No. 21-2392

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

ALIVE CHURCH OF THE NAZARENE, INC.,

Plaintiff-Appellant,

v.

PRINCE WILLIAM COUNTY, VIRGINIA,

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Virginia
Case No. 1:21-cv-00891-LMB-JFA
Honorable Leonie M. Brinkema

BRIEF OF THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AND THE JEWISH COALITION FOR RELIGIOUS LIBERTY AS AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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Cases

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Andon, LLC v. City of Newport News,
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Bethel World Outreach Ministries v. Montgomery Cnty. Council,
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Carcieri v. Salazar,
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Centro Familiar Cristiano Buenas Nuevas v. City of Yuma,
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Discover Bank v. Vaden,
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Gagliardi v. City of Boca Raton,
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Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter,
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H & R Block E. Enters., Inc. v. Raskin,
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Jesus Christ Is the Answer Ministries, Inc. v. Baltimore Cnty.,
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Moxley v. Town of Walkersville,
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Nat'l Ass'n of Mfrs. v. Dep't of Def.,
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Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cnty.,
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Reaching Hearts Int'l, Inc. v. Prince George's Cnty.,
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Reaching Hearts Int'l, Inc. v. Prince George's Cnty.,
584 F. Supp. 2d 766 (D. Md. 2008), *aff'd*, 368 F. App'x 370 (4th Cir. 2010) 16

Reaching Hearts Int'l, Inc. v. Prince George's Cnty.,
831 F. Supp. 2d 871 (D. Md. 2011) 16

Reaching Hearts Int'l, Inc. v. Prince George's Cnty.,
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Redeemed Christian Church of God (Victory Temple) v. Prince George's Cnty.,
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River of Life Kingdom Ministries v. Vill. of Hazel Crest,
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Rocky Mountain Christian Church v. Bd. of Cnty. Comm'rs,
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Roman Cath. Bishop of Springfield v. City of Springfield,
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Roman Cath. Diocese of Brooklyn v. Cuomo,
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Tree of Life Christian Schs. v. City of Upper Arlington,
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Westchester Day Sch. v. Vill. of Mamaroneck,
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Young Isr. of Tampa, Inc. v. Hillsborough Area Reg'l Transit Auth.,
--- F. Supp. 3d ----, No. 8:21-cv-294-VMC-CPT, 2022 WL
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26 U.S.C. § 4980B(f)(2)(A) 25

29 U.S.C. § 623(i)(10)(A) 25

42 U.S.C. § 2000bb(b)(1) 32

42 U.S.C. § 2000cc(a)(1) 30

42 U.S.C. § 2000cc(b)(1) 17, 20

42 U.S.C. § 2000cc-3(g) 32

American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 25

John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub. L. No. 116-9, 133 Stat. 580 (2019) 25

Religious Land Use and Institutionalized Persons Act of 2000, Pub. L. No. 106-274, 114 Stat. 803 (codified at 42 U.S.C. § 2000cc *et seq.*) 8

Legislative Materials

146 Cong. Rec. 16,698 (2000) 8, 18, 24

146 Cong. Rec. 19,124 (2000) 15

Scholarly Authorities

Leo Hershkowitz, *By Chance or Choice: Jews in New Amsterdam 1654*, 57 Am. Jewish Archives 1 (2005) 11

Peter T. Reed, Note, *What Are Equal Terms Anyway?*, 87 Notre Dame L. Rev. 1313 (2012) 24

Andrew Willis, Note, *Zoning on Holy Ground: Developing a Coherent Factor-Based Analysis for RLUIPA's Substantial Burden Provision*, 95 Chi.-Kent L. Rev. 425 (2020) 33

Other Authorities

A Historic Look at the Seventh Day Adventist Church, Seventh-day Adventist Church, https://perma.cc/8TSY-SCZH (last visited Feb. 4, 2022) 6

Randall Balmer, *Religious Diversity in America*, Nat'l Humans. Ctr. (2009), https://perma.cc/RE9A-DCHG 6

James Jay Carafano & Sara A. Carter, *Anti-Semitism Is All of Our Problem*, Heritage Found. (Jan. 5, 2021), https://perma.cc/TD67-F2G6 12

Sarah Fortinsky & Kelly Murray, *Arrest Made over Swastika Graffiti at DC's Union Station*, CNN (Jan. 30, 2022), https://perma.cc/U7LN-QJZW 7

From Haven to Home: 350 Years of Jewish Life in America, Libr. of Cong. (2004), https://perma.cc/2TVF-VRTE 6

The Fundamental Constitutions of Carolina: March 1, 1669, The Avalon Project, https://perma.cc/R4JS-6LWD (last visited Feb. 9, 2022) 11

Ulysses S. Grant, Gen. Orders No. 11 (Dec. 17, 1862), *in* 7 *The Papers of Ulysses S. Grant* 50 (John Y. Simon ed., 1969), *available at* https://perma.cc/RTZ6-XPTL 7

Brett Harvey & Howard Slugh, Opinion, *Orthodox Jews Face Collateral Damage from Unbalanced COVID-19 Measures*, Religion News Serv. (July 10, 2020), https://perma.cc/DS64-ANH4 13

Bernadette Hogan & Natalie Musumeci, *Cuomo Declines Apology to Orthodox Jewish Community over COVID-19 Lockdown*, N.Y. Post (Oct. 21, 2020), https://perma.cc/7LQP-MQFJ.. 12

Impose, Merriam-Webster, https://perma.cc/GD3L-UHQP (last visited Feb. 4, 2022).. 31

Garrett Power, *The Residential Segregation of Baltimore's Jews*, Generations 5 (Fall 1996), https://perma.cc/Z3B4-YDVK.. 12

