CASE NO. 20-2125

IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

THE REDEEMED CHRISTIAN CHURCH OF GOD (VICTORY TEMPLE) BOWIE, MARYLAND,

Plaintiff-Appellee,

v.

PRINCE GEORGE'S COUNTY, MARYLAND,

Defendant-Appellant.

On Appeal from the United States District Court
for the District of Maryland
(Case No. 8:19-cv-00367-DKC)

BRIEF OF APPELLEE

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Dated: March 15, 2021

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 20-2125 Caption: The Redeemed Christian Church v. Prince George's County, MD

Pursuant to FRAP 26.1 and Local Rule 26.1,

The Redeemed Christian Church of God (Victory Temple) Bowie, Maryland
(name of party/amicus)

who is Appellee, 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

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
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑NO
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:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
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.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
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/ Ward B. Coe III Date: 11/3/2020

Counsel for: Plaintiff-Appellee

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JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") is a federal statute, and Victory Temple's claim arising under RLUIPA presented a federal question. In its appeal brief, the County erroneously contends that the district court may not have had subject matter jurisdiction to the extent this Court adopts the County's arguments about the scope and construction of RLUIPA. Br. of Appellant at 1. However, a defendant does not defeat a federal court's subject matter jurisdiction merely by prevailing on the merits. *See Mulcahey v. Columbia Organic Chems. Co.*, 29 F.3d 148, 151 (4th Cir. 1994) ("In cases where federal law *creates* the cause of action, the courts of the United States unquestionably have federal subject matter jurisdiction."). The district court's jurisdiction was secure.

STATEMENT OF THE CASE

Victory Temple's Evangelistic Mission

Victory Temple is an "evangelical church" whose "main mission is to win souls and to plant churches." JA2473 at 1-25:16-20. Victory Temple is affiliated with the Redeemed Christian Church of God, a denomination headquartered in Nigeria, whose adherents aspire to "take as many people [to heaven] as possible" and to "have a member of The Redeemed Christian Church of God . . . in every family of all nations." JA1413.

True to its evangelistic mission, Victory Temple has grown by leaps and bounds since the church was founded by Pastor Adebayo "Bayo" Adeyokunnu in 1996. JA2474 at 1-26:2-14. In 2002, when Victory Temple began operations in Bowie, Maryland, the church had about 500 members. JA2475 at 1-27:6-7, JA2477 at 1-29:21-23. Today, the church has around 2,000 adult members, JA2501 at 1-53:10-12, as well as 250 to 300 children who attend services on Sundays, JA2485 at 1-37:12-13. The church holds its services in an old Ethan Allen furniture store located in a strip mall at 13701 Old Annapolis Road. JA2479 at 1-31:25 – JA2480 at 1-32:15. The

converted furniture store has a seating capacity of 521. JA2530 at 1-82:3-4. Because that seating capacity is inadequate for the church, Victory Temple rents an adjacent facility at 13633 Old Annapolis Road for its teenaged worshippers. JA2488 at 1-40:6-9. When those facilities are not sufficient for the church, Victory Temple rents additional space at the West Bowie Village Hall and the Bowie High School. JA2488 at 1-40:6-14, JA2495 at 1-47:15-20. Because parking is inadequate at Victory Temple's primary facility, Sunday morning worshippers are forced to park up and down the shoulder of Old Annapolis Road. JA2613 at 1-165:14 – JA2614 at 1-166:6.

After hearing extensive testimony about the crowded conditions at Victory Temple, the district court found that the "Old Annapolis Road property is insufficient to meet Victory Temple's needs." JA2433. The court relied in part on Pastor Bayo's unrebutted testimony that, prior to the onset of the COVID-19 pandemic, church attendance exceeded the building's capacity "almost every Sunday." JA2530 at 1-82:25 – JA2531 at 1-83:3. The court further found that overcrowding has forced Victory Temple to turn some parishioners away, "frustrating the church's

fundamental evangelical beliefs." JA2433. The County does not challenge these findings on appeal.

14403 Mount Oak Road

In February 2018, Victory Temple acquired a roughly 29-acre plot of land located at 14403 Mount Oak Road in Bowie, near the intersection where Church Road meets Woodmore Road to the west and Mount Oak Road to the east. JA1628; JA2515 at 1-67:9-14, JA2516 at 1-68:19-23. The property is located several miles south of Victory Temple's current Old Annapolis Road facility, and many parishioners travel up Church Road from the Fairwood, Woodmore Estates, Woodmore North, and Lottsford Road neighborhoods on their way to church at 13701 Old Annapolis Road. JA2588 at 1-140:13-17.

The Mount Oak Road property is large enough to support the development of a 1,500-seat church with associated classroom, administrative, and parking space. JA1455, JA1458. Before purchasing the Mount Oak Road property, Victory Temple engaged a civil engineering firm, Ben Dyer Associates, Inc., to perform a feasibility study. JA2513 at

1-65:5-16. Ben Dyer determined that "the proposed church could be feasibly developed pursuant to a Preliminary Plan of Subdivision and a Detailed Site Plan," after finding that

- The Mount Oak Road property is zoned R-E, a zoning category in which churches are permitted as of right;
- The proposed use is consistent with the Bowie and Vicinity Master Plan and Sectional Map Amendment, and the proposed layout is consistent with development standards contained in the zoning ordinances and the Prince George's County Landscape Manual; and
- Public water and sewer lines are located near the property.

JA1457-58.

Pastor Bayo testified at trial that, in light of the favorable report by Ben Dyer, he was "fully convinced that it is feasible for us to build a church on the property." JA2514 at 1-66:20-24. The district court credited that testimony, finding that "Victory Temple had a reasonable expectation that it could use the Mount Oak Road property to build a church." JA2436. The County does not challenge that finding on appeal and thus has conceded,

as the district court found, that the County's denial decision substantially burdened Victory Temple's religious exercise.

The Development Review Process

In Prince George's County, for any proposed development that will exceed 5,000 square feet, the property owner must prepare and submit a preliminary plan of subdivision. JA2640 at 2-15:18-24. The preliminary plan of subdivision is evaluated by subject-matter experts in the Maryland-National Capital Park and Planning Commission ("M-NCPPC"), Prince George's County Planning Department. JA1707. During this preliminary planning phase, county and state agencies have an opportunity to review and comment on the proposed development, JA1707, and the property owner may be required to conduct environmental and infrastructure studies to demonstrate that "adequate public facilities" are available for the proposed development, *see* Prince George's Cty., Md., Code of Ordinances § 24-122.01; JA2710 at 2-85:19-21.

As part of its feasibility study, Ben Dyer anticipated that Victory Temple would be required to complete a traffic study at the preliminary

plan of subdivision phase to "determine traffic impact generated by the proposed church." JA2642 at 2-17:20-24; *see generally* JA1632-90 (M-NCPPC "Guidelines for the Analysis of the Traffic Impact of Development Proposals"); JA2720 at 2-95:1-7 (land use attorney Arthur Horne testifying that these M-NCPPC guidelines "apply at the time of preliminary plan of subdivision"). Ben Dyer further anticipated that a stormwater management concept would be required, JA2643 at 2-18:13-24, and that a detailed site plan would be needed given the Mount Oak Road property's proximity to a cemetery with a historic designation, JA2642 at 2-17:25 – 2643 at 2-18:9. Likewise, a natural resource inventory and a tree conservation plan would be required as part of the preliminary plan of subdivision process, and a noise study might also be required. JA1457.

Victory Temple's Application to Amend the 2008 Water and Sewer Plan

Before any of the work involved in the preliminary planning phase can begin, a property must be designated in an appropriate water and sewer category. Under the 2008 Water and Sewer Plan administered by the

County pursuant to section 9-503 of the Code of Maryland, Environment Article, properties may be designated in any of the following categories:[1]

- Category 3: Community System
- Category 4: Community System Adequate for Development Planning
- Category 5: Future Community System
- Category 6: Individual Systems—Well and Septic Systems or Shared Facilities

JA1113. Sites designated in Category 6 are mostly rural properties located outside the sewer envelope; the County does not currently plan to extend water and sewer service to these sites. JA1113. Sites designated in Category 5 are located inside the sewer envelope but "require a redesignation to Category 4 prior to the development review process." JA1113. The Mount Oak Road property was designated in Category 5 at the time Victory Temple acquired it. JA1457. It is undisputed that the

[1] The 2018 Water and Sewer Plan took effect while this litigation was pending. It is undisputed that the 2008 plan is the operative version for Victory Temple's application.

property must be designated in at least Category 4 before Victory Temple can commence the development review process. JA2839 at 3-72:16-24 (County water and sewer plan coordinator testifying that Victory Temple "can't go through the preliminary plan of subdivision review in category 5").

On November 16, 2018, Victory Temple submitted an Application for Water and Sewer Plan Amendment to the County's Department of Permitting, Inspections and Enforcement ("DPIE") during the December 2018 cycle of amendments. JA0044, JA0047; JA0068-73.[2] Victory Temple's application described its proposed use of its Mount Oak Road property and included a lengthy justification statement showing how the proposed use is consistent with County policies. JA0057-66.

