No. 25-1832

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

THE SUMMIT CHURCH-HOMESTEAD HEIGHTS BAPTIST CHURCH, INC.,
Plaintiff-Appellee,

v.

CHATHAM COUNTY, NORTH CAROLINA BOARD OF COMMISSIONERS,
Defendant-Appellant.

On Appeal from the United States District Court
for the Middle District of North Carolina
Case No. 1:25-CV-00113-UA-JLW

BRIEF OF *AMICI CURIAE* STATE OF SOUTH CAROLINA AND 15 OTHER STATES IN SUPPORT OF PLAINTIFF-APPELLEE

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INTRODUCTION AND INTEREST OF AMICI STATES

The States of South Carolina, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Kansas, Louisiana, Mississippi, Missouri, Montana, South Dakota, Texas, Utah, and West Virginia ("Amici States") respectfully submit this brief as amici curiae in support of Plaintiff-Appellee. The Amici States have a strong interest in promoting and protecting religious liberty, even in a seemingly unconventional context like a zoning dispute. Upholding the legitimacy of the Religious Land Use and Institutionalized Persons Act (RLUIPA) in the face of substantially burdensome zoning decisions, such as this one, is key to that interest. Conversely, blocking enforcement of injunctive relief granted in this context would have grave consequences both for RLUIPA and for the integrity of religious freedom amongst Amici States.

As with religious liberty, Amici States are also often champions of federalism. Therefore, if the principles of federalism hung in the balance, Amici States would not be taking the stance it does here. But, contrary to the assertions of Defendant-Appellant, those federalism concerns are misplaced in this specific context.

SUMMARY OF ARGUMENT

Amici States have long been at the forefront of protecting and promoting religious liberty with some championing this fundamental liberty since before the founding of the nation and the Constitutional enshrinement of the Free Exercise Clause. In fact, many states enacted constitutional provisions protecting religious

freedom long before ratifying the First Amendment. *See* Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1455 (1990). States who entered the Union later similarly added such provisions to their own founding constitutions. *See, e.g.*, Ky. Const. of 1792, art. XII, § 3; Ohio Const. art. I, § 7; Miss. Const. of 1890, art. 3 § 18; Mo. Const. of 1820, art. XIII, § 4.

In the twentieth century, incorporation of the Free Exercise Clause added a complementary layer of protection to religious liberty that functioned in tandem with existing state protections. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). For a time, the Supreme Court thereafter bolstered that federal layer with a tough-to-crack strict scrutiny standard. *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). The Court later deviated from that standard, potentially diluting the robust protections previously afforded to religious liberty under Court precedent. *See Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872 (1990).

In response to this perceived dilution, Congress passed the Religious Freedom Restoration Act (RFRA) and then RLUIPA seven years later to codify the long-held tradition of accommodation to matters of belief and conscience. Douglas Laycock, *Theology Scholarships, the Pledge of Allegiance, and Religious Liberty: Avoiding the Extremes but Missing the Liberty*, 118 HARV. L. REV. 155, 211 (2004). And while the Supreme Court later held RFRA unconstitutional as applied to the

States, RLUIPA has remained. What's more, many States took it upon themselves to pass their own State RFRA laws. *Id.* And many of these States, some of Amici States included, continue to advance religious liberties through the work of their respective Attorneys General in a variety of capacities.

RLUIPA, for its part, complements the efforts of State Attorneys General and Amici States themselves, especially in the land use regulation context, where religious discrimination is prone to occur but harder to monitor. While Amici States might be wary with its application in other contexts, zoning disputes, especially of the kind present here, are precisely where RLUIPA should apply.

As its name suggests, RLUIPA generally seeks to provide "protection against government burdens on religious exercise imposed by states and localities" in two categories of cases: (1) laws and regulations concerning land use and (2) laws and regulations concerning institutionalized persons. *Madison v. Riter*, 355 F.3d 310, 315 (4th Cir. 2003). As to the first category, "land use regulation" has been defined by RLUIPA to include "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) . . . ." 42 U.S.C. § 2000cc-5(5). Despite the statute's text, and overwhelming precedent, Defendant-Appellants assert that, because the challenged zoning decision is "legislative" in nature, RLUIPA does not support Plaintiff-

Appellee's request for injunctive relief, and that such an injunction under RLUIPA would be unconstitutional here. Amici States briefly address each argument in turn.