Press Release, U.S. Dep't of Just., *Justice Department Files Lawsuit Against Village of Airmont, New York, for Zoning Restrictions that Target the Orthodox Jewish Community* (Dec. 2, 2020), https://perma.cc/3QRF-4WAC.................................... 32

Patrick Reilly, *NJ Man Fired After Video Shows Two Men Plowing Snow onto Orthodox Jewish Men*, N.Y. Post (Feb. 6, 2022), https://perma.cc/FZD8-GSUL... 7

Religious Pluralism in the United States, Boisi Ctr. for Religion & Am. Pub. Life, https://perma.cc/PK25-KP8R 6

Seventh-day Adventist Church, *Adventists and Religious Liberty* (Oct. 23, 2014), https://perma.cc/FEJ9-8AZC 15

Seventh-day Adventist Church, *Historic Stand for Temperance Principles and Acceptance of Donations Statement Impacts Social Change* (Oct. 11, 1992), https://perma.cc/7HQ7-86KU 15

George Washington, To the Hebrew Congregation in Newport, Rhode Island (Aug. 18, 1790), *in* 6 *The Papers of George Washington: Presidential Series* 284 (Mark A. Mastromarino ed., 1996), *available at* https://perma.cc/5RFW-CCKG 12

INTERESTS OF AMICI CURIAE

The General Conference of Seventh-day Adventists is the national administrative body for the Seventh-day Adventist Church, a Protestant Christian denomination with more than 22 million members worldwide and 1.2 million members in the United States. The Church operates the world's largest Protestant school system, with nearly 7,600 schools, more than 80,000 teachers, and 1,545,000 students. The Church operates 65 healthcare institutions in the United States as well as publishing houses, an international development NGO, and numerous community service centers. Through its own programs and the work of the International Religious Liberty Association founded in 1893, the Adventist Church works to guarantee religious liberty for all people in the United States and around the world.

The Seventh-day Adventist Church supported RLUIPA's passage and has since filed amicus briefs in major RLUIPA matters. *See, e.g.*, *Redeemed Christian Church of God (Victory Temple) v. Prince George's Cnty.*, 17 F.4th 497, 508 & n.8 (4th Cir. 2021) (favorably discussing amicus brief of General Conference of Seventh-day Adventists and Sikh Coalition on RLUIPA land-use issue); *Rocky Mountain Christian Church v.*

Bd. of Cnty. Comm'rs, 613 F.3d 1229, 1232-33 (10th Cir. 2010) (General Conference of Seventh-day Adventists as amicus in support of successful RLUIPA equal-terms claim); *see also* Br. for Int'l Mission Bd. of the S. Baptist Convention et al. as Amici Curiae in Support of Pet'r, *Holt v. Hobbs*, 574 U.S. 352 (2015) (No. 13-6827) (multi-party brief on RLUIPA's application in prisons).

The Jewish Coalition for Religious Liberty (JCRL) is an incorporated group of rabbis, lawyers, and professionals who practice Judaism and are committed to religious liberty. As adherents of a minority religion, JCRL's members have a strong interest in ensuring legal protection for diverse religious viewpoints and practices. The group aims to foster cooperation between Jews and other faith communities and to protect Americans' ability to freely practice their faiths. JCRL's leaders have filed amicus briefs in this court as well as the U.S. Supreme Court and state courts, published op-eds in prominent news outlets, and established an extensive volunteer network to spur action on religious-liberty issues. JCRL also litigates on behalf of religious rights, recently obtaining (as co-counsel) summary judgment on a free speech claim for a synagogue in Tampa. *Young Isr. of Tampa, Inc. v. Hillsborough Area Reg'l Transit*

Auth., --- F. Supp. 3d ----, No. 8:21-cv-294-VMC-CPT, 2022 WL 227563 (M.D. Fla. Jan. 26, 2022); *see also Lebovits v. Cuomo*, No. 1:20-cv-01284 (N.D.N.Y. Oct. 16, 2020) (Free Exercise challenge to restrictions on Orthodox Jewish girls' school).

JCRL often writes on religious land use questions arising under RLUIPA and similar statutes. *See, e.g.*, Br. of Amici Curiae Jewish Coal. for Religious Liberty and Nat'l Comm. for Amish Religious Freedom in Support of Pet'rs, *Mast v. Fillmore Cnty.*, 141 S. Ct. 2430 (2021) (mem.) (No. 20-7028); Br. of Jewish Coal. for Religious Liberty as Amicus Curiae in Support of Pet'r, *Tree of Life Christian Schs. v. City of Upper Arlington*, 139 S. Ct. 2011 (2019) (mem.) (No. 18-944) (amicus brief on equal-terms provision); Br. of Jewish Coal. for Religious Liberty & Agudath Isr. of Am. as Amici Curiae in Support of Pls.-Appellants & Reversal, *Canaan Christian Church v. Montgomery Cnty.*, No. 20-2185 (4th Cir. Mar. 15, 2021), ECF No. 41-1 (leave granted to file amicus brief on equal-term and substantial-burden issues).

The General Conference and JCRL therefore share a significant interest in ensuring that the strong protections RLUIPA has afforded minority faith communities in the courts are not diluted by novel

extratextual rules. Amici submit this brief to provide broader context demonstrating the importance of a proper interpretation of RLUIPA.

RULE 29(a) STATEMENT

Amici obtained consent to file this brief from both Plaintiff-Appellee Alive Church of the Nazarene and Defendant-Appellant Prince William County, Virginia.

This brief is submitted pursuant to Rule 29 of the Federal Rules of Appellate Procedure. No party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed money to fund the preparation or submission of this brief; and no other person except amici curiae, their members, or their counsel contributed money intended to fund the preparation or submission of this brief.[1]

[1] This brief has been prepared in part by a clinic operated by Yale Law School, but it does not purport to present the School's institutional views.

