No. 11-106

In The Supreme Court of the United States

CITY OF SAN LEANDRO,

Petitioner,

v.

INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL,

Respondent.

FAITH FELLOWSHIP WORSHIP CENTER,

Real Party in Interest.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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CORPORATE DISCLOSURE STATEMENT
Rule 29.6

Respondent, International Church of the Foursquare Gospel, has no parent corporation and issues no stock. Real party in interest, Faith Fellowship Worship Center, has no parent corporation and issues no stock.

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JURISDICTION

The judgment of the court of appeals was entered on February 15, 2011. A petition for rehearing and en banc review was denied on April 22, 2011. The petition for a writ of certiorari was filed on July 11, 2011. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

For purposes of this Brief, the Church[1] adopts the thorough factual and procedural history of the case

[1] For purposes of this brief, the Real Party in Interest, Faith Fellowship Worship Center, will be referred to as "Church." The Respondent, International Church of the Foursquare Gospel, is the denomination to which the Church belongs under what is essentially hierarchical governance. As is typical with such an ecclesiastical polity, the denomination holds title to real estate and the local church pays the mortgage and maintains the property. The building that is the subject of this dispute was so situated.

set forth in the Ninth Circuit's opinion, appended to the Petition for Certiorari (Pet.). The pertinent introductory portion of that opinion can be found at App. 4-15.

INTRODUCTION

For more than a decade, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), codified at 42 U.S.C. § 2000cc et seq., has leveled the playing field for houses of worship that, prior to the law's enactment, routinely faced government-imposed land use limitations not shared by their secular counterparts. This case illustrates both the necessity of the legislation and the reality that some local jurisdictions continue to believe that religious congregants should be afforded fewer opportunities to assemble than crowds more likely to generate greater economic activity.

The Petition continues the long-running crusade by local governments across the nation to overturn, or at least eviscerate, RLUIPA. The Circuit Courts of Appeals have soundly rejected claims that the land use provisions of RLUIPA are unconstitutional. *See, e.g., Guru Nank Sikh Soc'y of Yuba City v. County of Sutter,* 456 F.3d 978, 992-95 (9th Cir. 2006); *Midrash Sephardi, Inc. v. Town of Surfside,* 366 F.3d 1214, 1236-43 (11th Cir. 2004); *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007); *Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin,* 396 F.3d 895, 898 (7th Cir.

2005) (relying on *Charles v. Verhagen,* 348 F.3d 601, 610 (7th Cir. 2003)). *Cf., Cutter v. Wilkinson,* 544 U.S. 709 (2005) (upholding constitutionality of RLUIPA's institutionalized persons provisions). In light of the lack of conflict among the Circuits as to RLUIPA's constitutionality, the City in its Petition abandons that line of attack but seeks much the same outcome by asking the Court to redefine many of RLUIPA's key terms.

The actual facts of this case, however, provide a poor vehicle for achieving the ends sought by the City. As a result, the Petition distorts the record and analysis of the decision being appealed, minimizing the significant evidence of discrimination against this particular Church and exaggerating the effects of the Ninth Circuit's decision. The Petition should be denied as to all three of the questions presented for review.

ARGUMENT

I. The City's Substantial Burden Argument is Premised on a Misdescription of the Decision Below.

The City's Petition first raises the issue whether cost or inconvenience qualify as substantial burdens under RLUIPA. Pet. at 15-22. However, the City's query is entirely academic, as it rests on two bases not relied on by the Court of Appeals.

A. Cost was not a driving force of the decision favoring the Church.

The City greatly truncates the Ninth Circuit's substantial burden analysis by casting it as cost- and inconvenience-centered. It was neither. To be sure, the Ninth, Seventh and Second Circuits have identified "substantial 'delay, uncertainty and expense'" as factors that *might* be "indicative" of a substantial burden. *See,* Pet. at App. 22 (quoting *Guru Nank* and *Westchester Day School,* which in turn quotes *Sts. Constantine and Helen Greek Orthodox Church*). Yet one cannot fairly read the decision below and conclude that cost or convenience were central to the substantial burden holding. Rather, the Ninth Circuit's substantial burden analysis focused on the significant evidence that the City's arbitrary, economic-based rationales for restricting the Church's growth, prevented the Church from fulfilling its religious mandates. Specifically, the Ninth Circuit honed in on "significant evidence that no other suitable properties existed." *ICFG II,* Pet. at App. 21. Relying on *Westchester Day School*, the court again emphasized the importance of the realtor's testimony "that the specified property was the only site that would accommodate its new building." *Id.* at App. 21. Moreover, the court found evidence "that suitable residential property in the City was not available for the Church." *Id.* at App. 21.