Pursuant to section 6.3.1 of the 2008 Water and Sewer Plan, DPIE's Water and Sewer Plan Coordinator, Shirley Branch, received the

[2] The 2008 Water and Sewer Plan identifies the Department of Environmental Resources, or DER, as the agency responsible for coordinating water and sewer plan amendments. That responsibility was later transferred to DPIE. JA2775 at 3-8:24 – JA2776 at 3-9:6.

application and referred it out for an individualized review by the Washington Suburban Sanitary Commission, the M-NCPPC, the County Health Department, and other professionals at DPIE. JA1276; JA2777 at 3-10:16-20, JA2782 at 3-15:24 – JA2783 at 3-16:6. Each agency conducted an individualized assessment of the proposed church development and offered comments that Ms. Branch compiled into a DPIE staff report. JA0616-51. Ms. Branch submitted the DPIE staff report first to the County Executive's Office for the Executive's review and recommendation and then to the County Council for a final decision. JA2783 at 3-16:10-13. Before the Council rendered its final decision, it held a public hearing at which over thirty community members spoke either in favor of or against the proposed use for 14403 Mount Oak Road. JA0662-707.

All County subject-matter experts to consider Victory Temple's application supported advancement to Water and Sewer Category 4. Ms. Branch noted that the 14403 Mount Oak Road site is "located inside the Sewer Envelope, in a category designated for future water and sewer servicing, within Sustainable Growth Act Tier 2, and within the Growth

Boundary." JA0634. She added that the proposal is "[g]enerally consistent with criteria established in the Plan relating to contiguity to existing urban or suburban developments, proximity to existing or funded public water and sewer systems and in concert with the availability of other public facilities." JA0634.

The Health Department had "no objection to the category change." JA0635. The Washington Suburban Sanitary Commission noted that existing water mains "are available to serve the site." JA0635. DPIE commented that the "proposed site development will require an approved DPIE Stormwater Management Concept Plan and Fine Grading permit" and that County standards must be followed for right-of-way dedication and frontage improvements, with all roadways to be "consistent with the approved Master Plan for this area." JA0635. Similarly, the M-NCPPC commented that "[a]dditional dedication will be required along a portion of the site," and that "[d]epending on the size of the proposed church, a transportation study may be required to evaluate adequacy of the roadways in the surrounding area." JA0635. Ms. Branch testified at trial

that "[a]ll of these additional testing and reviews . . . take place at the preliminary plan of subdivision review designation." JA2825 at 3-58:13-15; *see* JA2827 at 3-60:13-18 (road dedications and transportation study would be required after advancement to Category 4).

The County Executive concurred in DPIE's recommendation that Victory Temple's water and sewer application should be granted. JA0071. The City Manager for the City of Bowie also concurred, JA1532-33, though the Bowie City Council recommended denial of the application following a public hearing at which residents complained about infrastructure, declining property values, and other issues, JA0462-63.[3]

In February 2019, while Victory Temple's water and sewer application was pending, representatives of the church met with Todd Turner, Chair of the County Council. JA1695. The group shared a

[3] Although the Bowie City Council held a hearing about Victory Temple's application and thereafter recommended denial of the application, the City Council has no decision-making authority under the 2008 Water and Sewer Plan. Under the legislative amendment process set forth in section 6.3 of the plan, only the County Council is authorized to grant or deny a water and sewer application. JA1274-75.

conceptual site plan with Chair Turner that depicted a two-story, 60,000 square foot church building. JA2699 at 2-74:10 – JA2701 at 2-76:5. According to Arthur Horne, a local land use attorney for Victory Temple who attended the meeting, Chair Turner was "fine" with the proposal and "had no issues." JA2701 at 2-76:6-12.

Chair Turner's reaction to the proposal was similar to the reaction of a group of six M-NCPPC personnel who had met with representatives of Victory Temple before the church submitted its water and sewer application. JA1691-92. Minutes from that meeting reflect that the "[t]ransportation section does not believe there are any significant traffic concerns because the intersection was recently improved." JA1692. At trial, Barry Caison, a Ben Dyer civil engineer, confirmed that the intersection where Church Road meets Woodmore and Mount Oak Roads was improved approximately eight years ago. JA2663 at 2-38:22 – JA2664 at 2-39:16. An aerial photograph introduced into evidence at trial shows six northbound lanes of Church Road (including a bicycle lane and turning lanes) adjacent to Victory Temple's property; two southbound lanes of

Church Road; and six eastbound lanes of Woodmore Road (again, including a bicycle lane and turning lanes) as Woodmore becomes Mount Oak Road. JA1628.

Public Opposition to Victory Temple's Proposal

During cycles of amendments to the County's Water and Sewer Plan, sponsors of applications and interested members of the public have an opportunity to provide comment at a public hearing before the County Council. A hearing on applications submitted during the December 2018 cycle of amendments was scheduled for April 16, 2019. In advance of that hearing, a community activist, Carrie Bridges, circulated an online petition titled "No MEGA CHURCH on Mount Oak and Church Road in Bowie." JA1539. The petition, which garnered over 400 signatures, was submitted at the hearing for the County Council's consideration and is part of the administrative record. JA2908 at 64:7-13; JA0216-59. Many of the comments in the petition reflect animus toward "megachurches" or churches in general, including the following:

- "I can think of no plausible reason for this 'church' to be built." JA0219.

- "Keep your cult to yourself." JA0229.

- "I am against a hulking parasitic entity that will abuse the infrastructure of the city without paying taxes. NO MORE." JA0231.

- "We don't need any further development, much less a church." JA0234.

- "No more land grabs." JA0239.

- "Another fine example of money hungry people. Like this area needs another church." JA0243.

- "These bloated castles have a huge impact on resources, the environment, and on traffic, but while they make a few people excessively rich (which seems counter to Christian values), the rest of us get stuck footing the bill." JA0246.

- "Apart from the strain this project would cause on the already over utilized amenities on the ground, it will attract all kinds of Individuals (like flies to a honey) coming to church with nefarious motives; Crime rate would skyrocket in this particular community. . . . We shall remember our friends at the next election." JA0259.

Thirty-two community members rose to speak at the April 16 hearing (with one ceding his time), and twenty of those community members expressed opposition to Victory Temple's water and sewer application. JA0663-707. While the County asserts in its opening brief that "twenty-one

witnesses testified about traffic safety on the roads surrounding the proposed development during the public hearing," Br. of Appellant at 8, five of the opponents of Victory Temple's proposal—Derrick Plummer, Lorenzo Sims, Dr. Lynn Boles, Kevin Doby, and Ade Adebisi—made no mention of traffic congestion or traffic safety.

The witnesses' concerns were wide ranging. James Albert (who later testified at trial) worried about the impact on the "historic environment and sight lines of the surroundings," as well as the health of 1,300 saplings he had planted on his sprawling property. JA0669 at 8:22 – JA0670 at 9:2. Evette Conwell was "concerned about the potential light pollution that would prevent [her] from looking at the stars." JA0672 at 11:4-5. Anita Wheeler worried that the exhaust from parishioners' cars might aggravate her upper respiratory condition. JA0680 at 19:1-7. Multiple residents worried about declining home values or contended that, as local taxpayers, they should exercise more autonomy over or receive more direct benefit from infrastructure improvements. JA0666 at 5:3-9, JA0672 at 11:21 – JA0673 at 12:5, JA0675 at 14:1-6, 16-18, JA0676 at 15:15-17, JA0683 at

22:22-24, JA0685 at 24:5-10. Joseph Meinert, the Director of Planning and Community Development for the City of Bowie, relayed that the City Council "concurred with the comments presented by the residents regarding the negative impact that a large church building and parking lot will have on the surrounding community," adding that a "County Capital Improvement Program project . . . has been in the program since 2006," but "the funding has been placed in the beyond six years category, which means there is no funding available for road improvements." JA0681 at 20:22 – JA0682 at 21:7. And Dr. Keith Strong echoed the sentiments of many participants in the community petition when he opined that "[w]e do not need yet another church, large church in Prince George's County. Church attendance in the U.S. is falling. . . . Approving this project will be like approving another shopping mall, when so many shops in the other existing malls remain empty." JA0677 at 16:3-7. All of the objections presented at the April 16 hearing were leveled at Victory Temple's proposed use of its property, which was to build a new church large enough to meet the needs of its growing congregation.

During this same period, while Victory Temple's water and sewer application remained pending before the County Council, Pastor Isaac Adeyemo, an assistant pastor at Victory Temple and a resident of Woodmore Estates in Bowie, attended two meetings with community members. In Pastor Adeyemo's words, the first meeting was "to mediate between the church, to find a common ground, whether we can actually resolve the problem by [the] community." JA2747 at 2-122:22-24. "All kind of questions were asked at the meeting," and representatives of the church endeavored to answer the community's questions. JA2748 at 2-123:9-11.