INTRODUCTION AND SUMMARY OF ARGUMENT

The United States was built on the promise of religious pluralism, with its founders seeking to provide a haven for uncommon, disfavored, and persecuted religious groups. *See, e.g.*, Randall Balmer, *Religious Diversity in America*, Nat'l Humans. Ctr. (2009), https://perma.cc/RE9A-DCHG. That religious pluralism has only grown, "making the United States one of the most religiously diverse nations in the world." *Religious Pluralism in the United States* 1, Boisi Ctr. for Religion & Am. Pub. Life, https://perma.cc/PK25-KP8R.

Jews were drawn to "the promise of America [that] was deeply rooted in its commitment to religious liberty"; "George Washington's declaration in 1790 to the Newport Hebrew Congregation" gave "an early assurance of America's suitability as a haven." *From Haven to Home: 350 Years of Jewish Life in America*, Libr. of Cong. (2004), https://perma.cc/2TVF-VRTE. And the United States' commitment to religious liberty allowed diverse religious movements to flourish. The Seventh-day Adventist Church traces its formal organization to the Second Great Awakening. *A Historic Look at the Seventh Day Adventist Church*,

Seventh-day Adventist Church, https://perma.cc/8TSY-SCZH (last visited Feb. 4, 2022).

To be sure, our nation and its communities have sometimes fallen short of these ideals. In one abhorrent episode, General Ulysses S. Grant banned Jews from his military district with General Order No. 11. That document ordered the Union army to take part in "expell[ing]" all "Jews, as a class," from parts of Kentucky, Mississippi, and Tennessee. Ulysses S. Grant, Gen. Orders No. 11 (Dec. 17, 1862), *in* 7 *The Papers of Ulysses S. Grant* 50 (John Y. Simon ed., 1969), *available at* https://perma.cc/RTZ6-XPTL.

While such overt hostility is less common today,[2] government actors can and do still struggle to carry out our national commitment to protect religious minorities. Congress, collecting evidence of such failures in both land-use and prison contexts, unanimously passed the Religious Land Use and Institutionalized Persons Act (RLUIPA), which President

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[2] To our nation's discredit, it has not disappeared completely. *See, e.g.*, Patrick Reilly, *NJ Man Fired After Video Shows Two Men Plowing Snow onto Orthodox Jewish Men*, N.Y. Post (Feb. 6, 2022), https://perma.cc/FZD8-GSUL; Sarah Fortinsky & Kelly Murray, *Arrest Made over Swastika Graffiti at DC's Union Station*, CNN (Jan. 30, 2022), https://perma.cc/U7LN-QJZW.

Clinton signed into law. *See* 146 Cong. Rec. 16,698 (2000) (joint statement of Sen. Hatch and Sen. Kennedy); Religious Land Use and Institutionalized Persons Act of 2000, Pub. L. No. 106-274, 114 Stat. 803 (codified at 42 U.S.C. § 2000cc *et seq.*).

Unfortunately, judge-fashioned extratextual rules sometimes undermine RLUIPA's plain text and limit religious organizations' access to courts. Here, the district court adopted a set of unusually strict extratextual limitations on RLUIPA and dismissed Alive Church's claims at the pleading stage. Amici submit this brief out of concern that if this Court were to approve the lower court's reasoning, it would prevent RLUIPA claims that could prevail in other circuits from even being *heard* in this one.

Amici focus on two errors that, left undisturbed, threaten RLUIPA's robust protections.

The first is the district court's conclusion that an "equal terms" claim can be brought only if a religious group can locate a comparator "similarly situated with respect to the purpose of the underlying regulation." JA 260. This test allows defendants to evade the burden of showing equal treatment under real-world circumstances so long as zoning

categories are facially rational—as is usually true. And the application here illustrates the problem. Here, the district court declined to treat wineries as comparators at the Rule 12 stage despite well-pleaded allegations that Alive Church *was* situated to serve the relevant agricultural interests promoted by the underlying zoning regulations.

The second is the determination that a religious entity *never* suffers a "substantial burden" from a limit on property use that existed at the time of purchase—a determination drawing from *Andon, LLC v. City of Newport News*, 813 F.3d 510, 515 (4th Cir. 2016) (holding that a "preexisting expectation" of use is "generally" required). But the district court overreads *Andon* to apply even in situations where a plaintiff could expect a nonconforming use to be allowed, if that allowance is not "guaranteed." JA 265. Overextending *Andon* in this manner would fashion an extratextual barrier to RLUIPA claims, including to some that recently prevailed in this Circuit. It would also generate unnecessary conflicts with circuits that do not treat preexisting allowances as an absolute

disqualifier to a substantial-burden suit. There is no reason to thus repurpose *Andon*'s fact-specific holding into the district court's absolute rule.[3]

Ensuring that the equal-terms and substantial-burden provisions are properly applied is crucial for all minority religious groups. Amici are grateful for the many instances where courts have properly applied RLUIPA, in this Circuit and elsewhere, to protect minority faith communities. *See, e.g.*, *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1228-35 (11th Cir. 2004) (protection for synagogue under RLUIPA's equal-terms provision); *Reaching Hearts Int'l, Inc. v. Prince George's Cnty.*, 368 F. App'x 370, 372 (4th Cir. 2010) (per curiam) (protection for Seventh-day Adventist Church under RLUIPA's substantial-burden provision). They ask this Court to continue that tradition, vacate the opinion below, and confirm that RLUIPA asks no more than its text expressly requires.

[3] Amici's focus on two claims should not be understood to endorse the district court's reasoning on other claims, including, e.g., whether the district court correctly articulated the standard generally applicable to Free Exercise claims.

