IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

THAI MEDITATION ASSOCIATION OF ALABAMA, INC., *et al.*, **Plaintiffs,** **v.** **CITY OF MOBILE, ALABAMA,** **Defendant.**	**Civil No. 1:16-00395-TFM-MU**

UNITED STATES' STATEMENT OF INTEREST IN SUPPORT OF NEITHER PARTY

Pursuant to 28 U.S.C. § 517, the United States respectfully submits this Statement of Interest to the Court relating to the parties' Motions for Summary Judgment, Doc. Nos. 194 & 197. This case raises important questions involving the application of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc *et seq*., in particular, how a plaintiff may show a substantial burden on religious exercise, and, if shown, how a government must justify imposition of such a burden. The Attorney General of the United States is charged with enforcing RLUIPA. *See* 42 U.S.C. § 2000cc-2(f). The United States believes that providing the Court with its analysis will aid the Court in deciding this case, and will advance the United States' RLUIPA enforcement program by furthering the clear and consistent application of the law's provisions.

INTEREST OF THE UNITED STATES

The Attorney General has statutory authority "to attend to the interests of the United States in a suit pending in a court of the United States." 28 U.S.C. § 517.[1] In support of the Department of Justice's RLUIPA enforcement program, the United States frequently files Statements of Interest in U.S. District Courts on RLUIPA's substantial burden provision. *See, e.g., Ramapough Mountain Indians, Inc. v. Township of Mahwah* (D. N.J.) (No. 2:18-9228) (March 18, 2019); *Jagannath Org. for Global Awareness, Inc. v. Howard Cnty.* (D. Md.) (No. 17-cv-02436) (July 23, 2018); *Roman Catholic Archdiocese of Kansas City v. City of Mission Woods* (D. Kan.) (No. 2:17-cv-02186) (May 24, 2018).

The United States has also filed amicus briefs on this issue in U.S. Courts of Appeals, including in many of the cases relied on by the parties here. *See, e.g., Jesus Christ is the Answer Ministries, Inc. v. Baltimore Cnty.*, 915 F.3d 256 (4th Cir. 2019) (No. 18-1450) (July 2, 2018); *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183 (2d Cir. 2014) (No. 12-1057) (Nov. 14, 2012), *cert. denied*, 575 U.S. 963 (2015); *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548 (4th Cir. 2013) (No. 11-2176) (Apr. 12, 2012); *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007) (No. 06-1464) (Aug. 11, 2006); *Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter*, 456 F.3d 978 (9th Cir. 2006) (No. 03-17343) (May 19, 2004); *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005) (No. 04-2326) (Aug. 13, 2004);

[1] Section 517, in its entirety, provides: "The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517.

Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214 (11th Cir. 2004) (No. 03-13858) (Nov. 25, 2003), *cert. denied*, 543 U.S. 1146 (2005).

The United States filed an amicus brief in support of neither party in the present action in the Eleventh Circuit and participated in oral argument.

BACKGROUND

As this Court explained in its Memorandum Opinion and Order of May 24, 2019, this case involves the efforts of a Buddhist religious organization, the Thai Meditation Association of Alabama, Inc. (the "Association"), and four Buddhist individuals (collectively, the "Plaintiffs") to build a Buddhist meditation center on property that Plaintiffs own in a residential district in Mobile, Alabama. Doc. 127, PageID.3765-66.

The Association began operating in 2007 at a home on Airport Boulevard, a major road in Mobile. *Id.* at PageID.3771, 3791. After neighbors complained that operating a meditation center was not a permitted use in the zone without planning approval, Plaintiffs filed an application for such approval. *Id.* at PageID.3771-72. After Plaintiffs' application was denied, the Association relocated to a shopping center near its original location. *Id.* at PageID.3772. Plaintiffs asserted that the shopping center location created hardships for its religious exercise: traffic noise interfered with meditation, the physical space was too small, there was no place for visiting monks to sleep on site, and there were safety problems at the location. *Id.* at PageID.3772-73, 3790.

