

No. 22-11674

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT

THAI MEDITATION ASSOCIATION OF ALABAMA, INC., ET AL.,
Plaintiffs-Appellants,

v.

CITY OF MOBILE, ALABAMA,
Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Alabama
Case No. 1:16-cv-00395-TFM-MU

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*
JEWISH COALITION FOR RELIGIOUS LIBERTY SUPPORTING
PLAINTIFFS-APPELLANTS AND URGING REVERSAL**

R. Wayne Bond
Taylor English Duma LLP
1600 Parkwood Circle,
Suite 200
Atlanta, GA 30339
(770) 434-6868
wbond@taylorenghish.com

Rory T. Gray
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Road
Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
rgray@adflegal.org

John J. Bursch
Ryan J. Tucker
Paul Daniel Schmitt*
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Ste 600
Washington, D.C. 20001
(202) 393-8690
jbursch@adflegal.org
rtucker@adflegal.org
pschmitt@adflegal.org

Counsel for *Amicus Curiae*
* *Admission Pending*

Jewish Coalition for Religious Liberty (“JCRL”) moves this Court for leave to file the accompanying proposed *amicus curiae* brief in support of the Appellants, pursuant to 11th Cir. R. 29-1. JCRL contacted Counsel for the Appellants and Appellee and requested their consent to file its proposed *amicus curiae* brief. Counsel for Appellants consented to the brief’s filing. Counsel for Appellees did not consent to the brief’s filing and advised that their client would let this Court determine whether it would accept *amicus* support. Regardless of the parties’ positions, Fed. R. App. P. 29(b)(2) and 11th Cir. R. 29-3 requires *amicus curiae* to file a motion and grant this Court unfettered discretion to allow the filing of JCRL’s brief.

INTEREST OF AMICUS

The Jewish Coalition for Religious Liberty (“JCRL”) is a cross-denominational association of Jewish communal and lay leaders. JCRL is devoted to ensuring that First Amendment and statutory religious liberty protections enable the flourishing of diverse religious viewpoints and practices in the United States. As adherents to a minority religion that has faced historic discrimination, JCRL has a strong interest in the vital religious liberty protections that the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) provides. JCRL advocates for religious liberty protections that allow religious adherents to practice their faith while fully participating in American life, and therefore has a strong interest in RLUIPA’s correct interpretation and application.

DESIRABILITY AND RELEVANCE OF THE BRIEF

“Since an *amicus* does not represent the parties but participates only for the benefit of the court, it is solely within the discretion of the court to determine the fact, extent, and manner of [its] participation” *Newark Branch, NAACP v. Town of Harrison*, 940 F.2d 792, 808 (3d Cir. 1991) (quotation omitted). But courts are “usually delighted to hear additional judgments from able amici that will help the court toward right answers.” *Mass. Food Ass’n v. Mass. Alcoholic Beverages Control Comm’n*, 197 F.3d 560, 567 (1st Cir. 1999). This is particularly true when an amicus provides “information on matters of law about which there [is] doubt, especially in matters of public interest.” *United States v. Michigan*, 940 F.2d 143, 164 (6th Cir. 1991).

JCRL and its counsel are well-suited to aid the Court in considering this appeal that raises critical religious liberty questions in the RLUIPA context. Both JCRL and their counsel specialize in religious liberty issues and are often on the frontlines of religious exercise disputes. Religious exercise is of paramount importance and interest to the public and is a special concern to members of minority religious groups, like JCRL’s members. The proposed amicus brief is desirable for three reasons.

First, the amicus brief provides this Court with important religious liberty considerations as they are unique to religious minority groups and the difficulties that they face in the land use and zoning context.

Religious minorities face special difficulties and obstacles, and they depend on RLUIPA's strong religious exercise protections.

Second, the amicus brief explains the extent of the district court's errors in applying the "substantial burden" factors articulated by this Court in its opinion earlier in this case. The amicus brief provides a comparative analysis of how the federal circuits have applied the substantial burden framework and how the district court's opinion is inconsistent and erroneous.

Third, the amicus brief explains how the district court erred in applying RLUIPA's "compelling interest" standard. RLUIPA mandates that government land use and zoning action that substantially burdens religious exercise must face strict scrutiny. The district court's compelling interest analysis is inconsistent with RLUIPA precedent and with strict scrutiny analysis in other First Amendment contexts. This error, if uncorrected, would set a dangerous precedent for religious exercise and could especially harm religious minority groups.

CONCLUSION

This Court should grant amicus curiae leave to file its proposed brief supporting Appellants and urging reversal of the district court's judgment.

Respectfully submitted this 15th day of September, 2022.