As to the statute's text, "zoning" is not defined specifically, and, by design, no carveout is created for "legislative" zoning, nor is there any effort to categorize zoning as non-legislative or legislative. Further, the statute itself gives the applicable mode of construction, requiring that its provisions "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by [its terms] and the Constitution." 42 U.S.C. § 2000cc-3(g). Thus, a broad application, as required by statute, would certainly extend to the zoning issue here. And looking outside the text, "zoning" is commonly defined to have an inherent "legislative" nature. *See* Zoning, Black's Law Dictionary (12th ed. 2024). Looking to precedent, both binding and persuasive, RLUIPA has been applied to a variety of zoning decisions, some of which could be characterized as legislative. *See, e.g.*, *Redeemed Christian Church of God (Victory Temple) Bowie v. Prince George's Cnty.*, 17 F.4th 497, 508 (4th Cir. 2021). This broad approach to applying RLUIPA in this context makes sense given the importance of zoning decisions to the free exercise of religion.

Defendant-Appellant attempts to bolster its cramped reading of RLUIPA by invoking federalism concerns, namely the Tenth Amendment and the anti-commandeering doctrine, to make the point that an injunction in this context would effectively be an unconstitutional hijacking of a local government's legislative

prerogative. But here, again, Defendant-Appellant ignores binding and persuasive precedent. For one, Courts, including this one, have consistently granted or affirmed injunctive relief for a plethora of RLUIPA zoning claims. For another, Defendant-Appellant ignores state efforts to champion equal and evenhanded treatment of religious organizations, efforts which are completely compatible with RLUIPA in the land use context. Contrary to their assertions, federalism is not being sacrificed for the sake of external enforcement of religious liberty.

ARGUMENT

I. States have long been at the vanguard of promoting religious liberty.

Many of the Amici States have a long tradition of promoting religious liberty. Indeed, some of the undersigned States championed religious liberty as colonies long before the founding of the nation.

Take South Carolina for example. From its charter in 1663 to its Fundamental Constitutions in 1669, the State's earliest legal compacts embraced religious freedom. *See* James Lowell Underwood, *The Dawn of Religious Freedom in South Carolina: The Journey from Limited Tolerance to Constitutional Right*, 54 S.C. L. REV. 111, 124 (2002) ("Despite the vacillation between broad tolerance to all settlers and unflinching preference for the Church of England, the predominant flavor of the Charters and Constitutions was attractive to the religiously oppressed."); *Knotts v. Williams*, 319 S.C. 473, 462, 477 (1995) ("The earliest charter given by Charles II

to the Lords Proprietors of Carolina in 1663 contains religious freedom provisions recognizing the need to create a governmental climate of toleration for a variety of religious beliefs and practices."). The Fundamental Constitutions is "of particular" interest both because of its "broadmindedness" and because of its drafter—John Locke. *See* McConnell, 103 HARV. L. REV. at 1429 (noting that the Fundamental Constitutions extended protections to "Jews, heathens, and other dissenters from the purity of Christian religion").

And these protections weren't merely academic; they led to an influx of religious minorities from around the world. As one scholar put it, South Carolina's Constitution of 1669 was "a veritable Magna Charta of liberty and tolerance. . . . Little wonder, then, the persecuted Jew, like the persecuted Huguenot and German Palatine, soon came here to find a haven of rest." Underwood, 54 S.C. L. REV at 125 (quoting Barnett A. Elzas, *The Jews of South Carolina From the Earliest Times to the Present Day* 17-19 (The Reprint Co. 1972) (1905)).

Other colonies, including Maryland, Rhode Island, and Pennsylvania were established "explicitly as havens for religious dissenters" but generally "extended freedom of religion to groups beyond their own." McConnell, 103 HARV. L. REV. at 1424–25.

Following the Revolution, nearly every State had a state constitutional provision protecting religious freedom. *Id*. at 1455. And although the original United

States Constitution did not contain a provision protecting religious freedom, the States soon ratified the First Amendment and its Free Exercise Clause. *Id*. at 1473–1503 (discussing the framing and ratification of the First Amendment).