The second meeting was a homeowners' association meeting, which Pastor Adeyemo attended in his capacity as a local homeowner. JA2744 at 2-119:5-10, JA2749 at 2-124:7-15. At this meeting, residents discussed their views about the proposed church development. JA2750 at 2-125:1-12. One resident suggested that Victory Temple might "sell the land and just go buy from somewhere else and just move." JA2750 at 2-125:8-9. Others remarked: "we don't want you people in our community, we don't want

our children to grow up having the church in [their] backyard." JA2750 at 2-125:10-12.

The County's Denial Decision

On April 23, 2019, the County Council's Transportation, Infrastructure, Energy and Environment ("TIEE") Committee convened to review the water and sewer applications submitted during the December 2018 cycle of amendments. Shirley Branch, the DPIE Water and Sewer Plan Coordinator, attended this committee meeting and described DPIE's review process. Ms. Branch explained:

> When we reviewed the Redeemed Christian Church of God, they met all the criteria that is adopted in the Water and Sewer Plan. And when they meet that criteria, unless there are some extenuating circumstances, our recommendation would always be to allow it to go to Category 4. And Category 4 is when the planning agency would be able to review this more succinctly, more in depth.

JA0738 at 16:20-24. Ms. Branch added: "our recommendation remains that the application met the criteria of the Water and Sewer Plan, and that's all we look at. . . . We go by the Plan, and we uphold the Plan." JA0739 at 17:9-11.

Despite Ms. Branch's explanation of the process and the favorable review by DPIE, the M-NCPPC, the County Executive, and other agencies, County Council Chair Todd Turner objected to the water and sewer upgrade. Chair Turner (who did not testify at trial) observed that "about 60 percent" of the community members who spoke at the hearing "were in opposition to the application" and that "based on the review of th[e] record, including the public testimony, there are compelling reasons to maintain the current water and sewer category for the subject property." JA0743 at 21:10-16. Chair Turner stated that those "compelling reasons" "include, but are not limited to":

> traffic impacts, the environmental impacts, the economic impact, the fiscal impact, potential pollution and air pollution, lack of infrastructure, including for stormwater management, potential impact on the quality of life, inconsistency with the General and Area Master Plans, no demonstration of a hardship by this applicant, and, additionally, the City of Bowie's position.

JA0743 at 21:18-22.[4]

[4] At trial, the County tactically winnowed down these various concerns to focus on just one issue: traffic.

Chair Turner added that, in his view, "maintaining the current category of the property would not create an undue burden on or preclude the church in developing its property in the future consistent with the community character," but that "there still needs to be work done amongst all the stakeholders involved in this process, whether it's the church, the surrounding communities, the City of Bowie and the County." JA0744 at 22:13-15, 21-23.

Following Chair Turner's remarks, the TIEE Committee voted unanimously to overrule the County Executive and the other agencies that had recommended advancement to Category 4 and to maintain the Category 5 designation for 14403 Mount Oak Road. JA0745 at 23:1-14. The full County Council met on May 7, 2019, and unanimously adopted the TIEE Committee's recommendation, JA0721 at 5:4 – JA0722 at 6:5, a decision that was codified in County Council Resolution CR-18-2019, JA0068-73.

During the same December 2018 cycle of amendments in which the County Council denied Victory Temple's application, the Council

approved all other applications, including over the County Executive's objection in one instance. JA0071-72. For several of these properties, the DPIE staff report noted that further studies may be required at the preliminary planning phase. For instance, the Council upgraded the Schraf Property located on Robert Crain Highway from Category 5 to Category 4, notwithstanding that the M-NCPPC commented that a "traffic study" and "frontage improvements" "may be required at the time of development." JA0651. The Council also upgraded the Bharat Darshan Brandywine Temple from Category 5 to Category 4, despite that the M-NCPPC found "[a]dditional dedication is required to meet master plan rights-of-way," a "transportation study may be required at the time of development," and "frontage and trail improvements as well as a contribution into the Brandywine Road Club[] may be required at the time of development." JA0647.

During the April 2019 cycle of amendments (the next cycle after the December 2018 cycle), the County Council approved a water and sewer upgrade from Category 5 to Category 4 for the Freeway Airport project,

JA2208, a development proposal for 44 single-family homes to be constructed near the intersection of Church Road and U.S. 50 in Bowie, JA1958, about two miles north of 14403 Mount Oak Road. The Council approved the upgrade despite the M-NCPPC's recognition that "[r]ight-of-way dedication may be required along Church Road at the time of preliminary plan of subdivision (PPS)" and that "an adequacy determination will be made by the Prince George's County Planning Board at the time of PPS, which may require additional investment in transportation facilities to provide adequate transportation service." JA1959.

At trial, counsel for Victory Temple asked Ms. Branch whether she disagreed that Victory Temple's application was the only application for an upgrade from Category 5 to Categories 4 or 3 between 2015 and 2019 that the Council had denied over the recommendations of the Executive and the M-NCPPC. Ms. Branch had no information to the contrary. JA2848 at 4:24 – JA2849 at 5:17. The County Council resolutions from that four-year time period, which are included in the trial record, reflect that the Council

denied just one application for an upgrade to Category 4 or Category 3 for which the Executive had recommended advancement: Victory Temple's application. JA2163-212.

In a September 9, 2020 Memorandum Opinion, the district court found that "the County violated RLUIPA in denying Victory Temple's application for a category change from W5 and S5 to W4 and S4." JA2442. Subsequent to that ruling, on October 2, 2020, the district court entered an Order permanently enjoining the County from denying Victory Temple's requested water and sewer category change and ordering the County to grant Victory Temple's application within sixty days. JA2445. The County defied that Order. It filed an out-of-time motion to stay, *see Redeemed Christian Church of God (Victory Temple) Bowie, Md. v. Prince George's County* ("*Victory Temple*"), No. DKC 19-3367 (D. Md. Dec. 3, 2020), ECF No. 70, which the court has not ruled on as of this filing. The County therefore is presently in contempt of the Order.

SUMMARY OF THE ARGUMENT

The County denied Victory Temple's application for a water and sewer upgrade and derailed the church's development plans after making an individualized assessment of Victory Temple's proposed use for its property located at 14403 Mount Oak Road. The County's denial decision substantially burdened Victory Temple's religious exercise through the implementation of a system of land use regulations—exactly the type of local government action that RLUIPA was designed to constrain. *See* 42 U.S.C. §§ 2000cc(a)(1), (a)(2)(C). The County's reliance on irrelevant Maryland case law to try to narrow the scope of RLUIPA is improper not only because federal law determines the meaning of federal statutes, but also because RLUIPA directs courts to construe the statute "in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the statute] and the Constitution." *Id.* § 2000cc-3(g).

Moreover, the County's denial decision could not satisfy strict scrutiny. Denial of a water and sewer upgrade is completely untethered from the traffic concerns that the County selected at trial from among a

host of pretextual reasons for its denial decision. The evidence shows that the County's true motivation had nothing to do with traffic: rather, the County was motivated by a political desire to appease disgruntled residents who do not want a "megachurch" in their neighborhood. Even if the County were concerned about traffic, it failed to show that its outright denial of Victory Temple's water and sewer application was the least restrictive means of furthering any interest in traffic safety. On the contrary, the unrebutted evidence shows that traffic and other concerns are ordinarily addressed during the preliminary plan of subdivision phase, at which point the property owner can work with the M-NCPPC and other state and local agencies to ensure that adequate public facilities are available for the proposed development. Since the County's ordinary process is less restrictive than its individualized denial decision in Victory Temple's case, that denial decision violated RLUIPA.

ARGUMENT

I. The district court correctly held that RLUIPA applies to the County's denial of Victory Temple's water and sewer application.

The district court held that the "County's denial of the water and sewer amendment constitutes a land use regulation under RLUIPA," explaining that the "Water and Sewer Plan . . . permits the County to make 'individualized assessments of the proposed uses for the property involved,'" JA2429, 2431 (citing 42 U.S.C. § 2000cc(a)(2)).

This Court reviews *de novo* the district court's ruling on the scope and application of the statute, *see Stone v. Instrumentation Lab. Co.*, 591 F.3d 239, 242-43 (4th Cir. 2009). The Court should affirm, because the County individually assessed Victory Temple's application for a water and sewer upgrade, denied the application against the backdrop of strong community opposition to the church, and halted Victory Temple's development efforts. That is precisely the type of burdensome land use regulation that Congress enacted RLUIPA to protect against. The County's argument that RLUIPA should not apply to actions the County deems "legislative" would frustrate

Congress's intent with a RLUIPA loophole that would allow local governments to avoid the statute through mere labeling and the shifting of decision-making authority from one branch of government to another. Nothing in the statute, the case law, or the legislative history of RLUIPA countenances such gamesmanship.

A. Federal law governs the interpretation of RLUIPA and requires that courts construe the statute in favor of a broad protection for religious exercise.

RLUIPA's substantial burden provision applies to the implementation of a "land use regulation," which the statute defines as "a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land . . . if the claimant has a[] . . . property interest in the regulated land or a contract or option to acquire such an interest." 42 U.S.C. § 2000cc-5(5). In its Memorandum Opinion denying the County's motion to dismiss, the district court explained that "[a]lthough it is obvious that state law is involved in the analysis, definition of the term 'zoning' is a matter of federal law." JA0027.