R. Wayne Bond
TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle, Suite
200
Atlanta, GA 30339
(770) 434-6868
wbond@taylorenghish.com

/s/ Rory T. Gray
Rory T. Gray
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Road
Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
rgray@adflegal.org

John J. Bursch
Ryan J. Tucker
Paul Daniel Schmitt*
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Ste 600
Washington, D.C. 20001
(202) 393-8690
jbursch@adflegal.org
rtucker@adflegal.org
pschmitt@adflegal.org

Counsel for *Amicus Curiae*
* *Admission Pending*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically with the Court's CM-ECF system on September 15, 2022. Service will be effectuated by the Court's electronic notification system upon all parties and counsel of record.

/s/ Rory T. Gray

Rory T. Gray

Counsel for *Amicus Curiae*

No. 22-11674

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT

THAI MEDITATION ASSOCIATION OF ALABAMA, INC., ET AL.,

Plaintiffs-Appellants,

v.

CITY OF MOBILE, ALABAMA,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Alabama
Case No. 1:16-cv-00395-TFM-MU

**BRIEF OF AMICUS CURIAE JEWISH COALITION FOR
RELIGIOUS LIBERTY SUPPORTING PLAINTIFFS-
APPELLANTS AND URGING REVERSAL**

R. Wayne Bond
Taylor English Duma LLP
1600 Parkwood Circle,
Suite 200
Atlanta, GA 30339
(770) 434-6868
wbond@taylorenghish.com

Rory T. Gray
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Road
Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
rgray@adflegal.org

John J. Bursch
Ryan J. Tucker
Paul Daniel Schmitt*
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Ste 600
Washington, D.C. 20001
(202) 393-8690
jbursch@adflegal.org
rtucker@adflegal.org
pschmitt@adflegal.org

Counsel for *Amicus Curiae*
** Admission Pending*

CERTIFICATE OF INTERESTED PERSONS

Pursuant to 11th Cir. R. 26.1-1 through 26.1-3, the undersigned certifies that they believe that the Certificates of Interested Persons filed by Appellants and Appellee are complete, subject to the following amendments:

Added:

R. Wayne Bond – Counsel for Amicus Curiae

John J. Bursch – Counsel for Amicus Curiae

Rory T. Gray – Counsel for Amicus Curiae

Ryan J. Tucker – Counsel for Amicus Curiae

Paul D. Schmitt – Counsel for Amicus Curiae

Jewish Coalition for Religious Liberty – Amicus Curiae

The undersigned will enter this information in the Court's web-based CIP contemporaneously with filing this Certificate of Interested Persons. Jewish Coalition for Religious Liberty has no parent company and no publicly held company holds 10% of its stock.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	C-1
TABLE OF CITATIONS	ii
INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	4
I. RLUIPA Protects Religious Minorities’ Rights.....	4
II. The District Court’s Errors Threaten Religious Exercise by Weakening RLUIPA’s Essential Protections.	9
A. The District Court Misapplied the Substantial Burden Test by Giving Equal Weight to All of the Factors Articulated by This Court Even Though Some Were Clearly More Relevant to This Case Than Others.	10
B. The District Court Misapplied the Compelling Interest Test by Allowing the City to State its Interest at a High Level of Generality, and by Failing to Require it to Show that Exempting the Particular Plaintiffs Would Undermine that Interest.	15
CONCLUSION	19
CERTIFICATE OF COMPLIANCE	20
CERTIFICATE OF SERVICE.....	21

TABLE OF CITATIONS

Cases

Adkins v. Kaspar,
393 F.3d 559 (5th Cir. 2004) 11, 12

Apache Stronghold v. United States,
38 F.4th 742 (9th Cir. 2022)..... 12

Bethel World Outreach Ministries v. Montgomery County Council,
706 F.3d 548 (4th Cir. 2013) 12

Burwell v. Hobby Lobby Stores, Inc.,
573 U.S. 682 (2014) 11, 16

*Chabad Lubavitch of Litchfield County, Inc. v. Litchfield Historic
District Commission*,
768 F.3d 183 (2d Cir. 2014)..... 12

*Employment Division, Department of Human Resources of Oregon
v. Smith*,
494 U.S. 872 (1990) 5

Fulton v. City of Philadelphia,
141 S. Ct. 1868 (2021) 16

Gonzales v. O Centro Espírita Beneficente União do Vegetal,
546 U.S. 418 (2006) 16

Guru Nanak Sikh Society of Yuba City v. County of Sutter,
456 F.3d 978 (9th Cir. 2006) 6, 11

Holt v. Hobbs,
574 U.S. 352 (2015) 11, 16

International Church of Foursquare Gospel v. City of San Leandro,
673 F.3d 1059 (9th Cir. 2011) 13

Lighthouse Institute for Evangelism, Inc. v. City of Long Branch,
510 F.3d 253 (3d Cir. 2007)..... 13