As other States were admitted to the Union, many inserted religious liberty guarantees into their own state constitutions. *See*, *e.g.*, Ky. Const. of 1792, art. XII, § 3 ("That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent . . ."); Mo. Const. of 1820, art. XIII, § 4 ("That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can be compelled to erect, support, or attend any place of worship, or to maintain any minister of the gospel, or teacher of religion . . ."); Miss. Const. of 1890, art. 3 § 18 ("the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred."). Eventually, the Free Exercise Clause was incorporated against the States in 1940, and efforts to protect religious freedom in the States were complemented by federal courts. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) ("The fundamental concept of liberty embodied in [the Fourteenth] Amendment embraces the liberties guaranteed by the First Amendment.").

In ensuing decades, the Supreme Court imposed a form of strict scrutiny in free exercise cases, requiring a State to justify a burden on free exercise by showing "a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate.'" *Sherbert v. Verner*, 374 U.S. 398, 403 (1963) (quoting *NAACP v. Button*, 371 U.S. 415, 438 (1963)); *see also Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) ("The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.").

The Supreme Court departed from this approach in *Employment Division, Department of Human Resources of Oregon. v. Smith*, 494 U.S. 872 (1990), which "largely repudiated the method of analysis used in prior free exercise cases [like *Sherbert* and *Yoder*]." *Holt v. Hobbs*, 574 U.S. 352, 357 (2015); *see also* Daniel O. Conkle, *Religious Truth, Pluralism, and Secularization: The Shaking Foundations of American Religious Liberty*, 32 CARDOZO L. REV. 1755, 1755 (2011) ("In *Employment Division v. Smith*, the Court effectively overturned a quarter century of constitutional doctrine, reducing the protection of the Free Exercise Clause . . . .").

In response to the decision in *Smith*, Congress enacted RLUIPA and its sister statute, the Religious Freedom Restoration Act of 1993. *See Holt*, 574 U.S. at 356–57 (describing history of RLUIPA and RFRA). These laws generally sought "to provide very broad protection for religious liberty." *Burwell v. Hobby Lobby Stores*,

Inc., 573 U.S. 682, 693 (2014). This Court previously described RLUIPA's role in the larger American tradition of liberty as follows: "Our society has a long history of accommodation with respect to matters of belief and conscience. If Americans may not set their beliefs above the law, there must be room to accommodate belief and faith within the law. . . . RLUIPA fits comfortably within this broad tradition." *Madison*, 355 F.3d at 321–22.

And when the Supreme Court declared RFRA unconstitutional as applied to the States, many States again stepped up to defend religious liberty by passing their own variation of state Religious Freedom Restoration Acts. *See* H. Justice Pace, *The Utility of Originalism in Mitigating Judicial Elite Bias: Evidence From the 2021-2022 Supreme Court Term*, 93 UMKC L. REV. 339, 372 (2024) ("*Smith* resulted in the enactment of the federal Religious Freedom and Restoration Act (RFRA), the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), and state versions of RFRA in almost half of the states.").

In recent decades, States, often acting through their Attorneys General, have been at the forefront of advancing religious liberty claims, weighing in on issues ranging from employment discrimination to government funding for religious institutions. *See, e.g.*, Brief of Arkansas and 17 Other States as Amici Curiae in Support of Petitioners, *Carson v. Makin*, No. 20-1088 (Mar. 11, 2022); Brief of South

Carolina and 19 Other States as Amici Curiae in Support of Plaintiff-Appellee, *Darren Patterson Christian Academy v. Lisa Roy*, No. 25-1187 (10th Cir., Nov. 17, 2025).

II. RLUIPA is not at odds with federalism in cases like this and instead complements State efforts.

Although Defendant-Appellant suggests that the application of RLUIPA in these circumstances offends principles of federalism, Amici States see things differently. In these circumstances, Amici States view RLUIPA as a complement to their longstanding efforts to combat religious discrimination. And while some of the Amici States may argue against the applicability of RLUIPA in other circumstances, Amici States all agree that RLUIPA applies here.