Plaintiffs searched for an alternative property, and ultimately purchased a 6.72-acre residential property on a heavily wooded lot along a river on Eloong Drive in Mobile. *Id.* at PageID.3773, 3814; Doc. 92-2, PageID.947-50. In 2015, Plaintiffs submitted applications to the City of Mobile Planning Commission (the "Planning Commission") seeking approval to build, in

addition to a residence already on the property, a 2,400-square-foot meditation center, a 2,000-square-foot cottage for visiting monks, a 600-square-foot restroom facility, and a parking lot. Doc. 127, PageID.3767-68. When the applications came before the Planning Commission on October 15, 2015, they were met with strong community opposition ostensibly based on traffic, noise, and other concerns. *Id.* at PageID.3775, 77-78.

On December 3, 2015, the Planning Commission denied approval, citing concerns involving site access, traffic, and compatibility with the neighborhood. *Id.* at PageID.3777. On January 19, 2016, the City Council upheld the Planning Commission's decision. *Id.* at PageID.3778. Plaintiffs then filed this suit, alleging that the City of Mobile's actions imposed a substantial burden on their religious exercise in violation of RLUIPA, and violated other provisions of RLUIPA, the U.S. Constitution, and Alabama law. Doc. 1.

On October 16, 2017, Plaintiffs moved for partial summary judgment on their claims under RLUIPA, the Free Exercise and Equal Protection Clauses of the First and Fourteenth Amendments of the U.S. Constitution, and the Alabama Religious Freedom Amendment, Alabama Const. Art. I, § 3.01. Doc. 91. The City also moved for summary judgment on all claims. Doc. 89. On September 28, 2018, this Court granted summary judgment to the City on the RLUIPA substantial burden claim, as well as Plaintiffs' RLUIPA equal terms claim under 42 U.S.C. § 2000cc(b)(1) and its claims under the Free Exercise Clause and the Alabama Religious Freedom Amendment. Doc. 127. The Court allowed the remaining claims to go to trial, and, after a bench trial, found for the City on these claims on May 24, 2019. Doc. 169.

Plaintiffs appealed, and on November 16, 2020, the United States Court of Appeals for the Eleventh Circuit vacated and remanded the grant of summary judgment on the RLUIPA substantial burden, Free Exercise, and Alabama Religious Freedom Amendment claims. No. 19-

12418 (slip op.) at 38. The Court of Appeals affirmed this Court's judgment on the remaining claims. *Id.*

On the RLUIPA substantial burden claim, the Court of Appeals held that the proper standard for evaluating whether governmental action has imposed a substantial burden on religious exercise is whether it is "akin to significant pressure which directly coerces the religious adherent to conform his or her behavior." Slip op. at 15 (quoting *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004), *cert. denied*, 543 U.S. 1146 (2005)). The Court of Appeals emphasized that the "ordinary [and] natural meaning" of "substantial" leads to the conclusion that pressure need not rise to the level of being "complete, total, or insuperable" to create a substantial burden. *Id.* at 13 (citation omitted) (alteration in original). Rather, the Court of Appeals held, "modified behavior, if the result of government coercion or pressure, can be enough." *Id.* at 16.

The Court of Appeals remanded the case for this Court to apply the standard it articulated. *Id.* at 16, 38. The Court of Appeals noted six criteria the Court should consider, "among others," *id.* at 16: 1) Plaintiffs' need for new or additional space to carry out their religious activities; 2) the degree to which the City's actions "effectively deprive[ ] the plaintiffs of any viable means" to engage in their religious activities; 3) the nexus between Plaintiffs' religious activities and the City's actions alleged to infringe them; 4) whether the City's actions were arbitrary or indicate a lack of even-handed treatment; 5) whether the City's decision was final or whether Plaintiffs had an opportunity to make modifications to address concerns; and 6) whether the burden was properly attributable to the government or, instead, was self-imposed by unreasonable expectations or the actions of Plaintiffs. *Id.* at 16-17. The Court of Appeals also remanded the Free Exercise Clause claim, which this Court had evaluated in tandem with the RLUIPA

substantial burden claim. *Id.* at 18. The Court of Appeals also determined that the Alabama Religious Freedom Amendment triggered heightened scrutiny when governmental action caused any burden on religion, not merely a "substantial" one as with RLUIPA. *Id.* at 36.[2]

