No. 25-1131

In the Supreme Court of the United States

MISSIONARIES OF SAINT JOHN THE BAPTIST, INC.,
Petitioner
v.

JOEL FREDERIC AND ELIZABETH FREDERIC,
Respondents

On Petition for Writ of Certiorari to the Supreme Court of Kentucky

BRIEF AMICUS CURIAE OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS[1]

The American Center for Law and Justice ("ACLJ") is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of religious liberty. The ACLJ has appeared before this Court in many cases advocating for the freedoms of religious groups and individuals, as counsel for a party, *e.g.*, *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993); *Locke v. Davey*, 540 U.S. 712 (2004), or for amicus, *e.g.*, *Carson v. Makin*, 596 U.S. 767 (2022); *City of Boerne v. Flores*, 521 U.S. 507 (1997).

This case presents a critical question about whether individuals can obtain meaningful relief when government officials violate their religious liberty rights through discriminatory ordinances. The ACLJ has a substantial interest in ensuring that federal civil rights statutes, including the Religious Land Use and Institutionalized Persons Act (RLUIPA), provide effective remedies for violations of religious freedom and are properly interpreted to provide robust protection for religious rights so that churches and all religious institutions receive equal treatment under the law.

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[1] Pursuant to Supreme Court Rule 37.3, amicus states that all parties have been given notice of this amicus brief. Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

SUMMARY OF ARGUMENT

For RLUIPA's protections to be meaningful, the lower courts must follow the statute's clear obligation: whenever the government treats *any* activity more favorably than religious conduct, it has infringed upon RLUIPA's clear mandate.

There are two questions presented in this case, and this brief focuses on the second: the lower court's misapplication and misunderstanding of the Equal Terms provision of RLUIPA, 42 U.S.C. § 2000cc(b)(1). The ordinance in question imposed express restrictions on religious assemblies or institutions that it does not impose on nonreligious assemblies or institutions, and yet the Kentucky Supreme Court upheld the ordinance anyway, simply because *some* nonreligious assemblies and institutions do not receive the same favored treatment.

This Court's review is necessary both to bring a textually grounded approach to RLUIPA's Equal Terms provision and to arrest the erosion of religious liberty resulting from the lower courts' insertion of qualifying terms contrary to the provision's straightforward requirements.

Although the Equal Terms provision requires courts simply to analyze whether religious assemblies and institutions are treated on equal terms with secular assemblies and institutions, the lower courts' addition of various qualifiers—"similarly situated," "as to the regulatory purpose," or "with respect to accepted zoning criteria"—has significantly hindered RLUIPA's goal of affording "broad protection of religious exercise." These qualifiers permit zoning authorities to subordinate protection for religious

assemblies to artfully drafted zoning goals. The qualifiers also incentivize zoning authorities to change the asserted regulatory purpose or zoning criteria during the course of frequently protracted litigation to ensure victory. Finally, these qualifiers inject needlessly complicated factual issues that are all too easily manipulated in the municipalities' favor. The playing field is then further tilted against religious assemblies by the deferential appellate review accorded to factual findings.

As occurred in this case, notwithstanding Congress's intent to level the playing field, religious assemblies face obstacles that the unambiguous Equal Terms provision never intended, putting religious assemblies in a position where they truly "can't win for losing."

In particular here, the Kentucky Supreme Court took the misguided step of finding some other institutions—hospitals, universities, police stations—that also face the arterial street requirement and concluded that churches are not therefore singled out. But the court sidestepped the real question under a plain text reading of the Equal Terms provision. The provision asks whether *any* nonreligious assembly or institution is treated better than a religious one. And under this ordinance, several clearly are. Nursery schools, libraries, public parks, golf courses, and country clubs are all conditional uses that face *no* arterial street requirement. For churches to be treated differently from *these* institutions is the RLUIPA violation. The RLUIPA question is not whether *any* organization is treated *similarly*; it is whether *any* organization is given *more favorable* treatment than churches.