To support this conclusion, start with the basics. As its name suggests, RLUIPA generally seeks to provide "protection against government burdens on religious exercise imposed by states and localities" in two categories of cases: (1) laws and regulations concerning land use; and (2) laws and regulations concerning institutionalized persons. *Madison*, 355 F.3d at 315. As for the first category, the relevant text of RLUIPA provides the following:

> 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.

42 U.S.C. § 2000cc(a)(1).

RLUIPA defines "land use regulation" to mean "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) . . . ." 42 U.S.C. § 2000cc-5(5). Additionally, "RLUIPA itself provides the applicable rule of construction, requiring that its provisions 'be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by [its terms] and the Constitution.'" *Redeemed Christian Church of God (Victory Temple) Bowie v. Prince George's Cnty.*, 17 F.4th 497, 508 (4th Cir. 2021) (quoting 42 U.S.C. § 2000cc-3(g)).

Despite this seemingly clear and broad text, Defendant-Appellant suggests that Plaintiff-Appellee's request for injunctive relief under RLUIPA is not applicable here because the challenged zoning decision is "legislative" in nature. But this argument ignores RLUIPA's text and binding precedent.

In looking to the text of RLUIPA itself, "zoning" is incorporated in RLUIPA's definition of "land use regulation." *See* 42 U.S.C. § 2000cc-5(5). And while the "precise contours of 'zoning' could be difficult to delineate, 'at its core [zoning] involves the division of a community into zones based on like land use.'" *Redeemed Christian Church of God*, 17 F.4th at 508 (citing *Fortress Bible Church v. Feiner*, 694 F.3d 208, 216 (2d Cir. 2012)). Looking outside the text, Black's Law Dictionary defines "zoning" as "the *legislative* division of a region, esp[ecially] a municipality, into

separate districts with different regulations within the districts for land use, building size, and the like." Zoning, Black's Law Dictionary (12th ed. 2024) (emphasis added). Inherently, then, zoning decisions seem to be, by nature, *legislative*. Keeping in line with that inherent nature, the text of RLUIPA does not attempt to delineate between non-legislative or legislative zoning; it simply says "zoning." It would seem, then, that Defendant-Appellant's argument is nothing but an attempt to rewrite RLUIPA to create an exception that is not there.

There is also a long line of precedent holding that RLUIPA applies to a variety of types of local zoning decisions. *See Redeemed Christian*, 17 F.4th at 509 (holding that denial of an application for a legislative amendment to a water and sewer plan may be sufficient to trigger RLUIPA); *see also Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 556 (4th Cir. 2013) (analyzing a challenge to a county zoning regulation that prevented construction of a church in an area designated an agricultural reserve). RLUIPA has been triggered by not just regulations themselves, but also by their application or implementation, such as a denial of an application for amendment to a county zoning plan. *See Redeemed Christian*, 17 F.4th at 509 ("Although we [in *Bethel*] relied predominantly on the zoning provision when we analyzed the church's claim under RLUIPA, we did not rule that the denial alone would have been insufficient to trigger RLUIPA. Today, we recognize that such a denial may be sufficient to do so.").

And this is true no matter how the decisions are characterized by the local zoning authorities themselves. In avoiding "form over substance" traps, this Court has looked at how a regulation or procedure functions, as opposed to its label. *Id.* ("If a regulation divides a community into zones, restricting or limiting how land can be used within each zone, the regulation is a zoning law subject to RLUIPA."). After all, RLUIPA's purpose could easily be "undermined if a State's own definition of a 'land use regulation' controlled" because "a State could, after all, define the applicable and key RLUIPA terms narrowly, thus limiting RLUIPA's application." *Redeemed Christian*, 17 F.4th at 508; *see also Fortress Bible Church*, 694 F.3d at 218 ("Finally, to hold that RLUIPA is inapplicable to what amounts to zoning actions taken in the context of a statutorily mandated environmental quality review would allow towns to insulate zoning decisions from RLUIPA review.").