<i>Livingston Christian School v. Genoa Charter Township</i> , 858 F.3d 996 (6th Cir. 2017)	12
<i>Navajo Nation v. United States Forest Service</i> , 535 F.3d 1058 (9th Cir. 2008)	12
<i>Ramirez v. Collier</i> , 142 S. Ct. 1264 (2022)	16
<i>Redeemed Christian Church of God (Victory Temple) Bowie, Maryland v. Prince George’s County, Maryland</i> , 17 F.4th 497 (4th Cir. 2021).....	17
<i>Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin</i> , 96 F.3d 895 (7th Cir. 2005)	6, 13
<i>San Jose Christian College v. City of Morgan Hill</i> , 360 F.3d 1024 (9th Cir. 2004)	13
<i>Thai Meditation Association of Alabama, Inc. v. City of Mobile, Alabama</i> , 980 F.3d 821 (11th Cir. 2020)	6, 10, 13, 14
<i>Thai Meditation Association of Alabama, Inc. v. City of Mobile, Alabama</i> , No. 1:16-cv-395-TFM-MU, 2022 WL 1194066 (S.D. Ala. Apr. 21, 2022).....	14, 15, 17, 18
<i>Vision Church v. Village of Long Grove</i> , 468 F.3d 975 (7th Cir. 2006)	13
<i>Westchester Day School v. Village of Mamaroneck</i> , 504 F.3d 338 (2d Cir. 2007).....	14, 17
Statutes	
42 U.S.C. § 2000cc	3, 9, 15

Other Authorities

146 Cong. Rec. S7774 (daily ed. July 27, 2000)..... 5

Alexa Ura, *“They are us. There’s no Distinction”: Terror of Synagogue Standoff is No Isolated Incident to Texas Jewish Leaders*, The Texas Tribune (Jan. 16, 2022), www.texastribune.org/2022/01/16/texas-synagogue-jewish-leaders/ 7, 8

BrieAnna J. Frank, *‘The Feeling is Devastating’: Tucson Synagogue Vandalized With Swastika, Anti-Semitic Slur*, AZCentral (Jun. 8, 2021), www.azcentral.com/story/news/local/arizona-breaking/2021/06/08/tucson-synagogue-vandalized-with-swastika-anti-semitic-slur/7607173002/ 7

Discrimination Against Sikhs Has Grown in US: Rights Expert to US Congress, Business Standard (Mar. 8, 2022), www.business-standard.com/article/international/discrimination-against-sikhs-has-grown-in-us-rights-expert-to-us-congress-122030800150_1.html 8

Emily Shapiro, *New York Synagogues Vandalized in ‘Brazen’ Attacks, Surveillance Video Released*, ABC (Apr. 26, 2021), <https://www.abcnews.go.com/US/york-synagogues-vandalized-brazen-attacks-surveillance-video-released/story?id=77316099>..... 7

Katherine Cook, *‘The Bigotry is Still Alive’: Portland Synagogue Vandalized With Threatening Hate Speech and Fire*, KGW8 (May 2, 2022), www.kgw.com/article/news/local/portland-synagogue-vandalized/283-1a1f2bd3-72d5-4444-8a58-aef8348776bd..... 7

Omar Jimenez & Bill Kirkos, *Chicago Police Announce Hate Crime Charges Filed in Weekend Synagogue Vandalism*, CNN (Feb. 1, 2022), <https://www.cnn.com/2022/02/01/us/chicago-synagogues-vandalism/index.html>..... 7

Press Release, DOJ, Justice Department Files Religious Discrimination Suit Against the City of Lansing, Michigan (Jul. 18, 2022), www.justice.gov/opa/pr/justice-department-files-religious-discrimination-suit-against-city-lansing-michigan 8

State Court and Legislative Responses to the Smith Decision, Pew Research Center (Oct. 24, 2007), www.pewresearch.org/religion/2007/10/24/a-delicate-balance8/ 5

Stephanie Lai, *Six Buddhist Temples Vandalized Across Little Saigon this Month*, LATimes (Nov. 28, 2020), www.latimes.com/california/story/2020-11-28/santa-ana-buddhist-temple-allegedly-defaced-by-two-female-suspects 8

Vandalism of Huntsville Synagogues, FBI (Apr. 2020), www.fbi.gov/wanted/seeking-info/vandalism-of-huntsville-synagogues..... 7

William Brangham & Rachel Wellford, *Antisemitic Incidents Hit a Record High in 2021. What’s Behind the Rise in Hate?*, PBS (Apr. 29, 2022), <https://www.pbs.org/newshour/show/antisemitic-incidents-hit-a-record-high-in-2021-whats-behind-the-rise-in-hate> 7

INTEREST OF AMICUS CURIAE¹

The Jewish Coalition for Religious Liberty (“JCRL”) is a cross-denominational association of Jewish communal and lay leaders. JCRL is devoted to ensuring that First Amendment and statutory religious liberty protections enable the flourishing of diverse religious viewpoints and practices in the United States. As adherents to a minority religion that has faced historic discrimination, JCRL has a strong interest in the vital religious liberty protections that the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) provides. JCRL advocates for religious liberty protections that allow religious adherents to practice their faith while fully participating in American life, and therefore has a strong interest in RLUIPA’s correct interpretation and application.