ARGUMENT

I. Proper Interpretation of RLUIPA Is Uniquely Important to Observant Jewish and Seventh-day Adventist Communities.

A. RLUIPA and the Jewish Community.

The Jewish faith has played a prominent role in the development of American religious liberties and pluralism from well before the Founding. In 1654, twenty-three Sephardi Jews fled the Portuguese Inquisition in Dutch Brazil and reached New Amsterdam (later New York City), becoming perhaps the first Jewish citizens of North America. Leo Hershkowitz, *By Chance or Choice: Jews in New Amsterdam 1654*, 57 Am. Jewish Archives 1, 3 (2005).

Since then, America has developed a meaningful commitment to protect Jewish people. Not only did the Fundamental Constitutions of Carolina, for example, expressly grant liberty of conscience to Jewish citizens, *see The Fundamental Constitutions of Carolina: March 1, 1669* art. 97, The Avalon Project, https://perma.cc/R4JS-6LWD (last visited Feb. 9, 2022), but no less a figure than George Washington welcomed Jewish adherents to the nascent nation. In his 1790 letter to the Newport Sephardic congregation, Washington wrote,

> May the children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants; while every one shall sit in safety under his own vine and figtree, and there shall be none to make him afraid.

George Washington, To the Hebrew Congregation in Newport, Rhode Island (Aug. 18, 1790), *in* 6 *The Papers of George Washington: Presidential Series* 284, 286 & n.1 (Mark A. Mastromarino ed., 1996), *available at* https://perma.cc/5RFW-CCKG.

Despite this history, the nation has not been free of anti-Semitism. There is some evidence that targeted harassment and even assault, already too common, may be increasing. *See* James Jay Carafano & Sara A. Carter, *Anti-Semitism Is All of Our Problem*, Heritage Found. (Jan. 5, 2021), https://perma.cc/TD67-F2G6. Until the Supreme Court intervened in 1948, cities across the country enforced restrictive covenants directed against Jews. *See Shelley v. Kraemer*, 334 U.S. 1, 21 n.26 (1948); Garrett Power, *The Residential Segregation of Baltimore's Jews*, Generations 5, 5 & n.16 (Fall 1996), https://perma.cc/Z3B4-YDVK. The COVID-19 pandemic saw a return of restrictive governmental edicts targeted towards Jewish religious practice—sometimes accompanied by rhetoric singling out the Jewish community. *See* Bernadette Hogan & Natalie Musumeci,

Cuomo Declines Apology to Orthodox Jewish Community over COVID-19 Lockdown, N.Y. Post (Oct. 21, 2020), https://perma.cc/7LQP-MQFJ; Brett Harvey & Howard Slugh, Opinion, *Orthodox Jews Face Collateral Damage from Unbalanced COVID-19 Measures*, Religion News Serv. (July 10, 2020), https://perma.cc/DS64-ANH4. Reviewing New York restrictions, the Supreme Court expressed concern that some decisionmakers' "comments" could be "viewed as targeting" Orthodox Jewish communities, before determining the restrictions did not qualify as religiously neutral. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020) (per curiam).

More commonly, bigotry or insensitivity to Jewish religious practice comes guised in neutral language or regulations. When such sentiments target Jewish synagogues or schools, RLUIPA serves as a crucial bulwark.

In *Westchester Day School v. Village of Mamaroneck*, a zoning board denied zoning modifications for a Jewish school that hoped to construct a new building on its existing campus. 504 F.3d 338, 345-46 (2d Cir. 2007). The board asserted that the school's new building would create parking and traffic issues. *Id.* at 346. Evaluating a RLUIPA suit, the district court

determined that the zoning application was denied not because of real concerns about parking but because a "small but influential group of neighbors ... were against the school's expansion plans." *Id.*; *cf. Gagliardi v. City of Boca Raton*, No. 16-CV-80195-KAM, 2017 WL 5239570, at *1-3 (S.D. Fla. Mar. 28, 2017) ("religious animus" mixed with "desire to protect the residential quality" of neighborhood in attempt to bar construction of a Chabad religious center), *aff'd sub nom. Gagliardi v. TJCV Land Tr.*, 889 F.3d 728 (11th Cir. 2018).

In *Midrash Sephardi*, Jewish synagogues were prohibited from renting space in a city's business district, even though the district allowed private clubs, lodges, and theaters. 366 F.3d at 1219-22. The synagogues brought a RLUIPA equal-terms challenge. *Id.* at 1222. While the town asserted that synagogues could not be compared to secular enterprises in the district, the Eleventh Circuit disagreed, holding the prohibition illegal. *Id.* at 1230-31. The court articulated that RLUIPA's provisions "require a direct and narrow focus." *Id.* at 1230.

In these and like cases, courts applied RLUIPA consistently with its text and protected a Jewish community.

B. RLUIPA and the Seventh-day Adventist Community.

Despite its uniquely American heritage, the Seventh-day Adventist Church has also faced well-publicized challenges to its faith. Members of the Church "keep[] the seventh-day Sabbath," which at times put Adventists "in conflict with governments that enforce[d] Sunday closing laws." Seventh-day Adventist Church, *Adventists and Religious Liberty* (Oct. 23, 2014), https://perma.cc/FEJ9-8AZC. Adventists also observe religious dietary restrictions; like Alive Church, they abstain from alcohol, and the Church by policy refuses donations from alcohol manufacturers. Seventh-day Adventist Church, *Historic Stand for Temperance Principles and Acceptance of Donations Statement Impacts Social Change* (Oct. 11, 1992), https://perma.cc/7HQ7-86KU.

In recent decades, members of the Seventh-day Adventist Church have continued to face conflict around their worship practices and charitable efforts, discussed by RLUIPA's proponents during its enactment. *See, e.g.*, 146 Cong. Rec. 19,124, 19,125 (2000) (statement of Rep. Hyde) (noting local zoning limits on two Seventh-day Adventist ministries, including one feeding the homeless, that could be addressed by RLUIPA).