DISCUSSION

I. Factors for Evaluating Substantial Burden

The Court of Appeals listed six categories of factors (and suggested that there may be other relevant factors) for this Court to consider on remand to evaluate whether governmental action is "akin to significant pressure which directly coerce[d the plaintiffs] to conform their behavior," slip op. at 16 (alterations in original). In doing so, the Court of Appeals joined other circuits that have coalesced around a totality-of-the-circumstances test for evaluating substantial burden. *See Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 195 (2d Cir. 2014) (applying "multifactored analysis" and noting that diverse factors considered by "[o]ur sister circuits have contributed additional texture to the analysis"); *Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 95 (1st Cir. 2013) ("[W]e do not adopt any abstract test, but rather identify some relevant factors and use a functional approach to the facts of a particular case"), *cert. denied*, 575 U.S. 963 (2015); *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 558 (4th Cir. 2013); *Livingston Christian Sch. v. Genoa Charter Twp.*, 858 F.3d 996, 1003-04 (6th Cir. 2017); *Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter*, 456 F.3d 978, 988-99 (9th Cir. 2006). In this totality-of-the-circumstances analysis, not all six factors must be present and no single criterion is dispositive in deciding the substantial burden issue. *See Litchfield*, 768 F.3d at 195 (holding that while arbitrary

[2] This Statement of Interest is limited to discussing the RLUIPA substantial burden and strict scrutiny standards.

and capricious governmental action was a factor in finding substantial burden in prior case, that was merely one factor "that may be considered to determine whether a substantial burden is imposed").

To assist the Court in applying the factors identified by the Eleventh Circuit, this Statement of Interest discusses the decisions of several other courts that may provide helpful guidance. This Statement does not take a position on whether any factor that the parties dispute has been met. The parties do not appear to dispute that the denial was final and not conditional, the fifth factor discussed below.

A. Religious Needs of the Plaintiff

The first factor the Court of Appeals identified is "whether the plaintiffs have demonstrated a genuine need for new or more space—for instance, to accommodate a growing congregation or to facilitate additional services or programming." Slip op. at 16 (footnotes omitted). A threshold question in assessing this factor is whether Plaintiffs' failure to obtain the land use they seek would be more than just an inconvenience and, instead, would significantly affect the exercise of their faith. After all, if a government's denial of approval for different or additional space would have only a negligible impact on a congregation or institution's religious practice, it would be hard to say that it imposed a "substantial burden" on religious exercise—regardless of how unreasonable or arbitrary the government's action was.

In making this assessment, courts have looked at factors such as (1) a religious institution's need for a new facility to accommodate the size of its congregation, *see Bethel World Outreach*, 706 F.3d at 558; *Chabad Lubavitch*, 768 F.3d at 188; *Sts. Constantine & Helen*, 396 F.3d at 898; (2) the necessity for space in which to expand the range of offerings at a religious school or to provide educational programs and counseling at a house of worship, *see Westchester*

Day Sch., 504 F.3d at 352; *Bethel World Outreach*, 706 F.3d at 558; and (3) the need to have a place of worship in a particular location to which members could walk safely. *Bikur Cholim, Inc. v. Vill. of Suffern*, 664 F. Supp. 2d 267, 272, 291 (S.D.N.Y. 2009).

Here, Plaintiffs claim that the Eloong Drive property meets their needs to provide greater space for their religious activities, a more peaceful environment for meditation, and space for visiting monks. Doc. 197, PageID.11657-58. They further assert that the property eliminates safety issues present at their current location that interfere with their religious activities. *Id.* In support of the asserted need for a tranquil environment, Plaintiffs explain that "[t]he location of a Buddhist meditation center is religiously significant to the Plaintiffs, as the purpose of meditation is to attain tranquility, serenity, and clarity of mind; therefore, an important precondition to this religious exercise is a serene and quiet location, and their current location is unacceptable and prevents proper Buddhist meditation." *Id.* at PageID.11657. The City questions Plaintiffs' asserted needs, contending that "[t]here is no evidence either of a particular religious significance of the Eloong property aside from its general quality of tranquility," Doc. 194, PageID.9604, and noting that the proposed meditation facility on the Eloong Drive property is not significantly larger in square footage than the current facility. *Id.*

