

AUG 25 2011

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**In The
Supreme Court of the United States**

CITY OF SAN LEANDRO,

Petitioner,

v.

INTERNATIONAL CHURCH
OF THE FOURSQUARE GOSPEL,

Respondent.

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

**BRIEF OF AMICUS CURIAE THE CALIFORNIA
CHAPTER OF THE AMERICAN PLANNING
ASSOCIATION IN SUPPORT OF PETITIONER**

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INTRODUCTION

The California Chapter of the American Planning Association (“APACA”) submits this *amicus curiae* brief in support of the City of San Leandro’s (“San Leandro” or “City”) petition for *certiorari* to this Court to review the decision of the United States Court of Appeals for the Ninth Circuit in *Int’l Church of the Foursquare Gospel v. City of San Leandro*, No. 09-15163, slip op. (9th Cir. Apr. 22, 2011).



INTEREST OF AMICUS CURIAE¹

The membership of APACA consists of 4,600 professional planners, planning commissioners and elected officials in California who are committed to urban, suburban, regional, and urban planning issues. The mission of APACA, the largest of the American Planning Association’s 46 chapters, is to foster better planning by providing vision and leadership. APACA’s *Amicus Curiae* Committee, made up of

¹ Pursuant to Rule 37.3 of the Rules of the United States Supreme Court (2010) (the “Rules”), counsel of record for all parties received notice at least 10 days prior to the due date of the *amicus curiae*’s intention to file this brief. The parties have consented to the filing of this brief.

Pursuant to Rule 37.6 of the Rules, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

experienced planners and land use attorneys, monitors litigation of concern to California planners and participates in cases of statewide or nationwide significance that may have implications for planning practice in California. The committee has identified this case as having particular significance for its potential effect on long-standing principles of regulating local land use and development in compliance with a general plan.²



RELEVANT PROCEEDINGS BELOW

The International Church of the Foursquare Gospel (the “ICFG”) founded the Faith Fellowship Foursquare Church (the “Church”) in San Leandro in 1947. In 1993, the Church’s congregation consisted of only 65 people. After 1993, the Church grew rapidly. In 2003, the Church constructed a new sanctuary on adjacent property with 650 to 700 seats. By 2005, the

² Under California law, a general plan is a comprehensive set of long-term goals and policies that guide local land use decisions. The plan must address the jurisdiction’s physical development, such as general locations, appropriate mix, timing, and extent of land uses and supporting infrastructure. The broad scope of physical development issues may range from appropriate areas for building factories to commercial and residential development. In this sense, the general plan is the constitution, or “blueprint,” for development. *Leshner Comm’n, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 540 (Cal. 1990); *Citizens of Goleta Valley v. Bd. of Supervisors of the County of Santa Barbara*, 801 P.2d 1161, 1171 (Cal. 1990).

Church again outgrew its space. To accommodate this growth, ICFG sought to purchase a larger property. *Int'l Church of the Foursquare Gospel v. City of San Leandro*, 632 F.Supp.2d 925, 929 (N.D. Cal. 2008).

In February 2006, ICFG identified two adjacent parcels in San Leandro located at 14600 and 14850 Catalina Street (the “Catalina property”) that it believed would better accommodate its growing membership. The Catalina property is located in San Leandro’s Industrial Park zoning district (“IP”), and is situated in the “West San Leandro Focus Area,” an area set aside in the City’s general plan to preserve an environment for high-tech industrial and technological activity. At the time, the San Leandro Zoning Code (the “Zoning Code”) did not allow assembly uses, including religious assembly uses, in the IP district. *Id.* at 930.

Nonetheless, on March 24, 2006, ICFG signed a purchase and sales agreement for the Catalina property. Pursuant to that agreement, ICFG paid \$50,000 as half of a nonrefundable deposit, which was to be applied to the purchase price of \$5.375 million. *Id.*

On May 3, 2006, City planning staff informed ICFG that to relocate to the Catalina property two changes to the Zoning Code were required. Specifically, the Code would have to be amended: first, to make assembly a conditionally permitted use in the Industrial Limited district (“IL”) and, second, to rezone the Catalina property as IL. *Id.*

In May 2006, ICFG applied to rezone the Catalina property as IL. Upon receipt of ICFG's application, City planning staff expressed concern over the planning policy implications for the general plan if the City were to allow assembly use in a light industrial or commercial zone. City planning staff were concerned in part because such a change for ICFG would have ramifications beyond ICFG's application. If the City were to grant ICFG's zoning amendment request to permit assembly use in the IL zone, every property zoned IL would have to accommodate an assembly use. According to planning staff, such an amendment would be a major modification to the City's general plan, not to be taken lightly. *Id.* at 931.

