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 FREE EXERCISE CLINIC AT YALE LAW SCHOOL IN SUPPORT OF PETITIONER

KATE STITH
NICHOLAS R. REAVES*
Counsel of Record
FREE EXERCISE CLINIC
YALE LAW SCHOOL
127 Wall Street
New Haven, CT 06511
203-432-6679
nicholas.reaves@yale.edu
Counsel for Amicus Curiae

**Barred in DC; practicing under the supervision of a Connecticut attorney.*

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTEREST OF THE *AMICUS CURIAE*[1]

The Free Exercise Clinic at Yale Law School provides an opportunity for law students to defend the free exercise rights of politically vulnerable religious minorities through both amicus filings and direct representation. The Clinic works under the supervision of experienced litigators to represent diverse religious clients and to support, among others, incarcerated individuals seeking the freedom to practice their faith, religious employees requesting workplace accommodations, and houses of worship navigating zoning approvals. The Free Exercise Clinic has filed amicus briefs in cases before this Court on several occasions. *E.g.*, *Mast* v. *Fillmore Cnty.*, 141 S. Ct. 2430 (2021) (amicus brief in support of certiorari); *Zhang Jingrong, et al.* v. *Chinese Anti-Cult World Alliance, Inc., et al.*, 143 S. Ct. 90 (2022) (amicus brief in support of certiorari); *Groff* v. *DeJoy*, 600 U.S. 447 (2023) (merits stage amicus brief); *Williams* v. *Reed*, 604 U.S. 168 (2025) (merits stage amicus brief).

The Free Exercise Clinic has a strong interest in the proper interpretation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) in light of the Act's critical importance to religious minorities nationwide. The Clinic has filed numerous briefs arguing for an interpretation of RLUIPA consistent with its

---

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus and their counsel, made any monetary contribution toward the preparation or submission of this brief. This brief has been prepared by a clinic affiliated with Yale Law School, but does not purport to present the school's institutional views, if any. Counsel provided timely notice to both parties regarding the filing of this brief.

plain text, its rule of broad construction, and Congress's clear intent. See, *e.g.*, Amicus brief of Jewish Coalition for Religious Liberty and National Committee for Amish Religious Freedom, *Mast*, 141 S. Ct. 2430 (highlighting lower court's misinterpretation of RLUIPA); Amicus Brief of Sikh Coalition and the General Conference of Seventh-day Adventists, *Redeemed Christian Church of God* v. *Prince George's Cnty.*, 17 F.4th 497 (4th Cir. 2021) (arguing that a plain-text interpretation of RLUIPA best protects religious minorities); Amicus Brief of Jewish Coalition for Religious Liberty and Agudath Israel of America, *Canaan Christian* v. *Montgomery Cnty.*, 29 F.4th 182 (4th Cir. 2022) (similar); Amicus Brief of Muslim Public Affairs Council, *Johnson* v. *Baker*, 23 F.4th 1209 (9th Cir. 2022) (similar); Amicus Brief of General Conference of Seventh-day Adventists and Jewish Coalition for Religious Liberty, *Alive Church of the Nazarene, Inc.* v. *Prince William Cnty.*, 59 F.4th 92 (4th Cir. 2023) (similar).

INTRODUCTION AND SUMMARY OF ARGUMENT

Twenty-five years ago, Congress enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA) with a clear and unambiguous purpose: to protect religious exercise from the subtle and not-so-subtle discrimination that had become common in local land use and zoning decisions. Congress heard testimony that religious institutions, particularly those outside the mainstream, were routinely denied the ability to build houses of worship, schools, and religious facilities through the application of facially neutral zoning regulations. These regulations, unfortunately, often masked anti-religious animus behind

concerns about traffic, noise, parking, and tax revenue. RLUIPA was Congress's answer. RLUIPA's text was deliberately broad, its rule of construction explicitly protective, and its purpose unmistakable.

Yet a quarter century later, that purpose is being frustrated. Across the country, lower courts have watered down RLUIPA's statutory protections by adding tripwires for religious claimants that appear nowhere in the statute's text—requirements that make it more difficult for religious minorities in particular to vindicate the very rights Congress guaranteed them. The result is a patchwork of inconsistent and often irreconcilable standards that leaves the scope of federal protection for religious land use dependent on the jurisdiction in which a religious institution happens to be located.