In evaluating these competing claims about the "genuine need" for new space, slip op. at 16, the Court generally should defer to Plaintiffs' sincere assertion of their religious beliefs and needs. *See Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 715 (1981) (declining to second-guess plaintiff's religion-based refusal to work on tank turrets in Free Exercise case, holding that plaintiff "drew a line, and it is not for us to say that the line he drew was an unreasonable one"); *Pass-A-Grille Beach Cmty. Church, Inc. v. City of St. Pete Beach, Fla.*, 2021 WL 252372, at *5, No. 8:20-cv-1952 (M.D. Fla. June 26, 2021) (upholding RLUIPA claim that

church was substantially burdened when barred from using parking lot to evangelize to beachgoers, noting that "courts are fairly deferential when adjudicating religious sincerity claims").

If the evidence indicates that Plaintiffs are sincere in their assertion that they need a quiet, tranquil environment for religious reasons, and indicates that the Eloong Drive property—but not their current location—would meet these needs, those facts would weigh in Plaintiffs' favor in the substantial burden analysis.

B. Impact of the Planning Commission's Denial

The second factor identified by the Court of Appeals is "the extent to which the City's decision, and the application of its zoning policy more generally, effectively deprives the plaintiffs of any viable means by which to engage in protected religious exercise." Slip op. at 16. Thus, even if Plaintiffs demonstrate a genuine need for new space, the Court must then consider whether the City's actions have had the effect of preventing them from meeting that need.

In applying this factor, courts have examined the availability of alternative properties and the prospect of obtaining approval at any such alternative properties in a timely manner. Courts have found substantial burdens where government denials of approvals left organizations without "quick, reliable, and financially feasible alternatives" to expand facilities as part of their religious exercise, *Westchester Day Sch.*, 504 F.3d at 352, or imposed the delay, uncertainty, and expense of either having to sell their property and identify another suitable property or repeatedly having to file potentially futile permit applications on alternative properties. *See Bethel World Outreach*, 706 F.3d at 557 (citation omitted); *Sts. Constantine & Helen*, 396 F.3d at 901; *Guru Nanak*, 456 F.3d at 991-92.

Here, Plaintiffs present evidence that they previously sought alternative locations, Doc. 197, PageID.11658, and contend that other residential properties that would offer the same quiet environment they seek for the meditation center likely would trigger the same objections that the City raised about the Eloong Drive site. *Id.* at PageID.11677. The City, for its part, claims that Plaintiffs have not shown that they lack other viable options. Doc. 194, PageID.9605-06. These are factors the Court must weigh in its substantial burden determination.

C. Nexus Between Government Conduct and Burden on Religious Exercise

The third factor identified by the Court of Appeals is "whether there is a meaningful 'nexus' between the allegedly coerced or impeded conduct and the plaintiffs' religious exercise." Slip op. at 17 (*citing Westchester Day Sch.*, 504 F.3d at 349).

Under this factor, a religious organization must do more than simply demonstrate that it was denied approval to do something it wishes to do. It must, rather, show that the government action is in fact burdening its *religious exercise.* The Second Circuit's decision in *Westchester Day School* illustrates this point. The court found a close nexus between the government's action and a school's religious exercise where the school was denied approval to expand its facilities to better carry out its religious mission and address declining enrollment. The Second Circuit contrasted the case before it with a hypothetical situation "where a school could easily rearrange existing classrooms to meet its religious needs in the face of a rejected application to renovate." 504 F.3d at 349. That hypothetical would not establish a sufficiently close nexus, the Second Circuit explained. *Id.* Likewise, in *Fortress Bible Church v. Feiner*, 694 F.3d 208, 219-20 (2d Cir. 2012), the court found "a close nexus" between a town's denial of approval for a church construction project and the church's religious exercise, holding that "[t]he Town's desire to

prevent the Church from building on its property relegated it to facilities that were wholly inadequate to accommodate its religious practice."