When informed of ICFG's request, the City's initial reviewing entity, the City Council's Business Development Subcommittee, expressed a strong interest in expanding opportunities for religious uses, and directed City planning staff to investigate appropriate planning strategies so that houses of worship would have more opportunities to locate in San Leandro while retaining and serving the broad purposes of the general plan. *Id.* at 930-31. City planning staff concluded that opportunities to expand religious and other assembly uses could be implemented by (1) collapsing "religious uses" and "clubs and lodges" into a single category; and (2) adopting an overlay approach for all nonresidential properties to benefit from assembly use. Following public hearings, the San Leandro City Council substantially expanded opportunities for religious uses by adopting both

proposals. “Assembly use” became one category,³ and an Assembly Use Overlay (“AU Overlay”) was established to open numerous properties zoned industrial or commercial to assembly use as long as eight neutral, generally applicable criteria were satisfied.⁴ The

³ The new definition of “Assembly Uses” includes:

“Meeting, recreational, social facilities of a private or non-profit organization primarily for use by member or guests, or facilities for religious worship and incidental religious education (but not including schools as defined in this section). This classification includes union halls, social clubs, fraternal organizations and youth centers.” San Leandro, Cal. Ord. No. 2007-005 (Apr. 2, 2007).

⁴ The eight criteria are:

- (1) The site is not located along a major commercial corridor;
- (2) The site is not located within certain General Plan Focus Areas (Downtown, Bayfair, Marina Blvd./SOMAR, or West San Leandro);
- (3) The site is not located in regional-serving retail area (Greenhouse Marketplace, Westgate, Marina Square, or “old” Target site);
- (4) The site is not located inside the one-half mile study area identified for Downtown Transit-Oriented Development Strategy;
- (5) The site abuts or is within one-quarter mile of an arterial street;
- (6) The site is not located in a Residential zone;
- (7) The site is not considered public land, and is not zoned Public Service, Open Space, or Commercial Recreation; is not owned by an Exempt Public Agency or leased/owned by a public utility; and
- (8) The overlay area must allow a contiguous area greater than or equal to two acres.

(Continued on following page)

new AU Overlay designation made eligible for assembly use 196 additional properties, together totaling over 200 acres in land. *Int'l Church of the Foursquare Gospel v. City of San Leandro*, No. 09-15163, slip op., at 2443 (9th Cir. Apr. 22, 2011).

Thereafter, ICFG applied to have the Catalina property rezoned from IP to IP with Assembly Use Overlay. The Planning Commission and, on appeal, the City Council unanimously concluded that ICFG's application did not satisfy the requirements of the AU Overlay because it failed to satisfy two of the eight neutral, generally applicable criteria: (1) the property is located within one of the General Plan Focus Areas – the West San Leandro Business District (in violation of criteria 2) and (2) the property does not abut or is not located within one-quarter mile of an arterial street (in violation of criteria 5). *Int'l Church of the Foursquare Gospel*, 632 F.Supp.2d at 934.

After the denial, the City offered to assist ICFG in finding an alternative site within the City's Assembly Use Overlay District, and ICFG agreed to work with the City to that end in the context of settlement negotiations. Despite accepting the City's offer, ICFG filed the present lawsuit on July 12, 2007, in which it alleged, *inter alia*, violation of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc ("RLUIPA"). *Id.* at 935.

Int'l Church of the Foursquare Gospel, 632 F.Supp.2d at 933.

The United States District Court granted the City's motion for summary judgment. Specifically, the District Court concluded that the City's denial of ICFG's application did not substantially burden the ICFG's exercise of its religion under RLUIPA, as there were other properties that ICFG could purchase for relocation. The District Court further concluded that even if the City had substantially burdened ICFG's religious exercise, that burden was warranted by the City's compelling governmental interest in preserving industrial land for industrial use. *Id.* at 943.