¹ Pursuant to Fed. R. App. P. 29(a), *Amicus Curiae* states that this brief was not authored in whole or in part by counsel for any party, and no person or entity other than *amicus curiae* and its counsel made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

The broad religious liberty protections guaranteed in American law make the United States a wonderful home for religious believers of all faiths, especially religious minorities who have faced historic persecution throughout the world. In America, religious liberty extends beyond belief, protecting adherents' freedom to practice and live out their faith as their traditions demand. This quality of American law and culture is essential to and cherished by those whose religious exercise is countercultural, like practicing Jews, for example.

RLUIPA provides critical religious exercise protections, especially for those who face rising hostility and discrimination. Lately, many religious groups have seen an increase in hate crimes, vandalisms, and even government discrimination. In the land use and zoning context, the potential for discrimination, if subtle, is high because decisions are made by elected officials (who are subject to majoritarian pressures), often in a (practically) standardless and unexplained fashion. When facing potential marginalization, religious minority groups rely on RLUIPA's broad protections to maintain a place in American society to exercise their faith. But in applying RLUIPA's protections in this case, the district court made several errors that will negatively impact RLUIPA jurisprudence and harm members of all religious faiths, especially religious minorities.

The district court misapplied the substantial burden test. First, it ignored that each factor articulated by this Court has varying applicability and relevance to each case and instead weighed all factors—even less relevant ones—equally in its analysis. Even though the district court determined that the three most relevant factors favored the Plaintiffs, it still ruled in the City’s favor because the remaining three, least relevant factors purportedly favored the City.

Second, the district court erroneously concluded that a tie—*i.e.*, three factors favored each party—should be resolved against religious free exercise. Congress established RLUIPA to provide broad religious liberty protections. Given America’s history of protection for religious liberty, and RLUIPA’s clear textual dedication to doing so, alleged “ties” ought to be broken in favor of protecting religious exercise, not in favor of government opposition to such exercise.

Third, the district court erred in applying RLUIPA’s compelling interest test, which requires the government to show that the substantial burden it has imposed is “(A) in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc(a)(1). Strict scrutiny demands that governments have a particularized interest in enforcing the law against the specific plaintiff. Neither an interest articulated at a high level of generality nor an interest in enforcing a law

against the majority of unobjecting citizens can justify burdening a specific adherent's religious exercise. Yet the district court ruled in the City's favor even though it the City only articulated a generalized interest in enforcing its Zoning Ordinance, which erases RLUIPA's protection.

ARGUMENT

I. RLUIPA Protects Religious Minorities' Rights.

Through federal and state constitutions and statutes, Americans enjoy unparalleled freedom to exercise their religion. Because the free exercise of religion is among the most fundamental freedoms enshrined in the U.S. Constitution, this country is a great home for those who live out their faith. This is especially true for religious minorities, whose religious traditions are often countercultural and who do not enjoy the political and social capital that majoritarian religious groups possess. To maintain our nation's exceptional culture of religious pluralism, it is essential that courts uphold and enforce existing constitutional and statutory protections.

Congress passed the Religious Freedom Restoration Act (RFRA) and RLUIPA in response to the Supreme Court's decision in *Employment Division v. Smith*, which held that religion-neutral laws that are generally applicable do not violate the First Amendment even if they

burden religion. 494 U.S. 872, 879–82 (1990).² Lawmakers were especially concerned about protecting religious minorities after the Supreme Court’s decision pared back First Amendment protections.³ Senators Hatch and Kennedy, cosponsors of the RLUIPA bill, noted, “Churches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the *highly individualized and discretionary processes of land use regulation*. . . . [O]ften, discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics, or ‘not consistent with the city’s land use plan.’” 146 Cong. Rec. S7774 (daily ed. July 27, 2000) (emphasis added).

Concerns about discrimination are present here. This Court stated the Planning Commission’s community meetings included “‘screaming and yelling,’ ‘a man . . . crying, saying that . . . this is unacceptable,’ and local residents [saying] things like ‘We don’t want Buddhism’ and ‘This

² Like the Congress that passed RFRA and RLUIPA, Amicus thinks that *Smith* was egregiously wrong as a matter of law and should be overruled. Under a proper interpretation of the First Amendment, Plaintiffs’ claims would likely succeed here.

³ *State Court and Legislative Responses to the Smith Decision*, Pew Research Center (Oct. 24, 2007), www.pewresearch.org/religion/2007/10/24/a-delicate-balance8/ (“In the years following *Smith*, the fear that the decision would significantly curtail religious liberty prompted state courts and legislatures, as well as the U.S. Congress, to act.”).

. . . is a Buddhist temple, and we don't need that.” *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile, Ala.*, 980 F.3d 821, 826 (11th Cir. 2020).