This case presents the Court with an opportunity to correct two of the most significant and recurring errors in RLUIPA jurisprudence. First, courts—including the court below—have imported extra-textual requirements into RLUIPA's substantial burden provision, concluding that a religious claimant is not substantially burdened if it could pursue a *different* religious exercise *elsewhere*, and that a religious claimant "self-imposes" a regulatory burden on itself merely by acquiring land with knowledge of applicable zoning restrictions. These requirements conflict with this Court's holding in *Holt* v. *Hobbs*, can be found nowhere in a plain-text reading of RLUIPA, and are particularly problematic for religious minorities with beliefs that might be unpopular in particular geographic areas.

Second, courts have fractured over the interpretation of RLUIPA's equal terms provision, with some requiring religious claimants to identify specific "similarly situated" secular comparators and others giving local governments a green light to discriminate as long as even one secular land use is treated similarly. These judge-made tests turn equal terms cases into battles of competing expert witnesses and allow governments to escape liability simply by pointing to disfavored secular land uses that are treated equally poorly.

The Free Exercise Clinic submits this brief because these errors are not merely academic. They have real and immediate consequences for the religious communities RLUIPA was designed to protect—communities that often lack the political influence necessary to seek relief through the legislative process and that depend on judicial enforcement of the rights Congress conferred. When courts burden straightforward RLUIPA claims with extra-textual requirements, the religious minorities who need RLUIPA most are left without a remedy.

The Court should grant certiorari, reaffirm that RLUIPA's text means what it says, and restore the broad protection of religious exercise that Congress intended.

ARGUMENT

I. Correct interpretation of RLUIPA is critical for religious minorities.

Government officials enforcing zoning regulations have every incentive to exclude houses of worship. They "are unpopular in residential zones because they

allegedly generate too much traffic, noise, and congestion, * * * in commercial zones because they allegedly generate too little traffic and not enough synergy with surrounding businesses, * * * [a]nd * * * with city officials because they are tax exempt." Douglas Laycock & Luke W. Goodrich, *RLUIPA: Necessary, Modest, and Under-Enforced*, 39 Fordham Urb. L.J. 1021, 1021 (2012). And the discretionary nature of zoning makes this anti-religious bent easy to conceal. See Von G. Keetch & Matthew K. Richards, *The Need for Legislation to Enshrine the Free Exercise Clause in the Land Use Context*, 32 U.C. Davis L. Rev. 725, 728 (1999) ("[G]iven their wide discretion, biased officials have little trouble finding seemingly plausible grounds for delaying or denying most any project."). Because hostility toward religion sometimes operates behind the facade of "ostensibly neutral land use," *id.* at 726, "religious hostility can be very hard to detect." Laycock & Goodrich, *supra*, at 1030. Cf. Douglas Laycock, *State RFRAs and Land Use Regulation*, 32 U.C. Davis L. Rev. 755, 761-62 (1999) (finding it "hard to identify reasons for opposition" to religious land uses that do not "derive from actual hostility to some or all churches"); *Tree of Life Christian Schs.* v. *City of Upper Arlington*, 905 F.3d 357, 377 (6th Cir. 2018) (Thapar, J., dissenting) ("Instead of saying 'no Muslims allowed,' city planners complained of the traffic on Fridays when Muslims gathered to pray.").

While a problem for all religious groups, religious minorities are most at risk. See Richard F. Duncan, *Free Exercise and Individualized Exemptions: Herein of* Smith*,* Sherbert*, Hogwarts, and Religious Liberty*, 83 Neb. L. Rev. 1178, 1187 (2005) (noting that "*ad hoc*

processes also risk denominational discrimination, because subjective determinations may be more likely to find 'good cause' in familiar religions and 'fault' in unfamiliar or minority faiths"). Hostility to minority or unfamiliar faiths also often fuels the mistaken view that they will not make good neighbors. See Laycock, *supra*, at 760 (The "excluded churches are typically small and unfamiliar, with few members, no visibility, and little political clout.").

