

No. 25-1131

IN THE
Supreme Court of the United States

MISSIONARIES OF SAINT JOHN THE BAPTIST, INC.,

Petitioner,

v.

JOEL FREDERIC, *et ux.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF KENTUCKY

**BRIEF OF ANASH INC. (D/B/A WYOMING
VALLEY YESHIVA) AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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QUESTIONS PRESENTED

1. Whether a land-use regulation that prohibits a religious institution from building a religious structure on its own property constitutes a “substantial burden” on religious exercise under the Substantial Burden Provision of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc(a).
2. Whether a land-use regulation that imposes express restrictions on religious assemblies or institutions that it does not impose on nonreligious assemblies or institutions violates the Equal Terms Provision of RLUIPA, 42 U.S.C. § 2000cc(b)(1).

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**IDENTITY AND INTEREST OF
AMICUS CURIAE**

Pursuant to Supreme Court Rule 37, Anash, Inc., d/b/a Wyoming Valley Yeshiva, respectfully submits this brief *amicus curiae* in support of Petitioner Missionaries of Saint John the Baptist, Inc.¹

Wyoming Valley Yeshiva is a nonprofit 501(c)(3) religious congregation. It is part of the vibrant Lubavitch community of Kingston, Pennsylvania. Under the leadership of Rabbi Shimon Hellinger, it has served as a place of religious study, worship, and spiritual growth where adherents learn and live principles of Judaism in daily life. Municipal officials of Kingston, Pennsylvania shattered the Yeshiva and its adherents' freedom of religious exercise. On the eve of Rosh Hashanah, municipal officials, backed by police, descended upon the Yeshiva's properties and declared them a "DANGER," closing them "due to zoning." In an instant, the Yeshiva's religious community dispersed and numerous adherents were left homeless, unable to study or practice their faith in the settings that had sustained them. The Yeshiva promptly filed suit in the Middle District of Pennsylvania and sought injunctive relief. The District Court denied relief, negating

1. Pursuant to this Court's Rule 37.2, all parties have consented to the filing of this brief. All listed parties received notice at least 10 days prior to the due date of *amicus curiae*'s intention to file this brief. Pursuant to Rule 37.6, *amicus curiae* affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation and submission.

the protections RLUIPA promises religious institutions. The Yeshiva's request for injunctive relief is now pending before the Third Circuit.

SUMMARY OF ARGUMENT

Religious institutions across the country that rely on RLUIPA to fight discriminatory localities do not compete on a level playing field. Lower courts have failed to interpret RLUIPA consistently. *Amicus curiae's* attempt to vindicate its rights illustrates the point. When the Yeshiva sued the Borough of Kingston, the U.S. District Court for the Middle District of Pennsylvania denied the Yeshiva's motion for preliminary injunctive relief on RLUIPA claims based on a number of erroneous standards that dangerously erode what it means to suffer a "substantial burden" or to be treated on equal terms. *Amicus* is seeking to correct these errors through a pending appeal in the Third Circuit.

Lower courts continue to interpret RLUIPA's Substantial Burden and Equal Terms Provisions differently. The courts do not even agree as to the first step of the analysis under either provision. This Court's intervention is sorely needed.

Courts apply a host of tests to determine whether a substantial burden exists, and most of the factors they consider bear no relation to RLUIPA's text or a common-sense understanding of the phrase. The Sixth Circuit considers four factors, one of which this Court specifically rejected in a prisoner rights' RLUIPA case, *Holt v. Hobbs*. Other courts have considered as many as sixteen factors. In light of this confusion, the Third Circuit—where

amicus curiae sued—chose not to identify a Substantial Burden test at all. These divergent tests leave RLUIPA’s Substantial Burden Provision’s protections dependent on where a religious institution is based—and they contradict RLUIPA’s plain text and central purpose.

To determine if a religious institution has a claim under the Equal Terms Provision, lower courts apply at least three tests. Two of these introduce elements that are not contained in the text. And these tests are so distinct that they cannot all be correct.