Other circuits have shown concern about this type of discrimination faced by minority religious groups. In *Guru Nanak Sikh Society of Yuba City v. County of Sutter*, for example, the Ninth Circuit noted the complaints of a neighbor who opposed the building of a Sikh temple: “[N]o family wants to live near a religious temple with all the excessive crowds, traffic, and noise which will increase with a future temple and [Guru Nanak’s] proposal.” 456 F.3d 978, 991 n.19 (9th Cir. 2006). And in *Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, the Seventh Circuit worried about “the vulnerability of religious institutions—especially those that are not affiliated with the mainstream Protestant sects or the Roman Catholic Church—to subtle forms of discrimination when, as in the case of the grant or denial of zoning variances, a state delegates essentially standardless discretion to nonprofessionals operating without procedural safeguards.” 396 F.3d 895, 900 (7th Cir. 2005).

As these examples illustrate, discrimination against religious minorities remains. As a coalition of Jewish believers who are especially grateful for the United States’ exceptional culture of religious freedom, this concern is sadly still a reality. For example, amid a record rate of

antisemitic attacks in 2021,⁴ the Jewish community saw the vandalization of synagogues in Chicago,⁵ New York,⁶ Huntsville,⁷ Portland,⁸ and Tucson.⁹ A rabbi and three congregants were taken hostage at a synagogue in North Texas, resulting in a nearly 11-hour standoff with police.¹⁰ In 2018, an armed man shouting antisemitic slurs

⁴ William Brangham & Rachel Wellford, *Antisemitic Incidents Hit a Record High in 2021. What's Behind the Rise in Hate?*, PBS (Apr. 29, 2022), <https://www.pbs.org/newshour/show/antisemitic-incidents-hit-a-record-high-in-2021-whats-behind-the-rise-in-hate>.

⁵ Omar Jimenez & Bill Kirkos, *Chicago Police Announce Hate Crime Charges Filed in Weekend Synagogue Vandalism*, CNN (Feb. 1, 2022), <https://www.cnn.com/2022/02/01/us/chicago-synagogues-vandalism/index.html>.

⁶ Emily Shapiro, *New York Synagogues Vandalized in 'Brazen' Attacks, Surveillance Video Released*, ABC (Apr. 26, 2021), <https://www.abcnews.go.com/US/york-synagogues-vandalized-brazen-attacks-surveillance-video-released/story?id=77316099>.

⁷ *Vandalism of Huntsville Synagogues*, FBI (Apr. 2020), www.fbi.gov/wanted/seeking-info/vandalism-of-huntsville-synagogues.

⁸ Katherine Cook, *'The Bigotry is Still Alive': Portland Synagogue Vandalized With Threatening Hate Speech and Fire*, KGW8 (May 2, 2022), www.kgw.com/article/news/local/portland-synagogue-vandalized/283-1a1f2bd3-72d5-4444-8a58-aef8348776bd.

⁹ BrieAnna J. Frank, *'The Feeling is Devastating': Tucson Synagogue Vandalized With Swastika, Anti-Semitic Slur*, AZCentral (Jun. 8, 2021), www.azcentral.com/story/news/local/arizona-breaking/2021/06/08/tucson-synagogue-vandalized-with-swastika-anti-semitic-slur/7607173002/.

¹⁰ Alexa Ura, *"They are us. There's no Distinction": Terror of Synagogue Standoff is No Isolated Incident to Texas Jewish Leaders*, The Texas Tribune (Jan. 16, 2022), www.texastribune.org/2022/01/16/texas-synagogue-jewish-leaders/.

opened fired inside the Tree of Life Congregation synagogue in Pittsburgh, killing 11 congregants.¹¹ And this phenomenon extends to other religious minorities too. Seventh Day Adventists have faced discrimination under city governments in relation to their employment,¹² hate crimes against Sikhs have increased dramatically,¹³ and in California, six Buddhist temples were vandalized in one month.¹⁴

Those examples, though extreme, show that religious minorities still face hostility and animosity. In the context of zoning and land use, where elected officials are subject to public pressure, these examples of discrimination highlight why courts must zealously enforce RLUIPA's protections. Besides their limited social and political capital, religious minority groups often have fewer resources to navigate an already long,

¹¹ *Id.*

¹² Press Release, DOJ, Justice Department Files Religious Discrimination Suit Against the City of Lansing, Michigan (Jul. 18, 2022), www.justice.gov/opa/pr/justice-department-files-religious-discrimination-suit-against-city-lansing-michigan.

¹³ *Discrimination Against Sikhs Has Grown in US: Rights Expert to US Congress*, Business Standard (Mar. 8, 2022), www.business-standard.com/article/international/discrimination-against-sikhs-has-grown-in-us-rights-expert-to-us-congress-122030800150_1.html.