And RLUIPA has helped the Church prevent such discrimination, as when it relied on RLUIPA's protections in a decade-long proceeding in this Circuit. In *Reaching Hearts*, Prince George's County engaged in an "eight-year legal battle" to prevent an Adventist congregation from building a church, including by denying necessary "water-sewer category change applications." *Reaching Hearts Int'l, Inc. v. Prince George's Cnty.*, No. RWT 05cv1688, 2011 WL 3101801, at *1, *4 (D. Md. July 22, 2011). The County lost at trial and the district court later entered additional injunctive relief that it described as an "attempt to right the wrong." *Reaching Hearts Int'l, Inc. v. Prince George's Cnty.*, 584 F. Supp. 2d 766, 796 (D. Md. 2008), *aff'd*, 368 F. App'x 370 (4th Cir. 2010) (per curiam). When county officials resisted the judgment, the district court ordered compliance after directing the County "to show cause why it should not be held in contempt and sanctioned." *Reaching Hearts Int'l, Inc. v. Prince George's Cnty.*, 831 F. Supp. 2d 871, 874 (D. Md. 2011). The General Conference has a special interest in ensuring that the mere fact that a construction requires special approvals to proceed does not impede necessary challenges to arbitrary restrictions on religious practice.

II. The District Court's Equal-Terms Standard Conflicts with RLUIPA's Text, Rule of Construction, and Purpose.

A. RLUIPA's Plain Terms Require Only a Better-Treated "Nonreligious Assembly or Institution."

Statutory interpretation begins, and often ends, with the statute's plain text. When "the statutory text is plain and unambiguous," courts "must apply the statute according to its terms." *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009). In other words, "extratextual considerations ... provide no basis to depart from the statute's plain language." *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617, 632 (2018).

RLUIPA's equal-terms provision prohibits governments from "treat[ing] a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1). The text conspicuously does *not* require plaintiffs to produce a "similarly situated" nonreligious assembly or institution as a threshold requirement for a prima facie unequal-treatment claim. As discussed below, such a requirement would undercut RLUIPA's purpose—and the canons of construction that would apply if the statute were ambiguous (a counterfactual) *support* the plain-text reading.

B. Importing Heightened Pleading Requirements External to RLUIPA's Text Would Undermine RLUIPA's Purpose and Protections.

Maintaining a plain-text construction of RLUIPA's equal-terms requirement is important to vindicate the statute's purposes. Congress observed that "[c]hurches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against … in the highly individualized and discretionary processes of land use regulation," expressing special concern that "black churches and Jewish shuls and synagogues" are frequent targets of such discrimination. 146 Cong. Rec. 16,698 (2000) (joint statement of Sen. Hatch and Sen. Kennedy); *see Jesus Christ Is the Answer Ministries, Inc. v. Baltimore Cnty.*, 915 F.3d 256, 264 (4th Cir. 2019) (quoting same). But often, "discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics, or '[inconsistency] with the city's land use plan.'" 146 Cong. Rec. 16,698. When RLUIPA plaintiffs obtain discovery to inquire into the full circumstances of a denial, courts often find evidence of the prejudice that Congress suspected was "lurk[ing]" in the background. *See, e.g.*, *Westchester*, 504 F.3d at 346 (district court determined that zoning board's justifications were pretextual).

This Circuit's caselaw demonstrates that RLUIPA protects plaintiffs from discrimination and arbitrary treatment when courts allow them to meet their threshold pleading requirements in a straightforward manner. *See, e.g.*, *Jesus Christ Is the Answer*, 915 F.3d at 263-65 ("paradigm example[s] of religious bias" alleged in complaint sufficed to make out nondiscrimination claim; dismissal reversed); *Moxley v. Town of Walkersville*, 601 F. Supp. 2d 648, 668-69 (D. Md. 2009) (allowing various RLUIPA claims, including equal-terms claim, to proceed past dismissal motion; a settlement agreement resulted).

As Alive Church's brief ably explains, courts generally agree that an equal terms claim requires a plaintiff to be a religious assembly or institution subject to land use regulation, treated on less than equal terms with a nonreligious assembly or institution. Alive Br.12. But the circuits disagree on what "less than equal terms" than "a nonreligious assembly or institution" means. *Id.*; *see Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cnty.*, 450 F.3d 1295, 1307 (11th Cir. 2006). The Fourth Circuit "has not addressed" this issue. *A Hand of Hope Pregnancy Res. Ctr. v. City of Raleigh*, 332 F. Supp. 3d 983, 994 (E.D.N.C. 2018); *see* JA 260 n.3 (district court noting same).

The Eleventh Circuit hews closest to the text in how it defines comparators. For facial claims, it requires the religious plaintiff to proffer only a nonreligious "assembly or institution" as specified by the text, 42 U.S.C. § 2000cc(b)(1), noting that RLUIPA "lacks the 'similarly situated' requirement usually found in equal protection analysis." *Midrash Sephardi*, 366 F.3d at 1229. In *Midrash Sephardi*, the Court reasoned that "private clubs and lodges" fell into the ordinary meaning of "assembly" and that "assembly or institution" defined the "perimeter" of comparators under the statute. *Id.* at 1231. It concluded that "private clubs and lodges [were] similarly situated to churches and synagogues." *Id.* And even in as-applied claims, the Eleventh Circuit takes a broad approach to comparability, taking a "thorough review of the record" and considering "comparable community impact." *Konikov v. Orange Cnty.*, 410 F.3d 1317, 1327 (11th Cir. 2005) (per curiam).

Likewise, while the Tenth Circuit uses the phrase "similarly situated" for as-applied challenges, it allows religious plaintiffs to proceed to trial, where they can present evidence to convince a jury of "substantial similarities" based on the whole record. *Rocky Mountain*, 613 F.3d at 1237.

