No. 23-1197

# In the Supreme Court of the United States

DAMON LANDOR, *Petitioner*,

*v.*

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY, ET AL.

On Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit

## BRIEF OF *AMICI CURIAE* MAJOR RELIGIOUS DENOMINATIONS SUPPORTING PETITIONER AND REVERSAL


JUSTIN W. STARR
KIRTON | MCCONKIE
36 S. State Street
Suite 1900
Salt Lake City, UT 84111

GENE C. SCHAERR
*Counsel of Record*
JAMES C. PHILLIPS
JOSHUA J. PRINCE
SCHAERR | JAFFE LLP
1717 K Street NW
Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-jaffe.com

*Counsel for Amici Curiae*


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## QUESTION PRESENTED

Whether an individual may sue a government official in his individual capacity for damages for violations of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §2000cc *et seq*. (RLUIPA).

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## INTRODUCTION AND INTERESTS OF *AMICI CURIAE*[1]

A quarter-century after the adoption of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA),[2] the statute is still trying to defend religious freedom with one hand tied behind its back. And, while Petitioner here is a prisoner, this case is of deep institutional concern to religious organizations given RLUIPA's land-use component. That is because, for millions of Americans, exercising one's religion is not a solitary activity, done like Thoreau, by oneself deep in the woods. Rather, American religion today generally requires community and gathering. And community and gathering require space.

Congress understood this in protecting religious land use. But for Congress's vision to be implemented, this Court must fulfill its centuries-old duty to say what the law is. And that law—RLUIPA—patently points in Petitioner's favor on the question of whether the statute allows damages against individuals who violate it.

That issue is of great importance to *Amici*, which include The Church of Jesus Christ of Latter-day Saints,[3] the General Conference of Seventh-Day

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[1] This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amici* or its counsel has made a monetary contribution toward the brief's preparation or submission.

[2] See Pub. L. No. 106-274, 114 Stat. 803, codified at 42 U.S.C. §2000cc *et seq.*

[3] https://www.churchofjesuschrist.org/welcome.

Adventists,[4] the American Islamic Congress,[5] the Assembly of Canonical Orthodox Bishops of the United States of America,[6] and the International Society for Krishna Consciousness,[7] and which collectively represent nearly 15 million Americans. While *amici* may passionately disagree on matters of religious doctrine, they are united in voicing the need for this Court to answer the question presented in the affirmative.

Twenty-five years ago, when RLUIPA was adopted, its co-sponsors in the Senate—Senators Orrin Hatch and Edward Kennedy—noted in their joint statement that, "Churches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation." 146 Cong. Rec. 16698 (2000). And, they observed, "This discrimination against religious uses is a nationwide problem." *Id*. at 16699. The Senate unanimously passed the bill. *Id.* at 16703. And of course, it's a clear First Amendment problem as well.

This need for RLUIPA's full-throated protection is even more acute given two trends in the United States: increased religious pluralism and increased secularism. The former means that local governments and populations are increasingly encountering religions newer to these locales, and thus these faiths

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[4] https://gc.adventist.org/about-us/.

[5] https://aicongress.org/who-we-are/about-us/.

[6] https://www.assemblyofbishops.org/about/overview.

[7] https://www.iskcon.org/about-us/what-is-iskcon.php.

are religious minorities that are more likely to face bias and hostility. The latter—increased secularism—presents a threat because there are increasingly large numbers of community and government officers who have little experience with, and sometimes little respect for, organized religion. If RLUIPA's full protection was needed in 2000, as Congress obviously thought it was, it is especially needed today.

## SUMMARY

Seldom do text, congressional intent, and good policy so align as they do here.

I. As this brief highlights, religious organizations are still fighting an uphill battle against local discrimination in land use. Just as was said at RLUIPA's passage, "Zoning codes frequently exclude churches in places where they permit theaters, meeting halls, and other places where large groups of people assemble for secular purposes. Or the codes permit churches only with individualized permission from the zoning board, and zoning boards use that authority in discriminatory ways." 146 Cong. Rec. 16698 (2000) (joint statement of Sens. Hatch and Kennedy).

What is more, still today "zoning board members or neighborhood residents explicitly offer race or religion as the reason to exclude a proposed church[.]" *Ibid*. Though, "[m]ore often, discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics, or 'not consistent with the city's land use plan.' Churches have been excluded from residential zones because they generate too much traffic, and from commercial zones because they don't

generate enough traffic." *Ibid*. Thus, it is still true that "[c]hurches have been denied the right to meet in rented storefronts, in abandoned schools, in converted funeral homes, theaters, and skating rinks—in all sorts of buildings that were permitted when they generated traffic for secular purposes." *Ibid*. Current disputes make this observation all too clear and still relevant.

II. The Court can easily help RLUIPA fulfill its original promise by ruling in Petitioner's favor here. And the path is remarkably straightforward. This Court has already interpreted identical language in RLUIPA's sister statute—the Religious Freedom Restoration Act of 1993, 42 U.S.C. §2000bb *et seq*. (RFRA)—to allow damage suits against a government official in his individual capacity. And the Court has elsewhere made clear that the two statutes should be interpreted in tandem.

Moreover, RLUIPA was passed under not just Congress's spending and commerce powers, but also its Section 5 authority under the Fourteenth Amendment. And Congress amassed more than enough evidence in passing the statute to satisfy the demands of Section 5—especially as to its land-use provisions. There is thus no constitutional obstacle to applying RLUIPA as written.

## ARGUMENT

### I. Religious Organizations of All Kinds Need to Be Able to Seek Damages Under RLUIPA.

While RLUIPA has been helpful to religious organizations even without authorizing individual-capacity damage suits, it does not provide sufficient protection to deter misconduct in land-use disputes with local governments, as illustrated by the following recent examples and studies from across the nation and across various faiths.

#### A. Current religious land-use disputes show hostility, and even bigotry, by local governments and populations despite RLUIPA.

