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 WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

BRIEF OF THE AMERICAN PLANNING ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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STATEMENT OF INTEREST OF *AMICUS*

The American Planning Association (APA) is a non-profit, public-interest research organization founded in 1978 to advance the art and science of land-use, economic, and social planning and development at the local, regional, state, and national levels. Based in Chicago, Illinois, and Washington, D.C., APA and its professional institute, the American Institute of Certified Planners (AICP), represent more than 39,000 practicing planners, elected officials, and citizens in 47 state or regional chapters. APA members work in both the public and private sectors, on behalf of government agencies and private landowners and developers, to formulate and implement planning, zoning, and other development regulations. APA has long educated the nation's planning professionals, and citizen planners who serve on local boards and commissions, on the planning and legal principles that underlie land-use planning and regulation through publications and training programs. APA advocates for planners' interests by filing *amicus curiae* briefs on important land-use law questions in state and federal courts across the country. As the professionals and citizens responsible for preparing, reviewing, and, sometimes, approving local plans, regulations, and zoning applications for religious land uses, APA members have a uniquely important interest in the case at bar, and APA therefore respectfully submits this brief of *amicus curiae*.[1]

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1. Pursuant to Supreme Court Rule 37.6, APA affirms that no counsel for a party authored this brief in whole or in part, and that no such counsel or party, other than APA or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Houses of worship are essential parts of American civic life. They frequently anchor neighborhoods'—and, sometimes, entire cities'—physical design. Yet they are also, in many cases, intensive land uses. Land-use planners sit at the intersection of the important interests—in religious liberty, social and cultural cohesion and growth, public safety, infrastructure adequacy, and neighborhood harmony—at stake in siting, developing, and expanding religious land uses. Planners serve local governments, religious organizations, and other stakeholders, preparing local plans for growth and development, drafting zoning and other land-use regulations, and processing individual real estate development applications. This Court's decision in this Religious Land Uses and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc–2000cc-5 (RLUIPA), case is therefore of critical importance to land-use planners' day-to-day practice—and to every American community.

Land-use planning and zoning serve important and compelling interests of the public, property owners, and religious institutions themselves. Planning and zoning advance public safety by ensuring adequate access for emergency services providers and by requiring that buildings and building sites meet safety standards. They direct growth and development to places where street and utility infrastructure can serve it. They protect the aesthetic quality of neighborhoods. They also establish procedures and create forums for stakeholder engagement, which minimize and resolve community conflict. By doing so, planning and zoning avert nuisance disputes, protect private property rights and values, and

advance the social and economic development of American communities.

Since RLUIPA's passage twenty-six years ago, land-use planners, like religious institutions, states, courts, and others, have been confused as to what constitutes a "substantial burden." The federal appellate courts' varying interpretations have only compounded that confusion. The Court's decision here will therefore offer much-needed guidance. Here, the Court can establish a workable standard that affords religious liberty protection and avoids religious discrimination while leaving room for communities to plan and regulate for the real-life impacts of religious institutions. Doing so will ensure that land-use planners and communities can develop in ways that are safe, rational, fiscally sound, and protective of the private property interests of all stakeholders. Nonetheless, the unique posture of this case, with no government party, raises justiciability questions and merits a careful approach to resolving these questions. APA therefore files this brief in support of neither party in the interest of (1) presenting a public-interest perspective that is not otherwise represented by the parties to this case; (2) aiding the Court in better understanding how local land-use planning, zoning, and approval processes offer a forum for all stakeholders, including religious institutions themselves, to evaluate and address the impacts of religious land uses; and (3) requesting clear legal guidance for land-use planners responsible for representing localities and landowners in cases involving religious land uses.

LEGAL ARGUMENT

A. Planning and Zoning for Religious Land Uses Serves Important—Even Compelling—Public Purposes and Balances Community Interests.

1. Land-Use Planning and Zoning Advance Compelling and Important Governmental Interests.

For over one hundred years, this Court has recognized zoning and land-use regulation's important role in the growth and management of American communities. *See Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 390 (1926); *Vill. of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974). Zoning and building regulations simultaneously vindicate private property rights and public interests. They protect landowners from nuisances and against incompatibility among land uses. *Euclid*, 272 U.S. at 388. They advance public health and safety by ensuring buildings' safety, adequacy of light and air, and accessibility for emergency services providers. *Id.* at 389. They pace growth to ensure that public infrastructure and facilities can accommodate it. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 605 (2013). They promote fiscal responsibility by directing development to areas with existing infrastructure. *See, e.g.*, *Schenck v. City of Hudson*, 114 F.3d 590, 594–95 (6th Cir. 1997). They protect important aesthetic natural, cultural, and historic resources. *E.g.*, *City of Austin v. Reagan Nat'l Adver., Inc.*, 596 U.S. 61, 75 (2022); *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 107–08 (1978). And they provide conditions for real estate and business investment by setting landowners' expectations, averting unnecessary disputes. *See, e.g.*,

Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1034–35 (1992) (Kennedy, J., concurring) (discussing role of land-use regulation in creating conditions for investment).