Congress created RLUIPA to robustly protect religious freedom. Under RLUIPA, just like the First Amendment, government regulations infringe upon religious rights "whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). The Kentucky Supreme Court's decision is a particularly egregious example of a problem that has infected many of the lower courts and merits this Court's review, correction, and clarification.

ARGUMENT

Any right can be nullified by the addition of qualifiers. That is what has been happening to RLUIPA rights in the lower courts. This Court should grant review in this case not only to bring order to the chaos prevailing among the lower courts about the proper interpretation of RLUIPA's Equal Terms provision, but also to forestall further evisceration of the protection Congress intended RLUIPA's Equal Terms provision to provide.

The text of RLUIPA's Equal Terms provision is clear: "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1). The lower courts have taken that direct, unambiguous protection and nearly nullified it by the addition of atextual requirements with no basis in the statute's clear mandate. Instead, this Court should return the legal standard to RLUIPA's plain instruction.

I. THIS COURT SHOULD GRANT REVIEW TO CORRECT THE LOWER COURTS' ADDITION OF EXTRA-TEXTUAL QUALIFIERS, WHICH NULLIFIES RLUIPA'S EQUAL TERMS PROVISION.

RLUIPA's language is unambiguous: the "relevant 'natural perimeter' . . . is the category of 'assemblies and institutions.'" *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1230 (11th Cir. 2004); *Tree of Life Christian Sch. v. City of Upper Arlington*, 905 F.3d 357, 378 (6th Cir. 2018) (Thapar, J., dissenting) (Equal Terms cases involve a comparison between religious and nonreligious "assemblies" and "institutions," terms that must be given "their natural and ordinary meaning[]"); *River of Life Kingdom Ministries v. Vill. of Hazel Crest*, 611 F.3d 367, 382 (7th Cir. 2010) (Sykes, J., dissenting) (the statute requires courts to ask whether a zoning code treats "a religious assembly or institution less well than a nonreligious assembly or institution"). The statute's mandate is express, clear, and unambiguous.

Congress did not further specify the categories of religious and secular assemblies or institutions that should be compared with each other. The term "similarly situated" is absent. Instead, Congress set up a straightforward mandate. Yet, to varying degrees, many of the circuits have imported the term "similarly situated" into the statute, requiring that religious assemblies show that they are "similarly situated" to secular assemblies that were accorded better treatment by zoning authorities. *See Signs for Jesus v. Town of Pembroke*, 977 F.3d 93, 109–10 (1st Cir. 2020); *Third Church of Christ, Scientist v. City of*

New York, 626 F.3d 667, 667 (2d Cir. 2010); *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 264 (3d Cir. 2007); *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 292–93 (5th Cir. 2012); *Tree of Life Christian Sch.*, 905 F.3d at 368–69; *River of Life Kingdom Ministries*, 611 F.3d at 387 (Sykes, J., dissenting); *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1172–73 (9th Cir. 2011); *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 1003 (7th Cir. 2006); *Rocky Mountain Christian Church v. Bd. of Cnty. Comm'rs*, 613 F.3d 1229, 1237 (10th Cir. 2010); *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County*, 450 F.3d 1295, 1311 (11th Cir. 2006) (Plaintiff must allege in as-applied Equal Terms challenges that the municipality "differentially treats similarly situated religious and nonreligious assemblies[]" under a neutral zoning code."). These mandates have no basis or justification in the statute's text.