Multiple faith groups seeking to build sacred spaces continue to face outright hostility and religious bigotry around the country.

1. *Church in Idaho*. For example, earlier this year the United States filed suit against the City of Troy, Idaho for violating RLUIPA by denying an application for a conditional use permit that would have allowed a Protestant church known as Christ Church to operate a religious assembly in a business district downtown. See Compl. ¶1, *United States* v. *City of Troy, Idaho*, No. 3:25-cv-00262-AKB (D. Idaho May 20, 2025), ECF No.1. A church member had purchased an abandoned bank building and agreed to rent it to the church on Sunday mornings for worship. *Id.* ¶¶15,19. Parking and traffic were not issues because downtown Troy, Idaho was essentially abandoned on Sunday mornings. *Id.* ¶45(b). Troy's ordinances allowed numerous secular gatherings in the downtown area.

*Id.* ¶¶31-33. In short, there was no good reason for anyone to object.

Yet, at a City Council hearing, 19 citizens spoke: one for, one neutral, and 17 *against* granting the permit. *Id.* ¶49. According to the DOJ's complaint, many of the views expressed at the hearing "reflected animus against Christ Church's beliefs or its members[.]" *Id.* ¶50. One objector said he had "'bad experiences with people involved' in the Church." *Id.* ¶51. Another said Troy would become a "ghost town because of this organization's ethos and dogma." *Id.* ¶52. Another said, "We need a community center, a place to bring it together instead of tear it apart. Downtown is not the place for another church, especially one that is so divided and has not had successful businesses downtown." *Id.* ¶53. And another said, "We don't need another church—especially this church—downtown." *Id.* ¶54.

"Each of these comments was met with enthusiastic applause[.]" *Id.* ¶55. Out of 32 written comments, 26 opposed the permit. *Id.* ¶56. The written comments included, "I do not want Christ Church to be allowed to destroy another Idaho town. They are evil people spreading evil beliefs. *** As a community, we do not need a hate group in our town." *Id.* ¶57. Other written comments referred to their "[e]xtreme views," "grotesque terminology," "extremist values," and "misogynistic ideology." *Ibid.*

According to the DOJ's complaint, "Posts made on a Troy community Facebook page during this period also reflect public hostility to the church. For instance, one resident posted in the months preceding the

hearing that the church should 'go away and leave our town alone' and asked why the church doesn't 'listen to all the community members *** that clearly state [the church's] version of Christians are not welcome.'" *Id*. ¶60.

The City Council voted unanimously to deny the permit. *Id*. ¶62. Its written decision said the church "'did not enhance the commercial district' and that the religious use was 'not in harmony with the [City's] Comprehensive Plan.'" *Id*. ¶64. The Council's decision also noted that the public was "heavily against" the CUP and "did not think [the church] was a good fit with the community." *Id*. ¶75.[8]

2. *Temple in Texas*. The Church of Jesus Christ of Latter-day Saints has often faced similar religious discrimination in its efforts to build temples in various locations. For example, in 2024 the church had purchased property in Fairview, Texas on which to build a temple. Located on a busy four-lane highway across from a strip mall, the 8.1 acre temple site is on what locals called "church row," because three other religious buildings are already on the same road.

Moreover, staff reports prepared by the Town's planning and zoning division concluded that the proposed temple met the Town's objective requirements.[9] But every church must apply for a

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[8] See also *Hope Rising Cmty. Church* v. *Borough of Clarion*, No. 2:24-CV-01504-WSH (W.D. Pa. filed Nov. 1, 2024), ECF No.47 at 5 (citing Am. Compl. ¶¶21,23-24, ECF No.30) (a borough refused to grant a variance because borough officials "did not want more churches because of the loss of property taxes").

[9] Town of Fairview, Staff Report (Apr. 11, 2024), https://tinyurl.com/4283frnr; *id.*, Staff Report (May 9, 2024),

conditional use permit (CUP) because no zone in the Town allows houses of worship as of right,[10] and the Town Council claims unbridled discretion to deny every CUP request.[11] Such discretion is not uncommon. Churches almost always must apply for rezoning, for a special permit, or for a conditional use permit, and local ordinances frequently give the decisionmakers broad, if not unbridled, discretion to reject such requests.

In Fairview, the Town's mayor led the charge against the temple.[12] He displayed open hostility to the Church and its members, smearing the Church as "extreme[ly] arrogan[t]" and a "bully," and describing the temple as something out of an "alien civilization."[13] The mayor consistently downplayed the Church as a religious institution, labeling it "the LDS corporation" and complaining about the "LDS corporate folks."[14]

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https://tinyurl.com/mr83xu8s; *id.*, Staff Report (June 4, 2024), https://tinyurl.com/4akk3d2r.

[10] See Fairview, Tex., Code of Ordinances §14.02.010(a), https://tinyurl.com/3p4rcz3n.

[11] Fairview, Tex., Code of Ordinances §14.02.517.

[12] That mayor—Mayor Lessner—has since concluded his term of service. The new mayor has sought to be more conciliatory.

[13] Fairview, Tex., Town Council Meeting, 1:03:50-1:03:54; 1:01:42-1:01:54 (Aug. 6, 2024), https://tinyurl.com/2pdcnvbc [Aug. 6, 2024 Town Council Mtg.].

[14] See *id.* at 56:05-56:15; 1:05:25-1:05:36. Mayor Lessner made similar statements at a May 8, 2024 Planning and Zoning Committee meeting, seeking to portray the Church as an aggressor: "[The Church is] an extraordinarily wealthy religion. We're a little town in North Texas. They're being a bully in a way." See Andrea Lucia, *Fairview faces legal threat as P&Z votes down proposed LDS temple design: "They're being a bully,"* CBS

The mayor even second-guessed the Church's judgment as to its religious need for a steeple on its temple: "I've got numerous people from your Church saying that whether there's a spire or not is irrelevant. *** [The steeple] does not play into the functionality of [the temple]."[15]

In the end, the Town Council voted 7 to 0[16] to deny the Church's application.[17] During the vote, the mayor dismissed RLUIPA and the Texas Religious Freedom Restoration Act—"I know about [those] laws. But we also have a need in our community to represent our community and to do what is best for our community, and follow *our* laws," meaning the Town's Ordinances.[18] A city council member also referenced

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News (May 10, 2024), https://tinyurl.com/phtr22d5 (quoting Mayor Henry Lessner).