Litigation has also repeatedly exposed how hostility toward religious minorities can influence zoning and land use determinations. See, *e.g.*, *Youkhanna* v. *City of Sterling Heights*, 934 F.3d 508, 514 (6th Cir. 2019) ("Some people voiced concerns about issues such as traffic and noise; others disparaged Islam and AICC, calling them terrorists or terrorist-funded."); *WR Prop. LLC* v. *Twp. of Jackson*, No. 17322, 2021 WL 1790642, at *3 (D.N.J. May 5, 2021) ("Zoning Board member John Burros referred to the Orthodox Jewish community in Lakewood as the 'tsunami of orthodoxy,' 'scourge of the cockroaches from the east,' and the 'Lakewood medieval cult.'"); *Jesus Christ Is the Answer Ministries* v. *Baltimore Cnty.*, 915 F.3d 256, 259 (4th Cir. 2019) (describing members of an "evangelical and multicultural" church as "dancing and hollering like they back at their home back in Africa somewhere").

RLUIPA was Congress's solution to this problem. "Congress enacted RLUIPA * * * 'in order to provide very broad protection for religious liberty.'" *Holt* v. *Hobbs*, 574 U.S. 352, 356 (2015) (quoting *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 683 (2014)). And Congress directed courts to interpret RLUIPA "in favor of a broad protection of religious exercise, to the

maximum extent permitted by the terms of this chapter and the Constitution." *Burwell*, 573 U.S. at 696 (quoting 42 U.S.C. 2000cc-3(g)). See also *Holt*, 574 U.S. at 358 ("Congress stated that RLUIPA 'may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.'" (quoting 42 U.S.C. 2000cc-3(c))).

Many courts have recognized this, concluding that "RLUIPA's purpose was to address what Congress perceived as inappropriate restrictions on religious land uses, especially by 'unwanted' and 'newcomer' religious groups." *Centro Familiar Cristiano Buenas Nuevas* v. *City of Yuma*, 651 F.3d 1163, 1170 (9th Cir. 2011). See also *Lighthouse Inst. for Evangelism, Inc.* v. *City of Long Branch*, 510 F.3d 253, 288 n.36 (3d Cir. 2007) (Jordan, J., concurring in part and dissenting in part) (explaining that "Congress compiled * * * massive evidence that [c]hurches in general, and new, small, or unfamiliar churches in particular, [were] frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation.").

Yet over a quarter-century after RLUIPA's enactment, religious minorities continue to face disproportionate discrimination in the land-use context. See Lucien J. Dhooge, *RLUIPA at 20: A Quantitative Study of its impact on Land Use and Religious Minorities*, 46 J. Legis. 207, 239-40 (2020) ("The 18.2% success rate for Islamic claimants, and the fact that 50% of all discrimination opinions and 81.5% of opinions relating to religious minorities concerned Islamic and Jewish claimants, supports a conclusion of governmental bias against these two minorities."); Laycock &

Goodrich, *supra*, at 1029 (highlighting disproportionate number of RLUIPA claims by "Jews, Muslims, Buddhists, and Hindus").

As the remainder of this brief argues, the best way to correct this is to interpret RLUIPA according to its plain text.

II. This Court should reaffirm its plain text interpretation of RLUIPA's substantial burden provision.

This Court should grant certiorari to reject the rigid, extra-textual requirements imposed by several lower courts and instead confirm a straightforward, text-based understanding of what constitutes a substantial burden.

A. This Court has already said what constitutes a substantial burden under RLUIPA.

This Court has already explained what constitutes a "substantial burden" under both RFRA and RLUIPA. In *Holt* v. *Hobbs* and *Burwell* v. *Hobby Lobby*, this Court explained that, at minimum, a substantial burden exists when the government either directly forbids a particular religious practice or when the government forces a claimant to choose between violating her sincere religious beliefs and facing a significant government-imposed penalty. *Holt*, 574 U.S. at 361-62; *Burwell*, 573 U.S. at 721-22; see also *Johnson* v. *Baker*, 23 F.4th 1209, 1215-16 (9th Cir. 2022) (Bumatay, J.) (describing various ways in which government action can substantially burden religious exercise).