The district court cited *United States v. Midgett*, 198 F.3d 143 (4th Cir. 1999), a case in which this Court recognized that "federal law governs the application of Congressional statutes in the absence of plain language to the contrary." *Id.* at 145 (citation omitted); *see also NLRB v. Nat. Gas Utility Dist. of Hawkins Cty.*, 402 U.S. 600, 603 (1971) ("In the absence of a plain indication to the contrary . . . it is to be assumed when Congress enacts a statute that it does not intend to make its application dependent on state law." (citation omitted)); *Lockhart v. Napolitano*, 573 F.3d 251, 259-60 (6th Cir. 2009) ("Although federal courts may look to state law for guidance in defining terms, formulating concepts, or delineating policies, courts need not incorporate state-law definitions where to do so would frustrate a federal statute's purposes."). As a matter of federal law, the district court concluded, "the County's denial of the water and sewer amendment constitutes a land use regulation under RLUIPA." JA0032.

On appeal, the County argues, as it did at trial, that the district court should have consulted Maryland law to determine what counts as a "zoning law" under RLUIPA, because zoning is a "quintessential matter[]

of local concern." Br. of Appellant at 24. The County has never identified a case in which a court excluded some form of land use regulation from RLUIPA's coverage based on a narrower state-law understanding of "zoning laws." *See* JA2430 ("The County cites no case applying state law to define 'land use regulation,' 'zoning law,' or any other RLUIPA terms."). Instead, the County relies on *Reconstruction Finance Corp. v. Beaver County*, 328 U.S. 204 (1946), a tax case that predated RLUIPA by over fifty years. The statute at issue in *Reconstruction Finance Corp.* subjected certain federal "real property" to state and local taxation. The Supreme Court observed that "Congress[,] in permitting local taxation of the real property, made it impossible to apply the law with uniform tax consequences in each state and locality." *Id.* at 209. In other words, the purpose of the statute was to **subject** federal property to local law, so courts had to look to local law to determine how the property would be taxed. The purpose of RLUIPA is to **exempt** religious land use from local law to the extent that local law substantially burdens religious exercise without a compelling justification. *See Martin v. Houston*, 196 F. Supp. 3d 1258, 1264 (M.D. Ala. 2016) ("To the

extent that RLUIPA upsets the ability of the states to enforce their own zoning regulations, the text of the statute makes Congress's intent to do so unmistakably clear."). Religious freedom, unlike state and local tax, is a bedrock constitutional principle with a uniform meaning across Maryland and all other states.

The other cases cited by the County provide no basis from which this Court could graft a narrower state-law understanding of zoning onto RLUIPA. The County cites *Second Baptist Church of Leechburg v. Gilpin Township*, 118 F. App'x 615 (3d Cir. 2004), an unpublished opinion written "solely for the parties," *id.* at 616, in which a church had conceded that a sewer tap-in ordinance did not directly involve a zoning or landmarking law, and the court then concluded that the ordinance was outside RLUIPA's scope, *id.* at 617. The County cites *Faith Temple Church v. Town of Brighton*, 405 F. Supp. 2d 250 (W.D.N.Y. 2005), and *St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616 (7th Cir. 2007), but those cases merely recognize the unremarkable fact that zoning (an exercise of the state's police power) and eminent domain are distinct concepts, and given

their differences, "it seems very unlikely that Congress assumed that courts would interpret RLUIPA's reference to zoning laws as including eminent domain proceedings as well." *Faith Temple Church*, 405 F. Supp. 2d at 254-55. The County also cites *Fourth Quarter Properties IV, Inc. v. City of Concord*, 127 F. App'x 648 (4th Cir. 2005), and *I-77 Properties, LLC v. Fairfield County*, 288 F. App'x 108 (4th Cir. 2008), a pair of unpublished *Burford* abstention cases that have nothing to do with RLUIPA or the application of state law definitions to a federal statute.

The County's effort to curtail RLUIPA by way of inapposite Maryland land use law is particularly inappropriate given Congress's direction that the statute must be construed "in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the statute] and the Constitution." 42 U.S.C. § 2000cc-3(g). Congress took the unusual step of incorporating rules of construction into the statutory framework because it recognized that local governments may surreptitiously wield a variety of land use regulations to preclude disfavored religious groups from entering their communities. As noted in

the congressional hearing record, discrimination often "lurks behind such vague and universally applicable reasons as traffic, aesthetics, or 'not consistent with the city's land use plan.' Churches have been excluded from residential zones because they generate too much traffic, and from commercial zones because they don't generate enough traffic." 146 Cong. Rec. S7774, S7774-75 (daily ed. July 27, 2000); *see id.* at S7774 ("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"). The County's arguments in this case epitomize Congress's concern. The County calls its decision-making process "legislative" and argues it can therefore avoid RLUIPA altogether. Congress prohibited such gamesmanship by directing courts to accord RLUIPA the broadest scope feasible.

The County's further argument that "the district court applied a virtually unlimited definition of zoning to a land use regulation governed by RLUIPA" and thus reached a decision "arguably unconstitutional as applied," Br. of Appellant at 25, is a new argument on appeal that the

Court need not consider, *United States ex rel. Modern Mosaic, Ltd. v. Turner Constr. Co.*, 946 F.3d 201, 208 (4th Cir. 2019). The argument is also meritless. The County's fear that a state's division of property into counties with differing zoning regulations could itself qualify as a RLUIPA zoning law, Br. of Appellant at 23, ignores the second requirement in the statute—that, with limited exceptions, a substantial burden must arise in the "implementation of a land use regulation or system of land use regulations, under which a government makes . . . individualized assessments of the proposed uses for the property involved." A state legislature's demarcation of county lines plainly does not constitute an individualized assessment of land use. But a local government's denial of a property owner's application for a water and sewer upgrade based, as here, on an analysis of the proposed use of the land is the quintessential individualized assessment to which RLUIPA applies.

B. In denying Victory Temple's application to amend the Water and Sewer Plan, the County implemented a system of land use regulations through which it made an individualized assessment of Victory Temple's proposed religious land use.

The district court recognized that, while the "Water and Sewer Plan

may be a comprehensive planning document, there is no question that water and sewer category change requests occur parcel by parcel." JA2430. That parcel-by-parcel analysis is spelled out in section 6.3 of the 2008 Water and Sewer Plan: (i) a landowner submits an application to amend the plan with respect to the landowner's property; (ii) DPIE (formerly DER) reviews the application, refers it out to other agencies, and prepares a report to the County Executive; (iii) the Executive makes a recommendation and transmits a proposed resolution to the County Council; (iv) the Council holds a public hearing and a work session prior to adopting the resolution; and (v) the Council adopts the final resolution. JA1275-77.

The County emphasizes that the Council is a legislative entity and that the category change Victory Temple sought required a legislative amendment. Br. of Appellant at 35-36. RLUIPA does not distinguish between "legislative" and "administrative" acts. It is not plausible that the same Congress that directed courts to construe RLUIPA "in favor of a broad protection of religious exercise, to the maximum extent permitted by the [statute] and the Constitution," 42 U.S.C. § 2000cc-3(g), also

contemplated that a local government could avoid the statute altogether by designating a regulatory process as "legislative" or housing it within the legislative branch of government. The process described in section 6.3 of the Water and Sewer Plan could play out in materially the same manner if the roles of the County Executive and County Council were swapped such that the Council were to make a recommendation but the Executive were to make the final decision. Whether designated as "legislative" or "administrative," the water and sewer upgrade process (at least as it played out in this case) is really quasi-judicial: it involves an "individualized assessment[] of the proposed uses for the property involved." *Id.* § 2000cc(a)(2)(C); *see Dugan v. Prince George's County*, 216 Md. App. 650, 661 (2014) ("it is permissible to identify situations where amending the water and sewer plan is a quasi-judicial action").

Conspicuously absent from the County's appeal brief is any example of a case reported anywhere in the country where a court held that a process comparable to the County's cycles of water and sewer amendments is immune from RLUIPA or that "legislative" acts are not subject to

RLUIPA. On the contrary, courts have repeatedly reviewed the actions of local government entities for compliance with RLUIPA without regard to whether those entities are housed in the legislative or executive branch of local government. *See, e.g.*, *Fortress Bible Church v. Feiner*, 734 F. Supp. 2d 409 (S.D.N.Y. 2010) (environmental quality review act determination by town board), *aff'd*, 694 F.3d 208 (2d Cir. 2012); *Guru Nanak Sikh Soc'y of Yuba City v. County of Sutter*, 326 F. Supp. 2d 1140 (E.D. Cal. 2003) (denial of conditional use permit by county board of supervisors), *aff'd*, 456 F.3d 978 (9th Cir. 2006); *Roman Catholic Archdiocese of Kan. City in Kan. v. City of Mission Woods*, 385 F. Supp. 3d 1171 (D. Kan. 2019) (denial of land use request by commission that makes recommendations to city council).