Similarly missing are the qualifiers "as to the government's regulatory purpose" or "with respect to accepted zoning criteria." Yet, the tests adopted by the Third, Fifth, and Ninth Circuits all require an inquiry into the zoning authority's "regulatory purpose." *See Lighthouse Inst.*, 510 F.3d at 264 (asking whether similarly situated "as to the regulatory purpose"); *Signs for Jesus*, 977 F.3d at 109 (requiring that comparators be similarly situated "with respect to the purpose of the underlying regulation[]"); *Opulent Life Church*, 697 F.3d at 292–93; *Centro Familiar Cristiano*, 651 F.3d at 1172–73. The tests adopted by the Sixth and Seventh Circuits require an inquiry into zoning criteria. *River of Life*

Kingdom Ministries, 611 F.3d at 387 ("accepted zoning criteria") (Sykes, J., dissenting); *Tree of Life Christian Sch.*, 905 F.3d at 368–69 ("legitimate zoning criteria"). The Fourth Circuit requires a comparator "similarly situated with regard to the regulation at issue"—a formulation seemingly more demanding than the regulatory-purpose test and the zoning-criteria test. *Canaan Christian Church v. Montgomery Cnty.*, 29 F.4th 182, 196 (4th Cir. 2022) (quoting *Tree of Life Christian Sch.*, 905 F.3d at 368). The Ninth Circuit stands alone in combining approaches by inquiring into the zoning authority's regulatory purpose "with respect to an accepted zoning criteria[.]" *Centro Familiar Cristiano Buenas Nuevas*, 651 F.3d at 1172–73; *see also New Harvest Christian Fellowship v. City of Salinas*, 29 F.4th 596 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 567 (2023).

Because Congress has employed the term "similarly situated" in numerous other statutes, Congress's choice to omit it from the Equal Terms provision must be deemed intentional. *Dep't of Homeland Sec. v. MacLean*, 574 U.S. 383, 391 (2015) ("Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another."); *Russello v. United States*, 464 U.S. 16, 23 (1983); *see* Douglas Laycock & Luke W. Goodrich, *RLUIPA: Necessary, Modest, and Under-Enforced*, 39 FORDHAM URB. L.J. 1021, 1061 n.242 (2012) (Congress has employed "similarly situated" approximately ninety-six times in a wide variety of federal statutes). Similarly, the omission of any caveat or exception related to a municipality's regulatory purpose or zoning criteria demonstrates that Congress did not intend RLUIPA to permit

unequal treatment when it could be justified by the municipality's regulatory purpose or zoning criteria. The law's plain meaning is clear; just as under the Free Exercise Clause, a religious entity under RLUIPA must be treated on the same terms as a nonreligious entity, period.

All these qualifiers have been added to the Equal Terms provision out of the apparent conviction that Congress must have meant something other than what it said. To the contrary, courts must "modestly" "presume . . . 'that [the] legislature says . . . what it means and means . . . what it says.'" *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017) (quoting *Dodd v. United States*, 545 U.S. 353, 357 (2005)). When courts disagree with Congress's word choices, they "are perfectly entitled to say so—in lectures, in law review articles, and even in dicta. But [they] are not entitled to replace the statute Congress enacted with an alternative of [their] own design." *Yates v. United States*, 574 U.S. 528, 570 (2015) (Kagan, J., joined by Scalia, Kennedy, & Thomas, JJ., dissenting). Adding qualifiers to the Equal Terms provision flies in the face of Congress's directive that courts should construe RLUIPA in favor of "broad protection of religious exercise to the maximum extent permitted by [its] terms . . . and the Constitution." 42 U.S.C. § 2000cc-3(g).

Congress designed RFRA and RLUIPA, parallel statutes, as "sister statutes" that work together to safeguard religious liberty. *Ramirez v. Collier*, 595 U.S. 411, 424 (2022); *Holt v. Hobbs*, 574 U.S. 352, 356 (2015); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014). As this Court has explained, Congress designed these statutes "in order to provide

very broad protection for religious liberty." *Holt*, 574 U.S. at 356 (quoting *Hobby Lobby*, 573 U.S. at 693). RLUIPA passed overwhelmingly in both houses of Congress because lawmakers recognized that religious freedom requires more than paper protections—it requires meaningful enforcement mechanisms.