[15] Fairview, Tex., Town Council Meeting, 43:59-44:48 (Apr. 29, 2025), https://tinyurl.com/2s5rvezv.

[16] Aug. 6, 2024 Town Council Mtg., 4:04:04-4:05:53.

[17] To avoid delay in construction of this desperately needed temple, the Church agreed to make it significantly smaller, even though the smaller temple was insufficient for the Church's religious needs. Under threat of a lawsuit under RLUIPA, the Town Council grudgingly voted 5 to 2 to approve the Church's revised application. The Church thus thought it had obtained approval. But, as in many states, Texas law requires the affirmative vote of three-quarters of a town council when owners of just 20% of the property within 200 feet of the rezoned site lodge an objection. See Tex. Local Gov't Code §211.007(c); see 1 Am. Law of Zoning §8:30 (5th ed.). In Fairview, protesting neighbors have sued the Town contending they met the 20% threshold, and the council vote did not meet the three-quarters threshold. Thus, construction of the temple may be substantially delayed.

[18] Aug. 6, 2024 Town Council Mtg., 3:55:00-3:55:16.

RLUIPA and said the law should not be used to bully little towns.[19]

The Church faced similar prejudice in seeking to build a temple in a town in the Southeast of the United States. Representatives of the Church met with the mayor after the Church had purchased property in the town for a temple. In that private meeting, the mayor said he would never allow the Church to build a temple at the chosen location. His reason? "It's my job to keep the garbage out."[20]

3. *Mosque in Texas*. At about the same time (in 2024), a group of Muslims were facing a similar problem in McKinney, Texas. The McKinney Islamic Association applied for the approvals necessary to build a mosque. But the city Planning and Zoning Commission voted unanimously to deny the application.

According to newspaper reports, community members showed up by the dozens opposing the application. "'The population of the community *** it's primarily Christian,' one speaker said. 'So I think a lot of the community residents would find this, I don't want to say an eyesore, but an eyesore.'"[21] Another resident said, "'I'm strongly in opposition, when I moved into this if I knew even one percent that there

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[19] See *id.* at 3:59:16.

[20] Because discussions continue, additional details cannot be provided out of concerns about retaliation.

[21] Emma Ruby, *Dozens of McKinney Residents Speak Against 'Eyesore' Mosque Moving in Next Door*, Dallas Observer (July 26, 2024), https://tinyurl.com/5n73c6jj.

was going to be a mosque built in this neighborhood, I would have never moved here.'"[22]

4. *Anti-Semitism in New York and New Jersey*. In *1940 Route 9, LLC* v. *Township of Toms River, New Jersey*, No. 3:18-CV-08008-PGS-LHG (D.N.J. Apr. 18, 2018), Orthodox Jews were prevented from residing and purchasing property in a New Jersey township and thus brought a RLUIPA suit. Referring to members of the Jewish community moving into the township, the township's mayor publicly declared, "It's like an invasion." Compl. ¶56, *id.*, ECF No.1. The case is currently in mediation.

Likewise, in *Congregation Rabbinical Institute of Tartikov, Inc.* v. *Village of Pomona*, No. 7:25-cv-01471-NSR (S.D.N.Y. Feb. 20, 2025), a rabbinical college brought a RLUIPA suit against the town when it prohibited the college from building and operating there. The building inspector engaged in repeated anti-Semitic conduct and communication, such as remarking "how stupid Jews are," that half of the Orthodox Jews "are inbred morons with retarded babies," that "there was four or five levels of Jews and he said the lowest are the real Hasidics [sic]," admonishing the Village Deputy Clerk for "helping the Jews" and repeatedly calling her a "Jew lover," mimicking the speech of Orthodox Jews, and wearing a "Hitler-was-right hat." Am. Compl. 261-287, *id.*, ECF No.16. The case is ongoing.

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[22] Sophia Beausoleil, *Neighbors in McKinney express concerns over size, parking and traffic regarding proposed mosque*, NBC 5 Dallas-Fort Worth (July 25, 2024), https://tinyurl.com/ykw8t26h (quoting McKinney resident).

These case studies—involving multiple faith groups in multiple locations around the country—illustrate an important reality: Even after RLUIPA, religious organizations—especially those comprising or representing religious minorities—often face severe prejudice and pushback in their efforts to find appropriate spaces where their members can meet and fellowship with each other and serve the communities in which they live.

### B. Empirical studies show that religious minorities are facing the stiffest local winds as they are overrepresented in RLUIPA litigation.

The lessons of these case studies are borne out by a recent systematic study of 188 RLUIPA state and federal land-use cases from 2002-2019.[23] For instance, the study examined the religious affiliation of RLUIPA claimants, finding that religious minorities[24] were significantly overrepresented, consisting of 28.9% of state cases[25] and 33.3% of federal cases[26] when such faiths appear to make up less than 7% of the U.S.

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[23] See Lucien J. Dhooge, *RLUIPA at 20: A Quantitative Study of Its Impact on Land Use and Religious Minorities*, 46 J. Legis. 207, 209 (2019).

[24] Religious minorities were the faiths of Judaism, Islam, Orthodox Christianity, Buddhism, "Masonic," "Mormonism" (The Church of Jesus Christ of Latter-day Saints), Hinduism, Black Hebrew Israelite, Christian Science, Church of Scientology, "Greater Faith," Nada Yoga, Paganism, Santeria, and Sikhism. See *id.* at 211-212 & tbl.1, 214-215 & tbl.3.