Zoning and building laws achieve these ends by establishing, within geographic districts, use, development, and performance standards for properties. *See, e.g.*, *Euclid*, 272 U.S. at 380. They also provide procedures for reviewing new development. Uses that present few offsite impacts, or even positive externalities, like a single-family dwelling or a park, usually require approval of only building or site plans. *See* PATRICIA E. SALKIN, AMERICAN LAW OF ZONING § 13.2 (5th ed. 2026). These applications are often disposed of administratively, on a non-discretionary basis, by professional land-use planners.

Uses that may generate more impacts to public services or surrounding properties—including increases in vehicle or pedestrian traffic, noise, heightened public utility usage, additional demands on emergency services, or environmental effects on floodplains or wetlands—are typically approved through more discretionary proceedings. These could include special or conditional use permits, variances, or amendments to the zoning ordinance or map itself. *Id.* Such proceedings usually require the decision-maker—be it a city council, planning commission, board of adjustment, or other body—to apply the facts of a given application to a set of legal criteria outlined in the ordinance; in practice, they afford wide latitude for applicants and localities to shape proposals and soften ordinance requirements to gain projects' approval. *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 738–39 (1997).

In response to rapid urbanization and industrialization, zoning spread quickly throughout the United States in the early Twentieth Century. MICHAEL ALLAN WOLF, THE ZONING OF AMERICA: *EUCLID V. AMBLER* 29 (2008). Thus, properties developed before the adoption of zoning do not always conform to subsequently adopted zoning laws. These nonconforming uses and structures are typically allowed to continue, so long as they do not expand. SALKIN, *supra*, § 12:1. Nevertheless, localities can and do accommodate expansions or changes to these properties pursuant to procedures contained in the zoning code.

Professional and citizen land-use planners are involved at every step of the zoning process. State enabling statutes authorize local governments to zone,[2] and typically require communities to plan as a necessary—or at least advisory—predicate to adopting zoning. Charles M. Haar, *"In Accordance With A Comprehensive Plan,"* 68 HARV. L. REV. 1154, 1155–56 (1955) (citing U.S. DEP'T OF COM., A STANDARD STATE ZONING ENABLING ACT § 3 (1926)). Planners are professionally trained to conduct broad public engagement to gather community stakeholders' needs and goals, and author plans reflecting this input. AM. PLAN. ASS'N, PLANNING FOR EQUITY POLICY GUIDE 9 (2019), *available at* https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/Planning-for-Equity-Policy-Guide-rev.pdf. Land-use planners also author zoning codes and ordinances, in consultation with community members and regulated parties. Professional planners administer zoning and building laws by working

2. Localities' zoning and building authority generally exists pursuant to state enabling legislation. *See* AMERICAN LAW OF ZONING § 2:9.

with applicants and neighboring landowners, reviewing development applications, and recommending action on those applications to local boards and commissions. And citizen planners serving on zoning decision-making boards have authority to approve or deny applications.

2. Planning and Zoning For Religious Land-Uses Protects The Health, Safety, And Welfare Interests Of Religious Institutions, Private Landowners, And Entire Communities.

This case, regarding a religious use's proposed modification, presents an altogether common, if challenging, land-use planning scenario. Before zoning—and widespread vehicle ownership and suburbanization—houses of worship frequently located within residential neighborhoods, affording congregants easy walkability from their homes. *See* Craig S. Lewis, *Authentic Urbanism and the Neighborhood Church*, 18 SACRED ARCHITECTURE (Fall 2010), https://www.sacredarchitecture.org/articles/authentic_urbanism_and_the_neighborhood_church. Yet zoning's subsequent adoption often rendered these neighborhood religious uses nonconforming. Thus, as older neighborhood religious uses evolve and expand, they sometimes present thorny planning challenges relating to vehicle traffic generation, adequacy of utility infrastructure, emergency services access, and aesthetic impact. Such cases require land-use planners to balance, on one hand, religious congregations' freedom of worship and important social benefits to the community, and, on the other, the private property rights, safety, and welfare of surrounding landowners, other community stakeholders, and religious congregations themselves.