Permitting the municipality's "regulatory purpose" or "zoning criteria" to determine whether religious and secular assemblies are similarly situated eviscerates the Equal Terms provision. Zoning authorities need only define the regulatory purpose narrowly enough to ensure that religious assemblies are excluded. Under such systems, "[z]oning authorities will have little difficulty articulating their objectives in such a way as to prevent an excluded religious assembly from identifying a better-treated nonreligious comparator." *River of Life Kingdom Ministries*, 611 F.3d at 386 (Sykes, J., dissenting). For example, a significant number of RLUIPA cases involve zoning goals promoting economic interests. Unsurprisingly, such interests typically result in the exclusion of tax-exempt religious assemblies. *See, e.g.*, *Lighthouse Inst. for Evangelism, Inc.*, 510 F.3d at 258 (holding that the zoning redevelopment plan to economically revitalize underdeveloped section of the city justified the exclusion of Lighthouse Institute); *Tree of Life Christian Sch.*, 905 F.3d at 371–75 (holding that the regulatory purpose of "revenue maximization" justified exclusion of Christian school); *River of Life Kingdom Ministries*, 611 F.3d at 377 (holding that the zoning purpose of establishing a commercial district justified exclusion of River of Life even though health

clubs, gymnasiums, and daycare centers were permitted); *Riverside Church v. City of St. Michael*, 205 F. Supp. 3d 1014, 1036 (D. Minn. 2016) (adopting both the Third and Seventh Circuit's tests and holding that: (1) the government's regulatory purpose was to strengthen the City's economy by providing for business and retail uses; (2) zoning criteria included "generation of taxable revenue and shopping opportunities"; and (3) the church was properly excluded because it did not provide taxable revenue); *First Korean Church of N.Y., Inc. v. Cheltenham Twp. Zoning Hearing Bd. & Cheltenham Twp.*, No. 05-6389, 2012 U.S. Dist. LEXIS 25968, at *42 (E.D. Pa. Feb. 29, 2012) (holding that the regulatory purpose to "maximize tax base" justified exclusion of church).

Perhaps one of the most stark examples of a municipality's use of economic "regulatory purposes" and "zoning criteria" to squeeze out a religious assembly occurred in *Calvary Chapel Bible Fellowship v. City of Riverside*, No. 16-259, 2017 U.S. Dist. LEXIS 217331 (C.D. Cal. Aug. 18, 2017). The saga began in 1996 when Calvary Chapel Bible Fellowship (CCBF) acquired its property in Riverside County in the Citrus/Vineyard zone, an area where religious assemblies were permitted. *Id.* at *3−4. Over the course of two decades, the relevant zoning ordinance was amended numerous times, with the final version permitting the church only if it submitted a "plot plan application" and agreed to operate an on-site vineyard. *Id.* at *4–10. First, the county changed the zoning district's purpose: to promote "the wine-making atmosphere and long term viability of the wine-industry." *Id.* at *4. The county then amended the ordinance definition of a public

assembly as:

> Any place designed for or used for congregation or gather[ing] of 20 or more persons in one room where such gathering is of a public nature, assembly hall, church, auditorium, recreational hall, pavilion, place of amusement, dance hall, opera house, motion picture theater, outdoor theater or theater, are included within this term.

Id. at *32 (emphasis added). Another section of the ordinance provided, however, that public assemblies were only permitted as "special occasion facilities." *Id.* Special occasion facilities were only permitted subject to a "plot plan application," which required the applicant to show that the property would contain an on-site vineyard and be used in conjunction with a dwelling or winery. *Id.* at *35.

The county argued, and the court agreed, that because these requirements applied to both secular and religious "public assemblies," there was no Equal Terms violation. *Id.* Thus, through clever zoning amendments redefining zoning criteria and purposes, the county effectively barred the church from using its property (which it had acquired prior to all the zoning amendments). *Id.* at *34–35. Because the county cabined the church within a very narrow category of "public assemblies," the court did not even consider whether other permitted uses, such as day care centers, were also secular comparators for purposes of the church's Equal Terms claim.

