country to a condition frighteningly foretold in the “Ethics of the Fathers” (*Pirkei Avot*).

**ARGUMENT****I. THE RABBINICAL COLLEGE'S QUESTION PRESENTED IS AN IMPORTANT ISSUE THAT AFFECTS MANY RLUIPA CASES INITIATED BY RELIGIOUS INSTITUTIONS****A. Whether a Religious Institution That Has Been the Victim of Years of Religious Animus in the Administration of Local Zoning Laws Must Apply and Be Denied a Permit Before It Has Standing To Assert a "Substantial Burden" Claim Under RLUIPA Is a Substantial Question That This Court Should Decide.**

The Petition demonstrates persuasively that the "standing" and "ripeness" standards applied to claims of RLUIPA plaintiffs is currently a subject of substantial disagreement among the Circuit Courts. Churches, synagogues, mosques, and religious educational institutions in New York and Philadelphia should not encounter different hurdles in securing their federal right to religious observance than comparable institutions in Boston and Miami. The conflicting standards across the country illustrated by the reported appellate decisions in the Petition can be resolved only by a decision of this Court. See Rule 10(a) of the Rules of this Court.

**B. The Second Circuit’s Decision Also Conflicts With a Seventh Circuit Ruling by Judge Posner.**

*World Outreach Conference Center v. City of Chicago*, 591 F.3d 531 (7th Cir. 2009), concerned a Christian sect that had a religious mission of providing living facilities to homeless and other needy people in a poor area in Chicago. It purchased a building from the YMCA. The City of Chicago obstructed its use for religious exercise with what the Seventh Circuit, per Judge Posner, called “malicious prosecution of a religious organization by City officials.” 591 F.3d at 537. The district court dismissed the plaintiff’s “substantial burden” claim under RLUIPA because World Outreach had not appealed the denial of a Special Use Permit and had, therefore, failed to exhaust administrative remedies. The Seventh Circuit, per Judge Posner, held that the dismissal on this ground, comparable to the Second Circuit’s holding that petitioner lacked standing, was erroneous. The history of this case warrants the same “malicious prosecution” characterization and, per Judge Posner’s reasoning in the *World Outreach* case, it compels rejection of the Second Circuit’s conclusion that petitioner lacked standing. See also the Sixth Circuit’s ruling in *DiLaura v. Ann Arbor Charter Township*, 30 Fed. Appx. 501 (6th Cir. 2002) (Boggs, Gilman, and Bright, C.JJ.).



## II. ORTHODOX JEWISH COMMUNAL PRAYER AND EDUCATION AND THE VITALITY OF ORTHODOX JEWISH INSTITUTIONS DEPEND ON CORRECT VIGOROUS ENFORCEMENT OF RLUIPA

Appropriate vigorous enforcement of the remedial provisions of RLUIPA is of vital importance to America's Orthodox Jewish community. Orthodox Jewish institutions are a miniscule percentage of religious entities in the United States, but they must frequently turn to the courts to engage in fundamental religious exercise. A large number of RLUIPA lawsuits have involved Orthodox Jewish synagogues, religious schools, and religion-based activities. See, e.g., *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004); *Williams Island Synagogue, Inc. v. City of Aventura*, 358 F. Supp.2d 1207 (S.D. Fla. 2004), *aff'd*, 144 Fed. Appx. 857 (11th Cir. 2005); *Congregation Kol Ami v. Abington Township*, 2004 WL 1837037 (E.D. Pa. 2004); *Konikov v. Orange County, Fla.*, 410 F.3d 1317 (11th Cir. 2005); *Westchester Day School v. Village of Mamaroneck*, 417 F. Supp.2d 477 (S.D.N.Y. 2006), *aff'd*, 504 F.3d 338 (2d Cir. 2007); *Hollywood Community Synagogue, Inc. v. City of Hollywood, Fla.*, 430 F. Supp.2d 1296 (S.D. Fla. 2006); *East Hill Synagogue v. City of Englewood*, 240 Fed. Appx. 938 (3d Cir. 2007); *Chabad of Nova, Inc. v. City of Cooper City*, 575 F. Supp.2d 1280 (S.D. Fla. 2008); *Congregation Anshei Roosevelt v. Planning and Zoning Board*, 338 Fed. Appx. 214 (3d Cir. 2009); *Bikur Cholim, Inc. v. Village of Suffern*, 664 F. Supp.2d 267 (S.D.N.Y. 2009); *Congregation Adas Yereim v. City of New York*, 673 F. Supp. 2d 94