The issue in this case, then, is whether Plaintiffs can show that the City's actions blocking them from locating a meditation center at the Eloong Drive property is closely related to their religious exercise. This factor overlaps to a large extent with the first two factors discussed above—Plaintiffs' religious needs and the impact of the zoning denial on their meeting those needs. *See supra* at 7-9.

D. Neutrality and Fairness of the Process

The fourth factor identified by the Court of Appeals for evaluating substantial burden is "whether the City's decisionmaking process concerning the plaintiffs' applications reflects any arbitrariness of the sort that might evince animus or otherwise suggests that the plaintiffs have been, are being, or will be (to use a technical term of art) jerked around." Slip op. at 17.

Even in a case where a plaintiff does not prove intentional discrimination, as here, this factor is relevant to "backstop[ ] the explicit prohibition of religious discrimination" in RLUIPA's nondiscrimination provision. *Westchester Day Sch.*, 504 F.3d at 351; *see also Chabad Lubavitch*, 768 F.3d at 195; *Saints Constantine & Helen*, 396 F.3d at 900.

Actions that depart from ordinary procedures or otherwise reflect "less than even-handed treatment" weigh in favor of finding a substantial burden. *Westchester Day Sch.*, 504 F.3d at 351. Such treatment may signal that a plaintiff is unlikely to succeed in winning approval of future applications for the same property or other properties in the jurisdiction. *See Roman Catholic Bishop of Springfield*, 724 F.3d at 96-97; *Sts. Constantine & Helen*, 396 F.3d at 900-01. It thus can impact an applicant in a manner similar to the "delay, uncertainty, and expense" factor

discussed in Section B above, burdening the applicant's religious exercise by creating barriers to alternatives and reducing the prospect of eventually receiving approval for a workable location.

Plaintiffs present evidence that they assert demonstrates procedural departures from the norm, including the City staff's alleged failure to work with Plaintiffs to address concerns about the impact of their proposed use, as they had with prior religious applicants, Doc. 197, PageID.11661-62. Plaintiff also assert that the City departed from its usual practice by making a late change to the standard under which it would evaluate Plaintiffs' application, *id.* at PageID.116693, among other allegations of irregularities. *Id.* at PageID.11659-63. The City denies that there were irregularities, asserting that the decisionmaking was consistent with state law and the information presented at the public hearings. Doc. 194, PageID.9609. If such irregularities did occur, they would weigh in favor of Plaintiffs' substantial burden claim.

E. Finality of Decision

The fifth category of inquiry for analyzing substantial burden is "whether the City's denial of the plaintiffs' zoning applications was final or whether, instead, the plaintiffs had (or have) an opportunity to submit modified applications that might satisfy the City's objections." Slip op. at 17.

Courts frequently examine this factor in the substantial burden analysis. *See, e.g.*, *Jesus Christ is the Answer Ministries*, 915 F.3d at 262-63; *Bethel World Outreach*, 706 F.3d at 558; *Westchester Day Sch.*, 504 F.3d at 349; *Guru Nanak*, 456 F.3d at 989. These courts have given great weight to this factor because of the evident difference between being completely foreclosed from using a property for religious exercise and having that use conditionally denied subject to certain modifications. As the Second Circuit has explained, "whether the denial . . . was absolute is important; if there is a reasonable opportunity for the institution to submit a modified

application, the denial does not place substantial pressure on [a plaintiff] to change its behavior." *Westchester Day Sch.*, 504 F.3d at 349. That said, a substantial burden may be shown even in the absence of such a complete foreclosure. Courts should consider whether the government's decision—including a decision that restricts the size or scope of a proposed use, rather than forbidding religious use altogether—hinders religious functions. *See, e.g., Livingston Christian Sch.*, 858 F.3d at 1006; *Bethel World Outreach*, 706 F.3d at 557-60; *Westchester Day Sch.*, 504 F.3d at 349-51.

Here there is no dispute that the decision was final and complete, and Plaintiffs were not given conditions to satisfy in order to gain approval.

F. Attributable to the Government or Self-Imposed

RLUIPA forbids the "government" from imposing substantial burdens on religious exercise without proper justification. It does not insulate religious users of property from burdens properly attributable to other actors, including actions of the religious users themselves. Thus, the Court of Appeals stated that the sixth inquiry is "whether the alleged burden is properly attributable to the government (as where, for instance, a plaintiff had a reasonable expectation of using its property for religious exercise) or whether the burden is instead self-imposed (as where the plaintiff had no such expectation or demonstrated an unwillingness to modify its proposal in order to comply with applicable zoning requirements)." Slip op. at 17.