In Maryland, federal courts on at least three prior occasions have applied RLUIPA in reviewing denials of water and sewer upgrades. The County acknowledges two of these cases—*Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548 (4th Cir. 2013), and *Reaching Hearts Int'l, Inc. v. Prince George's County*, 584 F. Supp. 2d 766 (D. Md. 2008), *aff'd*, 368 F. App'x 370 (4th Cir. 2010)—but offers the revisionist reading

that "zoning legislation was also at issue and brought the state conduct within RLUIPA's ambit." Br. of Appellant at 32. Neither case held or even intimated that RLUIPA applied only because some additional zoning action was challenged. On the contrary, in *Reaching Hearts* the court observed that the "jury heard testimony that the Defendant's denials of RHI's water and sewer category change applications . . . prevented RHI from building its church," and the court separately analyzed (and found unavailing) the purported "compelling interests" advanced by the county in support of its water and sewer denial decisions and its enactment of legislation that restricted RHI's use of its property. 584 F. Supp. 2d at 785, 787-89. For that matter, RHI's latest-in-time development proposal before it filed a federal lawsuit was derailed by a water and sewer denial decision. *Id.* at 779.

The County failed to acknowledge a third case involving the interplay between RLUIPA and Maryland water and sewer law. In *Canaan Christian Church v. Montgomery County*, No. TDC-16-3698, 2020 WL 5849479 (D. Md. Sept. 30, 2020), *appeal docketed*, No. 20-2185 (4th Cir. Nov. 2, 2020),

the only state action challenged by the plaintiffs was the denial of a water and sewer upgrade. Although the district court rejected the plaintiffs' RLUIPA substantial burden claim on its merits, the court understood that RLUIPA applied to such state action. The court simply found on the facts of that case—where plaintiffs sought to build a church on a site designated in Category 6 for which water and sewer applications had been historically denied—that plaintiffs lacked a reasonable expectation that they could use the property for their proposed church. *Id.* at *13.

The County has identified no authority for the proposition that a land use regulation designated under local law as "legislative" is outside RLUIPA's ambit, and the statute by its plain terms applies to the County's individualized assessment of Victory Temple's water and sewer application. The district court, like the courts in *Bethel World*, *Reaching Hearts*, and *Canaan Christian*, correctly understood that RLUIPA applies to such actions.

C. Appleton Regional Community Alliance v. County Commissioners of Cecil County *has no bearing on the proper construction of RLUIPA.*

Because federal law governs the interpretation of RLUIPA, and because the process outlined in section 6.3 of the County's Water and Sewer Plan plainly constitutes an implementation of a system of land use regulations pursuant to which the County Council makes individualized assessments of land use, this Court should affirm the judgment of the district court without regard to irrelevant Maryland case law. Even if the Court were inclined to consider the County's lengthy argument about *Appleton Regional Community Alliance v. County Commissioners of Cecil County*, 404 Md. 92 (2008), the Court should nevertheless affirm, because (i) *Appleton* has nothing to do with RLUIPA or religious land use, and (ii) nothing in *Appleton* undermines the district court's conclusion that the Council's water and sewer decisions implement zoning laws.

In *Appleton*, the Court of Appeals of Maryland determined that a county council's decision on a water and sewer application for a 390-acre development was not a judicially reviewable "zoning action" within the

meaning of a procedural statute now codified at Md. Code Ann., Land Use § 4-401. As the district court recognized, JA0029-30, *Appleton* merely held that a water and sewer upgrade was a "planning action" rather than a "zoning action" for purposes of the judicial review statute. It did not address whether the denial of a water and sewer upgrade after analysis of a proposed use involves the implementation of a zoning law, which is all that RLUIPA requires. *See Israelite Church of God in Jesus Christ, Inc. v. City of Hackensack*, No. 11-5960 (SRC), 2012 WL 3284054, at *5 (D.N.J. Aug. 10, 2012) (definition of "land use regulation" is "broadly worded, and appears to include within its scope any application of a zoning law that limits a claimant's use of land"); *United States v. County of Culpeper*, 245 F. Supp. 3d 758, 768 (W.D. Va. 2017) ("Where the record supports the inference . . . that a locality 'disingenuously used' its procedures 'to obstruct and ultimately deny' a congregation's building, courts 'decline to insulate' it from 'liability with regard to its decisions on zoning issues simply because it decided them under the rubric of an' ostensibly non-zoning process." (citation omitted)).

The County also argues that the "logical distinction between the application of zoning law . . . and an amendment to a water and sewer plan is whether the action taken is specific to a particular parcel of property based on its unique characteristics or is part of more comprehensive community planning that is only incidentally related to a parcel." Br. of Appellant at 31. That argument cuts against the County's position, because the County's entire justification for its denial of Victory Temple's water and sewer application turns on the purported characteristics of 14403 Mount Oak Road and its immediate vicinity. The County claims it denied the application because of the "harrowing" and "unforgiving" conditions of Church Road. *Id.* at 9. As the district court found, that explanation is implausible and pretextual. But the County's singling out of Victory Temple for different treatment illustrates that its denial decision involved an individualized assessment of the use of property and therefore fell within the ambit of RLUIPA. *See Fortress Bible Church*, 734 F. Supp. 2d at 499 ("[T]he significant evidence indicating that the Church's application

was treated differently from other comparable applications itself demonstrates that the Town's assessment was individualized.").

II. The district court correctly found that the County's denial decision was not the least restrictive means to further a compelling state interest.

After a three-day bench trial featuring over eighty exhibits and testimony by nine witnesses, the district court issued a carefully reasoned opinion in which it found that the County's denial decision could not withstand the strict scrutiny that RLUIPA requires, as the County had "wholly fail[ed] to link" its purported interest in traffic safety "to the denial of Victory Temple's application for an amendment." JA2439. The district court additionally found that "Victory Temple did not cause the current traffic issues and there is no reliable evidence that the activities of the church would exacerbate those issues," and that "the County's denial of Victory Temple's application is not the least restrictive means of ameliorating them." JA2440.

This Court reviews the district court's factual findings for clear error, *see June Med. Servs. LLC v. Russo*, 140 S. Ct. 2103, 2121 (2020); *see also id.*

("Where 'the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.'" (citation omitted)). The Court should affirm, because (i) the record shows that the County's purported traffic concerns are a pretext to conceal its true political concerns about backlash from disgruntled residents opposed to "megachurches"; and (ii) the denial of a water and sewer upgrade, which has nothing to do with traffic, is far more restrictive than the County's standard procedure of addressing traffic concerns at the preliminary plan of subdivision stage.

A. The record shows that the County's purported justifications for denying Victory Temple's application to amend the Water and Sewer Plan were pretextual.

The County's explanation of its rationale for denying Victory Temple's water and sewer application has been a moving target. At the April 16, 2019 hearing, community members expressed a range of concerns about the proposed church development, from environmental concerns to complaints about their rights as taxpayers and homeowners to the belief

that, because statistics show church attendance is falling nationwide, construction of a new church in Prince George's County is not appropriate. Council Chair Turner adopted those concerns at the April 23 TIEE Committee hearing when he asserted "based on the review of th[e] record, including the public testimony, [that] there are compelling reasons to maintain the current water and sewer category" at 14403 Mount Oak Road. JA0743 at 21:14-15. Chair Turner then listed some of those "compelling reasons," which "include, but are not limited to":

> traffic impacts, the environmental impacts, the economic impact, the fiscal impact, potential pollution and air pollution, lack of infrastructure, including for stormwater management, potential impact on the quality of life, inconsistency with the General and Area Master Plans, no demonstration of a hardship by this applicant, and, additionally, the City of Bowie's position.

JA0743 at 21:15-22.[5]

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[5] Chair Turner's vague reference to "inconsistency with the General and Area Master Plans" calls to mind the reference in the congressional hearing record to "discrimination lurk[ing] behind such vague and universally applicable reasons as traffic, aesthetics, or 'not consistent with the city's land use plan.'" 146 Cong. Rec. at S7774.

Chair Turner also contended, implausibly, that "maintaining the current category of the property would not create an undue burden on or preclude the church in developing its property in the future consistent with the community character." JA0744 at 22:13-15. That coded language put Victory Temple in a bind for several reasons. First, nothing in the Water and Sewer Plan or any other guidance identified by the County informs Victory Temple how to develop its property "consistent with the community character." Second, Chair Turner stated that his list of "compelling" reasons for the denial decision (though lengthy) was not exhaustive, and efforts by the church to address any one concern, *e.g.*, traffic issues, would be wasted if the County could then simply cite a different concern, *e.g.*, "potential impact on the quality of life." Third, Chair Turner called for "work" to be "done amongst all the stakeholders involved in this process," JA0744 at 22:21-22, yet he failed to explain what that "work" might entail or how it could proceed given that the Council derailed the development review process. For that matter, as Pastor Adeyemo testified, Victory Temple previously attempted to work through

the community's concerns about the church's development plans, but those good faith efforts were not successful. JA2746 at 2-121:2 – JA2750 at 2-125:12.