¹⁴ Stephanie Lai, *Six Buddhist Temples Vandalized Across Little Saigon this Month*, LATimes (Nov. 28, 2020), www.latimes.com/california/story/2020-11-28/santa-ana-buddhist-temple-allegedly-defaced-by-two-female-suspects.

taxing, and expensive zoning process.¹⁵ These factors make it especially (and sometimes prohibitively) difficult for religious minority groups to navigate the legal system. Onerous zoning and land use proceedings are difficult enough, and religious minorities rely on the statutory protections given to them by Congress to overcome hidden discrimination that may make the process even more formidable.

II. The District Court’s Errors Threaten Religious Exercise by Weakening RLUIPA’s Essential Protections.

RLUIPA prohibits land use regulation that imposes a substantial burden on the religious exercise of a person, religious assembly, or institution, unless the government demonstrates that burden “(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc(a)(1). In other words, when land use regulations substantially burden religious exercise, they face strict scrutiny.

The district court erred in applying the RLUIPA substantial burden factors recognized by this Court by not considering which factors were most relevant to this case. What’s more, the district court misapplied

¹⁵ Take this case, which has spanned multiple years and is now before this Court for the second time. Congress passed RLUIPA specifically to remove obstacles that religious organizations face in land use and zoning, but still the Thai Meditation Center faces years-long litigation merely to establish a quiet place where its religious adherents can meditate.

RLUIPA's compelling interest standard, which requires the government to articulate more than a generic government interest but a concrete, compelling interest that necessarily requires burdening the *plaintiffs*.

A. The District Court Misapplied the Substantial Burden Test by Giving Equal Weight to All of the Factors Articulated by This Court Even Though Some Were Clearly More Relevant to This Case Than Others.

This Court has articulated six factors for determining whether the City's denial of the Plaintiffs' zoning applications was "akin to significant pressure which directly coerce[d] the [plaintiffs] to conform [their] behavior." *Thai Meditation Ass'n*, 980 F.3d at 831–32.¹⁶ These factors were synthesized from tests expounded by other federal circuits and must be understood and applied in context. *Id.* at 831–32 nn.5–12 (citing cases).

¹⁶ The factors include: (1) "whether the plaintiffs have demonstrated a genuine need for new or more space"; (2) "the extent to which the City's decision . . . effectively deprives the plaintiffs of any viable means by which to engage in protected religious exercise"; (3) "whether there is a meaningful 'nexus' between the allegedly coerced . . . conduct and the plaintiffs' religious exercise"; (4) "whether the City's decisionmaking process . . . reflects any arbitrariness that might evince animus or otherwise suggests that the plaintiffs have been . . . jerked around"; (5) "whether the City's denial of the plaintiffs' zoning applications was final"; and (6) "whether the alleged burden is properly attributable to the government (as where . . . a plaintiff had a reasonable expectation of using its property for religious exercise) or whether the burden is instead self-imposed." *Thai Meditation Ass'n*, 980 F.3d at 831–32.

As shown by this Circuit and others, the substantial burden inquiry is inherently fact specific. *See Adkins v. Kaspar*, 393 F.3d 559, 571 (5th Cir. 2004) (“We recognize that our test requires a case-by-case, fact-specific inquiry to determine whether the government action or regulation in question imposes a substantial burden on an adherent’s religious exercise . . .”). But the district court lost the forest for the trees, missing the broader principle this Court emphasized—whether government action forced Plaintiffs to modify or conform their religious practices—by fixating on the factors that are supposed to aid a fact-based analysis.¹⁷

The cases from which this Court derived its factors emphasize the need for a fact-specific analysis. *E.g.*, *Guru Nanak*, 456 F.3d at 989 (noting that the definition of substantial burden must be applied “to the

¹⁷ The Supreme Court has emphasized that the substantial burden analysis under RLUIPA should look at whether the government action puts religious adherents “to [a] choice” between the desired religious exercise and complying with the government’s preferred policy. *See Holt v. Hobbs*, 574 U.S. 352, 361 (2015) (explaining that putting a prisoner to a choice between growing his beard for religious exercise purposes and disciplinary action was a substantial burden). Likewise, in the context of RLUIPA’s sister statute, the Court explained that even government regulation that makes religious exercise more expensive constitutes a substantial burden. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 710 (2014) (noting that religious exercise includes “physical acts’ that are ‘engaged in for religious reasons.’” (citation omitted)).

particular facts here”); *Bethel World Outreach Ministries v. Montgomery Cty. Council*, 706 F.3d 548, 558 (4th Cir. 2013) (applying fact-intensive analysis). Indeed, the Fifth Circuit described how the case-by-case, fact-specific inquiry is simply “unavoidable under the RLUIPA and the circumstances that it addresses.” *Adkins*, 393 F.3d at 571.