Park Hills's zoning ordinance addressed this problem by requiring new or expanded religious uses—along with other assembly and institutional uses—in residential districts to locate adjacent to arterial streets.[3] Pet. App., at 74a–75a. This requirement logically ensures adequate infrastructure and public safety. For instance, a neighborhood church's, synagogue's, or mosque's expansion might generate additional demand for on-street parking, heavier weekend traffic volumes when children might be home and playing outside,[4] or present challenges if fire, police, or ambulance services must navigate through local, residential streets to attend to an emergency. Am. Soc'y of Plan. Offs., Churches and Planning Controls 14 (Jan. 1958), *available at* https://planning-org-uploaded-media.s3.amazonaws.com/legacy_resources/pas/at60/pdf/report106.pdf.

Park Hills's regulatory choice also accounts for changes in religious institutions' and other assembly uses' physical needs since the advent of zoning. Whereas older religious institutions were often purpose-built, smaller, and neighborhood-serving—like an early twentieth-century urban Catholic church—modern congregations may draw congregants from broader suburban regions and often require more space than neighborhood sites

3. Most localities classify streets according to their traffic-carrying capacity, with arterial streets generally being major streets that often have commercial uses located along them, while local or collector streets are minor and typically serve lower traffic-generating uses such as residences.

4. As a planning matter, religious uses also tend to generate traffic and activity at times—such as on weekends or evenings—when other uses generate less traffic.

can offer. Contemporary religious congregations may also locate in storefronts, warehouses, or other buildings otherwise intended for non-religious uses. *See* Lewis, *supra*. And they may include a variety of uses, from worship spaces to community centers, homeless shelters, or even coffee shops. Harriet Torry, *Churches Are a Rare Construction Bright Spot*, Wall St. J. (Aug. 27, 2025), https://www.wsj.com/us-news/church-construction-booming-005f0c00.

Because the specific planning needs and considerations of one community may not apply equally elsewhere, and because planning and zoning practices continue to evolve, communities can and do change their regulatory approaches. Since this dispute originated, Park Hills itself has rewritten its zoning ordinance, and the community now allows religious uses along local streets, contingent upon a traffic study demonstrating that the use will not overburden the street's capacity; larger religious uses must still be located along collector or arterial streets. Park Hills, Ky., Zoning Ordinance § 4.05.D.1 (2026). Code updates such as these are evidence of land-use planners' ongoing efforts to balance the safety, compatibility, predictability, and other needs of various community stakeholders.

Moreover, local planning and zoning processes allow religious institutions to obtain regulatory relief—and for those institutions, localities, and the public to understand and address the prospective impacts of new and expanded development. While many zoning codes permit houses of worship as-of-right in areas zoned for residential use, others allow them to apply for a special use permit, conditional use permit, or special exception to locate in these areas. Furthermore, if a religious use's

footprint would violate height, setback (from the street), or side-yard (from neighboring parcels) restrictions, zoning ordinances usually provide for area and height variances if the landowner can show practical difficulties in complying with the existing zoning restrictions. Such procedures and others afford planners and local governments opportunities to assess matters such as local roadway capacity to handle the traffic a new or expanded religious use might generate; whether existing water and wastewater utilities can serve the proposed development or if expansions of these utilities are necessary; or the availability of emergency access routes to the proposed house of worship and its effect on those routes to surrounding uses.[5] *See, e.g.*, SALKIN, *supra*, § 14:9 (describing considerations for a special use permit).

In this case, the Park Hills Board of Adjustment approved a conditional use permit and setback variances, enabling the Petitioner's construction of its proposed project. Pet. App., at 8a. These flexible zoning devices frequently accommodate landowners whose development plans do not meet rigid height, area, and use controls. *See, e.g.*, DANIEL R. MANDELKER & MICHAEL ALLAN WOLF, LAND USE LAW § 6.37 (6th ed. 2026) ("The drafters of the Standard Zoning Act clearly contemplated a zoning process in which the uses designated by the zoning ordinance were permitted 'as of right,' but they also authorized an

5. Many zoning codes provide land-use planners and religious institutions with multiple procedural paths available to gain approval. For instance, an institution could apply for a variance or conditional use or could also seek a rezoning of the subject property. However, due to particular limitations in Park Hills's zoning ordinance, it does not appear that multiple paths were available in this instance.

administrative board to grant variances from the zoning ordinance in cases of hardship, as defined in the Act, and to grant special exceptions authorized by provisions in the zoning ordinance."); SALKIN, *supra*, §§ 13:1 ("The variance was developed early in the history of zoning out of a recognition that exceptions should be available from the strict application of zoning laws when necessary to correct maladjustments and to prevent inequitable or confiscatory effects."), 14:1 ("The terms 'special use permit,' 'special exception,' 'development permit,' and 'conditional use permit' are often used interchangeably. . . . [T]he essential mechanism involves the classification of uses as provisionally permitted, subject to criteria and standards enumerated in the ordinance, and pending review and approval on a case-by-case basis.").