This approach makes sense given the importance of zoning decisions to the free exercise of religion. *See* Roman P. Storzer & Anthony R. Picarello, Jr., *The Religious Land Use and Institutionalized Persons Act of 2000: A Constitutional Response to Unconstitutional Zoning Practices*, 9 GEO. MASON L. REV. 929, 945 (2001) ("The fundamental importance of RLUIPA is the recognition that the placement, building, and use of churches is more than simply a secular issue of height restrictions and traffic patterns. The physical embodiment of a faith group-- its church--represents its ability to speak, assemble, and worship together: three

fundamental rights embodied in the First Amendment."). After all, zoning decisions necessarily implicate the right to assemble for worship, which is "at the very core of religious liberty." Douglas Laycock, *State RFRAs and Land Use Regulation*, 32 U.C. DAVIS L. REV. 755, 755–56 (1999); *see also* 146 Cong. Rec. S7774 (joint statement of Sen. Hatch and Sen. Kennedy) ("The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes."). Indeed, in "every major religious tradition--Christian, Jewish, Muslim, Buddhist, Hindu, whatever--communities of believers assemble together, at least for shared rituals and usually for other activities as well." Laycock, 32 U.C. DAVIS L. REV. at 756.

Defendant-Appellant attempts to bolster its cramped reading of RLUIPA by suggesting that federalism concerns render an injunction inappropriate here. And while Amici States are nearly always at the forefront of efforts to champion federalism, those concerns are misplaced in these specific circumstances. For one, Defendant-Appellant's argument appears to ignore precedent.

Courts, including this one, have consistently granted or affirmed injunctive relief for a variety of zoning RLUIPA claims. *See Redeemed Christian*, 17 F.4th at 512 (affirming grant of injunction that enjoined county from denying an application and ordered county to amend its water and sewer plan to advance the property to a new category); *Rocky Mountain Christian Church v. Bd. of Cnty. Comm'rs*, 613 F.3d

1229, 1233 (10th Cir. 2010) (affirming grant of permanent injunction that required county to approve plaintiff church's special use application); *Guru Nanak Sikh Soc. of Yuba City v. County of Sutter*, 456 F.3d 978, 996 (9th Cir. 2006) (affirming district court order that enjoined a county immediately to approve and grant plaintiff's conditional use permit application); *Fortress Bible Church*, 694 F.3d at 224 (affirming district court's injunction that ordered a town to approve church's site plan, grant a waiver from parking requirement, grant a variance permitting a side building, and issue a building permit). Similarly, courts have also dispensed with the notion that RLUIPA or its application violates the Tenth Amendment. *See Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1242 (11th Cir. 2004) ("Finally, we reject the argument that in enacting RLUIPA, Congress violated the Tenth Amendment . . . . Although RLUIPA intrudes to some degree on local land use decisions, RLUIPA does not violate principles of federalism if it is otherwise grounded in the Constitution.").

Further, the federalism argument ignores state efforts to champion equal and evenhanded treatment of religious organizations. Rather than regulate the states or compel enforcement of a federal regulatory program, RLUIPA's core policy, especially in the context of land use regulation, is to instead protect the free exercise of religion, a goal that Amici States have always shared and felt is consistent with federalism principles. *See Town of Surfside*, 366 F.3d at 1243 (*"*RLUIPA's core policy

is not to regulate the states . . . but to protect the exercise of religion"). Proof of this commitment to free exercise includes the decision to accept federal funds in the first instance. *See Madison v. Virginia*, 474 F.3d 118, 125 (4th Cir. 2006) (discussing the congressional spending power in the context of RLUIPA); *see also Cutter v. Wilkinson*, 544 U.S. 709, 733 (2005) (Thomas, J., concurring) ("The States' voluntary acceptance of Congress' condition undercuts [a State's] argument that Congress is encroaching on its turf [in a RLUIPA case].").

All that to say, there could, of course, be applications of RLUIPA that pose a constitutional problem for the States. But a standard zoning dispute about the construction of a church property is not one of them.

CONCLUSION

The Court should affirm the district court's ruling.

[Signature on following page]

March 30, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(G), this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 3,723 words. This brief complies with the typeface and typeset requirements of Federal Rule of Appellate Procedure 29(a)(4) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

March 30, 2026

s/ Joseph D. Spate
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