Because of the deep circuit splits, many religious institutions receive far less protection under RLUIPA than the Free Exercise Clause demands. But RLUIPA generally, and the Equal Terms Provision specifically, are designed to protect religious exercise to the fullest extent authorized by the Free Exercise Clause. RLUIPA’s text states that the burden of proof under RLUIPA and the Free Exercise Clause is the same. The Equal Terms Provision does not have any of the limitations contained in the Substantial Burden Provision, indicating that it is to be read broadly. Moreover, evidence from Congress confirms that the Equal Terms Provision served to remedy the violations of the Free Exercise Clause experienced by religious institutions.

It’s time for this Court to intervene. In recent years, the Court has confirmed that the Free Exercise Clause is to provide ample protections to religious institutions. But lower courts have not applied that reasoning to RLUIPA claims. This Court should grant certiorari to ensure that RLUIPA’s protections are—at a minimum—coextensive with the Free Exercise Clause and to adopt uniform standards that prevent fragmenting religious protections.

REASONS FOR GRANTING THE WRIT**I****Wyoming Valley Yeshiva’s Experience Exemplifies
the Continued Challenges Religious Institutions
Face in RLUIPA Land Use Cases.**

Like Petitioner, Wyoming Valley Yeshiva has suffered from lower courts’ unreasonable application of the Substantial Burden and Equal Terms Provisions of RLUIPA. Before officials from the Borough of Kingston, Pennsylvania, compelled the Yeshiva to sue in defense of its rights, the Yeshiva had been operating in the Borough for over four years. But, in 2023, the Borough amended its zoning ordinance to prevent the Yeshiva from operating unless it first received a likely impossible-to-obtain variance. When the Yeshiva did not apply for the newly-demanded variance, Borough officials forcibly closed its properties and pushed its adherents off premises on the eve of Rosh Hashanah. By targeting the Yeshiva and its adherents, Borough officials engaged in the exact sort of actions RLUIPA prohibits.

But when the Yeshiva sued, the district court found that the Borough did not violate RLUIPA’s Substantial Burden or Equal Terms Provisions. Instead, it stated that the Yeshiva’s adherents “can and have practiced their religion in alternative locations and may, but have not[,] applied for a variance to use the Properties as a school, dormitory, or house of worship.” *Anash, Inc. v. Borough of Kingston*, 3:24-cv-01955, 2024 WL 5294369, at *6 (M.D. Pa. 2024). It added that the Yeshiva did “not establish[] that [the Borough] treated religious groups

differently than secular groups or other similarly situated groups” because “secular group[s] would have to apply for a variance or special use permit to use a property in a manner other than that which is permitted under the zoned commercial zone.” *Id.* at *7.

In reaching its unnerving conclusion, the district court relied only on a non-precedential Third Circuit case without citing the section that even mentioned RLUIPA. In the cited case, the Third Circuit opined that it would apply rational basis review to a religious institution’s free speech and assembly claim and freedom of association claim. *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch (Lighthouse I)*, 100 F. App’x 70, 76 (3d Cir. 2004). Only in a separate section did the Third Circuit even refer to RLUIPA. And the district court never even relied on this section. Nor did the district court even cite to the precedential RLUIPA case of the same name. *See Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch (Lighthouse II)*, 510 F.3d 253, 264 (3d Cir. 2007).

Still, the district court grafted *Lighthouse I*’s free speech and assembly holding onto RLUIPA’s Substantial Burden and Equal Terms Provisions without explanation. Relying on that irrelevant rule, the district court concluded that a zoning code which completely excluded the Yeshiva from operating on its premises—or anywhere as of right—did not violate RLUIPA because the zoning code was designed to “promote, protect and facilitate . . . health, safety, . . . general welfare, coordinated and practical community development, proper density of population, . . . vehicle parking and loading space, [. . . and] schools.” *Anash*, 2024 WL 5294369, at 6 (quoting Kingston, Pa., Zoning Ordinance, art. 1, § 102 (2023)).