Other flexible devices could include floating zones (pre-existing zoning classifications that are not tied to one geographic area until a landowner makes a development proposal), incentive zoning (under which landowners are allowed to develop above or beyond the zoning envelope in exchange for providing public goods), and planned unit developments (which allow for a variety of uses and structures in the same neighborhood). MANDELKER & WOLF, *supra*, §§ 6.58, 7.26, 9.25. The availability of these and other flexible zoning devices means that, as is the case here, local governments and their land-use planners provide ample—and sometimes multiple—avenues for religious congregations' proposals and are well-positioned to address their unique needs within the frameworks of local plans and regulations.

Professional land-use planners typically facilitate such flexible zoning devices. Importantly, they have a

special obligation to avoid religious discrimination and deal evenhandedly with all parties, especially the religious institution. The AICP Code of Ethics and Professional Conduct (AICP Code), governing certified planners, both prohibits discrimination of any kind and directs planners to "[r]ecognize and work to mitigate the impacts of existing plans and procedures that result in patterns of discrimination" while also pursuing the public interest, treating process participants fairly, and educating the public on planning issues. AICP Code §§ A.1.c, A.2.a, A.3.c, A.4.a, B, *available at* https://www.planning.org/ethics/ethicscode/.

Official APA policy further directs land-use planners to "eliminate those zoning and design regulations that disproportionately burden . . . persons of different national origins or religious faiths" and to "ensure that needed health, educational, *religious*, and civic facilities or services are permitted and simple to establish in or near all residential areas . . . ." Am. Plan. Ass'n, Equity in Zoning Policy Guide 48 (2022), *available at* https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/Equity-in-Zoning-Policy-Guidev2.pdf (emphasis added). As such, zoning processes offer opportunities for planners to "soften the strictures of [] general regulations" and advance religious inclusion, *Suitum*, 520 U.S. at 738, while simultaneously ensuring that a religious institution can safely and harmoniously locate within a community. Land-use planners should therefore be able to perform their duties without the threat of potentially costly RLUIPA lawsuits (especially when brought by neighborhood opposition, as in the instant case) that may survive summary judgment only because terms such as "substantial burden" are unclear.

B. Local Governments and Land-Use Planners Need Clear Guidance From the Court for Determining What Constitutes a "Substantial Burden," and That Guidance Must Account for Sound Planning and Zoning.

1. Except Where Religious Bias Motivates Land-Use Decisions, Courts Should Continue to Defer to Reasonable Exercises of the Police Power.

In *Euclid*, Justice Sutherland observed that "the village, though physically a suburb of Cleveland, is politically a separate municipality, with powers of its own and authority to govern itself as it sees fit within the limits of the organic law of its creation and the State and Federal Constitutions." 272 U.S. at 389. Sutherland—joined by Chief Justice Taft and Associate Justices Brandeis, Holmes, and Sanford—reminds us that the village's zoning ordinance was enacted by "[i]ts governing authorities, presumably representing a majority of its inhabitants and voicing their will." *Id.*

This deference is, of course, subject to limitations. While reasonable minds could differ as to the wisdom of height, area, and use controls, because Ambler Realty's lawsuit was a facial challenge, the *Euclid* Court could easily conclude that "the reasons [for the land use regulatory scheme] are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." *Id.* at 396. Since *Euclid*, as long as legislative judgments

as to zoning classifications are "fairly debatable," courts have generally deferred to them. *Id.* at 388.

The Court has cited *Euclid* favorably in several recent decisions, including in Justice Barrett's opinion for a unanimous Court in *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024). The *Sheetz* Court cited *Euclid* for the proposition that "States have substantial authority to regulate land use." However, Justice Barrett cautioned that there are limitations to that authority, as "the right to compensation is triggered if [States] 'physically appropriat[e]' property or otherwise interfere with the owner's right to exclude others from it. That sort of intrusion on property rights is a *per se* taking." *Id.* at 274 (quoting *Cedar Point Nursery* v. *Hassid*, 594 U.S. 139, 149-152 (2021)). Similarly, the Court has questioned that same "substantial authority to regulate land use" in cases involving irrational prejudice against those with intellectual disabilities, *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 446 (1985) ("The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational."), narrow definitions of the word "family," *Moore v. City of E. Cleveland*, 431 U.S. 494, 499 (1977) (plurality opinion) ("[W]hen the government intrudes on choices concerning family living arrangements, this Court must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation."), and alleged racial discrimination, *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977) ("[R]acial discrimination is not just another competing consideration. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this

judicial deference is no longer justified."). Even where generous deference is inappropriate, land-use planners and local governments are, and should be, afforded room to employ the ideal package of zoning tools to protect community interests such as traffic, public safety, clean air and water, and police and fire protection.