In contrast, RLUIPA's legislative record indicates that Congress regarded municipal zoning authorities' regulatory purpose or zoning criteria as irrelevant in

RLUIPA enforcement actions. Congress recognized that zoning ordinances excluding religious assemblies were often motivated by economic concerns: "One explanation suggested for this disparate treatment was that local officials may not want non-tax-generating property taking up space where tax-generating property could locate." H.R. Rep. No. 106-219, at 20 (1999). Describing the problem that RLUIPA addressed, Senators Orrin Hatch and Edward Kennedy observed that "churches 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." 146 Cong. Rec. 16,698 (2000) (joint statement of Sen. Hatch and Sen. Kennedy).

Having understood that discriminatory treatment of churches was frequently motivated by economic concerns, Congress proceeded expressly to prohibit such unequal treatment. The Equal Terms provision targets zoning ordinances that exclude religious assemblies but allow many other uses that would promote economic interests, such as "banquet halls, clubs, community centers, funeral parlors, fraternal organizations, health clubs, gyms, places of amusement, recreation centers, lodges, libraries, museums, municipal buildings, meeting halls, and theaters." H.R. Rep. No. 106-219, at 19. The only possible conclusion then is that Congress did not intend religious assemblies to be treated on unequal terms, regardless of whether the disparity furthered the municipality's "regulatory purpose," or "legitimate zoning criteria." To use such purposes to justify discrimination is expressly contrary to

Congress's clear intent.

Likewise, the extra-textual qualifiers—"similarly situated," "as to the government's regulatory purpose," or "with respect to accepted zoning criteria"—incentivize municipalities to amend zoning ordinances after RLUIPA claims are filed to tilt the playing field in the municipalities' favor. Exclusion of religious assemblies can easily be justified by zoning amendments that concoct new criteria or purposes to justify the exclusion. Such amendments can significantly protract the litigation. For example, in *Lighthouse Institute for Evangelism, Inc.*, the ordinance that the plaintiff initially challenged permitted numerous uses, including "assembly halls," but not churches. 510 F.3d at 257. Two years after the lawsuit began, the city amended that ordinance, adopting a redevelopment plan that redefined the regulatory purpose as economic revitalization of an underdeveloped area of the city. *Id.* at 258. The court held that the amended ordinance did not violate the Equal Terms provision because churches were not similarly situated to the other allowed secular assemblies with respect to the City's purpose of revitalizing an underdeveloped area of the town. *Id.* at 270.

Even more remarkably, in *Opulent Life Church*, 697 F.3d at 284, the City amended its zoning ordinance the night before oral argument before the Fifth Circuit. The ordinance had permitted churches only if they obtained approval from neighboring property owners, the mayor, and the Board of Aldermen. *Id.* at 283. The amended ordinance redefined the church's zoning district as a "Business Courthouse Square District," whose purpose was "to

designate the area . . . for certain retail, office and service uses which will complement the historic nature and traditional functions of the court square area as the heart of community life." *Id.* at 293. All religious assemblies were excluded from the district, although museums, libraries, and art galleries were permitted. *Id.* Nevertheless, the court remanded the case to the district court to address whether the amended ordinance violated the Equal Terms provision. *Id.* at 299. If federal courts interpreted the Equal Terms provision according to its plain terms, such mid-litigation maneuvering by zoning authorities, such as took place there, would be unavailing.

Subjective and multifaceted zoning criteria render the similarly situated secular comparator analysis even more unwieldy. For example, in *Society of American Bosnians & Herzegovinians v. City of Des Plaines*, No. 15 C 8628, 2017 U.S. Dist. LEXIS 26542 (N.D. Ill. Feb. 26, 2017), the relevant zoning criteria for determining whether to grant a rezoning request contained five highly subjective subparts:

> (1) whether the proposed amendment is consistent with the goals, objectives, and policies of the City's comprehensive plan;
> (2) whether the proposed amendment is compatible with current conditions and overall character of the development in the immediate vicinity of the property;
> (3) whether the proposed amendment is appropriate considering the adequacy of public facilities and services available to this subject property;

> (4) whether the proposed amendment will have an adverse effect on the value of properties throughout the jurisdiction; and
> (5) whether the proposed amendment reflects responsible standards for development and growth.