The District Court was dismissive of the Church's religious tenets involving congregational worship, going so far as to suggest that the Church abandon

its search for a large site and instead split its ministries so they could be located at numerous smaller locations preferred by the City. *ICFG I,* Pet. at App. 57-58, 66. The Ninth Circuit correctly rebuked the District Court for second-guessing the beliefs and practices central to the denomination's doctrine. *ICFG II,* Pet. at App. 24-26 (citing *U.S. v. Ballard*, 322 U.S. 78, 86-87 (1944)). *Accord, Fifth Ave. Presbyt. Church v. City of New York,* 293 F.3d 570, 574-75 (2d Cir. 2002), *cert. denied,* 549 U.S. 954 (2006) (rejecting city's attempts to cast doubt on church's religious obligations to minister to homeless). The Church's core tenets – not an aversion to cost – led to the Ninth Circuit's holding on substantial burden.

Because of the strong nature of the evidence, and the unsupportable holdings of the District Court, there is no reason to believe a different reviewing court would have resolved the appeal any less favorably to the Church than did the Ninth Circuit. While courts such as the Seventh Circuit have tended to favor local governments in RLUIPA cases, those holdings are reconcilable with the decision now before this Court. For instance, one of the Seventh Circuit's leading decisions in this area, *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752 (7th Cir. 2003), herein, *C.L.U.B.* There, the court noted, "Appellants contend that the scarcity of affordable land available for development in R zones, along with the costs, procedural requirements, and inherent political aspects of the Special Use, Map Amendment, and Planned Development approval processes, impose

precisely such a substantial burden." *Id.* at 761. By contrast, the Church here willingly engaged the political process, submitting no less than three zoning amendment and use permit applications, and committing considerable funds to a site that could not reasonably be called "affordable." The Church was willing to engage the process and shoulder the necessary costs because the Church anticipated fair treatment by the City, and it knew the Catalina property alone was both available and adequate for its needs. As it turned out, the bureaucratic obstacles encountered by the Church proved not to be "ordinary" or the same as those faced "by any person or entity, religious or nonreligious." *C.L.U.B.,* 342 F.3d at 752.

In step with the Seventh Circuit on this issue, the Ninth Circuit in *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024 (9th Cir. 2004), emphasized that normal costs and bureaucratic hurdles are not sufficient to create a substantial burden for purposes of RLUIPA. Consistent with these principles, the Ninth Circuit in this case determined that the substantial burden had its genesis in denial of ability to practice core tenets, not cost, and that there was nothing "ordinary" or fair about the City's approach. Since cost was far from the driving force of the decision now before this Court, the abstract determination sought by the first half of the first question presented, granting review would only serve to obfuscate, rather than elucidate, the substantial burden inquiry.

B. Convenience was barely mentioned by the Ninth Circuit, and not at all in the manner presented by the City.

While cost and expense received a passing nod from the Ninth Circuit as a minor consideration in the substantial burden analysis, convenience did not. In fact, while the City asks this Court to resolve whether convenience (sometimes used interchangeably with inconvenience) can result in a substantial burden, the Ninth Circuit did nothing of the sort.

The City claims, "The Ninth Circuit ruled that cost and market availability, which is a variation on inconvenience, could be sufficient to prove a substantial burden. . . ." Pet. at 21. The court below, citing its prior precedents, actually reiterated that inconvenience, standing alone, does *not* constitute a substantial burden. "[W]e have held that a substantial burden 'must place more than inconvenience on religious exercise.'" *ICFG II*, Pet. at App. 19 (quoting *Guru Nanak,* 456 F.3d at 988).