The special protections that RLUIPA affords religious institutions align with these other situations in which the Court has limited deference. However, just as a landowner must do more than simply allege discrimination or a taking to prevail, RLUIPA claimants must clear important thresholds before receiving strict judicial scrutiny. In the instant case, that threshold is the requirement that the religious institution show that a "substantial burden" has been placed on the religious exercise. If, as in most RLUIPA challenges, that threshold is not met, traditional, Euclidean deference to states and localities exercising their police power obligation to protect the health, safety, morals, and general welfare is, and should be, the Court's posture. In defining what constitutes a "substantial burden," the Court must not convert RLUIPA into a cudgel that frustrates non-discriminatory efforts by land-use planners and local officials to require religious landowners to offset community impacts involving public safety, traffic, utility capacity, and other matters within the traditional purview of the police power.

2. This Case Presents an Opportunity for the Court to Articulate a Workable Test for Defining "Substantial Burden" in RLUIPA Land-Use Disputes.

a. Prevailing Case Law Sends Mixed and Confusing Messages to State and Local Officials.

The confusing nature of RLUIPA's "substantial burden" provision is illustrated by a recent decision of the U.S. Court of Appeals for the Third Circuit involving a case with facts similar to those in the instant case. In July 2026, the Third Circuit, for the first time, filled in the statutory gap regarding the meaning of "substantial burden." *See Anash, Inc. v. Borough of Kingston*, 184 F.4th 214 (3d Cir. 2026). In 2019, an Orthodox rabbi purchased property in a commercial (C-2) zone in Kingston, Pennsylvania, using "the house for religious group living for about ten Orthodox Jewish young men who were his students and members of his congregation and who used the property for religious purposes such as group prayer." *Id.* at 225. Two years later, the rabbi bought a second parcel, also zoned C-2, for use "for his rabbinical office, and also as a yeshiva — a space devoted to prayer, religious study, and religious instruction." *Id.*

At the time these two parcels were purchased and used for religious purposes, Kingston allowed less intensive, that is, residential, uses in commercial zones. In 2023, however, Kingston adopted a new comprehensive zoning ordinance, which provided that single-family dwellings, rooming houses, and public and private schools "were not permitted in C-2 Districts as of right but rather were

allowed only as conditional uses." *Id.* at 226. As a result, the rabbi found that his yeshiva and dormitory were no longer in compliance with the zoning ordinance.

When, as in the instant case, a neighbor complained about the religious use, the rabbi's attempts to continue to use the properties met with official resistance, including inspections of his properties for zoning and building code violations. When the searches were complete, "Kingston condemned the Pierce Street properties through no-occupancy orders posted on the front doors of both properties." *Id.* at 229. Ultimately, the rabbi, who was faced with daily fines of up to $500, filed a RLUIPA-based complaint in federal court, which denied his motion for preliminary injunctive relief. A divided Third Circuit panel reversed and remanded, based in large part on the majority's determination that "there is a likelihood that Rabbi Hellinger and his congregation will succeed on the merits of their substantial-burden claim." *Id.* at 246.

The court split over the proper test for determining "substantial burden." Judge Phipps, joined by Judge Mascott, provided a string citation, which illustrates the range of conflicting approaches used by the various courts of appeals:

> Our sister circuits have taken a variety of approaches to the substantial-burden standard in the context of land use regulations. *See, e.g., Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 94–97 (1st Cir. 2013) (using a multi-factor functional approach to assess a substantial burden); *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338,

349–52 (2d Cir. 2007) (considering multiple factors in connection with the substantial-burden standard, including the feasibility of alternative locations); *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 556 (4th Cir. 2013) (explaining that the substantial-burden standard is satisfied by proof that a "government regulation puts substantial pressure on [a plaintiff] to modify its behavior"); *Livingston Christian Schs. v. Genoa Charter Twp.*, 858 F.3d 996, 1003–05 (6th Cir. 2017) (requiring "some degree of severity" for a burden "to be considered 'substantial'" and also considering multiple other factors); *C.L. for Urb. Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003) (requiring that the land use regulation bear "a direct, primary, and fundamental responsibility for rendering religious exercise—including the use of real property for the purpose thereof within the regulated jurisdiction generally—effectively impracticable" for there to be a substantial burden); *Marianist Province of U.S. v. City of Kirkwood*, 944 F.3d 996, 1001 (8th Cir. 2019) (holding that a burden was not substantial when there were "feasible alternative locations for religious exercise"); *Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006) ("[F]or a land use regulation to impose a 'substantial burden,' it must be 'oppressive' to a 'significantly great' extent." (alteration in original) (quoting *S.J. Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004))); *Grace United Methodist*

> *Church v. City of Cheyenne*, 451 F.3d 643, 660 n.4, 661–63 (10th Cir. 2006) (holding that to be substantial, a burden did not have to relate to "fundamental" religious activities); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004) (explaining that to be substantial, a burden "must place more than an inconvenience on religious exercise," and rather must involve "significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly").