Id. at *7–8. In that case, a Muslim religious assembly ("AIC") sought to build a facility for religious and educational purposes in a district zoned for manufacturing uses. AIC asked the City to rezone the land from M-1 (manufacturing) to I-1 (institutional), in which places of worship, religious institutional headquarters, and schools were permitted. Even though the City granted identical rezoning requests to a science and arts academy and a nonprofit cultural society, it denied AIC's request. *Id.* at *3.

Under a straightforward application of the Equal Terms provision, AIC should easily have prevailed. Instead, after engaging in lengthy comparisons of AIC with the science and arts academy and the nonprofit cultural society, in light of the zoning criteria, the court threw up its hands and decided that more factual development was necessary to resolve the case. *Id.* at *37.

Similarly, in *Roman Catholic Archdiocese of Kansas City v. City of Mission Woods*, 337 F. Supp. 3d 1122 (D. Kan. 2018), the court conducted a lengthy factual analysis of whether a Catholic church's proposed use of a house adjacent to its property was similarly situated to uses previously approved for a secular private school. The analysis required consideration of no less than nine zoning criteria, and three different use approval requests by the private

school. *Id.* at 1129, 1143–45. After weighing the evidence, the court decided that further factual development was required and denied summary judgment to both the city and the church. *Id.* at 1144−45.

The inherently subjective nature of most zoning criteria also enables results-oriented interpretation by zoning officials. For example, in *Truth Foundation Ministries, NFP v. Village of Romeoville*, 387 F. Supp. 3d 896, 916−18 (N.D. Ill. 2016), the court denied a church's motion for a preliminary injunction on its Equal Terms claim because the church was not similarly situated to an art museum. Art museums were permitted uses in the "light manufacturing research park" where the church's property was located. *Id.* at 901, 917. The court based its ruling on a zoning official's testimony that the ordinance did not actually mean the "conventional understanding of an art museum." *Id.* at 917. Rather, the ordinance permitted "a manufacturing or industrial business in that District that has an artisan who wants to display some of his or her work." *Id.* The trial court found the testimony credible because it comported with one of the zoning criteria, which was "[t]o discourage uses . . . incompatible with planned industrial uses." *Id.*

A final problem with the fact-driven analyses required by the extra-textual modifiers is that they are subject to very deferential appellate review. Fed. R. Civ. P. 52(a). In other contexts where the plaintiff must show that he is similarly situated to another, the issue is a question of fact for the jury. *See, e.g.*, *McDonald v. Vill. of Winnetka*, 371 F.3d 992, 1001−02 (7th Cir. 2004) (Equal Protection Clause claim); *Riggs*

v. Airtran Airways, Inc., 497 F.3d 1108, 1114–15 (10th Cir. 2007) (ADEA claim); *Graham v. Long Island R.R.*, 230 F.3d 34, 39 (2d Cir. 2000) (Title VII claim).

At least within the Tenth Circuit, whether religious and secular entities are similarly situated is a jury question. *Roman Catholic Archdiocese of Kan. City*, 337 F. Supp. 3d at 1141 (citing *Rocky Mountain Christian Church*, 613 F.3d at 1236). Thus, as the Tenth Circuit held, a highly deferential "sufficiency of the evidence" standard of review must be applied to the jury's factual findings on the church's Equal Terms claim. *Rocky Mountain Christian Church*, 613 F.3d at 1235. The appellate court must not "weigh evidence, judge witness credibility, or challenge the factual conclusions of the jury," and the court must not "substitute [its] judgment for that of the jury." *Id.* at 1235–36.