The United States Court of Appeals for the Ninth Circuit reversed. First, it found that ICFG's religious exercise had been substantially burdened by the City's denial of its application even though the City provided, through neutral, generally applicable standards, numerous opportunities for large and busy houses of worship to locate throughout the City, including nearly 200 additional sites totaling 200 acres under the AU Overlay. The Ninth Circuit also held that the City did not have a compelling governmental interest in preserving industrial land for industrial use pursuant to the City's general plan. Thus, the Ninth Circuit held as a matter of law that neutral, generally applicable local land use and zoning principles do not constitute a compelling interest under RLUIPA. *Int'l Church of the Four-square Gospel*, No. 09-15163, slip op., at 2455-56. From that decision, the City petitions this Court to grant its writ of *certiorari*.



SUMMARY OF THE ARGUMENT

A. The City Had a Compelling Interest in Preserving the Integrity of Its Zoning Scheme and Protecting the Public Health and Safety of Its Community

Under RLUIPA, a municipality may not impose or implement a land use regulation that substantially burdens a person's free exercise of religion unless that regulation furthers a compelling governmental interest.⁵ Accordingly, a municipality may impose or implement a land use regulation that substantially burdens the free exercise of religion where that regulation furthers a compelling governmental interest. Here, San Leandro's denial of ICFG's request to rezone the Catalina property furthered the City's compelling governmental interests in protecting (1) the integrity of its general plan⁶ and zoning scheme; and (2) the public health and safety. In particular, San Leandro's industrial zones are designed to (1) provide appropriately located areas consistent with the general plan for a broad range of manufacturing, distribution and storage, and service uses,

⁵ The term "compelling interest" has the same meaning under both RLUIPA and the Free Exercise Clause. See Part 5, *infra*.

⁶ Under California law, a general plan is a comprehensive set of long-term goals and policies that guide local land use decisions. The plan must address the jurisdiction's physical development. In this sense, it is the constitution, or "blueprint," for development. *Leshner Commc'n, Inc.*, 52 Cal.3d at 540; *Citizens of Goleta Valley*, 801 P.2d at 1171.

(2) strengthen the City's economic base, and provide employment opportunities close to home for residents of the City and surrounding communities; and (3) provide a suitable environment for various types of industrial use, and protect them from the adverse impacts of inharmonious uses. San Leandro Zoning Code § 2-700 (2011).

In assessing whether a city has a compelling governmental interest under RLUIPA and the First Amendment's Free Exercise Clause, courts consider the facts particular to the case. *See Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 852 (7th Cir. 2007) (finding city without compelling interest in denying church's request to locate in industrial zone because city previously allowed non-church membership organizations to buy and build freely in that zone), *cert. denied*, 552 U.S. 1131 (2008); *Rector, Wardens and Members of the Vestry of St. Bartholomew's Church v. City of New York*, 914 F.2d 348, 357 n.6 (2d Cir. 1990) (noting land use restrictions must be reviewed in context of individual property in question), *cert. denied*, 499 U.S. 905 (1991); *Grosz v. City of Miami Beach*, 721 F.2d 729, 738-41 (11th Cir. 1983) (finding burden on religion outweighed by compelling interest in preserving character of zone), *cert. denied*, 469 U.S. 827 (1984); *Grace Church of North County v. City of San Diego*, 555 F.Supp.2d 1126, 1140 (S.D. Cal. 2008) (noting facts of case belie defendants' claim they have compelling interest in preserving industrial lands in industrial park); *Vineyard Christian Fellowship of Evanston v. City of*

Evanston, 250 F.Supp.2d 961, 978 (N.D. Ill. 2003) (finding city without compelling interest in denying church's request to locate in specific zone because city already allowed church to conduct non-worship activities there). The Ninth Circuit, too, has held that facts specific to the case must be examined to evaluate whether a city has a compelling governmental interest under RLUIPA. See *Christian Gospel Church, Inc. v. San Francisco*, 896 F.2d 1221, 1224 (9th Cir. 1990) (finding burden on religion outweighed by compelling interest in preserving character of zone), *cert. denied*, 489 U.S. 999 (1990).

In contrast, the Ninth Circuit in *San Leandro* deemed it unnecessary to examine the facts of the case to determine whether San Leandro had a compelling governmental interest. See *Int'l Church of the Foursquare Gospel*, No. 09-15163, slip op., at 2455. Rather, the Ninth Circuit in *San Leandro* simply held that "preservation of industrial lands for industrial uses does not by itself constitute a 'compelling interest' for purposes of RLUIPA." *Id.* at 2455, quoting *Grace Church of North County*, 555 F.Supp.2d at 1140. The Ninth Circuit erred by refusing to consider whether, under the specific facts of this case, San Leandro had a compelling governmental interest.