Id. at 236 n.17.[6]

After noting that Third Circuit precedent "recognized the separateness of the two substantial-burden protections—those for institutionalized persons and those for land use—and expressly stated that the land-use protections were 'not applicable' in the institutionalized person context," *id.* at 239 (quoting *Washington v. Klem*, 497 F.3d 272, 277 (3d Cir. 2007)), Judge Phipps asserted that "there is a strong textual basis for reading RLUIPA's substantial-burden protections for religious land use more expansively than its substantial-burden protections for institutionalized persons." *Id.* at 239. Therefore, the *Anash* court presented three land use-related "scenarios" that would form that circuit's approach to determining when

6. Compare this wide range of statutory interpretations with the unanimity among numbered circuits construing the Fair Housing Act, as noted in *Tex. Dep't of Hous. and Cmty, Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535–36 (2015) ("By [1988], all nine Courts of Appeals to have addressed the question had concluded the Fair Housing Act encompassed disparate-impact claims.").

the government had crossed the "substantial burden" threshold:

> First, a land use regulation imposes a substantial burden on religious exercise if it restricts *access* to real property that is otherwise available for the proposed exercise of religion. Second, a land use regulation — even one of general applicability — imposes a substantial burden if it limits the *use* of real property that is otherwise available for the proposed exercise of religion so as to prevent the proposed exercise of religion on the property. Third, even when the imposition or implementation of a land use regulation does not directly impede religious exercise, the land use regulation may still impose a substantial burden if it has a *significant adverse effect* on real property that is used or otherwise available for the proposed exercise of religion.

Id. at 239–40. Because the *Anash* majority found that the rabbi's situation matched all three scenarios, it had no problem concluding that the rabbi "and his congregation have shown a likelihood that they will prove a *prima facie* case for their substantial-burden claim." *Id.* at 240.

In dissent, Judge Restrepo employed a different "substantial burden" test and called out his colleagues for "rel[ying] on RLUIPA's separate provisions governing prison inmates despite recognizing that the substantial burden analysis in the prison context is 'not applicable' to RLUIPA land use cases." *Id.* at 250 (Restrepo, J., dissenting). Instead, Judge Restrepo would have the

Third Circuit "follow the approach and guidance of our sister circuits" by "consider[ing] two factors that are particularly apposite here: (1) whether the plaintiff had a reasonable expectation of religious land use or whether the plaintiff's burden was self-imposed;[7] and (2) whether the plaintiff had ready alternatives." *Id.* at 251 (Restrepo, J., dissenting). These, of course, are the same two factors, both requiring the court to consider the religious institution's motivations and expectations, that the Supreme Court of Kentucky highlighted in the instant litigation. Pet. App., at 22a–25a. Because the rabbi's quandary was self-imposed and because alternative sites were available for the yeshiva and dormitory, Judge Restrepo believed "that Appellants are unlikely to succeed on their RLUIPA substantial burden claim." *Anash*, 184 F.4th at 252 (Restrepo, J., dissenting).

3. The Court Should Avoid Putting Itself and Lower Federal Courts in the Position of Serving as Super Zoning Boards of Appeals

The contrast between the two opinions in *Anash* is instructive. It reveals how outcome-determinative the

7. The Court has ruled that such preexisting knowledge is not necessarily fatal to a regulatory takings claim. *See Palazzolo v. Rhode Island*, 533 U.S. 606, 628 (2001) ("A blanket rule that purchasers with notice have no compensation right when a claim becomes ripe is too blunt an instrument to accord with the duty to compensate for what is taken."). A similar question arises in the zoning variance context "when self-created hardship is claimed because the landowner purchased a lot with knowledge of the zoning restrictions. . . . The cases that reject the rule that purchase with knowledge of existing zoning is self-created hardship are well-reasoned." MANDELKER & WOLF, § 6.47.

"substantial burden" test is and how current confusion over its meaning can chill land-use planning decisions that are wise, sensitive to the needs of the public, and respectful of religious exercise.

Here, APA does not champion one circuit's test over the others or propose an ideal test for the Court. Still, from the perspective of land-use planning professionals, a clear-cut and easy-to-apply test holds several advantages over a multi-factor balancing test,[8] particularly if one or more of the key factors puts federal judges in the role of a "super" zoning board of appeals or tribunal. *See Schenck*, 114 F.3d at 594; *Const. Ind. Ass'n v. City of Petaluma*, 522 F.2d 897, 906 (9th Cir. 1975) ("Being neither a super legislature nor a zoning board of appeal, a federal court is without authority to weigh and reappraise the factors considered or ignored by the legislative body in passing the challenged zoning regulation."). Should the decision to allow a religious use come down to a location-specific factor such as the availability of alternate sites, judges with limited to no experience in land-use planning and little familiarity with the relevant municipality would find themselves in that uncomfortable position.