Other circuits, including those cited by the district court, have taken a narrower view of qualifying comparators—requiring plaintiffs to "identify a better-treated secular comparator that is similarly situated in regard to the *objectives* of the challenged regulation," *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 268 (3d Cir. 2007), or in regard to "accepted zoning *criteria*," *River of Life Kingdom Ministries v. Vill. of Hazel Crest*, 611 F.3d 367, 371 (7th Cir. 2010) (en banc).

Many of these decisions are divided, drawing sharp dissents for "depart[ing] from the text, structure, and history of RLUIPA," thus risking "eviscerat[ing] the equal-terms provision." *Id.* at 377, 387 (Sykes, J., dissenting); *see, e.g.*, *Tree of Life Christian Schs. v. City of Upper Arlington*, 905 F.3d 357, 376, 378-83 (6th Cir. 2018) (Thapar, J., dissenting) (same critique); *Lighthouse*, 510 F.3d at 291 (Jordan, J., concurring in part and dissenting in part) (concluding that "the Majority disregards the plain language of the statute" and reinstitutes "precisely the problem Congress sought to rectify with RLUIPA").

However, even some of these nominally more restrictive tests are *less* restrictive than the test the district court used below. As Alive Church notes, the Ninth Circuit associates itself with the Third and

Seventh Circuits, holding that a comparator must be "similarly situated with respect to an accepted zoning criteria." But the Ninth Circuit "depart[s] from" those circuits by placing the burden "on the city to show that the treatment received by the church should not be deemed unequal, where it appears to be unequal on the face of the ordinance," rather than "on the church to show a similarly situated secular assembly." *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1173 & n.47 (9th Cir. 2011); *see* Alive Br.23-24 & n.2. As Judge Thapar explained in *Tree of Life*, this rule provides a path by which "'similarly situated' *can* come into the analysis: not as a heightened pleading requirement on the plaintiff, but instead as a governmental rebuttal to an as-applied challenge." 905 F.3d at 382 (Thapar, J., dissenting).

Here, however, the district court applied the starkest version of the "similarly situated" requirement by allowing facial zoning categorizations to preclude any attempt to show disparate treatment or in-practice similarity. The court found that breweries are "by definition, agricultural," while churches are not. JA 262 n.5. It concluded this barred Alive Church from comparing itself to wineries and breweries despite well-pleaded allegations that it proposed a plan to serve agricultural purposes,

just like breweries and wineries. This illustrates why courts "[c]an only analyze different treatment by digging into the context." *Tree of Life*, 905 F.3d at 382 (Thapar, J., dissenting).

Legal standards matter, and they matter well beyond the (admittedly unusual) facts of this case.[4] Adopting the district court's reasoning here would mean barring equal-terms claims from proceeding past the pleading stage whenever a court can identify a rational zoning distinction—even if that distinction is irrational as applied to the facts of the case, and even if the government has adduced no evidence to carry its burden. *See Centro Familiar*, 651 F.3d at 1173 & n.47 (citing 42 U.S.C. § 2000cc-2(b)). That would make RLUIPA's equal-terms provision a poor tool for its purpose: digging behind "vague and universally applicable"

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[4] For that same reason, it should be immaterial to this Court whether (as the district court asserted) Alive Church did not "appear to argue ... a materially different approach" from a similarly-situated standard below. JA 260. "[A] court is not required 'to accept what in effect [is] a stipulation on a question of law." *H & R Block E. Enters., Inc. v. Raskin*, 591 F.3d 718, 723 n.10 (4th Cir. 2010) (second alteration in original) (quoting *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 448 (1993)). Nor should it, when the legal question affects the rights of religious minorities in this circuit more broadly. So Alive Church's contention on appeal that it can prevail under any circuit's standard—even if true—should not be a reason to adopt a restrictive standard for others. Alive Br.18-19.

distinctions to find "lurk[ing]" unequal treatment in practice. 146 Cong. Rec. 16,698; *see* Peter T. Reed, Note, *What Are Equal Terms Anyway?*, 87 Notre Dame L. Rev. 1313, 1334 (2012) (arguing "the equal terms provision" is designed to "appl[y] in situations that, according to congressional research, often mask discrimination").

C. Multiple Canons of Construction Support the Plain-Text Reading.

If the plain text and statutory purpose are not enough, ordinary canons of construction also cut against the district court's version of the similarly-situated analysis.

First and most simply, as Alive Church notes, Congress provided an explicit rule of construction that would exclude narrow readings. Alive Br.11. RLUIPA "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," *Holt*, 574 U.S. at 358 (quoting 42 U.S.C. § 2000cc-3(g)), because it is designed to "provide very broad protection for religious liberty," *id.* at 356 (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014)).

But even setting aside that express rule for present purposes, this Court has held "where Congress knows how to say something but chooses

not to, its silence is controlling." *Discover Bank v. Vaden*, 396 F.3d 366, 370 (4th Cir. 2005) (quoting *In re Griffith*, 206 F.3d 1389, 1394 (11th Cir. 2000)). Here, "Congress knew about 'similarly situated' standards from the Equal Protection context and chose *not* to incorporate them into RLUIPA." *Tree of Life*, 905 F.3d at 379 (Thapar, J., dissenting); *see Konikov*, 410 F.3d at 1324 (Congress did not adopt the "similarly situated" standard from "our familiar equal protection jurisprudence").

And more to the point, Congress *has* in fact used "similarly situated" in other contexts, including other civil-rights statutes. *See* 29 U.S.C. § 623(i)(10)(A) (in Age Discrimination in Employment Act, requiring a "[c]omparison to similarly situated younger individual"); 26 U.S.C. § 4980B(f)(2)(A) (IRS rule on continuation coverage keyed to "similarly situated beneficiaries"); 16 U.S.C. § 1134(b) (land preservation rules keyed to "similarly situated" land). Even recently enacted legislation incorporates this well-known phrasing. *See* American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9501(a)(1)(B)(ii)(III), 135 Stat. 4, 128 (health coverage for employees); John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub. L. No. 116-9, § 8006(2), 133 Stat. 580, 808 (2019) (benefits for land-reclamation projects).