This Court has consistently concluded that local governments are in the most advantageous positions to interpret and apply their own land use zoning laws to the situations before them. See *City of Edmonds v. Oxford House*, 514 U.S. 725, 744 (1995) ("[i]t is obvious that land use . . . is an area traditionally regulated

by the [s]tates rather than by Congress, and that land-use regulation is one of the historic powers of the [s]tates.”); *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 44 (1994) (noting United States Constitution requires due deference to local land use determinations); *FERC v. Mississippi*, 456 U.S. 742, 767 n.30 (1983) (“[r]egulation of land use is perhaps the quintessential state activity.”). Other federal courts have reached the same conclusion. *See, e.g., Murphy v. New Milford Zoning Comm’n*, 402 F.3d 342, 349 (2d Cir. 2005) (noting “judiciary’s appreciation that land use disputes are uniquely matters of local concern more aptly suited for local resolution.”); *Congregation Kol Ami v. Abington Township*, 309 F.3d 120, 135 (3d Cir. 2002) (noting land use is a bastion of local control, generally free of federal intervention). Indeed, no area of law is more local than land use. *See Kelo v. City of New London*, 545 U.S. 469, 482-83 (2005) (“[v]iewed as a whole, our jurisprudence has recognized that the needs of society have varied between different parts of the Nation, just as they have evolved over time in response to changed circumstances.”). Accordingly, in this case, San Leandro is in the best position to determine whether granting ICFG’s request to rezone the Catalina property would compromise the integrity of its land use planning and zoning scheme or risk the public health and safety of its community.

Based on the facts of this case, any burden on ICFG’s exercise of religion resulting from denial of ICFG’s application is warranted by San Leandro’s

compelling interest in preserving the integrity of its zoning scheme.⁷ This Court first recognized the critical importance of zoning in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). *Id.* at 395. In *Village of Euclid*, this Court explained that with the great increase and concentration of population, problems have developed that risk community values and character and that require additional restrictions for their preservation. *Id.* at 386. Municipalities address those problems through neutral, generally applicable zoning laws that regulate types of uses and the bulk, density, and dimensions of those uses. ROBERT H. FREILICH & S. MARK WHITE, 21ST CENTURY LAND DEVELOPMENT CODE 3 (2008).

Land use planning and related zoning laws and decision-making enable local governments to preserve their distinct characters. Indeed, a general plan translates long-term values into comprehensive, complicated documents that describe how, why, when, and where to build or rebuild while challenging and inspiring members of the community with a vision of what might be – and telling them how to get there. PLANNING AND CONTROL OF LAND DEVELOPMENT CASES AND MATERIALS 34-37 (Daniel R. Mandelker et al. eds., 8th ed. 2011). Federal circuit courts of appeal have acknowledged the importance of zoning in allowing municipalities to shape the character of their

⁷ Although we believe that the City did not substantially burden the ICFG in denying its request, we do not address that issue.

communities. See *Smithfield Concerned Citizens for Fair Zoning v. Town of Smithfield*, 907 F.2d 239, 244-45 (1st Cir. 1990) (“controlling both the rate and character of community growth is the very purpose of land use regulation.”); *Pace Res., Inc. v. Shrewsbury Township*, 808 F.2d 1023, 1030 (3d Cir.) (same), *cert. denied*, 482 U.S. 906 (1987). The implementation of the general plan with zoning regulations controlling land use serves to preserve community values and character. *Vill. of Euclid*, 272 U.S. at 392-93. Judicial decisions that preclude orderly implementation of the general plan risk compromising community character and values.

In this case, San Leandro has labored to create and follow a comprehensive general plan that must satisfy detailed requirements established by the California legislature, serve the people of San Leandro, accommodate many competing uses and shape and preserve the character of its community. San Leandro’s general plan affords many uses and seeks to keep complementary uses together and conflicting uses apart, to ensure a proper land use balance addressing the various competing interests of San Leandro and its citizens. San Leandro does not permit assembly uses in commercial or industrial zones unless it is satisfied that certain neutral, generally applicable criteria have been met. Those criteria serve a dual purpose: (1) they afford more options for assembly uses to be located in commercial and industrial zones; and (2) they maintain the integrity of the zoning land use planning and zoning

scheme in general, and its commercial and industrial zones in particular, and seek to reduce the potential for conflicts between industrial uses and assembly uses.