Nevertheless, in articulating a clear test, the Court must consider the real-world land-use issues, and the

8. *See* Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175 (1989). *See also* Rachel E. Barkow, *In Memoriam: Justice Antonin Scalia*, 130 Harv. L. Rev. 9, 11 (2016) ("One of the reasons Justice Scalia disliked balancing tests so much was precisely because it is almost impossible to predict how a case should come out using one. Who is to say who is right and wrong when the 'test' is to take everything into account and come out with an answer?").

need to balance on-the-ground facts and interests, that professional land-use planners address daily. *See* § A.2 *supra*. The Court should afford sufficient room for land-use planners to continue to plan for, reasonably regulate, and evaluate the land-use applications filed by religious institutions. For instance, a test whereby *any* land-use regulation or procedure constitutes a substantial burden would eviscerate land-use planners' ability to apply generally applicable rules, leading to serious repercussions for the safety, health, and wellbeing of religious congregations, surrounding landowners, and communities alike. A test that ensures that reasonable, non-discriminatory plans, zoning rules, and approval procedures can continue to be used to balance and protect the interests of all community stakeholders is critically important to the growth and livability of every American community.

C. Because the Local Government Used its Zoning Power to Accommodate a Religious Use, This Case Presents the RLUIPA Issue in a Highly Unusual Posture (if RLUIPA Applies at All)

1. Because There is no Government Defendant in This Case, it is Impossible to Fully Adjudicate the RLUIPA Issue and Ripeness is Absent.

Since RLUIPA's enactment, state and federal courts have decided hundreds of cases under its land-use provisions. The cases have varied enormously, but they all shared an ingredient: a government party adverse to the religious landowner. Yet in this case, no government party is adverse to the Petitioner. RLUIPA entered the case not in response to state action, but as a defense advanced

by the Board of Adjustment to support its decision in Petitioner's favor. Pet. App., 92a.

Park Hills, which has land-use jurisdiction over the property, has expressed no position on the Petitioner's application and has never been a party to this case. In the state courts, the Board of Adjustment was a nominal defendant, but that Board is a local appellate panel of appointed citizens separate from the entire city government. Ky. Rev. Stat. § 100.217(1), (2). Moreover, the Board of Adjustment is not adverse to the Petitioner because it *granted* the underlying applications. After private, third-party objectors sought judicial review under state law, the Board of Adjustment raised RLUIPA in defense of its own decision. Pet. App., at 92a. Any adversity between the Petitioner and Park Hills is thus contingent. The absence of a government litigant creates two procedural anomalies.

First, it is impossible to finally adjudicate the RLUIPA issue. RLUIPA's merits provisions require a government litigant to defend its regulations. *See* 42 U.S.C. § 2000cc(a) (requiring "the government [to] demonstrate" a justification for the regulation it seeks to impose). This Court's prior RLUIPA cases have mostly focused on the government's attempts to carry this burden. *E.g., Holt v. Hobbs*, 574 U.S. 352, 363-368 (2015) (assessing government's attempt to justify its regulations under RLUIPA). Whether Park Hills could effectively justify its zoning regulations is beside the point. Instead, RLUIPA's algorithm cannot be run to its conclusion without the government's involvement. Even if this Court were to determine that Park Hills's zoning regulations

imposed a substantial burden, the merits of RLUIPA would remain unresolved.

The second procedural curiosity is that the Kentucky Supreme Court adjudicated the RLUIPA issue before it became ripe under any of the standards being advocated in another case in the current term of the Court involving RLUIPA ripeness, *Grand v. City of University Heights*, No. 25-965 (U.S. 2026). The question presented there is the degree of finality required to ripen a RLUIPA claim. There, the government has argued that a RLUIPA claim becomes ripe only upon the issuance of a final administrative decision; the landowner has conversely argued that a RLUIPA claim ripens when a municipality declares its adversity by issuing a cease-and-desist letter. In this case, however, neither scenario has occurred. The Board of Adjustment granted the application. Even if the Kentucky Supreme Court assumed that, on remand, Park Hills would adopt a position adverse to the Petitioner's plans, such an assumption would be purely speculative. Because Park Hills is not a party, there is no mechanism for it to express its position.

2. RLUIPA's Text Makes its Applicability Contingent on the Existence of Adversity Between the Government and the Religious Landowner.