[25] See *id.* at 212 tbl.1.

[26] See *id.* at 215 tbl.3.

population.[27] In other words, religious minorities are four to five times more likely to be a claimant in a RLUIPA case than one would expect based purely on population. Furthermore, RLUIPA land-use claimants, whether of majority or minority faiths, seldom won: just 15.8% of the time in state courts and 24.7% of the time in federal courts.[28]

These troubling trends, especially regarding religious minorities, are not surprising. Religious *majorities* tend to be protected by elected officials and thus have less of a need for RLUIPA's refuge. (Though one locale's religious majority may be another's religious minority, meaning most if not all faiths are a religious minority somewhere.)

Consistent with this trend, in a 2016 report on the Justice Department's enforcement of RLUIPA for the period of 2010-2016,[29] DOJ noted that its "experience in its investigations since 2010 has reinforced the conclusion that minority groups have faced a disproportionate level of discrimination in zoning matters, reflected in the disproportionate number of suits and investigations involving minority groups

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[27] The percentage of the U.S. population consisting of specific minority faiths at the time of this study include Judaism (1.9%), The Church of Jesus Christ of Latter-day Saints (1.6%), Islam (0.9%), Buddhism (0.7%), Hinduism (0.7%), and Orthodox Christianity (0.5%). See *id.* at 209 n.14 (citing Pew Rsch. Ctr., American's Changing Religious Landscape 101-102, app. B (2015)).

[28] See *id.* at 228 & tbl.13, 234 tbl.16.

[29] U.S. Dep't of Just., Update on the Justice Department's Enforcement of the Religious Land Use and Institutionalized Persons Act: 2010-2016 (2016), https://tinyurl.com/mvmztnf9.

undertaken by the Department."[30] The DOJ noted that the "increase in Muslim cases is the most significant development" and that "most" of these cases "included allegations of intentional religion-based discrimination."[31] DOJ also noted the "significant problem" that "places of worship were frequently disfavored in zoning treatment relative to nonreligious assemblies."[32]

### C. Even when religious organizations win under RLUIPA, without the deterrence effect or additional compensation of individual-capacity damages, they still lose.

Although it is less than a quarter of the time, religious organizations still prevail in some cases. But being required to litigate a RLUIPA dispute all the way to resolution still results in substantial injury. The examples below, while ending in some kind of victory, still exemplify the hostility and harm religious organizations face.

1. In a RLUIPA suit by Jewish plaintiffs against the Township of Jackson, New Jersey, one of the Zoning Board of Adjustment members posted on a "Community Watchdog" page, referring to Orthodox Jews in a neighboring township as a "medieval cult" and as "filthy f'ing cockroaches!" 3d Am. Compl. ¶122, *WR Prop. LLC* v. *Township of Jackson*, No. 3:17-CV-03226-MAS-DEA (D.N.J. Aug. 13, 2020), ECF No.94.

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[30] *Id.* at 4.

[31] *Id.* at 6.

[32] *Ibid.*

He also referred to their "mischievous will" and repeatedly urged a Jewish state senator, who had sought to advance the interests of these Orthodox Jews, to "commit suicide," describing him as "nothing but the byproduct of a human body eating matzoh and gafelta fish." *Ibid*. Additionally, in a Facebook post, this same Zoning Board member, speaking about Orthodox Jews in a neighboring township, referred to them as "the scourge of the cockroaches from the east." Burnstein Decl. Ex. C, *id.*, ECF No.55-108. And then, in another Facebook post, he threatened, "They are on target for a repeat of the 1930s." Burnstein Decl. Ex. D, *id.,* ECF No.55-109). Ultimately the Jewish group obtained a preliminary injunction, but not before suffering the bigoted malice of a government official, and substantial costs.

Relatedly, in *Lost Lake Holdings LLC* v. *Town of Forestburgh*, No. 7:22-CV-10656-VB (S.D.N.Y Aug. 22, 2025), government officials made discriminatory statements about the plaintiffs—Hasidic Jews attempting to purchase a 0.7-acre property. For instance, a then-member of the town's Comprehensive Plan Review Committee urged in an email, "I would strongly encourage you to immediately gather the major leaders and stakeholders in town to discuss this clear threat and the potential defenses the town can employ. *** I hope you'll ask for help and circle the wagons." Opp'n Ex. J, *id.*, ECF No.177-10. He so urged because "they [Hasidic Jews] will completely take over within a few short years." *Ibid*. And, he continued, "I would note that their sect is notorious for mysogyny [sic] and child abuse," and "they take over, like

locusts—killing everything they encounter, draining every last resource." *Ibid*.

2. In January 2025, a suit was brought in *United States* v. *Sugar Grove Township,* No. 1:25-cv-00022-SPB (W.D. Pa. Jan. 30, 2025). The complaint alleged that the township and local sewage authority violated RLUIPA by enacting and enforcing two ordinances against Old Order Amish residents: one mandating that certain households connect to the township's and sewage authority's municipal sewage system, which requires the use of an electric grinder pump; and one banning privies on property intended for permanent residence. Compl. ¶1, *id.*, ECF No.1. The lawsuit alleged that these acts substantially burdened Old Order Amish residents' religious exercise, which restricts the use of electricity and requires adherents to remain separate and apart from the modern world. *Id.* ¶2.

On March 18, 2025, the court entered a consent order that requires the township and sewage authority to exempt certain Old Order Amish households from mandatory connection to the municipal sewage system, permit Old Order Amish residents to use privies on their properties, and forgive any outstanding liens, fines, or other monetary penalties against Old Order Amish households for prior noncompliance with the two ordinances. See Consent Order ¶¶29-33, *id.*, ECF No.10.