The Church is at a loss to understand where the City finds any conflict with this statement, which would seem to favor the City and raise the bar for the Church. This statement mirrors the Eleventh Circuit's decision in *Midrash Sephardi v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004), which found no substantial burden where Jewish congregants faced the inconvenience of walking some distance since a synagogue was not approved in their neighborhood.

To be sure, the Church has had no shortage of inconveniences associated with its current, overcrowded worship site. As a few examples, many church attendees must park off-site and walk much further than is comfortable, particularly in inclement weather. *ICFG I,* Pet. at App. 32-33. The dire parking shortage also sparks regular conflicts with neighbors, which the Church is seeking to ameliorate. Yet, in keeping with decisions such as *Midrash Sephardi,* the Ninth Circuit insisted on much more than inconvenience – and the Church provided it. The essence of the Church's burden was that many who sought to worship could not. *ICFG I,* Pet. at App. 54-55. As a result, the Church's evangelism and corporate worship practices were rendered useless. *Id.* at 60. The City would have the Court venture into uncharted waters, assuming the Ninth Circuit meant the *opposite* of what it said, and reverting back to the District Court's order directing the Church to split up its operations and divide itself into smaller congregations. It is even more likely, the Church would be forced to move out of the jurisdiction in order to maintain its principles. In either event, the City's position is an extreme departure from settled Religion Clause principles. *See, e.g., Ballard, supra; Wisconsin v. Yoder,* 406 U.S. 205, 218 fn. 9 (1972) ("[T]he danger to the continued existence of an ancient religious faith cannot be ignored simply because of the assumption that its adherents will continue to be able, at considerable sacrifice, to relocate in some more tolerant State or county or work out accommodations under threat of criminal prosecution. Forced

migration of religious minorities was an evil that lay at the heart of the Religion Clauses.")

Tellingly, the City points to no authority that acknowledges there is a "split" as to the role of cost or convenience in RLUIPA substantial burden analysis. The City even goes so far as to claim there are splits *within* circuits like the Seventh and Ninth. Pet. at 19. These supposedly "deep and wide" splits have not attracted the attention of those courts; much less do they demand resolution by this Court. Pet. at 5. In a rather roundabout manner, the City seems to be asking this Court to either *agree* with the Ninth Circuit's holding that inconvenience alone does not equate to a substantial burden, or to determine that the Ninth Circuit did not really mean what it wrote. The first option provides no controversy for the Court to resolve, and the second requires an assumption of disingenuousness that is utterly foreign to this Court's usual deference to fact-finding in the lower courts. In either event, this second half of the first question presented is wholly unfounded, and review should be denied.

II. The Circuits Are Not Conflicted on Individualized Assessments Under RLUIPA.

In its second question presented, the City alleges conflict among the lower courts on the interpretation of the phrase "individualized assessment." Pet. at 22-26. The problems with this question presented are twofold. First, the City completely ignores the actual

text of RLUIPA that dispels any confusion about this phrase. Second, regardless of the test or definition used, the City cannot seriously argue that its assessment of the Church's requests was not "individualized."

A. The City's confusion arises from ignoring the text of RLUIPA.

The City's claimed confusion over the meaning of "individualized assessments" is almost entirely self-inflicted. The City's first mistake is that it relies on legislative history from a bill that was never enacted, the Religious Liberty Protection Act, H.R. 1691, 106th Cong. (1999), which never was put to a vote in the Senate. Pet. at 7, 24. On that basis, the City assumes that, as with "substantial burden," Congress intended "individualized assessment" to have no meaning of its own. Not so. Unlike substantial burden, Congress gave much more definition to individualized assessment in the text of RLUIPA. The text states as follows:

> (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.

42 U.S.C. § 2000cc(a)(2). The scope of the statute as stated above is undeniably expansive. Most noticeably, there are three separate bases identified above for RLUIPA jurisdiction. While the City claims, without authority in the record, that individualized assessment under subdivision (2)(C) is the only basis for jurisdiction in this case, the courts below have not so ruled, and the Church has certainly not conceded the point. Rather, the District Court and the Ninth Circuit paid little attention to this issue and thus did not discuss the alternative grounds for jurisdiction advanced by the Church.[2] Indeed, the City's focus on

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[2] The Church's Complaint expressly alleged federal funding of City activities and implicitly invoked interstate commerce in relation to its planned renovation of the Catalina property. The

(Continued on following page)

this issue is surprising, since it was relegated to a footnote in their main brief to the Court of Appeals.