Because the Free Exercise Clause is enforced against state and local government through the Fourteenth Amendment, state action is required. In other words, the Free Exercise Clause becomes relevant only when government (or a private party acting under color of law) seeks to impose a burden on religious activity. Because

RLUIPA was modeled on the Free Exercise Clause, RLUIPA is also addressed to "state and local action." *Landor v. La. Dep't of Corrs.*, 609 U.S. 59, 85 (2026) (Jackson, J., dissenting).

This case involves no state action. Private parties qualify as state actors only "in a few limited circumstances." *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019). There is no claim that the Respondents became state actors by filing a board of adjustment appeal on state-law grounds. The prosecution of private litigation has been treated as state action only in the unique context of *Shelley v. Kraemer*, 334 U.S. 1 (1948). No doubt, the Respondents would be surprised to face an award of attorneys' fees under 42 U.S.C. § 1988(b) after filing a routine appeal from a zoning board decision.

To assert why RLUIPA applies here, the Kentucky Supreme Court merely cited 42 U.S.C. § 2000cc(a)(2)(C).[9] But that provision applies only where the government "impose[s]" a substantial burden. When that provision is read in the context of the entire statute, it becomes clear that RLUIPA contemplates the involvement of a government party adverse to the religious landowner.

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9. In response to *City of Boerne v. Flores*, 521 U.S. 507, 117 S.Ct. 2157 (1997), Congress enacted RLUIPA under authority of the Spending Clause, the Commerce Clause and Section 5 of the 14th amendment, respectively, in 42 U.S.C. § 2000cc(a)(2)(A), (B), and (C). Nothing in the record suggests Respondents receive any federal funding, 42 U.S.C. § 2000cc(a)(2)(A), and Petitioners have never argued that approval of the church's application affected interstate commerce under 42 U.S.C. § 2000cc(a)(2)(B).

Under RLUIPA's "scope of application" provision, 42 U.S.C. § 2000cc(a)(2), RLUIPA only applies to a "case" in which government "imposes a substantial burden" on religious exercise through a "land use regulation." 42 U.S.C. § 2000cc(a)(1). Until the government seeks to impose a substantial burden on the landowner, there is no "case" within the meaning of § 2000cc(a)(2). The prerequisites for a "case" cannot arise from speculation about a future position that Park Hills might take. What would follow from the Kentucky Supreme Court's decision is unknown. The record shows only that Park Hills has yet to take action that satisfies even the least-demanding ripeness requirement being advocated in *Grand*.

Likewise, RLUIPA's definition of "land use regulations" also requires adversity. 42 U.S.C. § 2000cc-5(5). Contrary to what one might expect, RLUIPA does not define "land use regulation" to include both innocuous and burdensome local laws. Rather, a local land use regulation qualifies as such under RLUIPA if, and only if, the regulation "limits or restricts a claimant's use or development of land." 42 U.S.C. § 2000cc-5(5). Unless and until Park Hills seeks to enforce its regulations in a way that substantially burdens the Petitioner—which the record here does not show—RLUIPA cannot apply.

3. RLUIPA Creates a Defense to State Action, not a Defense the State May Use in Response to Private Claims.

Pursuant to 42 U.S.C. § 2000cc-2(a), RLUIPA creates a defense in a judicial proceeding. But, like the protections of the Free Exercise Clause, this is a defense to state

action. It applies when, for example, local government seeks to impose a fine for violating its zoning ordinance. RLUIPA's defensive use is the mirror image of its offensive use; it cannot be larger. RLUIPA's one-and-only algorithm for adjudicating the merits requires the involvement of a government litigant. No precedent suggests that RLUIPA creates a defense to a claim by a private litigant.[10]

CONCLUSION

This case provides an opportunity for the Court to provide needed clarification on a topic of great importance to nearly every American community. Religious institutions are important to thousands of communities and millions of Americans. Yet religious facilities can and do present real-world impacts to their neighbors and neighborhoods. Land-use planners are responsible for balancing these interests, and they require guidance in formulating legally defensible plans and zoning regulations, and in evaluating land-use applications. With workable guidance from the Court, planners are prepared to work with communities and religious groups to mitigate the effects of growth and development of religious facilities while respecting

10. Indeed, given the absence of any state action that threatens to impose a burden on Petitioner, it is difficult to square RLUIPA's application in this case with the limits on Congressional authority under Section 5 of the Fourteenth Amendment. No precedent extends that power to giving government a substantive defense of its decision *in favor of* a religious landowner in response to litigation brought by an unrelated private party. *Cf. City of Boerne*, 521 U.S. at 532 (concluding that Fourteenth Amendment power did not authorize Congress to "attempt a substantive change in constitutional protections.").

religious organizations' liberty and their important role in the public life of our communities.

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November 23, 2026