The real reason, though, for the County Council's denial decision was not included in Chair Turner's list. The real reason was community animus toward churches generally and "megachurches" in particular. That animus is transparent in the many dozens of antichurch comments included in the "No MEGA CHURCH on Mount Oak and Church Road in Bowie" community petition, which was presented to the Council and included in the administrative record. JA0216-59.

Of course, antipathy toward a minority group would not satisfy even rational basis review, let alone strict scrutiny. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446-47 (1985) ("some objectives—such as a bare desire to harm a politically unpopular group—are not legitimate state interests" (citations, alterations, and internal quotation marks omitted)). And it is "well-established that community views may be attributed to government bodies when the government acts in response to

these views," as the County Council did here. *A Helping Hand, LLC v. Baltimore County*, 515 F.3d 356, 366 (4th Cir. 2008).

In discovery, the County's Rule 30(b)(6) designee, Shirley Branch (who is also the DPIE Water and Sewer Plan Coordinator), confirmed that all of the County's compelling interests were set forth in the testimony by the citizens and taxpayers who appeared at the April 16 hearing. JA2916 at 72:8-15. That certainly was not evident at trial. Rather, the County selected just one of the many reasons that the community members and Chair Turner referenced at the administrative hearing—traffic safety—and tried to create a case from scratch using evidence that had not been presented to the Council (including some evidence that postdated the Council's denial decision and therefore could not have been presented to the Council sans a time machine). The County's attorney disavowed one of the reasons that the community members and Chair Turner had cited, arguing at closing: "I believe there was one witness who talked about some pollution issue, but we're not alleging that . . . ." JA2953 at 109:17-19.

The County's pruning of its rationale in litigation may be understandable insofar as several of Chair Turner's purported reasons for the denial decision are so broad as to be meaningless, whereas strict scrutiny requires that a "law restrictive of religious practice must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993) (citations and internal quotation marks omitted). But strict scrutiny does not permit a court to hypothesize reasons that *could* have motivated a government decision maker. Instead, the court must consider only those reasons that *actually* motivated the decision. *See Bostic v. Schaefer*, 760 F.3d 352, 377 (4th Cir. 2014) (proponents of laws reviewed under strict scrutiny framework "must rely on the laws' actual purposes rather than hypothetical justifications" (citations, alterations, and internal quotation marks omitted)); *Ciempa v. Jones*, 745 F. Supp. 2d 1171, 1194 (N.D. Okla. 2010) ("RLUIPA's strict scrutiny standard requires courts to consider only the actual reasons for a decision."), *aff'd*, 511 F. App'x 780 (10th Cir. 2013).

For that reason, the Sixth Circuit remarked in a prisoner RLUIPA case that "explanations offered for the first time in litigation ought to come with a truth-in-litigating label, requiring the official to disclose whether the new explanations motivated the . . . officials at the time of decision or whether they amount to post hoc rationalizations. Only the true explanations for the policy count." *Haight v. Thompson*, 763 F.3d 554, 562 (6th Cir. 2014). Similarly, this Court and others have recognized (and common sense would suggest) that shifting rationales for a decision can be indicative of pretext. *See, e.g.*, *Merritt v. Old Dominion Freight Line, Inc.*, 601 F.3d 289, 299 (4th Cir. 2010); *Cicero v. Borg-Warner Auto., Inc.*, 280 F.3d 579, 592 (6th Cir. 2002); *Candelario v. Forsyth*, No. Civ.A CV207-01, 2009 WL 790323, at *4 (S.D. Ga. Mar. 25, 2009).

By starting with a plethora of reasons for the denial decision—most of which could not be compelling—and then winnowing the list down to the one rationale for which the County believed it might put on a plausible case at trial, the County tipped its hand. It did not deny Victory Temple's water and sewer application because of traffic concerns, or for any other

neutral, good faith reason. It did so for the one reason Chair Turner conveniently omitted from his list but that was front-and-center at the April 2019 hearing: community animus toward "megachurches."

B. *The district court considered but appropriately discounted the County's limited evidence of traffic problems in the vicinity of 14403 Mount Oak Road.*

The County's discussion about compelling state interests mischaracterizes the findings of the district court. First, the County erroneously suggests that the district court abused its discretion by "requir[ing the County] to present expert testimony pursuant to a traffic study or to proffer evidence that [Victory Temple] caused the traffic problems faced in the vicinity of the proposed development." Br. of Appellant at 42. Next, the County erroneously asserts that the district court's "disregard" of "largely uncontroverted evidence constitutes an abuse of discretion." *Id.* at 45. The County's characterizations of the district court's rulings are misleading at best, and its reliance on the standard of review governing evidentiary disputes is misplaced. The district court considered all the evidence before it and made factual

findings that are reviewable for clear error only, *see June Med. Servs.*, 140 S. Ct. at 2121.

Scope of evidence. With respect to the scope of evidence under the strict scrutiny framework, the district court did not "require" the County to proffer expert testimony. For that matter, it is far from clear that expert testimony in support of the County's position would even have been admissible. Any such evidence (i) was not before the Council and could not have informed the Council's decision, and (ii) would not merely augment an existing bona fide justification but would instead further the County's efforts to fabricate a justification to displace Chair Turner's laundry list of pretextual reasons for the denial decision. *See Rothe Dev. Corp. v. Dep't of Def.*, 413 F.3d 1327, 1338 (Fed. Cir. 2005) ("to be relevant in the strict scrutiny analysis . . . evidence must be proven to have been before Congress prior to enactment of the [suspect] classification"); *cf. Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Balt.*, 721 F.3d 264, 282-83 (4th Cir. 2013) (city was permitted to "augment the record with evidence to support its existing justification—not to invent a new one").

Thus, the County's appeal to Governor Hogan's COVID-19 orders is beside the point, since any traffic study that the County might have conducted last summer could not possibly have informed a decision reached by the Council a year earlier.[6]

Rather than imposing some new evidentiary standard for strict scrutiny, the district court found that the evidence before it—which included the administrative record as well as the bootstrapping testimony that the County was permitted to offer at trial—was insufficient to establish that the denial decision was in service of, let alone the least restrictive means of furthering, a compelling state interest. In making that finding, the district court observed that the County relied only on "anecdotes from

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[6] While the County cited the COVID-19 pandemic in moving to strike Victory Temple's designation of a hybrid fact/expert witness to testify about the feasibility of the proposed church development, *Victory Temple*, No. DKC 19-3367 (D. Md. May 13, 2020), ECF No. 39, a motion that the district court granted, *Victory Temple*, No. DKC 19-3367 (D. Md. May 14, 2020), ECF No. 40, at no point in the district court proceedings did the County argue that it could not adequately demonstrate its compelling interest without expert assistance, nor did it move to delay the trial until after the pandemic subsides.

neighboring property owners." JA2441. While the County argues on appeal that it should be permitted to prove its compelling interest through "common sense," Br. of Appellant at 40, in support of that argument it cites just one case in which the government's asserted compelling interest was traffic safety, *Gbalazeh v. City of Dallas*, No. 3:18-cv-0076-N, 2019 WL 1569345 (N.D. Tex. Apr. 11, 2019). The court in *Gbalazeh* denied preliminary injunctive relief, finding plaintiffs unlikely to prevail on the merits of their First Amendment challenge to a panhandling statute. *Gbalazeh* sheds no light on the caliber of evidence needed to establish whether an as-yet unknown volume of Sunday morning traffic would overload Church Road, let alone whether any problems identified during the preliminary planning phase could be remediated. *See Yellowbear v. Lampert*, 741 F.3d 48, 59 (10th Cir. 2014) ("RLUIPA's compelling interest test is a strict one . . . . That test isn't traditionally the sort of thing that can be satisfied by the government's bare say-so.").

Similarly, while the district court correctly observed that "Victory Temple did not cause the current traffic issues," it did not hold that the

County was required to show that Victory Temple caused the purported issues. Rather, the court explained that there was "no reliable evidence that the activities of the church would exacerbate those issues." JA2440. That holding aligns with the unrebutted trial testimony—including by the County's lead witness, Shirley Branch—that traffic studies and similar analyses are completed during the preliminary plan of subdivision process. JA2642 at 2-17:9-24, JA2823 at 3-56:4 – JA2825 at 3-58:15, JA2827 at 3-60:13 – JA2828 at 3-61:24. If at that stage the County's subject-matter experts determine that a projected increase in traffic will overburden Church Road, the experts can work with Victory Temple to determine whether the problem can be mitigated (for example, through additional dedication and road improvements).

Evidence presented. With respect to the evidence of traffic issues actually presented at trial, the district court did not "disregard" the evidence. In fact, the court determined that traffic safety "likely" constitutes a compelling state interest, JA2438-39, despite significant authority to the contrary, *see, e.g.*, *Dimmitt v. City of Clearwater*, 985 F.2d

1565, 1569-70 (11th Cir. 1993); *Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 418-19 (S.D.N.Y. 2015), *aff'd*, 945 F.3d 83 (2d Cir. 2019); *XXL of Ohio, Inc. v. City of Broadview Heights*, 341 F. Supp. 2d 765, 789-90 (N.D. Ohio 2004); *Curry v. Prince George's County*, 33 F. Supp. 2d 447, 452 (D. Md. 1999). However, the court found that the traffic safety anecdotes the County had marshaled, which the County repeatedly characterizes in its appeal brief as "overwhelming," Br. of Appellant at 17, 38, 42, were insufficient to carry the County's burden under RLUIPA, *see* 42 U.S.C. §§ 2000cc(a)(1); 2000cc-2(b).