While "modern zoning practices are such that landowners are rarely *guaranteed* approvals," the Fourth Circuit has explained that "[w]hen a religious organization buys property reasonably expecting to build a church, governmental action impeding the building of that church may impose a substantial burden." *Bethel World Outreach*, 706 F.3d at 557 (emphasis in original); *see also Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 851 (7th Cir.

2007) (holding that when an "organization has bought property reasonably expecting to obtain a permit, the denial of the plaintiff may inflict a hardship on it"), *cert. denied*, 552 U.S. 1131 (2008).

Whether a plaintiff has a reasonable expectation to use property in a certain way is a question of fact. Thus while the Fourth Circuit held that the congregation in *Bethel World Outreach* raised a material fact regarding the reasonableness of its belief that it could build its church when it bought the property, 706 F.3d at 558, that court subsequently held that a small church purchasing a .32-acre lot, with adjacent single-family homes too close for a building like a church under the zoning code, did not have a reasonable expectation of obtaining a variance. *Andon v. City of Newport News*, 813 F.3d 510, 515 (4th Cir. 2016) ("Because the plaintiffs knowingly entered into a contingent lease agreement for a non-conforming property, the alleged burdens they sustained were not imposed by the [zoning board's] action denying the variance, but were self-imposed hardships.").

Here, several factors are potentially probative of whether Plaintiffs had a reasonable expectation of approval when they decided to locate their meditation center at the Eloong Drive property. Among them are Plaintiffs' assertions regarding the residential zone's designation of religious institutions as by-right uses, Doc. 197, PageID.11666, 11679-80; the history of approvals of churches and other religious institutions in the zone, *id.* at PageID.11666, 11679; and the feedback Plaintiffs received from Planning Staff, *id.* at PageID.11666, 11680. Also potentially relevant are the City's assertions that Plaintiffs knew planning approval was required and that there was neighborhood opposition, Doc. 194, PageID.9610-11. The Court should evaluate these competing assertions in determining whether the burden here is properly attributed to the government.

II. The Compelling Interest and Least Restrictive Means Tests Under RLUIPA are Exceptionally Demanding

RLUIPA requires that once a plaintiff establishes that a government's actions impose a substantial burden on religious exercise, the government must prove that the burden is justified by a compelling governmental interest pursued through the least restrictive means. 42 U.S.C. §§ 2000cc(a)(1), 2000cc–2(b). *See Church of Our Savior v. City of Jacksonville Beach*, 69 F. Supp. 3d 1299, 1324 (M.D. Fla. 2014).

A. Compelling Interest

A compelling governmental interest means not just a legitimate or even important interest, but an interest "of the highest order." *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 230 (1972) (discussing compelling interest in the Free Exercise Clause context). As the Court explained in *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993): "The compelling interest standard that we apply . . . is not watered . . . down but really means what it says."[3] *See also Westchester Day Sch.*, 504 F.3d at 353 (citing *Lukumi* for principle that compelling interests under RLUIPA are "interests of the highest order").

To be a "compelling interest" under RLUIPA, a governmental concern must be "grounded on more than mere speculation, exaggerated fears, or post-hoc rationalizations." *West v. Grams*, 607 F. App'x 561, 567 (7th Cir. 2015) (internal quotation marks, citation omitted). "Congress borrowed its language from First Amendment cases applying perhaps the strictest form of judicial

[3] The City cites *Grosz v. City of Miami Beach*, 721 F.2d 729 (11th Cir. 1983), a free exercise zoning case, for the proposition that its actions are justified because it "has a legitimate interest in creating and enforcing zoning laws in order to protect the character, health, and safety of areas within its zoning discretion." Doc. 194, PageID.9614. After *Lukumi*, however, an interest that is not more than "legitimate" is no longer sufficient. *See* 508 U.S. at 547.

scrutiny," and "[t]hat test isn't traditionally the sort of thing that can be satisfied by the government's bare say-so." *Yellowbear v. Lambert*, 741 F.3d 48, 59 (10th Cir. 2014) (Gorsuch, J.).