The district court concluded that this rationale satisfied rational basis review. But that holding—like the Supreme Court of Kentucky’s against Petitioner—turns RLUIPA’s protections into sand.

II

This Court’s Intervention is Needed to Resolve Clear Lower-Court Splits on the RLUIPA Standards for Establishing a Substantial Burden and a Denial of Equal Terms.

Lower courts’ interpretations of RLUIPA’s Substantial Burden and Equal Terms Provisions are inconsistent, making RLUIPA’s protections vary depending on a religious institution’s location—the very problem RLUIPA was supposed to resolve. Absent this Court’s intervention, courts will continue to apply inconsistent protections to religious institutions filing RLUIPA claims.

1

Substantial Burden Provision

Lower courts’ conflicts over the Substantial Burden Provision are so fundamental that courts cannot agree on the first step to take in determining whether a burden is substantial.

The Supreme Court of Kentucky’s test, which adopts Sixth Circuit precedent, varies considerably from other courts. That test considers whether a religious institution (1) “has a feasible alternative location from which it can carry on its mission,” (2) will “suffer substantial

delay, uncertainty, and expense,” and (3) has “imposed a substantial burden upon itself.” *Missionaries of St. John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400, 414 (Ky. 2025) (quoting *Livingston Christian Schs. v. Genoa Charter Twp.*, 858 F.3d 996 (6th Cir. 2017) (internal citations omitted)). Both the Sixth Circuit and the Kentucky Supreme Court have found that a religious institution’s mere awareness of an ordinance constitutes self-imposition of a harm. *Id.* at 415. The Sixth Circuit’s final factor considers whether there is evidence that “the municipality’s decisionmaking process was arbitrary, capricious, or discriminatory.” *Id.* But other courts do not consider these factors when deciding if an institution makes a substantial burden claim. The Second Circuit, for example, applies a coercion standard that does not relate to any of these factors. *Fortress Bible Church v. Feiner*, 694 F.3d 208, 218-19 (2d Cir. 2012).

The Supreme Court of Kentucky’s adopted test is also doubtful as a matter of law. The four factors the test considers are both atextual and at odds with this Court’s understanding of substantial burdens elsewhere in RLUIPA. In *Holt v. Hobbs*, this Court held that RLUIPA’s substantial burden inquiry for prisoners does not consider the very first factor applied by the Supreme Court of Kentucky. Courts do not ask “whether the claimant is able to engage in other forms of religious exercise.” 574 U.S. 352, 361 (2015). And this Court faulted the district court for “improperly” considering “the availability of alternative means of practicing religion.” *Id.* When a religious institution’s location furthers its religious mission, *Holt* confirms that courts do not consider alternative locations.

Like the Supreme Court of Kentucky's test, other circuits' tests are also textually unmoored. They too adopt a random array of factors that bear no relation to RLUIPA's text or a common-sense understanding of whether a burden is substantial. Pet. Brief at 25. RLUIPA's Substantial Burden Provision says nothing about the discriminatory nature of a burden, yet the First Circuit considers, and places great weight on, that factor. *See Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 96 (1st Cir. 2013). And nothing in the Provision nor this Court's precedent suggests that a burden's substantiality depends on whether the government's decision is arbitrary, but the Second, Seventh, and Ninth Circuits all consider that carefully. Pet. Brief at 19. The result is that RLUIPA's Substantial Burden Provision's protections vary widely depending on the jurisdiction in which a religious institution resides.

Facing this barrage of inquiries and factors, some lower courts have punted, deciding not to establish any Substantial Burden Provision test at all. In its principal RLUIPA land-use case, the Third Circuit took this route. *See Lighthouse II*, 510 F.3d at 264. The *Lighthouse* court nowhere addressed what a claimant must show to demonstrate a substantial burden. *See id.* It merely clarified that a claimant need not demonstrate a substantial burden to satisfy the Equal Terms Provision. *Id.* In the nearly two decades that have elapsed since that decision, the Third Circuit has still not defined a substantial burden in land use cases.² Courts' resistance to clarifying what

2. In a case involving the prisoner-rights Substantial Burden Provision, the Third Circuit noted that a substantial burden may be found where "a follower is forced to choose between following the precepts of his religion and forfeiting benefits otherwise

constitutes a substantial burden leaves the Substantial Burden Provision's promise to protect religious exercise unsatisfied nearly thirty years after its enactment.