Regardless of the potential for alternative grounds for jurisdiction, the issue of individualized assessment need not long detain the Court. The City conflates the existence of general zoning regulations with the implementation and application of those regulations to specific uses on specific properties. As the above statutory text makes clear, the two are not the same. Since the Ninth Circuit disposed of nearly an identical argument from the County of Sutter in *Guru Nanak*, its explanation is illuminating. After thoroughly reviewing the county's zoning code and procedures for considering conditional use permits and related rezoning requests, the court noted the differences between the two for RLUIPA purposes. The court stated:

> By its own terms, it appears that RLUIPA does not apply directly to land use regulations such as the Zoning Code here, which typically are written in general and neutral terms. However, when the Zoning Code is applied to grant or deny a certain use to a particular parcel of land, that application is an "implementation" under 42 U.S.C. § 2000cc(a)(2)(C).

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lower courts' failure to discuss all the grounds for jurisdiction is hardly a concession by the Church.

Guru Nanak, 456 F.3d at 987. The City's substitution of its own confusion for the clarity in the text of RLUIPA in this section does not create an important unsettled federal question. Supreme Court Rule 10(c). Applying the text, it cannot reasonably be disputed that the City took a highly individualized look at the use to which the Church sought to put the Catalina property. However, since the City is now questioning a proposition that seemed obvious to the Court of Appeals based on the statutory text, a brief review of the Church's experience is in order.

B. The City downplays the facts of this case that demonstrate an individualized assessment.

After the Church approached the City to discuss its proposed use of the Catalina property, the City undertook extraordinary measures to prevent the property from becoming a church. The City recognized that there were not enough properties zoned for large church use in residential areas, *id.* at App. 21. The City knew this inadequacy was problematic under other aspects of RLUIPA. At the same time, the City took an unusual interest in the Catalina property, calling it "uniquely important" to their interests because of its location and its former (and unsustainable) use by a larger employer. *ICFG I*, at App. 59. To resolve its dilemma, the City struck upon the quintessential bureaucratic approach, devising a plan that had the appearance of providing more opportunities for the Church to relocate without actually creating any viable solutions. Along the way, the City denied

no less than three formal requests and applications by the Church for rezoning and use permits. *ICFG II,* App. 14. Regardless of whether this Court might ultimately find that the City's actions created a substantial burden, it can hardly be argued that the process was not "individualized." Indeed, it is disingenuous for the City to now claim that it took no individualized assessment of the Church's property, when it earlier insisted that the property was "uniquely important" to the City's interests. It cannot be both.

Under the extensive record evaluated by the Ninth Circuit, greatly abbreviated here, the Church fails to grasp – and the City fails to explain – how *any* concept of the phrase would lead to a conclusion that no individualized assessment took place. Nor does the City point to any court that would have refused to reach the merits of the substantial burden claim on the basis that an individualized assessment was lacking.

For these reasons, the City appears to be virtually alone in its confusion, and the Court should deny review of this question.

III. The Criteria Developed By The City To Deny The Church's Zoning Requests Were Not Neutral or Generally Applicable And Would Not Likely Have Been Deemed Compelling By Any Reviewing Court.

The City's third and final question presented continues in a similar vein as the second question,

but shifts the focus to the compelling interest test. In so doing, it rests on the notion that the criteria applied to the Church's zoning and CUP requests were neutral and generally applicable. This myth was dispelled by a mountain of evidence given credence by the Court of Appeals. Moreover, even if this Court were willing to accept the City's premise, it does not follow that general planning principles constitute compelling interests. Indeed, such a holding would come as a great surprise to the lower courts and would have repercussions far beyond RLUIPA.

A. The criteria lacked neutrality and general applicability.

Much like the City's claim that its actions toward the Church were not individualized assessments, its claim that the Church simply ran into neutral laws of general applicability does not comport with the findings of the courts below.