3. On September 18, 2024, the United States filed a complaint and proposed consent decree in *United States* v. *Hendricks County, Indiana*, No. 1:24-cv-01620-SEB-MKK (S.D. Ind. Sept. 18, 2024), settling

allegations that the County violated the Fair Housing Act (FHA) and RLUIPA by twice unlawfully denying zoning approval to Al Hussnain, Inc., an Islamic educational organization seeking to develop a religious seminary, school, and residential housing in Hendricks County. See Compl. ¶1, *id.*, ECF No.1; [Proposed] Consent Order, *id.*, ECF No.4-1.

The complaint alleged that the County, facing significant community animus and opposition, denied Al Hussnain's rezoning applications to develop a mixed-use community containing a residential neighborhood, community center, K-12 religious school, Islamic seminary, and dormitories for seminary students at two different locations in the County, citing concerns that lacked a legitimate basis. Compl. ¶¶33-141. The complaint further alleged that Hendricks County repeatedly departed from its own zoning ordinances as well as the county's processes and procedures for reviewing zoning applications and treated Al Hussnain's application worse than similar applications brought by non-Muslim developers. *Id.* ¶¶105, 142. The complaint further alleged that the County engaged in a pattern or practice of unlawful discrimination and denied rights to a group of persons because of religion in violation of the FHA and imposed a substantial burden on the Islamic organization's religious exercise, treated the organization on less than equal terms with nonreligious assemblies or institutions, and discriminated against the organization on the basis of religion in violation of RLUIPA. *Id.* ¶¶189-199.

The court entered the consent decree on December 4, 2024, which resolved the lawsuit filed by the United States. See *id.,* ECF No.14.[33]

4. It is no counter to these dismal data and anecdotes that, when successful, religious organizations can get attorney's fees. That is because the process of fighting local government's RLUIPA violations often inflicts significant damages beyond legal fees. *Amici* can attest to these monetary damages, including property payments and interest on building loans when the land sits unused; increased building costs due to the postponement of construction; and for some religious organizations, even lost revenue, among other pecuniary injuries. Attorney's fees will not cover these damages. Nor will attorney's fees cover the incalculable spiritual harm caused by the delay.

Religious organizations are not built for political or social battles. Americans of faith seek peace and harmony with their fellow citizens. In seeking to build houses of worship, they routinely make major concessions to address real and purported land use concerns, even when not legally required. But too often opponents are implacable because land use concerns are not the real issue. Born of prejudice, the conflicts described above further inflame and entrench prejudice and bitterness within the community. The

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[33] See also *United States* v. *City of Troy*, 592 F. Supp. 3d 591, 606-607, 611 (E.D. Mich. 2022) (granting summary judgment in a RLUIPA suit where a city denied a Muslim community center a parking variance because of additional special use requirements for places of worship not imposed on comparable secular institutions).

most vigorous opponents portray the faith community as dangerous aggressors, which turns objecting neighbors and even the municipality into their supposed victims. This is deeply wrenching for members of a minority faith community. Many would rather capitulate and move on than defend their rights in the face of this bigotry.

As the adage goes, building a fence at the top of a cliff is more effective (and humane) than putting an ambulance at the bottom. Litigation is resource draining, not just for the parties, but for society—as courts are tied up with matters that could have been avoided. Damages can be an ambulance if things go south, but they can also function as a fence, deterring local governments from jumping off RLUIPA's cliff. See Steven Shavell, Foundations of Economic Analysis of Law 177-182 (2004) (explaining the deterrence effect of damages).

Besides the deterrent effect individual damages provides, such damages can also be a bargaining chip against government officers in RLUIPA violation situations where religious organizations would otherwise be financially or socially forced to give up before reaching a favorable resolution.

All of these considerations militate in favor of Petitioner's position here—that is, that individual state officials should be subject to personal liability for at least the most patently outrageous RLUIPA violations.

## II. RLUIPA Should be Interpreted the Same As RFRA.

While interpreting RLUIPA to allow for individual-capacity damages is good policy, more importantly, it is the reading that best aligns with the statutory text.

### A. The plain language of the two statutes is identical, and this Court has repeatedly determined that they should be given the same reading.

When interpreting a statute, the Court should "start, as always, with the relevant statutory text." *CC/Devas (Mauritius) Ltd.* v. *Antrix Corp. Ltd.*, 145 S. Ct. 1572, 1579 (2025). Here, RLUIPA provides a private right of action against government officials for "appropriate relief." 42 U.S.C. §2000cc-2(a).

1. The Court has already recognized that RLUIPA's use of "appropriate relief" is "flexible," "inherently context dependent," "open-ended[,] and ambiguous." *Sossamon* v. *Texas*, 563 U.S. 277, 285-286 (2011). And so it is. But that does not mean that it lacks all meaning. In *Tanzin* v. *Tanvir*, this Court interpreted the same phrase in RFRA—"appropriate relief"—to allow money damages in suits against governmental officials in their individual capacities. 592 U.S. 43, 49, 52 (2020). In so doing, the Court explained that "damages have long been awarded as appropriate relief" and remain "appropriate" now. *Id.* at 49. And the Court looked to the long history of allowing damages under 42 U.S.C. §1983, another statute that allowed suits against state officers—like RFRA had when it was originally enacted. *Tanzin*, 592

U.S. at 50. See also *ibid.* ("There is no doubt that damages claims have always been available under § 1983 for clearly established violations of the First Amendment."). The Court also emphasized that, in many cases, damages are "the *only* form of relief that can remedy" a RFRA violation." *Id.* at 51.