* * *

Lower courts' inconsistent interpretations of the Substantial Burden Provision also erode the protections that the Provision's text supplies religious institutions. The differing interpretations provide some institutions with the robust protections the text envisions and leave others with no protection at all.

The extent of those protections depends largely on the state or circuit in which a religious organization resides. Had Petitioner been located a few miles west in the Seventh Circuit, it may have demonstrated a substantial burden under the discriminatory decisionmaking standard. *See Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 900 (7th Cir. 2005). And had the Yeshiva located itself in New York and filed suit there, it may have succeeded under the Second Circuit's "direct coercion" standard as forcibly closing a religious property is more coercive than other government actions the court has invalidated. *See Fortress*

generally available." *Mack v. Warden Loretto, FCI*, 839 F.3d 286, 304 (3d Cir. 2016) (quoting *Washington v. Klem*, 497 F.3d 272, 280 (3d Cir. 2007)). One court has applied the prisoner rights Substantial Burden Provision test to land use cases even though the *Washington* court stated that the land-use provision was "not applicable" to the case, highlighting courts' confusion in applying the Substantial Burden Provision. *See Allentown Victory Church v. City of Allentown, Pennsylvania*, No. 22-2817, 2024 WL 3439772, at *6 (3d Cir. July 17, 2024).

Bible Church v. Feiner, 694 F.3d 208, 218-19 (2d Cir. 2012) (affirming a district court’s finding of a substantial burden where a local zoning board rejected a church’s attempts to develop a larger building). But the whole point of RLUIPA is to provide religious institutions equal protection against municipalities nationwide.

In some cases, inconsistent substantial burden tests allow municipalities to game the system and evade providing religious institutions protection at all. In Michigan, where the state Supreme Court rightly “reject[ed] th[e] definition of substantial burden” the Sixth Circuit had adopted, *Greater Bible Way Temple of Jackson v. City of Jackson*, 733 N.W.2d 734, 750 n.23 (2007), *cert. denied*, 552 U.S. 1332 (2008), municipalities can and have removed cases filed in state court to avail themselves of the Sixth Circuit’s head-scratching interpretation of the Substantial Burden Provision. *See CBS Outdoor, Inc. v. City of Kentwood*, No. 1:09-CV-1016, 2010 WL 3942842, at *5 (W.D. Mich. Oct. 6, 2010) (discussing the city’s removal of a religious institution’s RLUIPA claim to the district court). These tactics leave religious institutions exposed to limited protections, even when state courts have attempted to hold municipalities accountable. But Congress clarified that RLUIPA’s provisions would apply uniformly to municipalities.

2

Equal Terms Provision

Just as lower courts inconsistently interpret the Substantial Burden Provision, so do they interpret the Equal Terms Provision. And as with the Substantial

Burden Provision, lower courts disagree on the first step of the Equal Terms analysis.

Federal circuit courts have adopted at least three Equal Terms Provision tests: the comparator test, the express distinction test, and the strict scrutiny test. But not all these tests capture the Provision's meaning, and state courts have modified these tests, introducing additional uncertainty.

On its face, the Equal Terms Provision prohibits a government from “impos[ing] or implement[ing] 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). As one judge has noted, “[t]he correct analysis [of RLUIPA] should begin and, to the extent possible, end with the language of the statute.” *Lighthouse II*, 510 F.3d at 283 (Jordan, J. dissenting in part). The Provision's language asks only one question—whether religious assemblies are treated any worse than non-religious institutions. *See* Sarah Keeton Campbell, RLUIPA's Equal Terms Provision, 58 Duke L.J. 1071, 1088 (2009) (explaining that the Equal Terms Provision only requires courts to determine whether a religious institution is treated differently from a non-religious institution).