(E.D.N.Y. 2009); *Mosdos Chofetz Chaim, Inc. v. Village of Wesley Hills*, 701 F. Supp.2d 568 (S.D.N.Y. 2010); *Young Israel of Bal Harbour, Inc. v. Town of Surfside*, 2011 WL 13220998 (S.D. Fla. 2011); *Yeshiva Imrei Chaim Viznitz of Boro Park, Inc. v. City of New York*, 2011 WL 3273273 (S.D.N.Y. 2011), *aff'd*, 496 Fed. Appx. 122 (2d Cir. 2012); *Congregation Etz Chaim v. City of Los Angeles*, 2011 WL 12472550 (C.D. Cal. 2011); *East End Eruv Ass'n, Inc. Village of Westhampton Beach*, 828 F. Supp.2d 526 (E.D.N.Y. 2011); *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach, Fla.*, 727 F.3d 1349 (11th Cir. 2013); *Chabad Lubavitch of Litchfield County, Inc. v. Litchfield Historic District Comm'n*, 768 F.3d 183 (2d Cir. 2014); *Bernstein v. Village of Wesley Hills*, 95 F.Supp.3d 547 (S.D.N.Y. 2015), *aff'd*, 644 Fed. Appx. 42 (2d Cir. 2016); *Bloomington Jewish Educ. Ctr. v. Village of Bloomington*, 111 F. Supp.3d 459 (S.D.N.Y. 2015); *Congregation Kollel, Inc. v. Township of Howell*, 2017 WL 637689 (D.N.J. 2017); *Chabad Jewish Center of Toms River, Inc. v. Township of Toms River*, 2018 WL 1942360 (D.N.J. 2018); *Congregation ARIEL Russian Community Synagogue, Inc. v. Baltimore County*, 2018 WL 1535494 (D. Md. 2018); *Chabad Lubavitch of the Quad Cities, Inc. v. City of Bettendorf, Iowa*, 389 F. Supp.3d 590 (S.D. Iowa 2019); *Friends of Lubavitch v. Baltimore County*, 421 F.Supp.3d 146 (D. Md. 2019); *Central UTA of Monsey v. Village of Airmont*, 2020 WL 377706 (S.D.N.Y. 2020).

The meaning and enforcement of the zoning (“land use regulation”) clause of RLUIPA has never been considered by this Court. The Court should grant the petition in this case and confirm that the federal law protecting religious exercise against improper

manipulation of local land use regulations must be enforced by courts to achieve real-world practical vindication of protected rights.

### **III. REVIEW BY THE COURT IS PARTICULARLY TIMELY BECAUSE OF CURRENT ESCALATION OF ANTI-RELIGIOUS ANIMUS**

A final practical note: America is now in a turbulent time. Anti-religious bias has grown frighteningly. Orthodox Jews have become targets of virulent attacks based on their religious and ethnic identity.

The Ethics of the Fathers (*Pirkei Avot*) admonishes in Chapter 3, Mishnah 2, that all should pray for the welfare of government because “if people do not fear it, they would swallow each other alive.” Today’s climate proves that the rabbis did not exaggerate. Religious observance has become the target of majoritarian movements. Orthodox Jews are in danger of being “swallowed,” and they need the active support of government to survive.

The judiciary is the branch of our government that should, in this tumultuous time, secure the freedom of religion enshrined by the First Amendment and shielded by laws such as RLUIPA. By reviewing this case, enforcing RLUIPA, and reversing the judgment below, this Court would preserve the rights of all Americans, and particularly America’s Orthodox Jews, to live as their consciences direct.

**CONCLUSION**

For the foregoing reasons and those presented in the Petition for a Writ of Certiorari, the Writ should be granted.

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