*Tanzin* compels the same result for RLUIPA that the Court reached for RFRA: damages are available for individual-capacity RLUIPA violations. And it compels that result for the same reasons as in *Tanzin*. Like RFRA and §1983, RLUIPA expressly creates a cause of action against government officials. And, as with RFRA, often the only relief available for RLUIPA violations is damages. See *id.* at 51 ("A damages remedy is not just 'appropriate' relief as viewed through the lens of suits against Government employees. *** For certain injuries, *** effective relief consists of damages, not an injunction."). Just as in RFRA, so with RLUIPA: "Had Congress wished to limit the remedy to that degree, it knew how to do so." *Ibid.*

2. But there are still other reasons to treat RFRA and RLUIPA the same. This Court has long endorsed the practice of "look[ing] for guidance not just in [a statute's] immediate terms but in related provisions as well." *Harrington* v. *Purdue Pharma L. P.*, 603 U.S. 204, 221 (2024). It is difficult to think of two statutes more related than RFRA and RLUIPA. And, as the Court has recognized, it is "a longstanding interpretive principle" that, when "a statutory term is obviously transplanted from another legal source, it brings the old soil with it." *Taggart* v. *Lorenzen*, 587 U.S. 554, 560 (2019) (cleaned up).

Here the term "appropriate relief" in RLUIPA was "obviously transplanted" from RFRA. Thus, as this Court has recognized, "RLUIPA, and its sister statute the Religious Freedom Restoration Act of 1993," were enacted in direct response to this Court's precedents. *Ramirez* v. *Collier*, 595 U.S. 411, 424 (2022). And RLUIPA came later—after this Court invalidated RFRA as to the states in *City of Boerne* v. *Flores*, 521 U.S. 507, 519 (1997). Given their shared catalysts, as Judge Oldham correctly emphasized, this Court has consistently interpreted RFRA and RLUIPA the same way. App.28a (dissenting from denial of reh'g en banc) (collecting cases).

3. The Court's longstanding practice of giving the same interpretation to RFRA and RLUIPA, moreover, has not always required the two statutes even to have the same text. Rather, the Court has interpreted the statutes the same way even when one statute has language that the other does not.

In *Burwell* v. *Hobby Lobby Stores, Inc.*, for example, the Court interpreted RFRA to require a broad construction—"to the maximum extent permitted." 573 U.S. 682, 696 (2014) (quoting 42 U.S.C. §2000cc-3(g)). And though the principal dissent argued that the broad construction applied only to RLUIPA—since RFRA only incorporated the definition of "religious" in 42 U.S.C. §2000cc-5, not the definition in 42 U.S.C. §2000cc-3(g)—this Court rejected that argument as not only wrong, but "plainly" so. *Id.* at 696 n.5 (discussing *id.* at 747-748 (Ginsburg, J., dissenting)). According to the majority, the fact that "RFRA must be given the same broad meaning that applies under RLUIPA" necessarily

followed from the statutory text. *Ibid.* That general interpretive principle applies even more forcefully here, since "appropriate relief" is the same phrase in both statutes.

In short, since RFRA allows individual damages, so too does its sister statute RLUIPA.

### B. Congressional intent would be subverted if RLUIPA's "appropriate relief" did not provide for damages.

Given the overwhelming history of Congress recognizing statutory damages in civil rights claims against government officials, no "speculation as to Congress' intent" is necessary to reach the same conclusion as to RLUIPA. *Corner Post, Inc.* v. *Board of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 815 (2024) (cleaned up). The Court has recognized that "the best evidence of Congress's intent is the statutory text." *National Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 544 (2012). And the text is read with the understanding that "Congress legislates against the backdrop of existing law." *McQuiggin* v. *Perkins*, 569 U.S. 383, 398 n.3 (2013).

Here, the history against which RLUIPA was enacted was so strong that this Court recognized a "presumption" that courts can award *any* relief sought in a cognizable right of action—even while holding that such damages were not available against arms of the state who violate RLUIPA because of sovereign immunity. *Sossamon*, 563 U.S. at 288. Since the existing law that served as the backdrop for RLUIPA, together with the text itself, allowed money damages, Congress's intent to allow for such damages can thus

be inferred from the text itself. To conclude—contrary to text and history—that the statute does not allow individual damages would be to undermine Congress's intent to provide religious claimants with all possible avenues for relief. As shown in Part I, such a conclusion would be devastating for communities of faith.

### C. If necessary, as an alternative to the Spending Clause, Section 5 of the 14th Amendment authorizes Congress to provide a damages remedy for RLUIPA.

Even if unconvinced by Petitioner's showing that the statute authorizes such damages as an exercise of Congress' spending power, this Court can still find that RLUIPA authorizes damages as a valid exercise of Section 5 of the Fourteenth Amendment.

1. To be sure, this Court, in the context of a prisoner case, has determined that Congress invoked the spending (and commerce) powers when it enacted RLUIPA. See *Holt* v. *Hobbs*, 574 U.S. 352, 357 (2015). But the Court is no stranger to upholding acts of Congress under different powers than those Congress invoked.

In upholding the Affordable Care Act as an exercise of the taxing power, for example, this Court reiterated the maxim that the "question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *National Fed'n of Indep. Bus.*, 567 U.S. at 570 (quoting *Woods* v. *Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948)); *cf. Adickes* v. *S. H. Kress & Co.*, 398 U.S. 144, 187 (1970) (Douglas, J., dissenting in part)

("[P]owers exercised by Congress may stem from more than one constitutional source." (collecting cases)). Thus, the Court can uphold the statute as a valid exercise of the Fourteenth Amendment even if Congress did not anywhere "recite the words 'section 5' or 'Fourteenth Amendment' or 'equal protection.'" *EEOC* v. *Wyoming*, 460 U.S. 226, 243 n.18 (1983).[34]

2. The Court should do so here if it concludes that, as an exercise of the spending power, RLUIPA cannot authorize individual-capacity damages. The Court has explained that Congress's power to enforce a constitutional right is remedial: It does not include the right to change or expand "what the right is." *City of Boerne*, 521 U.S. at 519. Thus, any law purporting to enforce the Fourteenth Amendment must show "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *Id.* at 520.