The County's evidence consisted of the following:

- Brief remarks by disgruntled community members who spoke at the April 16, 2019 County Council hearing, JA0663-707;

- Trial testimony by three residents of Bowie, none of whom claimed to have any civil engineering or related expertise and one of whom baldly asserted that she did not "need a traffic study to tell [her] that the current infrastructure won't support an additional increase in traffic that the proposed development would have brought with it," JA2861 at 17:17-20, despite that there is no evidence in the record to establish what volume of traffic the church would generate let alone whether the roads could support it in their current or some modified configuration;

- Random photos taken by an adjacent property owner that depict traffic accidents that have occurred over a six-year period, JA2327-63; and

- Police records generated after the County Council's denial decision that reflect (i) traffic stops and accidents occurring within two miles of 14403 Mount Oak Road, JA2260-79; (ii) a pedestrian strike that occurred in June 2019 at the intersection of Church Road and Fairview Vista Drive, more than two miles north of 14403 Mount Oak Road but less than one mile north of the Freeway Airport development for which the Council approved a water and sewer upgrade, JA2280-90; and (iii) accidents occurring anywhere "within the city limits of Bowie," JA2291-326, all of which were introduced into evidence without any corresponding testimony or context from which the court could determine whether these reports demonstrate that conditions on Church Road are unusually dangerous.[7]

The most the district court could plausibly have discerned from the County's evidence is that accidents happen on Church Road and elsewhere in Bowie from time to time and that some adjoining landowners or community members are stridently opposed to Victory Temple's development plans.

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[7] At trial, the County also introduced as Exhibit D-1 (and contained within Exhibit D-5) a spreadsheet listing calls for police service within three miles of 14403 Mount Oak Road between January 1, 2018 and March 31, 2020, most of which had nothing to do with traffic.

Against that evidence, the court was confronted with unrebutted evidence that traffic issues are ordinarily addressed during the preliminary planning phase, JA2642 at 2-17:9-24, JA2823 at 3-56:4 – JA2825 at 3-58:15, JA2827 at 3-60:13 – JA2828 at 3-61:24; that Victory Temple's application was the only application for a water and sewer category change from Category 5 to Category 4 that the Council denied over the Executive's recommendation during a four-year period, JA2848 at 4:24 – JA2849 at 5:17; JA2163-212; that the County has been aware of the need for infrastructure improvements on Church Road since at least 2006 but has not funded those improvements, JA0681 at 20:22 – JA0682 at 21:10; and that, in the cycle of amendments immediately following the cycle in which Victory Temple submitted its application, the Council approved a category change for the much larger Freeway Airport development, two miles north of 14403 Mount Oak Road, JA2208.

The court also heard testimony from Assistant Pastor Isaac Adeyemo, who lives in the vicinity of 14403 Mount Oak Road and who testified that he has not experienced traffic problems when driving in that neighborhood

on weekday mornings or Sunday mornings. JA2744 at 2-119:9 – JA2745 at 2-120:10. And the court heard testimony from Pastor Bayo that many of Victory Temple's parishioners already travel up Church Road from the Fairwood, Woodmore Estates, Woodmore North, and Lottsford Road communities on their way to church at 13701 Old Annapolis Road. JA2588 at 1-140:13-17.

The district court did not disregard any of the evidence admitted at trial. Rather, the court weighed the evidence; made certain threshold determinations that were favorable to the County's position (including that traffic concerns could be compelling and that post hoc police records and testimony not presented to the County Council could be admissible to substantiate a compelling interest); and then concluded, based on all the evidence, that the County could not carry its burden under strict scrutiny. That conclusion is amply supported by the record, which shows that the County's purported traffic concerns are pretextual and certainly not compelling. *See Jesus Christ Is the Answer Ministries, Inc. v. Baltimore County*,

915 F.3d 256, 262 n.3 (4th Cir. 2019) ("religious animus . . . is not a permissible government interest, much less a compelling one").

C. *The evidence at trial demonstrated that the County's denial decision was the most restrictive means of furthering its pretextual interests.*

Even if traffic concerns were a compelling state interest, and even if the County had carried its burden to show that its denial decision was in service of that interest rather than the political fortunes of councilmembers who answer at the polls to disgruntled constituents, the County would still lose unless it could demonstrate that the denial decision was the least restrictive means to further its compelling interest. RLUIPA makes clear that the burden to prove least restrictive means rests with the County. 42 U.S.C. § 2000cc-2 ("If a plaintiff produces prima facie evidence to support a claim alleging a violation of . . . section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law . . . that is challenged by the claim substantially burdens the plaintiff's exercise of religion."); *Couch v. Jabe*, 679 F.3d 197, 200 (4th Cir. 2012) ("the government

must . . . prove that the challenged policy is the least restrictive means of furthering a compelling governmental interest").

The County disagrees, citing *Hamilton v. Schriro*, 74 F.3d 1545 (8th Cir. 1996), and *Antietam Battlefield KOA v. Hogan*, 461 F. Supp. 3d 214 (D. Md. 2020), for the proposition that "the plaintiff bears a burden in this prong of the analysis," Br. of Appellant at 46. In *Hamilton*, a case involving a claim by a prisoner under the Religious Freedom Restoration Act, or RFRA (RLUIPA's counterpart that applies to federal law only), the court explained that RFRA "places the burden of production and persuasion on . . . prison officials," but "once the government provides this evidence, the prisoner must demonstrate what, if any, less restrictive means remain unexplored." 74 F.3d at 1556. The *Hamilton* court reasoned that it would be burdensome to "require prison administrators to refute every conceivable option in order to satisfy the least restrictive means prong of RFRA," and such a requirement would be "irreconcilable with the well-established principle . . . that prison administrators must be accorded due deference in creating regulations and policies directed at the

maintenance of prison safety and security." *Id.*; *see also Cutter v. Wilkinson*, 544 U.S. 709, 717 (2005) ("Lawmakers anticipated . . . that courts entertaining complaints under [section 3 of RLUIPA] would accord 'due deference to the experience and expertise of prison and jail administrators.'" (citations omitted)). *Hamilton*'s "well-established principle," which places a gloss on RFRA in the prison context, is irrelevant.

Antietam Battlefield is irrelevant for two reasons. First, the district court in that case decided a preliminary injunction motion pursuant to the *Jacobson v. Massachusetts* standard, which requires plaintiffs challenging public health measures during a disease outbreak to prove that the measures are "beyond all question, a plain, palpable invasion of rights secured by the fundamental law." *Antietam Battlefield*, 461 F. Supp. 3d at 228 (citation omitted). Second, the court principally found that plaintiffs' Free Exercise and speech/assembly claims should be reviewed pursuant to rational basis and intermediate scrutiny, respectively, and only addressed strict scrutiny in the alternative. *Id.* at 234-35, 237.

In this case, if the Court rejects the County's threshold arguments about the scope of RLUIPA, it is then undisputed that strict scrutiny applies; and neither the exigencies of a pandemic nor the hazards of prison administration justify any gloss on or departure from the statutory framework. The County bears the burden to prove both a compelling interest and least restrictive means. To carry its burden, the County must show that it "consider[ed] and reject[ed] other means before it can conclude that the policy chosen is the least restrictive means." *Couch*, 679 F.3d at 203 (citation omitted).

The County did not come close to carrying its burden at trial. As an initial matter, the decision to grant or deny a water and sewer upgrade is completely untethered from any concerns about traffic safety. Indeed, the County's own Rule 30(b)(6) representative acknowledged that the traffic issues on which the County presently is focused, together with the other "compelling interests" that Chair Turner cited but that the County does not currently care about, are addressed later, during the preliminary plan of subdivision phase. JA2823 at 3-56:4 – JA2825 at 3-58:15, JA2827 at

3-60:13 – JA2828 at 3-61:24; *see also* JA2642 at 2-17:20-24 (Ben Dyer's Barry Caison testifying that "as a part of this process, meaning the preliminary plan of subdivision process, the traffic study will be required to determine traffic impact generated by the proposed church").

Ms. Branch similarly informed the Council back in 2019 that Victory Temple "met all the criteria" in the 2008 Water and Sewer Plan, and "when they meet that criteria, unless there are some extenuating circumstances, our recommendation would always be to allow it to go to Category 4. And Category 4 is when the planning agency would be able to review this more succinctly, more in depth." JA0738 at 16:20-24. Yet because Victory Temple's property is "in category 5, and that is a holding category," "they can't go through the preliminary plan of subdivision review in category 5." JA2839 at 3-72:22-24.