Similarly, while circuits apply substantial burden factors to the facts, *see, e.g., Chabad Lubavitch of Litchfield Cty., Inc. v. Litchfield Historic Dist. Comm’n*, 768 F.3d 183, 195 (2d Cir. 2014); *Livingston Christian Sch. v. Genoa Charter Twp.*, 858 F.3d 996, 1002 (6th Cir. 2017), no circuit has ever suggested that all factors relevant to a substantial burden analysis must, or even should, be weighted equally. This Court did not do so earlier in this case, nor has it ever done so. It is also significant that no federal court (other than the district court here) has used all the Eleventh Circuit’s factors in a single case. Instead, some combination of similar factors is used, often alongside others that are particularly relevant to the facts before the court. *See Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1069–73 (9th Cir. 2008); *Apache Stronghold v. United States*, 38 F.4th 742, 756–57 (9th Cir. 2022).

Simply put, the six factors are helpful for a RLUIPA substantial burden analysis, but not all of them are relevant in every case. The factors are a means for determining whether government action is forcing religious adherents to modify their religious conduct. They are not an end

in and of themselves. The applicability and relevance of each factor turns on the facts at hand, which gives rise to an expectation that some factors will at times be weighed more heavily than others. RLUIPA's text and history, this Court's prior ruling, the cases from which it derived those factors,¹⁸ and the wider substantial burden case law of the federal circuits make this point clear.¹⁹ Yet the district court chose to apply all six factors with equal weight.

What makes the error worse is that the district court failed to correctly weigh the nature and extent of the compulsion experienced by the Plaintiffs. The Plaintiffs showed genuine need for new or more space in which to exercise their faith, the City's decision effectively deprived them of any viable means by which to engage in protected religious exercise, and the "nexus" between the coerced conduct and their religious exercise is clear. *Thai Meditation Ass'n.*, 980 F.3d at 831–32. These factors are naturally of higher probative value than the others. They bear directly on the government's actions, the restrictions imposed, and the results of those restrictions on this religious exercise.

¹⁸ See e.g., *Sts. Constantine & Helen Greek Orthodox Church*, 396 F.3d at 898–901 (7th Cir. 2005); *Int'l Church of Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1069 (9th Cir. 2011).

¹⁹ See, e.g., *Vision Church v. Vill. of Long Grove*, 468 F.3d 975 (7th Cir. 2006); *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253 (3d Cir. 2007); *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024 (9th Cir. 2004).

Further still, because meditation centers are far more affected by surrounding noise than many other religious facilities, the Plaintiffs have had to alter the way they teach meditation, foregoing the silence dictated by its religious beliefs because of the influence of outside noises from the busy commercial area. *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile, Ala.*, No. 1:16-cv-395-TFM-MU, 2022 WL 1194066, at *11 (S.D. Ala. Apr. 21, 2022). Traffic noises interfere with the serenity and concentration that are essential to developing effective meditation, and this inability to host meditation retreats at a facility in an environment free from the traffic, noise, and chaos found in industrial or commercial zones requires teachers to change the way they would normally conduct their religious practices. *Id.*

The first three factors are therefore of preeminent importance here, given that the first two concern the basis for needed space and the feasibility of religious exercise in its absence, while the third concerns the connection between the denial itself and its impact on Plaintiffs. *See Thai Meditation Ass'n*, 980 F.3d at 831–32. The special probative value of these factors is also evidenced by the fact that they are more likely to be considered by circuit courts than the latter three. *See Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 351–53 (2d Cir. 2007). In fact, there appears to be no federal circuit case in which factors four through six were all present.

The district court then erred again by concluding that a quantitative tie—in this case, the first three factors supporting Plaintiffs and the latter three in favor of the government—should be resolved *against* religious exercise. That error contradicts RLUIPA’s purposes and its plain text: “This chapter shall be construed in favor of a *broad protection* of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.” 42 U.S.C. § 2000cc-3(g) (emphasis added). Thus, because Plaintiffs established a substantial burden through the first three factors, it should be afforded the religious exercise protections the statute provides.

B. The District Court Misapplied the Compelling Interest Test by Allowing the City to State its Interest at a High Level of Generality, and by Failing to Require it to Show that Exempting the Particular Plaintiffs Would Undermine that Interest.

Beyond the substantial burden standard, the district court also misapplied RLUIPA’s compelling interest test. It held, without meaningful analysis, that “even if Plaintiffs’ religious exercise was substantially burdened by the denial of their Applications . . . the decision was the least restrictive means to further the City’s compelling interest in its Zoning Ordinance” *Thai Meditation Ass’n*, 2022 WL 1194066, at *18. But this misstates the government’s burden. Strict scrutiny demands that governments have a particularized interest in enforcing the law against the plaintiff. “Rather than rely on ‘broadly formulated

interests,’ courts must ‘scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants.’” *Fulton v. City of Phila.*, 141 S. Ct. 1868, 1881 (2021) (quoting *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 431 (2006)).