ICFG's request for rezoning required careful analysis by City planning staff and consideration at public hearings by numerous civic advisory bodies, the Planning Commission, the Board of Zoning Adjustments, and, ultimately, the City Council to ensure that any such change was consistent with the City's general plan. Following that extensive process, San Leandro denied ICFG's rezoning request because it determined that ICFG failed to meet two of those eight neutral, generally applicable criteria. *Int'l Church of the Foursquare Gospel v. City of San Leandro*, No. 09-15163, slip op., at 2455. The Ninth Circuit's conclusion that, as a matter of law, preserving the integrity of a general plan and implementing zoning regulations does not serve a compelling interest completely negates local planning and regulation when a religious organization seeking to locate in a particular zone alleges a violation of RLUIPA.

Additionally, based on the facts of this case, San Leandro's decision to deny ICFG's rezoning application furthered a compelling interest in protecting the public health and safety. *See Elsinore Christian Ctr. v. City of Lake Elsinore*, 291 F.Supp.2d 1083, 1093-94 (C.D. Cal. 2003) (noting that protecting public health and safety is of paramount importance in land use planning and, thus, may constitute a compelling interest), *rev'd on other grounds*, 197 Fed. Appx. 718

(9th Cir. 2006); *Murphy v. Zoning Comm'n of New Milford*, 148 F.Supp.2d 173, 190 (D. Conn. 2001) (“local governments have a compelling interest [under RLUIPA] in protecting the health and safety of their communities. . . .”), *vacated on other grounds*, 402 F.3d 342 (2d Cir. 2005). Municipalities establish zoning laws to protect against health and safety risks such as flood, fire, traffic, and population density. DOUGLAS W. KMIEC, ZONING AND PLANNING DESKBOOK § 5.2 Health and Safety (2d ed. 2007). Neutral, generally applicable laws are created to implement and give effect to a general plan. *O’Loane v. O’Rourke*, 231 Cal.App.2d 774, 783 (1965).

Failure to comply with locally adopted land use and zoning laws risks compromising both the general plan and protection against the dangers associated with unregulated development. This is particularly so in states such as California, where the policies of the general plan are intended to underlie most land use decisions. *See DeVita v. County of Napa*, 9 Cal.4th 763, 772 (1995). Pursuant to state law, subdivisions, capital improvements, development agreements, and most other land use actions must be consistent with the adopted general plan. Cal. Gov’t Code § 65860 (2011). In addition, preparing, adopting, implementing and maintaining the general plan serves to (1) identify the community’s land use, circulation, environmental, economic, and social goals and policies as they relate to land use development; (2) provide a basis for local government decision-making, including decisions on development approvals and

exactions; (3) provide citizens with opportunities to participate in the planning and decision-making process of their communities; and (4) inform citizens, developers, decision-makers, and other municipalities of the ground rules that guide development within a particular community. *State of California General Plan Guidelines*, Governor's Office of Planning and Research (2003), available at www.opr.ca.gov/planning/publications/General_Plan_Guidelines_2003.pdf.

In this case, the City determined that the proposed rezoning of the Catalina property would negatively impact public health and safety. In particular, the City determined that there was potential for conflicts between industrial uses and assembly uses, including unacceptable impacts such as noise, dust, and constant truck traffic on permitted assembly uses, and unacceptable constraints on industrial operations to avoid impacts on, or complaints from, permitted assembly uses. *Int'l Church of the Four-square Gospel*, 632 F.Supp.2d at 931. The City also concluded that the proposed rezoning of the Catalina property risked the presence and the potential future presence of hazardous materials and activities in proximity to the Church's proposed assembly use because eight businesses operating under a Hazardous Materials Business Plan ("HMBP") were located within 500 feet of the Catalina property.⁸ *Id.* at 934. The City also determined

⁸ The Ninth Circuit in *San Leandro* states that "the Church raises the issue that one of the criteria noted in denying its
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that approving the Church's rezoning request could displace industrial and commercial uses with assembly activities, and thereby negatively affect the City's industrial employment and economic base. *Id.* at 931. Thus, by rejecting any factual inquiry, the Ninth Circuit has stripped all municipalities of their authority to plan and regulate so as to protect the health and safety of their communities when a religious organization alleges a violation of RLUIPA.