The City's argument rests on the facial neutrality of the zoning codes, the eight criteria used to exclude the Church from the Assembly Use Overlay, and the general plan. However, this Court's approach to the neutrality question has been markedly different. Facial neutrality is the "minimum" requirement for a law to satisfy Free Exercise, *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533 (1993), but it is certainly "not determinative." *Id.* at 534. A lack of true neutrality may be "masked as well as overt," *id.,* requiring close examination of its

"effect" and "real operation." *Id.* at 535. *See also, Yoder,* 405 U.S. at 220 (noting that facial neutrality is not dispositive where free exercise is implicated). The Court has also been sensitive to the potential for a "religious gerrymander." *Church of the Lukumi Babalu Aye* at 534 (quoting *Walz v. Tax Comm'n of New York City,* 397 U.S. 664, 696 (1970) (Harlan, J., concurring)). Overall, the inquiry is "practical" and considers the effects of the regulations on the religious exercise.

The premise of the City's third question presented casts aside these principles. Since the City has conflated the concept of "neutral laws of general applicability" with "individualized assessment," the previous discussion as to why the City's actions were individualized also applies here. Under a practical approach, the effects of the City's actions were a "gerrymander" that rezoned 196 parcels that had not requested rezoning, while conspicuously leaving out the one property that had triggered the City's actions – the Church's Catalina property. *ICFG II,* at App. 11-12. In so doing, the City used eight criteria, listed at *id.* App. 12, fn. 4, that had never been applied to any other applicant as a justification for denial. *Id.* at App. 11-12. As the City knew or should have known, none of the rezoned properties were remotely suitable for the Church. *ICFG II,* at App. 20-21. Had the City been a "neutral" actor in the drama that unfolded, it would have allowed the marketplace to embrace the Church after its preferred use could not be sustained.

Instead, the City actively intervened to prevent the Church from using the property.

The Ninth Circuit approached the events surrounding the City's decision with a panoramic lens – and it saw hostility at work. The City's description of its approach as laws of "neutral and general applicability" insinuates a hands-off approach by the City. Nothing could be further from reality. As such, the City's third argument rests on a faulty foundation.

B. The City's notion that general planning principles are compelling interests is unprecedented and far-reaching.

Proceeding from a flawed premise, the City now asserts that general planning principles are inherently compelling. In so doing, the City shifts away from previous explanations of its interests, in hopes of finding one that is more convincing. In the process, the City not only contradicts itself but fails to find any real conflict and asks the Court to reverse decades of its own precedent covering a wide array of constitutional doctrines.

At the outset, it must be noted that the City's latest attempt to identify a compelling interest clashes with prior justifications for denial of the Church's requests. In contrast to its current focus on "general planning principles," in the District Court the City took nearly the opposite approach, arguing that the "unique importance" of the *particular* property at the center of the litigation was key to its interests. *ICFG*

I, at App. 59. The City also now appears to abandon its prior position that the Church could be treated differently because it was non-profit – perhaps because other courts have emphatically rejected this rationale. *See, e.g., Town of Mt. Pleasant v. Legion of Christ, Inc.,* 850 N.E.2d 1147, 1150 (N.Y. 2006) ("keeping property in taxpaying hands is not a legitimate purpose of zoning.") Besides these two flimsy rationales, the City initially latched on to one that, had it not been pretextual, had the greatest promise for becoming a compelling health and safety concern, namely, the presence of nearby properties with hazardous materials business plans (HMBP's). *ICFG II,* at App. 13. But when the Church pointed out that the presence of HMBP's would not preclude other large, for-profit gatherings at the Catalina property, and indeed that this rationale, if applied equally, should have also disqualified *every* other property the City claimed was "available" for church use, the City backpedaled and jettisoned this justification. *ICFG II,* at App. 26. Consequently, the City's current version of its claimed compelling interest strains credulity. As will be seen next, even assuming the City's third question presented is consistent with its previous positions, it is flatly inconsistent with longstanding jurisprudence on compelling interest.

Whatever the reason for its shift in strategy, the City searches in vain for a conflict necessitating the Court's intervention.