This Court has also explained that the substantial burden analysis requires a narrow and individualized

inquiry that focuses on the specific *practice* and the specific *practitioner*. In *Holt*, this Court looked at the burdened religious practice (a half-inch beard)—*not* at other religious practices that remained available to Mr. Holt. *Holt*, 574 U.S. at 361-62 (substantial burden inquiry does not ask "whether the RLUIPA claimant is able to engage in other forms of religious exercise"); see *Johnson*, 23 F.4th at 1215-16 (Bumatay, J.) (describing this Court's precedents). And this Court rejected the claim that the burden on Mr. Holt was "slight" because he testified that his faith would still "credit" him for "attempting to follow his religious beliefs." *Holt*, 574 U.S. at 362. This approach is consistent with RLUIPA's definition of "religious exercise," which bars courts from scrutinizing the centrality or compulsion of a religious practice and instead covers "any" sincere religious exercise. 42 U.S.C. 2000cc-5(7)(A) ("The term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.").[2]

Tellingly, this Court did not water down RLUIPA's definition of a substantial burden despite first interpreting the term it in a case involving an incarcerated individual—a context in which courts are more often deferential to government interests. But see *Holt*, 574 U.S. at 364 (Respect for prison officials "does not justify the abdication of the responsibility, conferred by Congress, to apply RLUIPA's rigorous standard.").

---

[2] RLUIPA also explains that "[t]he use, building or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose."42 U.S.C. 2000cc-5(7)(B).

Some lower courts, however, have departed from RLUIPA's text and this Court's precedent. Instead, they have imposed rigid extra-textual requirements that often disproportionately affect religious minorities—or that serve as a trap for the unwary. See *Livingston Christian Schools* v. *Genoa Charter Twp.*, 858 F.3d 996, 1004 (6th Cir. 2017) (applying multifactored extratextual test to find no substantial burden); *Canaan Christian Church,* 29 F.4th at 186 (similar). But there is no statutory justification for subjecting RLUIPA land-use claims to more stringent requirements than RLUIPA incarcerated-individual claims. Use of the same statutory phrase in both sections of RLUIPA (and in RFRA) strongly suggests it should be interpreted consistently. *Merril Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71, 86 (2006) (noting that identical words used in different parts of the same statute are generally presumed to have the same meaning).

And just as this Court's straightforward explanation of what constitutes a substantial burden has not unduly constrained prison officials, taking the same approach here will not stymie local land use regulation. Rather than relying on rigid, atextual checklists divorced from the nuances of a particular case (as the court below did, Pet.App.25a-27a), a straightforward reading of the phrase substantial burden—focused on the relative magnitude or cost of the government-imposed burden on a specific religious exercise—better protects religious exercise while still providing ample room for local governments to show that regulations aimed at legitimate concerns such as traffic, parking, environmental impacts, or community compatibility

either (1) impose no more than an *in*substantial burden or (2) are sufficiently compelling to satisfy strict scrutiny.

B. This Court should reject extra-textual constraints on RLUIPA's substantial burden requirement.

The rigid, multi-factored test applied by the court below—focused primarily on whether a smaller grotto could be built elsewhere and whether the burden was "self-imposed," Pet.App.24a-25a—deviates from the text of RLUIPA, is inconsistent with this Court's precedent, and disfavors minority faiths.

Ready alternatives. The court below concluded that Petitioner had "a feasible alternative location from which it can carry on its mission" because it possessed the "ability to build a smaller shrine or grotto" on its existing property, and therefore the denial of the variance "falls more into the category of a mere inconvenience than a burden with 'some degree of severity.'" Pet.App.24a-25a. But this Court has already rejected the "ready alternatives" logic under RLUIPA's incarcerated-individuals provision. In *Holt*, this Court held that the substantial burden inquiry must look at whether the government has burdened the *specific religious exercise* at issue, not whether the claimant may engage in "other forms of religious exercise." *Holt*, 574 U.S. at 361-62. In *Holt*, the inmate could pray on a prayer rug, observe religious holidays, and engage in other religious practices, *id.* at 360—he "just" could not grow a half-inch beard. These "alternative means of practicing religion," this Court explained, are irrelevant under RLUIPA and thus did not diminish the

substantial nature of the burden on Mr. Holt's requested religious exercise—growing a half-inch beard. *Id.* at 361.