On a 12(b)(6) motion, then, it should have sufficed for Alive Church to allege that a nonreligious entity was treated more favorably. That does not guarantee Alive Church a victory; it only allows it to put the government to its proof at a later stage that differential treatment did not amount to unequal treatment. *See* Alive Br.12 (noting the government "bear[s] the burden of persuasion" to rebut an RLUIPA land-use plaintiff's "prima facie evidence" (alteration in original) (quoting 42 U.S.C. § 2000cc-2(b))). And that distinction may make all the difference in a future case where a religious minority faces unequal treatment all too easily masked behind generalities.

III. The District Court's Inflexible Substantial-Burden Rule Diverges from Text and Precedent and Dramatically Limits RLUIPA's Scope.

A. The District Court's Reasonable-Expectation Test Broke with Precedent.

Alive Church alleges that, pending a process of SUP compliance, it wishes to use its land in the interim for a purpose already permitted in its zone ("agritourism events" of a religious nature), but it is prohibited from such use unless it obtains "a liquor license" in violation of its beliefs. Alive Br.33-35. That would ordinarily qualify as "substantial pressure ... to modify [the Church's] behavior." *Id.* at 32 (quoting *Jesus Christ*

Is the Answer, 915 F.3d at 263); *see Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter*, 456 F.3d 978, 988-89 (9th Cir. 2006) ("a significantly great restriction or onus" qualifies as a substantial burden).

However, this Court commonly asks an additional question: "whether [a religious group] had a reasonable expectation of being able to build" its proposed property. *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 558 (4th Cir. 2013). Answering that question, the district court held that no substantial burden took place because: (1) Alive Church bought its property "knowing [it] was subject to a SUP" and so faced a "self-imposed hardship"; and (2) the denial of the agricultural workaround was proper because allowing the workaround would grant an "automatic exemption to religious organizations from generally applicable land use regulations." JA 265 (quoting *Andon*, 83 F.3d at 516). That reasoning relied on reading a prior precedent, *Andon*, to bar substantial burden claims whenever a religious group "acquire[s] the property knowing that it was non-conforming and that a variance was not guaranteed." *Id.* This analysis both rewrites *Andon* and conflicts with other Fourth Circuit cases.

Andon dealt with plaintiffs seeking to build on land that was both "not a permitted site" for a church and "had not met applicable setback requirements for [its] type of use for at least 14 years." 813 F.3d at 515. It also noted the special contingency contract at issue in the case, and found those facts reflected no expectation of approval. *Id.* And *Andon* caveated its holding by noting "[a] self-imposed hardship *generally* will not support a substantial burden claim under RLUIPA." *Id.* (emphasis added).

But nothing in *Andon* suggests that where variances or exceptions are merely "not guaranteed," a preexisting restriction can *never* be the basis for a substantial burden claim. JA 265. To the contrary: *Bethel*, on which *Andon* relied (813 F.3d at 514-16), said precisely the opposite. Responding to a county defendant's argument that there were "no guarantees" the church could obtain all its approvals, this Court explained that "modern zoning practices are such that landowners are rarely *guaranteed* approvals" and that Bethel had offered evidence that it "had a reasonable expectation" that it would be able to surmount the request processes and build its church. *Bethel*, 706 F.3d at 558.

Other prevailing RLUIPA plaintiffs in this circuit were concededly seeking land uses not wholly permitted at the time of their suit. In *Jesus Christ Is the Answer*, the plaintiff's petition for approval was barred based on pre-existing restrictions, yet this Court found it reasonable for the plaintiff to "believe[e] that she could satisfy these broadly and permissibly phrased conditions" where her use was otherwise available by right. 915 F.3d at 261. In *Reaching Hearts*, the plaintiff required a sewer and water reclassification, but was reasonable in assuming it was available based on past grants to other entities. 368 F. App'x at 371. And in *Redeemed Christian Church*, the plaintiff had a "reasonable expectation" of building despite a similar need for water and sewer amendments—with the court also noting that the "significant issue of overcrowding" at the current location also supported a substantial burden. 17 F.4th at 510 n.9.

In short, *Andon* does not preclude the possibility that a plaintiff church or synagogue that cannot build a desired structure under applicable zoning rules could still be substantially burdened. For example, a substantial burden may exist where they have good reason to expect an exception, or if other factors show the hardship to be centrally imposed

by the government. Here, "accepting as true the facts alleged in the complaint and drawing all reasonable inferences in Plaintiffs' favor," *Jesus Christ Is the Answer*, 915 F.3d at 260, the church has alleged that the agricultural-use request relating to cider appeared to them as an available option, and the insistence on an alcohol license in violation of their beliefs was not inevitable. Nor is there any reason to think that permitting the agricultural use workaround—which would presumably require much time and effort on the church's part—amounts to an "automatic exemption to religious organizations from generally applicable land use regulations," as the district court suggested. JA 265.

B. Treating a Firm Expectation of Approval as a Strict Threshold is Extratextual and Diverges from Other Circuits.

But there is a stronger reason to avoid hardening the reasonable-expectation standard further: it is mistaken. It breaks from RLUIPA's text. And when treated as dispositive, it diverges from well-reasoned precedent in other circuits.

First, RLUIPA's text simply states that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person." 42 U.S.C.

§ 2000cc(a)(1). The text does not say "on religious exercise *reasonably expected to be permitted*." Rather, it mirrors the substantial-burden provision of RFRA and RLUIPA's prisoner-rights provisions—places where the idea of a "reasonable expectation" would be a non sequitur, since the litigant ordinarily seeks an exemption from a pre-existing statute or regulation. *See, e.g.*, *Holt*, 574 U.S. at 356.