Simply returning to the plain language of the statute's text would align RLUIPA with the fundamental constitutional requirement this Court has likewise emphasized: government regulations infringe upon religious rights "whenever they treat *any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (emphasis in original). This Court has answered the exact issue presented here: "It is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id.* Any comparator being treated more favorably than a religious institution is enough to trigger the First Amendment; it likewise should be enough to lead to the direct application of RLUIPA's plain text.

II. THIS CASE PRESENTS AN IDEAL VEHICLE TO CLARIFY THE TEXT'S MEANING.

Contrary to the straightforward inquiry contemplated by the Equal Terms provision, the importation of qualifiers "similarly situated," "as to the government's regulatory purpose," or "with respect to accepted zoning criteria," has immersed much Equal Terms litigation in picayune factual issues involving trivial differences between religious and secular assemblies. As one court wryly put it: "The Court's prior opinion in this case addressed the question 'when is a church like a library?' Now the Court must address a more narrow question: 'when is this church like that library?'" *Immanuel Baptist Church v. City of Chi.,* 344 F. Supp. 3d 978, 980−81 (N.D. Ill. 2018) (internal emphasis omitted).

The case at bar is a particularly grievous example of how the malleable "similarly situated comparator" requirement has led courts to decisions contrary to the protection that the Equal Terms provision was intended to afford. The analysis under the statute's text is plain and straightforward; the zoning ordinance in this case requires churches and other buildings for the purpose of religious worship to be on an arterial street, while not requiring the same for other comparable entities. Nursery schools, libraries, public parks, golf courses, and country clubs are all conditional uses that face no arterial street requirement. Under this ordinance, numerous nonreligious assemblies and institutions—including those where comparable numbers of people congregate—are exempt from the ordinance barring

conditional-use permits unless the proposed structure is located next to an arterial street. That disparity alone should suffice to trigger the Equal Terms provision.

The Kentucky Supreme Court rejected the Equal Terms claim because some other entities are required to be on an arterial street. "Institutions for higher education, hospitals, sanitariums, convalescent homes, nursing homes, police stations, and fire stations must also be on an arterial street." *Missionaries of Saint John the Baptist, Inc.*, 2025 Ky. LEXIS 230, at *32 (2025). This argument turned the analysis on its head. The question under the Equal Terms provision is whether the "religious assembly or institution" is treated differently from *any* "nonreligious assembly or institution." Under this Ordinance, that is clearly the case. Certain institutions, like nursery schools, are free from the arterial street requirement—churches are not. That is the exact evil that RLUIPA was designed to prohibit. Under RLUIPA, just like the Free Exercise Clause, any comparator is enough to show a lack of equal terms. Instead, the Kentucky Supreme Court held that denying a permit to petitioner would not violate the Equal Terms provision because some secular entities face the same prohibition as places of worship, even though numerous other secular entities do not. On that view, a city ordinance could treat religious institutions worse than all other property uses but one or two and evade RLUIPA's mandate.

The Kentucky Supreme Court's decision went further astray than the circuit courts' approaches. It deemed sufficient to defeat petitioner's RLUIPA defense that there are *some* nonreligious institutions

treated similarly. It made no finding that the institutions exempt from the arterial street requirements, such as country clubs and nursery schools, are differently situated. It ignored purposes, regulatory goals, and factors, and simply ruled against churches because some secular entities were treated as poorly. Given the divergent approaches of lower courts—including on such fundamental issues as who bears the burden of outcome-determinative questions—this Court should grant review to resolve the proper meaning of the Equal Terms provision.

Whether the fact-finder is judge or jury, making religious liberty rights hinge on such fact-intensive and amorphous determinations runs contrary to the plain text of the Equal Terms provision. Worse, such loosey-goosey fact assessments are unlikely to be reversed on appeal. RLUIPA's goal of providing maximum protection for religious assemblies cannot be realized when enforcement actions are mired in multifaceted factual determinations that the Equal Terms provision does not require. This Court should grant review to restore Congress's mandate of religious liberty.

CONCLUSION

This Court should grant certiorari and reverse the decision below.

Respectfully submitted,

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