RFRA was held to have failed that inquiry as to the states because it applied even to laws that were neutral and generally applicable and thus would have survived any constitutional challenge under *Employment Division* v. *Smith*, 494 U.S. 872, 878-882 (1990). In other words, RFRA failed constitutional muster because it was "universal in its coverage" despite the First Amendment—as interpreted by *Smith*—being far more limited. *Cutter* v. *Wilkinson*,

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[34] The joint statement of RLUIPA's co-sponsors in the Senate, Senators Hatch and Kennedy, declared that "the bill applies only to the extent that Congress has power to regulate under the Commerce Clause, the Spending Clause, or *Section 5 of the Fourteenth Amendment*." 146 Cong. Rec. 16698 (2000) (emphasis added).

544 U.S. 709, 715 (2005) (internal alterations omitted) (quoting *City of Boerne*, 521 U.S. at 516).

3. RLUIPA, by contrast, is far "[l]ess sweeping" and only "targets two areas" where the burdens on religion by the government were shown at the time to be particularly acute: "land-use regulation" and the "religious exercise [of] institutionalized persons." *Ibid.* (citing 42 U.S.C. §§2000cc, 2000cc-1). As another *amicus* has ably shown—because inmates have long faced "severe and documented religious discrimination in the prison context, where that harm occurs all too frequently," *City of Boerne* is no barrier to treating RLUIPA as an exercise of Section 5 as to inmates. See Br. of Tayba Foundation as Amicus Curiae 17.

As shown in Section I above, land-use regulations similarly result in repeated examples of religious discrimination in violation of the First Amendment. But this is no new issue: After *City of Boerne* and before passing RLUIPA, Congress compiled "massive evidence" that churches generally, and "new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation." 146 Cong. Rec. 16698 (2000) (joint statement of Sens. Hatch and Kennedy). Congress concluded that "[z]oning codes frequently *** permit churches only with individualized permission from the zoning board, and zoning boards use that authority in discriminatory ways. *** More often, discrimination lurks behind such vague and universally applicable reasons as traffic, *aesthetics, or 'not consistent with the city's land use plan*.'" *Ibid.* (emphasis added). See *also ibid.*

(observing that RLUIPA "is based on three years of hearings—three hearings before the Senate Committee on the Judiciary and six before the House Subcommittee on the Constitution—that addressed in great detail both the need for legislation and the scope of Congressional power to enact such legislation."). Based on that evidence Congress concluded that First Amendment rights were routinely being violated in the land-use setting. See *id.* at 16699.

4. That evidence, no less than the evidence about discrimination in prisons, demonstrated the need to protect religious rights in land-use regulation as well and shows why Congress acted well within its Section 5 power when it enacted RLUIPA.

In his post-*Boerne* testimony before Congress, for example, Professor Douglas Laycock called land-use regulation the "clearest," "first[,] and easiest" discrimination against religion to document. *Protecting Religious Freedom After Boerne v. Flores: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 55-56 (1997) ("Laycock Testimony").[35] To name just a few examples Laycock identified, New York City landmarked churches "at a rate forty-two times higher than secular properties." *Id.* at 55. Chicago required religious groups to obtain the "consent of surrounding owners" before starting a new church—even if they only wanted to "rent and occupy" an existing storefront for religious purposes. *Ibid.* And, citing the work of *Amicus* The Church of Jesus Christ of Latter-day Saints filed in *City of Boerne*, Laycock testified

[35] Available at https://tinyurl.com/paah23bn.

that minority religions "that account for only 9% of the population account for about half the reported church zoning cases," a figure that showed that "the zoning process disproportionately excludes small and unfamiliar faiths." *Ibid.*

At a later hearing addressing the then-named Religious Liberty Protection Act of 1998, the same subcommittee heard testimony from Professor W. Cole Durham, Jr. on the particular "need for special protection of religious freedom in the field of land use planning." *Religious Liberty Protection Act of 1998: Hearing on H.R. 4019 Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 133-153 (1998) ("Durham Testimony").[36] His testimony focused on how "the communal life[] of a religious group necessarily involves using land." *Id.* at 135. Looking to the same empirical evidence that Laycock had considered the year before, Durham showed that smaller non-denominational religious groups brought "over 68% of reported location cases, and over 50% of accessory use cases[.]" *Id.* at 136. And he showed that, "in far too many cases," land use decisions were "wrapped in neutral sounding language" that was "merely *** an empty verbal mask hiding illicit discriminatory conduct aimed at the exercise of religion" because they were grounded in "essentially standardless discretion to determine whether religious practices may go forward." *Id.* at 137-138. Consequently, "[t]he highly individualized processes of land use regulation readily lend themselves to discrimination that is difficult or

[36] Available at https://tinyurl.com/mudhcc2t.

impossible to prove in individual cases, but which is in fact pervasive[.]" *Id.* at 139.

This testimony showed—as Professor Laycock explained in the earlier hearing—that "land use regulation typically involves vague and changeable standards and highly discretionary decisions." Laycock Testimony at 57. Given that discretion, "land-use laws are often not neutral and they are almost never generally applicable in any meaningful sense." *Id.* at 56.

Thus, even in 1997, it was already clear that "the resulting burdens on churches should be subject to strict scrutiny" under the First Amendment because of their discretionary and discriminatory enforcement. *Ibid.* And they were thus "appropriate *** for enforcement legislation even under *Boerne*." *Ibid.* It did not matter that "religious discrimination [did] not lurk behind every land use decision" since *City of Boerne* did not require it to. Durham Testimony at 140. Even under that regime, "[p]reventive measures prohibiting certain types of laws may be appropriate when there is reason to believe that many of the laws affected by the congressional enactment have a significant likelihood of being unconstitutional." *City of Boerne*, 521 U.S. at 532.

5. Professors Laycock and Durham alone showed why many land-use laws may be unconstitutional even after *Smith*. And by 1997, this Court had already held that laws are not generally applicable if they provide "a mechanism for individualized exemptions." *Smith*, 494 U.S. at 884 (citation omitted). The Court had concluded the same for laws prohibiting or burdening

religious practice while permitting comparable secular conduct. *Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 542-546 (1993). And it had concluded that the Free Exercise Clause "protects against governmental hostility which is masked, as well as overt" to prevent "'religious gerrymanders.'" *Id.* at 534 (citation omitted from second quotation).