The same is true here: Petitioner's religious exercise—building a grotto according to Petitioner's religious beliefs—has been foreclosed. That outright ban is undoubtedly a substantial burden. To conclude (as the court below did) that the physical ability to build a "smaller grotto" on adjacent land can convert this substantial burden into a "mere inconvenience," Pet.App.25a, allows local governments to eviscerate RLUIPA's protections merely by arguing that the religious claimant could have obtained a variance had they sought to build a house of worship that was ten percent smaller and twenty feet to the left.

The "ready alternatives" test creates other problems, too. It favors religious groups with strict requirements (that foreclose alternative forms of religious exercise) while disfavoring those religious groups that can exercise their faith in various ways or in various locations. Worse, this requirement serves as a trap for the unwary: savvy litigants will know better how to plead and litigate around this extra-textual requirement by portraying their religious obligations as clear, compelled, and unalterable. But pro se and inexperienced litigants (more often representing small houses of worship or minority faith communities) may be caught unaware. Paradoxically, this requirement also disincentivizes pre-litigation compromise by encouraging claimants to strenuously oppose any alternative accommodation in anticipation of having to argue in court that no ready alternative exists.

"Self-imposed" burdens. The court below also held that Petitioner "imposed a substantial burden

upon itself" because it knew that building the grotto on its recently acquired property was "not directly permitted by the current local zoning ordinance." Pet.App.26a-27a. This test butchers RLUIPA's text, conflicts with this Court's precedent, and gives local governments another easy tool to defeat many RLUIPA substantial burden claims.

RLUIPA's text states that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person." 42 U.S.C. 2000cc(a). Tellingly, it does not say: "on the religious exercise of a person *that is reasonably expected to be permitted*." Rather, it mirrors the language of RLUIPA's incarcerated-individuals provision—a context in which the idea of having a "reasonable expectation" would be a *non sequitur*, as the incarcerated individual is almost always seeking an exemption from a pre-existing prison condition barring his religious exercise.

Indeed, the very premise of this requirement—that only those litigants who reasonably expect approval can show a substantial burden—stacks the deck *against* religious minorities and regionally unpopular religious groups. See generally Laycock, *State RFRAs*, *supra*, at 760. In many cases, religious minorities face opposition and hostility from the jump, and may even *expect* to end up in court. *E.g.*, *Zikar Holdings LLC* v. *Ruhland*, No. 24-cv-03721, 2024 WL 5220688, at *3 (D. Minn. Dec. 26, 2024) (describing how local officials were "buried in phone calls from residents" about a potential new Muslim community development even before the purchase agreement was signed). What is more, zoning restrictions, conditional use permits,

SUPS, special zoning districts, traffic and utility setbacks, and countless other zoning requirements are so opaque and easily manipulable that, absent hiring a zoning attorney, many religious congregations will find it nearly impossible to say *ex ante* whether their proposed religious land use is "reasonably expected" to be approved. See Keetch & Richards, *supra*, at 728.[3]

Courts that try to justify this requirement often point to the word "impose" in RLUIPA, arguing that the claimant's burden is "*self*-imposed" (not imposed by the government) if they should have known that existing zoning laws barred their proposed land use. But "impose" simply means "to establish or apply by authority," *Impose*, Merriam-Webster, https://perm-a.cc/GD3L-UHQP (last visited April 22, 2026). Regardless of whether the claimant *knew* the government would block her request, that restriction is still imposed *by the government* (i.e., the "authority"). And similar logic would eviscerate RLUIPA's protection for criminally incarcerated individuals, as prison officials could argue that claimants "self-imposed" prison regulations on themselves by committing a crime, because they knew or should have known that incarceration comes with significant restrictions on individual rights.