The Supreme Court recently emphasized this RLUIPA requirement in *Ramirez v. Collier*, 142 S. Ct. 1264 (2022), a case that involved the “institutionalized persons” portion of the Act. In *Ramirez*, a death-row inmate alleged a RLUIPA violation when prison officials refused to allow the inmate’s pastor to say audible prayers or lay hands on him in the execution chamber. After determining that the inmate was likely to succeed in showing that his exercise of religion was substantially burdened, the Court turned to the burden that the government officials had to carry. “Under RLUIPA,” the Court explained, “the government *cannot* discharge this burden by pointing to ‘broadly formulated interest.’” *Id.* at 1278 (emphasis added, quoting *Burwell*, 573 U.S. at 726). “It must instead ‘demonstrate that the compelling interest test is satisfied through application of the challenged law [to] the particular claimant whose sincere exercise of religion is being substantially burdened.’” *Id.* (emphasis added, quoting *Holt*, 574 U.S. at 363).

Given the Supreme Court’s directive in *Ramirez*, it was wrong for the district court to hold simply that “[t]he City has a compelling interest in enforcing its Zoning Ordinance.” *Thai Meditation Ass’n*, 2022 WL

1194066, at *21. The City was obligated to prove it had a compelling interest in burdening the Thai Meditation Center’s religious exercise. The district court’s low standard would erase RLUIPA because cities *always* have an interest in enforcing their zoning ordinances. That is why federal courts focus their compelling interest analyses on particular zoning interests vis-à-vis individual plaintiffs, rather than a generalized zoning interest. *E.g.*, *Westchester Day Sch.*, 504 F.3d at 353 (“The Village claims that it has a compelling interest in enforcing zoning regulations and ensuring residents’ safety through traffic regulations. However, it must show a compelling interest in imposing the burden on religious exercise in the particular case at hand, not a compelling interest in general.”); *Redeemed Christian Church of God (Victory Temple) Bowie, Maryland v. Prince George’s Cty., Md.*, 17 F.4th 497, 510 (4th Cir. 2021) (“A ‘compelling interest’ is not a general interest but must be particular to the specific case . . . the interest requires the infringement of a particular right in this case due to an interest of the highest order.”).

Here, the district court merely referenced the fact that in enforcing its Zoning Ordinance, the City generally

considers the location and site plan and whether they are “appropriate with regard to transportation and access, water supply, waste disposal, fire and police protection, and other public facilities; as not causing undue traffic congestion or creating a traffic hazard; and as being in

harmony with the orderly and appropriate development of the district in which the use is located.”

Thai Meditation Ass’n, 2022 WL 1194066, at *21. But the City offered no evidence to show that the Plaintiffs would negatively affect these interests—the district court merely assumed that they “were implicated by the proposed meditation center” and skipped any review. *Id.*

Based on this cursory analysis, the district court held that the purported harm to the City’s interests “could not have been alleviated by conditional approval and, therefore, denial of the Plaintiffs’ Application was the least restrictive means to further the City’s compelling interest in its Zoning Ordinance.” *Id.* But it is impossible to determine whether the City’s means are the least restrictive if it has not shown whether the City even has a particular, compelling interest in denying the *Thai Meditation Association’s* request. No interests were weighed and no consideration of less restrictive options was given. The district court therefore misapplied the compelling interest test to the detriment of Plaintiffs’ religious exercise.

CONCLUSION

The district court misapplied RLUIPA's substantial burden and compelling interest tests. As a result, its decision endangers the religious freedom of minority religious communities and significantly weakens RLUIPA's protections. *Amicus* respectfully encourages this Court to correct these errors and reverse the district court's judgment.

Respectfully submitted this 15th day of September, 2022.

R. Wayne Bond
Taylor English Duma LLP
1600 Parkwood Circle,
Suite 200
Atlanta, GA 30339
(770) 434-6868
wbond@taylorenghish.com

/s/ Rory T. Gray
Rory T. Gray
Alliance Defending Freedom
1000 Hurricane Shoals Road
Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
rgray@adflegal.org

John J. Bursch
Ryan J. Tucker
Paul Daniel Schmitt*
Alliance Defending Freedom
440 First Street NW, Ste 600
Washington, D.C. 20001
(202) 393-8690
jbursch@adflegal.org
rtucker@adflegal.org
pschmitt@adflegal.org

Counsel for *Amicus Curiae*
* *Admission Pending*

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), the undersigned certifies that this brief complies with the type-volume limitations of Fed. R. App. P. 29(b)(4). Exclusive of the sections exempted by Fed. R. App. P. 32(f), the brief contains 4,046 words, according to the word count feature of the software (Microsoft Word 365) used to prepare the brief. The brief has been prepared in proportionately spaced typeface using Century Schoolbook 14 point.

/s/ Rory T. Gray

Rory T. Gray

Counsel for *Amicus Curiae*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically with the Court's CM-ECF system on September 15, 2022. Service will be effectuated by the Court's electronic notification system upon all parties and counsel of record.

/s/ Rory T. Gray
Rory T. Gray
Counsel for *Amicus Curiae*