This Court's more recent religion cases make these points more overtly. In *Tandon* v. *Newsom*, for example, the Court explained that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." 593 U.S. 61, 62 (2021) (per curiam) (citation omitted). And in *Fulton* v. *City of Philadelphia*, the Court held that "[t]he creation of a formal mechanism for granting exceptions renders a policy not generally applicable, *regardless* whether any exceptions have been given[.]" 593 U.S. 522, 537 (2021) (emphasis added).[37]

That this post-*Boerne* and pre-RLUIPA congressional testimony aligns with each suspect form of religious discrimination in the land-use context is telling. Land-use laws, which routinely are riddled with discretionary exceptions, contained the very

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[37] Of course, as recent scholarship confirms, this "Court has long taken the view that discretionary permitting regimes for *speech* are themselves censorious and thus unconstitutional." Eli Nachmany, *Bill of Rights Nondelegation*, 49 BYU L. Rev. 513, 517 & n.13 (2023) (emphasis added) (collecting cases). In applying that standard to Free Exercise, *Fulton* and *Lukumi* were thus in line with a much broader tradition.

"formal mechanism[s]" that this Court has repeatedly held strip a law of general applicability. See *Fulton,* 593 U.S. 537. The general applicability of land-use laws was further undermined by testimony about the rate at which religious buildings were treated as landmarks, see Laycock Testimony at 55, showing that religious buildings were often treated worse than similarly situated secular buildings. And the testimony about the difficulty of smaller or minority faiths to obtain exemptions, see *ibid.*—and their disproportionate need for such exemptions, see Durham Testimony at 136—was evidence of the very religious gerrymanders that this Court found suspect in *Lukumi.* See 508 U.S. at 534.

This evidence was enough to bring land-use regulations into Congress's crosshairs under the test adopted in *City of Boerne*. *See* 146 Cong. Rec. 16699 (noting that "[t]he land use sections of this bill have a third constitutional base"—the "Fourteenth Amendment"—and "the bill satisfies the [*City of Boerne*] standard factually" and "legally"). Congress's reasonable and narrow focus on two areas where state religious discrimination was at an apex demonstrated "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *City of Boerne,* 521 U.S. at 520. Thus, even as an exercise of the Fourteenth Amendment's enforcement power, RLUIPA is constitutional.

6. Nor can there be any serious question that Section 5 of the 14th Amendment allows Congress to impose damages on individual officers who violate RLUIPA. The Court has long recognized that Section 5 "includes the authority both to remedy and to deter

violation of rights *** by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." *Kimel* v. *Florida Bd. of Regents*, 528 U.S. 62, 81 (2000) (citation omitted). That authority, of necessity, "grant[s] Congress the authority to abrogate the States' sovereign immunity." *Id.* at 80. But even where Congress has *not* abrogated state sovereign immunity, the Court has long rejected any suggestion that "the immunity of the sovereign *** extend[s] to wrongful individual action," holding instead that "the citizen is allowed a remedy against the wrongdoer personally." *Great N. Life Ins. Co.* v. *Read*, 322 U.S. 47, 51 (1944). In other words, "officers sued in their personal capacity come to court as individuals." *Hafer* v. *Melo*, 502 U.S. 21, 27 (1991).

With that understanding, everything else falls into place. The Court has held, for example, that "state officers may be held personally liable for damages under [42 U.S.C.] § 1983 based upon actions taken in their official capacities." *Id.* at 24, 31. Section 1983, of course, was "one of the means whereby Congress exercised the power vested in it by §5 of the Fourteenth Amendment to enforce the provisions of that Amendment." *Monroe* v. *Pape*, 365 U.S. 167, 171 (1961), *overruled on other grounds by Monell* v. *Department of Soc. Servs. of City of N.Y.*, 436 U.S. 658 (1978). And, under this Court's precedents, §1983 is "brought within the domain of congressional power" because it is "adapted to carry out the objects the amendments have in view" and "tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality

of civil rights and the equal protection of the laws against State denial[.]" See *Ex parte Virginia*, 100 U.S. 339, 345-346 (1879) (addressing the constitutionality of another Reconstruction Era statute). Indeed, *Tanzin* itself recognized as much: "By the time Congress enacted RFRA, this Court had interpreted the modern version of § 1983 to permit monetary recovery against officials[.]" 592 U.S. at 50 (collecting cases).

The same is true for RLUIPA. Since—as shown—RLUIPA only responds to unconstitutional state-authorized religious discrimination, it follows that Congress has the power "to prevent, as well as remedy, [those] constitutional violations." *City of Boerne*, 521 U.S. at 517. As with §1983, and as with RFRA, under RLUIPA such remedies can, and do, include individual damages.

## CONCLUSION

During the Revolutionary War, John Adams wrote that the new Nation's ability to provide "compleat Liberty of Conscience to Dissenters"—and all other citizens—was "worth all of the Blood and Treasure which has been and will be Spent in this war."[38] No blood need be spilt, and only little treasure need be exhausted, for the Court to protect that same "Liberty of Conscience" here. The decision below should be reversed.

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[38] Letter of John Adams to James Warren (Feb. 3, 1777), *in* 6 Letters of Delegates to Congress, 1774-1789, 202 (Paul H. Smith et al. eds., 1980), available at https://www.loc.gov/item/76002592/.

Respectfully submitted,

GENE C. SCHAERR
*Counsel of Record*
JAMES C. PHILLIPS
JOSHUA J. PRINCE
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-jaffe.com

JUSTIN W. STARR
KIRTON | MCCONKIE
36 S. State Street
Suite 1900
Salt Lake City, UT 84111

*Counsel for Amici Curiae*

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