As a practical matter, it is difficult (but not impossible) for governmental entities to take action

that is narrowly tailored to achieve a true compelling interest. This challenge is, of course, not unique to RLUIPA; it has existed for decades in every sphere where the compelling interest standard or its functional equivalents have been employed. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 213-14, 221-26 (1972) ("paramount" state interests in educating children must yield to fundamental free exercise rights); *Troxel v. Granville*, 530 U.S. 57, 80 (Thomas, J., concurring) (state had no compelling interest to second-guess fit custodial parent's fundamental substantive due process right to determine whether child would associate with grandparents).

Taken to its logical conclusion, the City's argument would implicate many areas of both statutory and constitutional law where application of the compelling interest test frequently – but not automatically – results in invalidation of the restriction at issue. The Court need not topple the first domino of a well-settled test. As one example, the notion that general planning principles are compelling interests would seem to dictate a different outcome in such far-flung cases as the Equal Protection benchmark, *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985), where zoning regulations were not allowed to trump thinly-veiled discrimination. Or, *Rosenberger v. Rector & Visitors of Univ. of Virginia,* 515 U.S. 819, 835 (1995), the landmark free speech decision where this Court declared that allocation of scarce spaces and resources (not unlike land use

planning) was never an excuse for discrimination against a religious group.

The City itself cannot point to any real conflict over the compelling interest test; instead, it dismisses the Ninth Circuit's careful and consistent application of the test as "lip service." Pet. at 27. In other words, the City could not reasonably quibble with the Ninth Circuit's analysis – the City simply disagreed with the results. The City is hard-pressed, however, to find any other RLUIPA decision by a reviewing court that has articulated and applied "compelling interest" in the radical manner sought by the City. It follows that no conflict is evident among the Courts of Appeal or State Supreme Courts.

For decades, "compelling" has meant interests "of the highest order." *Yoder,* 406 U.S. at 214. *See also Westcheter Day Sch.,* 504 F.3d at 3 – (quoting *Lukumi*). Moreover, compelling interest coupled with least restrictive means is "the most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). As a result, courts across the nation have agreed with the Ninth Circuit that the generalized type of interest asserted by the City to be anywhere near "compelling." *See, e.g., Town of Mt. Pleasant,* 850 N.E.2d at 1150 (town's attempts to keep property as for-profit use were not "legitimate," let alone compelling); *Rocky Mtn. Christian Church v. Bd. of County Comm'rs,* 612 F.Supp.2d 1163, 1174-75 (D. Colo. 2009), *aff'd*, 613 F.3d 1229 (10th Cir. 2010), *cert. denied*, 131 S. Ct. 978 (2010) (rejecting argument that compatibility with general plan is compelling

interest). Other local governments, well aware that general planning principles are not compelling, have fought substantial burden while conceding they do not have a compelling interest. *Guru Nanak,* 456 F.3d at 981. Once again, the City resorts to inapt citations and does not identify any real disagreement among the lower courts on this issue.

The City had every opportunity to present strong interests, such as public health and safety, to the courts below. Instead, the City presented economic and other generalized interests that, while likely constituting legitimate governmental interests under this Court's jurisprudence, fall far short of compelling. By claiming that general planning principles are a compelling interest, the City also advances a position directly contrary to the intent of the legislation, as stated by its authors. Sens. Hatch and Kennedy declared, "[O]ften, discrimination lurks behind such vague and universally applicable reasons as aesthetics, traffic, or 'not consistent with the city's land use plan.'" 146 Cong. Record S774-01 (daily ed. July 27, 2000) (quoted in *Guru Nanak,* 456 F.3d at 987 fn. 9).

In sum, there are many reasons why the compelling interest test should not be drastically altered in the manner sought by the City. Not only RLUIPA, but a number of other bedrock constitutional doctrines would be affected. If good reasons exist for upending the current constitutional order, they have certainly not been identified in the Petition.

CONCLUSION

The Petition calls for radical changes not only to RLUIPA, but also to Free Exercise interpretation and indeed, to a number of interrelated core constitutional doctrines. This case cannot bear the weight the City seeks to hang on it. A closer examination will reveal that the Ninth Circuit's decision is unremarkable in light of a factual record that is markedly different than the characterizations on which the City's arguments depend. For these reasons, the Petition should be denied.

Respectfully submitted,

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