Unfortunately, some of the competing tests add elements to the Equal Terms Provision. The comparator test requires a religious institution to identify a more favorably treated and similarly situated non-religious comparator. *Lighthouse II*, 510 F.3d at 264; *Tree of Life Christian Schs. v. Upper Arlington*, 905 F.3d 357, 368

(6th Cir. 2018), *cert. denied*, 587 U.S. 985 (2019).³ And the strict scrutiny test has incorporated a threshold question applying a similarly situated analysis when a religious institution brings an as-applied challenge.

Even courts that apply the same comparator test disagree about how to compare religious and non-religious institutions.

The Third Circuit asks whether a “secular comparator . . . is similarly situated as to the regulatory purpose” or the “*objectives* of the challenged regulation.” *Lighthouse II*, 510 F.3d at 264, 268 (emphasis in original). Under this test, there can be no violation of the Equal Terms Provision unless a municipality regulates religious and non-religious entities with different objectives in mind. As one judge has explained, there may almost never be an Equal Terms Provision violation under this view because “[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 v. Village of Hazel Crest*, 611 F.3d 367 (7th Cir. 2010).

The Sixth Circuit identifies a comparator by evaluating zoning criteria themselves, not the purposes underlying them. Rejecting the Third Circuit’s purposive language, the Sixth Circuit asks whether “the legitimate zoning criteria set forth in the municipal ordinance” situate a

3. As Petitioner explained, variants of this test are applied in the First, Second, Fourth, Seventh and Tenth Circuits, each using differing standards.

secular institution similarly to a religious one. *Tree of Life*, 905 F.3d at 368. Only when a municipality's criteria treat religious institutions and non-religious institutions similarly does the Sixth Circuit identify a comparator and apply the Equal Terms Provision.

To further complicate matters, the Kentucky Supreme Court has adopted a novel version of the comparator test. It adds that if zoning criteria restrict *any* secular institution in a similar way to the claimant, an Equal Terms Provision claim fails. *See Missionaries of St. John the Baptist, Inc.*, 727 S.W.3d at 416. Under this theory, an Equal Terms Provision claim might be defeated by prohibiting a single secular institution to the same degree as a religious institution.

Comparator courts' inability to determine how to identify a similarly situated non-religious organization or when treatment is equal demonstrates their need for this Court's assistance in evaluating the Equal Terms Provision.

The express distinction test adopted by the Second and Ninth Circuits asks a distinct set of questions. Under the approach, religious institutions need only point to an "express distinction" between religious and nonreligious institutions within the text of the ordinance. *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1171 (9th Cir. 2011). Once a distinction is identified, the burden shifts to the government to prove that any more favorably treated non-religious institution is not similarly situated. *Id.* Rather than emphasize the similarity between religious institutions and non-religious institutions, the express distinction test asks two

questions: (1) is there a distinction, and (2) if so, can the government bear its burden to overcome the distinction. But the differences in the questions asked by the express distinction test and comparator test illustrate that both cannot be right.

Adding more to the mix, the Eleventh Circuit offers yet a third test for identifying violations of the Equal Terms Provision. In contrast to the comparator and express distinction tests, the strict scrutiny test asks a different set of questions still. As the *Midrash Sephardi* court noted, the Eleventh Circuit first asks if a law is a neutral law of general applicability as interpreted by the Supreme Court's First Amendment jurisprudence. *Midrash Sephardi, Inc. v. City of Surfside*, 366 F.3d 1214, 1230-31 (2004). If it is, the law undergoes rational basis review. If it is not, it undergoes strict scrutiny. *Id.* at 1230-31. But the Eleventh Circuit has modified this straightforward test to conduct a comparator analysis when a claimant "bring[s] an as-applied Equal Terms challenge." *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cnty.*, 450 F.3d 1295, 1311 (11th Cir. 2006).