The County's 30(b)(6) representative therefore identified for the County a less restrictive means of furthering its purported interest in traffic safety. It could allow the preliminary plan of subdivision process to play out, giving Victory Temple an opportunity to work with the M-NCPPC

and other County agencies to identify, address, and mitigate any concerns. In other words, if the County were truly focused on traffic problems in the vicinity of 14403 Mount Oak Road, it would not have denied a water and sewer upgrade, a decision unrelated to traffic; it would have instead permitted the County experts to assess and address any traffic problems that the proposed church (on a property situated inside the sewer envelope and therefore already designated for future development) might cause or exacerbate.

The County insists that the Council was "required" under the 2008 Water and Sewer Plan to evaluate Victory Temple's proposal in light of various policy concerns, including traffic impacts. Br. of Appellant at 47. The Council's settled practice of approving water and sewer upgrades from Category 5 to Category 4 (including for the Freeway Airport development on Church Road) belies its concern about "an abrogation of its express duty." *Id.* Moreover, the County created the 2008 Water and Sewer Plan, including its "requirement" that the Council give each application for an upgrade from Category 5 to Category 4 an up-or-down

vote. So the "requirement" that the County now relies on is a creature of its own making. A local government cannot draft its way around RLUIPA. Once a plaintiff demonstrates a substantial burden on religious exercise through the implementation of a land use regulation, the government must adjust its approach unless it can prove both a compelling interest and least restrictive means.

For that matter, as the district court aptly observed, the "defendant here is the County, not the Council. The Planning Board consists of the members of the M-NCPPC from Prince George's County." JA2441. So while the **Council** (under rules the County created and could modify if it so wished) may have only one opportunity to weigh in on a proposal, the **County** has multiple opportunities to participate in the development review process through its duly appointed agents, including at the preliminary plan of subdivision phase.

Bethel World is instructive. In that case, a Montgomery County zoning amendment prohibited landowners from building private institutional facilities on properties—like the plaintiff church's property—

that were subject to a transferable development rights easement. The county argued that the zoning amendment furthered its interests in "preserving agricultural land, water quality, and open space and managing traffic and noise in the rural density transfer zone." 706 F.3d at 559. This Court assumed without deciding that those interests were compelling but held that the County failed to carry its burden to prove least restrictive means, since it presented "no evidence that its interest in preserving the integrity of the rural density transfer zone could not be served by less restrictive means, like a minimum lot-size requirement or an individualized review process." *Id.*

Similarly, in *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007), the village zoning board of appeals denied a religious school's application for a permit to expand its facilities, ostensibly because the zoning board was concerned about enforcing zoning regulations and ensuring residents' safety through traffic regulations. The district court was unconvinced, finding that the real reason the application was denied was "undue deference to the opposition of a small group of neighbors." *Id.*

at 353. But, as the Second Circuit explained, "even were we to determine that there was a compelling state interest involved, the Village did not use the least restrictive means available to achieve that interest. The ZBA had the opportunity to approve the application subject to conditions, but refused to consider doing so." *Id.*

So too here: even if, against the weight of evidence, the County acted out of a bona fide concern for traffic safety, the County's standard process for evaluating traffic and other impacts of a proposed development during the preliminary planning phase presents a less restrictive means of advancing its interest. The traffic, environmental, and infrastructure studies that are a part of that process will provide reliable information from which the M-NCPPC and other County agencies can determine whether adequate public facilities are available to support Victory Temple's proposed development or some modified proposal. That development review process is not only less restrictive than the County's outright denial, it will better serve the County's purported interests by yielding real data rather than the unsworn anecdotes, speculation, and animus presented to

the Council at the April 16, 2019 hearing. *See Reaching Hearts*, 584 F. Supp. 2d at 789 ("Th[e] absence of qualitative and quantitative evidence on Defendant's part undermines any assertion that it fully and adequately considered any alternatives to its outright denials of RHI's 2003 and 2005 applications and the passage of CB–83–2003.").[8]

As the district court observed, "Chairman Turner's statement that 'there still needs to be work done amongst all the stakeholders involved in this process' is telling. The development review process contemplates the dialogue Chair Turner suggests," but Victory Temple cannot participate in that process "until the County approves its category change request and

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[8] This case is thus unlike *Greater Bible Way Temple of Jackson v. City of Jackson*, 733 N.W.2d 734, 753-54 (Mich. 2007), where the Supreme Court of Michigan found that (i) the city's interest in maintaining the character of a single-family residential neighborhood was compelling, and (ii) denial of plaintiff's request to rezone the neighborhood was the least restrictive means of furthering that interest, since approval of plaintiff's request would have eviscerated the compelling interest. Here, by contrast, the least restrictive (and, indeed, most sensible) way for the County to further its purported interest in traffic safety is to allow Victory Temple to begin the development review process, at which point traffic studies can be conducted.

designates the Mount Oak Road property Category 4." JA2441 (citation omitted).

The district court's finding that the County's denial decision was not the least restrictive means of furthering a compelling state interest was eminently supported by the record. The finding certainly was not clearly erroneous. This Court should affirm.

CONCLUSION

This Court should affirm the judgment of the district court. Pursuant to Local Rule 34(a), Victory Temple respectfully requests oral argument due to the important questions of both statutory interpretation and the uniformity of federal law presented by this appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), the brief contains 12,726 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in 14-point Palatino Linotype, a proportionally spaced typeface, using Microsoft Word.

/s/ Joseph C. Dugan
Joseph C. Dugan
Attorney for Plaintiff-Appellee
Dated: March 15, 2021

STATUTORY ADDENDUM

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 21C. Protection of Religious Exercise in Land Use and by Institutionalized Persons

42 U.S.C.A. § 2000cc

§ 2000cc. Protection of land use as religious exercise

Effective: September 22, 2000
Currentness

(a) Substantial burdens

(1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application

This subsection applies in any case in which--

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) Equal terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits

No government shall impose or implement a land use regulation that--

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

CREDIT(S)

(Pub.L. 106-274, § 2, Sept. 22, 2000, 114 Stat. 803.)

Notes of Decisions (257)

42 U.S.C.A. § 2000cc, 42 USCA § 2000cc
Current through P.L. 116-259. Some statute sections may be more current, see credits for details.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 21C. Protection of Religious Exercise in Land Use and by Institutionalized Persons

42 U.S.C.A. § 2000cc-2

§ 2000cc-2. Judicial relief

Effective: September 22, 2000
Currentness

(a) Cause of action

A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) Burden of persuasion

If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) Full faith and credit

Adjudication of a claim of a violation of section 2000cc of this title in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) Omitted

(e) Prisoners

Nothing in this chapter shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) Authority of United States to enforce this chapter

The United States may bring an action for injunctive or declaratory relief to enforce compliance with this chapter. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United

States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) Limitation

If the only jurisdictional basis for applying a provision of this chapter is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

CREDIT(S)

(Pub.L. 106-274, § 4, Sept. 22, 2000, 114 Stat. 804.)

Notes of Decisions (207)

42 U.S.C.A. § 2000cc-2, 42 USCA § 2000cc-2
Current through P.L. 116-259. Some statute sections may be more current, see credits for details.

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United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 21C. Protection of Religious Exercise in Land Use and by Institutionalized Persons

42 U.S.C.A. § 2000cc-3

§ 2000cc-3. Rules of construction

Effective: September 22, 2000
Currentness

(a) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(b) Religious exercise not regulated

Nothing in this chapter shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) Claims to funding unaffected

Nothing in this chapter shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) Other authority to impose conditions on funding unaffected

Nothing in this chapter shall--

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this chapter.

(e) Governmental discretion in alleviating burdens on religious exercise

A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious

exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) Effect on other law

With respect to a claim brought under this chapter, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this chapter.

(g) Broad construction

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.

(h) No preemption or repeal

Nothing in this chapter shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this chapter.

(i) Severability

If any provision of this chapter or of an amendment made by this chapter, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, the amendments made by this chapter, and the application of the provision to any other person or circumstance shall not be affected.

CREDIT(S)

(Pub.L. 106-274, § 5, Sept. 22, 2000, 114 Stat. 805.)

Notes of Decisions (1)

42 U.S.C.A. § 2000cc-3, 42 USCA § 2000cc-3
Current through P.L. 116-259. Some statute sections may be more current, see credits for details.

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United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 21C. Protection of Religious Exercise in Land Use and by Institutionalized Persons

42 U.S.C.A. § 2000cc-5

§ 2000cc-5. Definitions

Effective: September 22, 2000
Currentness

In this chapter:

(1) Claimant

The term "claimant" means a person raising a claim or defense under this chapter.

(2) Demonstrates

The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

(3) Free Exercise Clause

The term "Free Exercise Clause " means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government

The term "government"--

(A) means--

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 2000cc-2(b) and 2000cc-3 of this title, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) Land use regulation

The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity

The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d-4a of this title.

(7) Religious exercise

(A) In general

The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) Rule

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

CREDIT(S)

(Pub.L. 106-274, § 8, Sept. 22, 2000, 114 Stat. 806.)

Notes of Decisions (39)

42 U.S.C.A. § 2000cc-5, 42 USCA § 2000cc-5
Current through P.L. 116-259. Some statute sections may be more current, see credits for details.