Treating reasonable expectation as a prerequisite relies, then, on repurposing "impose"—if you buy land that has been restricted, your burden is "self-imposed." But taking the common understanding of "impose"—"to establish or apply by authority," *Impose*, Merriam-Webster, https://perma.cc/GD3L-UHQP (last visited Feb. 4, 2022)—the fit to RLUIPA's terms is questionable. People take voluntary actions every day that are regulated by law, yet it would be inappropriate to refer to many of these burdens as self-imposed, rather than government-imposed. We would not say that an air traveler has "imposed" a TSA security check on herself simply because she must comply with existing law to travel in an otherwise legal manner. Similarly, a rabbi moving to a village whose zoning code functionally "ma[kes] it impossible ... to obtain approval for religious schools and home synagogues" does not impose that restriction on

himself. *See* Press Release, U.S. Dep't of Just., *Justice Department Files Lawsuit Against Village of Airmont, New York, for Zoning Restrictions that Target the Orthodox Jewish Community* (Dec. 2, 2020), https://perma.cc/3QRF-4WAC.

The Supreme Court's recent oral argument in *Cruz v. FEC* confirms the point. When discussing self-imposed burdens, all parties agreed that "when plaintiffs stand on their rights and insist on doing what they would do if the law were not in effect," any such burden is not self-imposed. Transcript of Oral Argument at 29-30, *FEC v. Ted Cruz for Senate*, No. 21-12 (U.S. Jan. 19, 2022), https://perma.cc/35T5-TM95. So RLUIPA's text does not indicate that plaintiffs waive their rights by implicitly consenting to a restriction through some action. Such a reading would be untenable given RFRA and RLUIPA's shared goal of "restor[ing]" the right to religion guaranteed by the Constitution itself. 42 U.S.C. § 2000bb(b)(1). And again, even if the point were debatable, RLUIPA's internal rule of construction requires "constru[al] in favor of a broad protection of religious exercise." 42 U.S.C. § 2000cc-3(g); *see* Alive Br.11.

Second, several other circuits do not treat reasonable expectation as dispositive. The First Circuit, for example, looks to a variety of possible

factual circumstances for evidence of religious targeting, the disparate impact of facially neutral policies, and arbitrary, capricious, or unlawful regulations in determining whether a land regulation imposes a substantial burden on religious exercise. *See Roman Cath. Bishop of Springfield v. City of Springfield,* 724 F.3d 78, 95-97 (1st Cir. 2013) (explaining that list of relevant circumstances is illustrative, not exhaustive). Other circuits, including the Sixth and Eleventh, treat the presence of a reasonable expectation as only one of several "factors" a court may consider in determining the validity of a substantial-burden claim. *See* Andrew Willis, Note, *Zoning on Holy Ground: Developing a Coherent Factor-Based Analysis for RLUIPA's Substantial Burden Provision*, 95 Chi.-Kent L. Rev. 425, 438-40 (2020); *see also Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, 980 F.3d 821, 831-33 (11th Cir. 2020). This Court should at least clarify its guidance (that a reasonable expectation "generally" must be present) does not foreclose finding a burden in other egregious cases. The fact that a municipality is quick to foreclose religious uses before anyone asks—or sets up too many stages of zoning approvals to permit anyone to expect approval with any certainty—should not immunize it from RLUIPA challenges to arbitrary burdens.

Ultimately, this Court need not overrule *Andon* to avoid adopting the district court's outlier reasoning. It can simply reaffirm that *Andon* qualified reasonable expectation as "generally" required, and dealt with plaintiffs that—on those facts—had no expectation that their variance would be granted. That would be no barrier to concluding Alive Church has plausibly pleaded there was substantial reason to think its workaround could be approved, or that the onus placed on it otherwise qualified as a substantial burden. To be sure, that allegation may be challenged following further discovery, or the government may respond with a strict-scrutiny justification. But nothing in this Court's precedent requires that the substantial burden claim here be cut off at this preliminary stage, particularly in a manner that could bar the courthouse doors to legitimate claims.

CONCLUSION

RLUIPA is an important protection for the Jewish community, Seventh-day Adventists, and other religious minorities. However this case is resolved, the Court should not approve the harsh and atextual standards adopted by the district court. Instead, this Court should vacate the

district court's ruling and remand with guidance for the court to apply RLUIPA according to its text.

Dated: February 14, 2022

Respectfully submitted,

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/s/ Gordon D. Todd
Gordon D. Todd

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I hereby certify that on February 14, 2022, I caused the foregoing to be electronically filed with the U.S. Court of Appeals for the Fourth Circuit via the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system, with automatic email notifications of such filing to all attorneys of record.

/s/ Gordon D. Todd
Gordon D. Todd

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COUNSEL FOR: General Conference of Seventh-day Adventists, Jewish Coalition for Religous Liberty as the

(party name)

☐ appellant(s) ☐ appellee(s) ☐ petitioner(s) ☐ respondent(s) ☑ amicus curiae ☐ intervenor(s) ☐ movant(s)

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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- Counsel has a continuing duty to update the disclosure statement.

No. 21-2392 Caption: Alive Church of the Nazarene, Inc. v. Prince William County, Virginia

Pursuant to FRAP 26.1 and Local Rule 26.1,

General Conference of Seventh-day Adventists
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

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If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

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If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Gordon D. Todd Date: 2/14/2022

Counsel for: Amicus

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No. 21-2392 Caption: Alive Church of the Nazarene, Inc. v. Prince William County, Virginia

Pursuant to FRAP 26.1 and Local Rule 26.1,

Jewish Coalition for Religious Liberty
(name of party/amicus)

who is amicus, makes the following disclosure:
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2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
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If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

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Signature: /s/ Gordon D. Todd Date: 2/14/2022

Counsel for: Amicus

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