The volume of tests—and the differing questions they pose—reveals that courts are at a loss in trying to understand the Equal Terms Provision. Only this Court's intervention can resolve the conflict.

III**Due to These Splits, Many Religious Organizations Enjoy Far Less Protection Under RLUIPA Than the Free Exercise Clause Provides, Running Headlong Against RLUIPA's Equal Terms Provision.**

Many lower courts read RLUIPA's Equal Terms Provision to provide religious institutions far less protection than the Free Exercise Clause allows. But this cuts against the Equal Terms Provision's plain text, structure, and purpose. Each demonstrates that Congress adopted the Equal Terms Provision to provide as much, if not more, protection to religious organizations as the Free Exercise Clause affords. To effectuate RLUIPA's plain command, this Court should grant certiorari.

a**RLUIPA Requires that Courts Afford Religious Institutions at Least as Much Protection as the Free Exercise Clause Affords.**

RLUIPA's text demonstrates that its protections are tied to the Free Exercise Clause. The statute explains that "[i]f a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim." 42 U.S.C. § 2000cc-2(b). In other words, the text directly aligns RLUIPA's burden of proof to that under the Free Exercise Clause. And there is no textual evidence that RLUIPA's protections are meant to be any less than that offered under the Free Exercise Clause. And this

Court has described the Free Exercise Clause standard using language that closely follows RLUIPA's Equal Terms Provision. It recently explained that “government regulations are not neutral and generally applicable . . . whenever they treat any comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021).

RLUIPA's structure also demonstrates that the Equal Terms Provision provides at least as much protection as the Free Exercise Clause. The Equal Terms Provision—unlike the Substantial Burden Provision—lacks a jurisdictional limitation and burden requirement that would narrow its scope as compared to the Free Exercise Clause. That Provision also lacks a compelling interest exception, suggesting its protections may extend further than the Free Exercise Clause's strict scrutiny analysis. At a minimum, the Equal Terms Provision's lack of limitations reflects its broad purpose to “rest on claims of religious equality, not privilege.” Sarah Keeton Campbell, *RLUIPA's Equal Terms Provision*, 58 Duke L.J. at 1084 (internal citations omitted). In other words, the Equal Terms Provision's “plain terms . . . appear to completely prohibit unequal treatment.” *Id.*

RLUIPA's history confirms the unmistakable connection between RLUIPA's Equal Terms Provision and the Free Exercise Clause. Congress specifically adopted the strict prohibition outlined in the Equal Terms Provision to “directly address some of the more egregious forms of land use regulation and provide more precise standards than the substantial burden and compelling interest tests.” 146 Cong. Rec. 19,123 (2000) (statement of Rep. Canady). To accomplish this goal, RLUIPA

“codif[ied] parts of the Supreme Court’s constitutional tests as applied to land use regulation.” *Id.*

Before enacting RLUIPA, Congress investigated and discovered the extent to which religious institutions were treated less favorably than similar secular institutions in land use contexts. Congress held several hearings to review examples of localities’ intentional religious discrimination.⁴ In hearing after hearing, Congress learned of unacceptable religious discrimination through zoning laws. One local zoning law banned churches from commercial zones with few exceptions while making “extensive provision for places of secular assembly, including public and private schools, government buildings, public and private clubs, recreational centers, movie theaters, live theaters, clubs for games with spectator seating, and many others.” H.R. Rep. No. 106-219 at 110 (statement of Douglas Laycock, Prof., Associate Dean for Research, Univ. of Tex. L. Sch.). And a Brigham Young University empirical study indicated that nonmainstream religious groups were particularly susceptible to discrimination through local zoning laws because smaller religious groups comprised a disproportionately high percentage of all zoning litigants. *See id.* at 20–21.