Courts have been very careful regarding which land-use interests are sufficiently compelling. In the free speech context, the Eleventh Circuit held that aesthetics and traffic were not compelling justifications for a sign code's provisions exempting some signs from regulation but not others. *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1267 (11th Cir. 2005). As one District Court explained: "Given th[e] high bar [of strict scrutiny], courts have held that [a]esthetics, traffic, and community character are normally not compelling interests." *Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*, 138 F. Supp. 3d 352, 418 (S.D.N.Y. 2015), *aff'd in part and rev'd in part*, 945 F.3d 83 (2d Cir. 2019), *cert. denied*, 141 S. Ct. 885 (2020).

Courts have similarly looked warily on claims that preventing potential declines in property values are compelling governmental interests. *Westchester Day Sch.*, 504 F.3d at 353 (collecting cases and noting "[t]here is reason to question whether the maintenance of property values constitutes a compelling governmental interest"); *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1228-29 (C.D. Cal. 2002) (holding, in a RLUIPA zoning case, that revenue generation and economic development were not compelling interests).

Moreover, a municipality must not merely demonstrate some compelling interest in the abstract, but must "show a compelling interest in imposing the burden on religious exercise in the particular case at hand." *Westchester Day Sch.*, 504 F.3d at 353 (*citing Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 432 (2006)); *accord Reaching Hearts Int'l, Inc. v. Prince George's Cnty.*, 584 F. Supp. 2d 766, 788 (D. Md. 2008), *aff'd*, 368 F. App'x 370

(4th Cir. 2010); *Covenant Christian Ministries, Inc. v. City of Marietta*, 2008 WL 8866408, at *14, No. 1:06 cv 1994 (N.D. Ga. Mar. 31, 2008). As the Supreme Court explained in *O Centro Espirita*, the government must show a compelling interest in applying its rule "'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." 546 U.S. at 430-31. The focus must be on the government's interest in restricting the actions of the individual plaintiff in the particular manner the plaintiff proposes. *See id.* at 430-33. Here, that would mean not simply general interests in regulating traffic or protecting neighborhood character, but the interest in limiting the Plaintiffs' use of this particular seven-acre wooded lot, along this particular road, as a meditation center. This requires proof, not opinion or speculation. *See West*, 607 F. App'x at 567 (speculation insufficient); *Yellowbear*, 741 F.3d at 59 (proof, not government assertions, is required).

B. Least Restrictive Means

Even if a government can prove that a substantial burden imposed on a particular plaintiff furthers a compelling governmental interest, the government must additionally prove that the burden being imposed is the least restrictive means available. 42 U.S.C. § 2000cc(a)(1)(B).

It is the government's obligation at this stage of a RLUIPA case to refute all "alternative schemes suggested by the plaintiff to achieve that same interest and show why they are inadequate." *Yellowbear*, 741 F.3d at 62 (quotation marks and citation omitted). In *Westchester Day School*, for example, the Second Circuit held that imposing conditions, rather than an outright denial of the school expansion at issue, was a less restrictive alternative that could have been used. 504 F.3d at 353; *see also Mintz*, 424 F. Supp. at 324 (condition that a church's "parish center and sanctuary not operate at the same time" was a less restrictive alternative to outright denial that also ameliorated traffic concerns).

The City has made no effort in its brief to meet its burden of proving that there are no less restrictive ways that it can achieve a compelling objective. Doc. 194. Indeed, Plaintiffs allege in their brief that the City has admitted that it did not consider less restrictive alternatives. Doc. 197, PageID.11665. Unless the City can prove that there is no less restrictive alternative, a showing by Plaintiffs of a substantial burden on their religious exercise would require judgment for Plaintiffs on their RLUIPA claim.

CONCLUSION

The United States respectfully requests that the Court consider the issues discussed above in deciding the parties' Motions for Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2021, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, will send notification to the following, or, if the party served does not participate in Notice of Electronic Filing, by U.S. First Class Mail, hand delivery, fax or email:

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