An imam or rabbi moving to a town whose zoning code was preemptively amended to bar the building of any new house of worship has not "imposed" this land use restriction on him or herself. *E.g.*, *Zikar Holdings*,

---

[3] That the court below concluded the burden was "self-imposed" *despite* Petitioner obtaining a setback variance and a conditional use permit from the Board of Adjustment further confirms the flaws inherent in this requirement. See Pet.App.8a.

2024 WL 5220688 at *3 (imposing preemptive "moratorium" on all new developments after learning that Islamic developer was interested in purchasing property). To rule otherwise would give local governments a very potent means of excluding newly arrived religious groups (often religious minorities): simply state loudly and publicly that no religious group should expect to obtain any variance from any zoning requirement. Such a result is untenable given RFRA and RLUIPA's shared goal of "restor[ing]" the right to religion guaranteed by the Constitution itself. 42 U.S.C. 2000bb(b)(1). And again, *even if* this point were debatable, RLUIPA's rule of construction requires "constru[al] in favor of a broad protection of religious exercise." 42 U.S.C. 2000cc-3(g).

This Court also rejected closely analogous logic in *Palazzolo* v. *Rhode Island*, when it held that a property owner does not forfeit her right to seek just compensation simply because she acquired title after a regulation's enactment. 533 U.S. 606, 627 (2001). In *Palazzolo*, this Court rejected the "sweeping rule" that "[a] purchaser or a successive title holder like petitioner is deemed to have notice of an earlier-enacted restriction and is barred from claiming that it effects a taking." *Id.* at 626. In rejecting this rule, the Court instead explained that "[f]uture generations, too, have a right to challenge unreasonable limitations on the use and value of land." *Id.* at 627. And it recognized that such a rule would "put an expiration date on the Takings Clause" by "absolv[ing] the State" of its obligation to defend even "extreme" and "unreasonable" restrictions on land use with respect to any post-enactment purchasers. *Id.* at 611, 627. This same logic applies to the "reasonable expectations" requirement: it

encourages local governments to impose onerous restrictions *today* to extinguish RLUIPA claims *tomorrow*. The more direct and extreme the restrictions, the better.

III. This Court should interpret RLUIPA's equal terms provision according to its plain text.

Lower courts were already in disarray over how to interpret RLUIPA's equal terms provision. Pet.31-35. And now the court below has adopted *yet another* interpretation of this statutory provision. This Court should step in to clarify that Congress meant what it said when it enacted RLUIPA's equal terms provision.

1. RLUIPA's equal terms provision states that "[n]o 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). This straightforward statutory text tells courts to consider the ways in which a "land use regulation" "treats" a "religious assembly or institution" and compare that treatment to how the same land use regulation treats a "nonreligious assembly or institution." *Ibid.* If "a nonreligious assembly or institution" has received more favorable treatment in either the "impos[ition] or implement[ation]"[4] of the "land use regulation," then the RLUIPA claimant has been treated "on less than equal terms." *Ibid.*

---

[4] Noah Kane, *Treat Thy Neighbor As Thyself? Equal Protection and the Scope of RLUIPA's Equal Terms Clause*, 43 Cardozo L. Rev. 823, 834 (2021) ("By using the words 'impose or implement,' the Equal Terms [provision] makes available two types of claims: facial challenges and as-applied challenges."); see also *Tree of Life*, 905 F.3d at 381 (Thapar, J., dissenting) (identifying

A plain text reading clarifies several key aspects of how this provision should work. First, the relevant comparator for a "religious assembly or institution" is "a nonreligious assembly or institution." 42 U.S.C. 2000cc(b)(1). In other words, "Congress specified the way in which the two land uses must be similar: they must both fall within the categories of 'assembly' or 'institution.'" Laycock & Goodrich, *supra*, at 1062; *Tree of Life*, 905 F.3d at 379 (Thapar, J., dissenting) (using dictionary definitions of "assembly" and "institution" to determine scope of comparator analysis). Courts that impose further comparability requirements—like variations of the "similarly situated" requirement—read in something Congress chose to leave out. *Id.* ("'Similarly situated' appears nowhere in [RLUIPA's] mandate."); *River of Life Kingdom Ministries* v. *Vill. of Hazel Crest*, 611 F.3d 367, 382 (7th Cir. 2010) (Sykes, J., dissenting) (same).