Based on these findings, Congress decided that RLUIPA needed to serve as a forceful response. The House Committee of the Judiciary’s independent

4. These hearings primarily involved RLUIPA’s predecessor bill, the Religious Liberty Protection Act (“RLPA”). RLUIPA was “patterned” after RLPA. 146 Cong. Rec. 19,123 (2000) (statement of Rep. Canady). The Equal Terms Provision directly corresponds to RLPA’s 3(b)(1)(B), and RLUIPA is not otherwise accompanied by any recorded legislative history.

examination revealed that local zoning boards often prohibited religious exercise protected by the Free Exercise Clause. The Committee detailed many examples of municipalities' (1) refusal to allow religious congregants to meet at a house for worship, (2) coercion of churches to comply with zoning ordinances that were otherwise unenforced only to deny their zoning applications, and (3) outright discrimination against religious organizations. The Committee found that these sorts of regulations prohibiting Free Exercise were not "neutral and generally applicable rules" sanctioned by this Court's Free Exercise jurisprudence. H.R. Rep. No. 106-219, at 24.

But at times, the pervasive discrimination in land use cases indicated that existing constitutional remedies may not go far enough. *See Sarah Keeton Campbell, RLUIPA's Equal Terms Provision*, 58 Duke L.J. at 1099. In zoning, Congress recognized it needed to address overt forms of religious discrimination as well as more subtle ones. *See id.* at 1082. For this reason, the Committee envisioned broad legislation would serve "as a means of remedying [] abuses of the First Amendment right to free exercise." H.R. Rep. No. 106-219, at 23. Congress considered that the scope of harm required religious institutions be treated equal to other institutions. For only by that command did Congress think it could diminish the harm religious institutions experience. *See Sarah Keeton Campbell, RLUIPA's Equal Terms Provision*, 58 Duke L.J. at 1093-95.

Lower Courts’ Treatment of RLUIPA’s Equal Terms Provision has Fallen Short of This Court’s Free Exercise Jurisprudence.

Since Congress’s enactment of RLUIPA, this Court has reaffirmed and restored the protections granted by the Free Exercise Clause. In the last decade, this Court has explained that laws are not neutral or generally applicable when they demonstrate “official expressions of hostility” to religion, undermine a government’s asserted interest by prohibiting religious conduct but permitting secular conduct, or provide “a mechanism for individualized exemptions.” In *Kennedy v. Bremerton School District*, the Court “made explicit what was implicit in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*”:⁵ the government does not comply with the Free Exercise Clause when “‘official expressions of hostility’ to religion accompany laws or policies burdening religious exercise.” 597 U.S. 507, 525, n.1 (2022) (quoting *Masterpiece Cakeshop v. Colorado Civil Rights Comm’n*, 584 U.S. 617, 639 (2018)). And when a government policy “prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way” or provides “mechanisms for individualized exemptions,” those policies only comply with the Free Exercise Clause if they survive strict scrutiny. *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021). Accordingly, the Free Exercise Clause provides individuals and religious organizations with expansive protections.

5. Stephanie H. Barclay, *The Religion Clauses after Kennedy v. Bremerton School District*, 108 Iowa L. Rev. 2097, 2111 (2023)

RLUIPA's clear text and history demand that, at the very least, the very same constitutional protections carry over to the Equal Terms Provision. But too many courts have failed to honor the promise that RLUIPA was enacted to fulfill. *See supra* Sections II.1-2 (explaining how courts have failed to provide protections to religious organizations).

Had the Supreme Court of Kentucky applied an Equal Terms Provision standard according to Free Exercise Clause jurisprudence, Petitioner could have demonstrated, at a minimum, that the zoning code provided "mechanisms for individualized exemptions" and therefore was subject to strict scrutiny. And had the Middle District of Pennsylvania District Court in Wyoming Valley Yeshiva's case applied a test for unequal treatment consistent with this Court's Free Exercise jurisprudence, the discriminatory impact of Kingston's ordinances would not have been summarily dismissed with such little explanation.

CONCLUSION

The Court should grant a writ of certiorari and reverse the judgment.

Respectfully submitted,

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