Second, the text tells us what must be "equal": the "terms" on which the government is regulating secular and religious "assembl[ies] and institution[s]." 42 U.S.C. 2000cc(b)(1). Courts therefore need not attempt to divine a "regulatory purpose" behind every local zoning ordinance when confronted with a facial challenge; they can instead compare how a religious and a *non*religious assembly or institution are treated in the text (i.e., "terms") of the challenged regulation. This has two virtues: it adheres to the statutory text and supplies an administrable standard. Laycock & Goodrich, *supra*, at 1063 (explaining that "these

---

facial challenges, as-applied challenges, and religious-gerrymanders).

'terms' are much more readily ascertainable than the equality of 'use' or 'effects'" adopted by some courts).

Finally, the structure of 42 U.S.C. 2000cc(b)(1) confirms that the equal terms provision operates independently of the substantial burden provision's strict-scrutiny framework. Congress deliberately placed equal terms in a separate subsection—and during the drafting process, it repeatedly rejected proposals that would have grafted a strict-scrutiny "defense" onto the equal terms provision. Laycock & Goodrich, *supra*, at 1058-59. Indeed, "Congress was aware of the strict scrutiny buzzwords and included none of them in the Equal Terms provision." *Tree of Life*, 905 F.3d at 382 (Thapar, J., dissenting). That deliberate omission is dispositive. Once a claimant demonstrates that the challenged regulation treats comparable nonreligious assemblies or institutions more favorably than religious ones, the equal terms provision is violated. No inquiry into compelling interests or narrow tailoring is required, or permitted.

In addition to making sense of RLUIPA's text, a plain-text interpretation also respects Congress's desire to balance robust protection for religious assemblies and institutions with the flexibility local governments need when making land use determinations. Local governments remain free to impose zoning requirements on *all* assemblies and institutions—limiting a building's size in certain geographic areas (*e.g.*, "no places of public assembly larger than 15,000 square feet," Laycock & Goodrich, *supra*, at 1063-64), requiring a certain number of parking spaces per square foot, or imposing any other zoning restriction even-handedly. The one thing a local government *can't*

do is impose zoning restrictions that treat *secular* assemblies or institutions better than *religious* assemblies or institutions. So long as a regulation's "terms" are written and enforced neutrally, local governments have a free hand.[5]

This approach also readily answers "sky-is-falling" concerns—such as the suggestion that "if a town allows a local, ten-member book club to meet in the senior center, it must also permit a large church with a thousand members." *Lighthouse Inst. for Evangelism, Inc.*, 510 F.3d at 268. Under the equal terms provision, a municipality remains free to adopt and enforce religiously neutral, even-handed capacity limits on *all* assemblies or institutions that would welcome small assemblies but impose restrictions on thousand-seat theaters and churches. Properly understood, then, the equal terms provision does not confer preferential treatment on religious exercise; it only requires equal treatment. See *River of Life*, 611 F.3d at 389 (Sykes, J., dissenting) ("The equal-terms provision reflects a congressional judgment about state and local regulation of religious land uses: Regulations that treat religious assemblies or institutions less well than nonreligious assemblies or institutions are inherently not neutral.").

2. Much like Tolstoy's "unhappy families," each court that has misapplied RLUIPA's equal terms provision has erred in its own way. See Pet.32 (describing

---

[5] In this way, equal *terms* analysis may at times differ from the Free Exercise Clause's general applicability analysis, as general applicability looks to the relevant *government interest* as the yardstick of comparison. *Tandon* v. *Newsom*, 593 U.S. 61, 62 (2021).

"sub-interpretations * * * so divergent that they effectively function as distinct tests"). These misguided efforts to rewrite a straightforward statutory command have rendered the equal terms provision less objective, more difficult to administer, and less protective of religious minorities.

Similarly situated. Some courts require religious assemblies or institutions to come forward with "a nonreligious comparator that is 'similarly situated' to the religious institution and yet treated more favorably." Pet.32. But the equal terms provision offers no textual criteria to determine whether religious and nonreligious assemblies are "similarly situated"—not even to help courts determine *in what way* comparators must be similarly situated. See Pet.32-34. Lower courts thus face difficult line-drawing questions with no statutory guidance. For example, does a community recreation center raise fewer traffic and noise problems in a residential neighborhood than a church? Even assuming traffic and noise concerns are the relevant point of comparison, these kinds of inquiries can turn an equal terms case into a battle of expert witnesses or require courts to rely on intuitions about zoning and land use. See *Tree of Life*, 905 F.3d at 373 (relying on expert witness testimony regarding the comparability of various land uses).

The focus on *similarly situated* comparators also makes it easy to circumvent the equal terms provision, as a municipality can often come up with some plausible-sounding reason to treat houses of worship worse than other assemblies. For instance, houses of worship are tax-exempt, so if generating municipal revenue is an accepted regulatory purpose, churches can be

treated worse than any assembly that is not tax-exempt—or even some that are. See *Tree of Life*, 905 F.3d at 376 (Christian school failed to make prima facie equal terms showing due to expert testimony that nonprofit daycares generate more tax revenue). This logic departs from Congress's purpose in passing RLUIPA: to prohibit municipalities from masking discrimination against houses of worship behind facially neutral concerns like traffic, parking, density, community fit, and infrastructure strain. See Kane, *supra*, at 843-44.

Less than equal. A second way in which courts have misinterpreted the equal terms provision is to water down the core requirement that religious assemblies and institutions not be treated on "*less than equal*" terms. Here, the Kentucky Supreme Court correctly identified the relevant "terms" as the operative text of the zoning regulations. Pet.App.28a-29a. But it erred by holding that the government may treat religious assemblies worse than some nonreligious assemblies so long as *other* nonreligious assemblies receive equally poor treatment. *Ibid*. That reasoning turns the equal terms provision on its head: it allows the government to escape liability simply by spreading the unequal treatment a little bit more broadly.

This contradicts RLUIPA's plain text. The equal terms provision asks whether "*a*" religious assembly is treated on less than equal terms with "*a*" secular assembly. 42 U.S.C. 2000cc(b)(1). The Kentucky Supreme Court's approach, however, effectively rewrites that word: it reads "*a*" as though it said "*every*"—requiring a religious claimant to show that it was treated worse than *every* secular assembly or institution before a violation can be established.

This Court's precedent reinforces the point. *Tandon* v. *Newsom* rejected the same maneuver in the free exercise context, holding that it is irrelevant whether some secular uses receive the same treatment as religion. When assessing whether secular activity is treated "more favorably than religious exercise," "[i]t is no answer that a State treats some comparable secular businesses or other activities as poorly or even less favorably than the religious exercise at issue." *Tandon* v. *Newsom*, 593 U.S. 61, 62 (2021) (citation omitted). As Professors Laycock and Collis have explained, "[t]he question is not whether one or a few secular analogs are regulated. The question is whether a single secular analog is not regulated." Douglas Laycock & Steven T. Collis, *Generally Applicable Law and the Free Exercise of Religion*, 95 Neb. L. Rev. 1, 22 (2016). RLUIPA's equal terms provision is the mirror image of *Tandon*, and that opinion's logic applies with the same force here.

It is a "settled principle[] of statutory construction" that when "the statutory text is plain and unambiguous," courts "must apply the statute according to its terms." *Carcieri* v. *Salazar*, 555 U.S. 379, 387 (2009). RLUIPA's equal terms provision is plain and unambiguous. This Court should make clear that lower courts must apply this provision according to its terms.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted.

KATE STITH
NICHOLAS R. REAVES*
Counsel of Record
FREE EXERCISE CLINIC
YALE LAW SCHOOL
127 Wall Street
New Haven, CT 06511
203-432-6679
nicholas.reaves@yale.edu
Counsel for Amicus Curiae

* *Barred in DC; practicing under the supervision of a Connecticut attorney.*

APRIL 2026