REASON FOR GRANTING THE WRIT

A. Split in Authority Has Caused Confusion Over Whether Planning Principles Constitute a “Compelling Governmental Interest” Under RLUIPA

A split in authority among the federal courts has resulted in confusion among municipal governments and their planning agencies, boards and commissions over whether local land use planning and zoning

application to include the Catalina property in the AU Overlay District that is within one-quarter mile of other sites with [HMBPs], would render all of the 196 properties zoned AU Overlay unavailable because they are within one-quarter mile of one or more sites with a [HMBP].” *Id.* at 934. Significantly, the Ninth Circuit makes no mention of the eight businesses operating under a HMBP located within 500 feet of the Catalina property. It is important to note, however, that while those eight uses were found to be inappropriate by the City, that does not suggest that sites within 500 feet of a lesser number of businesses with hazardous materials would be deemed inappropriate.

principles can constitute a compelling governmental interest under RLUIPA. This Court's attention is required for clarification.

The concept of "compelling governmental interest" in RLUIPA derives from First Amendment Free Exercise jurisprudence. See H. Comm. on the Judiciary, 106th Cong., 1st Sess., Religious Liberty Protection Act of 1999 (Report to Accompany H.R. 1691) (106 H. Rpt. 219) (July 1, 1999); 146 Cong. Rec. Sec. 7774-01, Ex. 1, 7776 (July 27, 2000) (joint statement of Sen. Hatch and Sen. Kennedy) (noting terms "compelling interest," "substantial burden," and "individualized assessment" are derived from U.S. Supreme Court's constitutional nomenclature).

Most federal courts have found that neutral, generally applicable land use and planning principles may constitute a compelling governmental interest under the Free Exercise Clause. See *Petra Presbyterian Church*, 489 F.3d at 852 (noting that planning principles concerning public health, safety, and welfare may constitute compelling interest); *Rector, Wardens and Members of the Vestry of St. Bartholomew's Church*, 914 F.2d at 357 n.6 (noting that preservation of structures and areas with special historic, architectural or cultural significance may constitute compelling interest), citing *Penn Cent. Trans. Co. v. New York City*, 438 U.S. 104 (1978); *Christian Gospel Church, Inc.*, 896 F.2d at 1224 (noting that municipalities have strong interest in maintenance of integrity of zoning scheme); *Grosz*, 721 F.2d at 738-41 (noting "substantial government[al]

interest” in preserving character of specific zone); *Elsinore Christian Ctr.*, 291 F.Supp.2d at 1093-94 (noting that protecting public health and safety is of paramount importance in land use planning and, thus, may constitute compelling interest); *Vineyard Christian Fellowship of Evanston*, 250 F.Supp.2d at 983 (noting that traffic congestion, parking problems, and tax revenue may constitute compelling interest); *Murphy*, 148 F.Supp.2d at 190 (“local governments have a compelling interest [under RLUIPA] in protecting the health and safety of their communities. . .”).

In direct contrast, the Ninth Circuit in *San Leandro* concluded, as a matter of law, that neutral, generally applicable land use and planning principles cannot constitute a compelling interest within the meaning of RLUIPA. *Int’l Church of the Foursquare Gospel*, No. 09-15163, slip op., at 2455-56 (“preservation of industrial lands for industrial uses does not by itself constitute a ‘compelling interest’ for purposes of RLUIPA.”). The Washington Supreme Court reached a similar conclusion. See *First Cov. Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 223 (1992) (holding preservation of aesthetic and historic structures under a comprehensive zoning scheme is not a compelling interest).

Unless this Court acts now, the decision of the Ninth Circuit in *San Leandro* will undermine local land use planning on a national scale. In particular, the Ninth Circuit decision will deter local governments from making decisions that are clearly in the

best interests of the community and the general welfare for fear of a particular religious applicant challenging that determination under RLUIPA. Given the Ninth Circuit's holding in *San Leandro* that neutral, generally applicable planning principles, such as preserving a land use planning and zoning scheme and protecting the health and safety of a community, do not constitute compelling governmental interests, there is little that municipalities can do to deny a religious organization's request to locate in a zone that prohibits religious assemblies. Further, under the Ninth Circuit's *San Leandro* decision, it is difficult for local governments to be certain of their liabilities and obligations with regard to religious applicants in land use cases because of the split concerning whether planning principles can constitute a compelling interest.

CONCLUSION

"[Z]oning is a complex and important function of the [s]tate." *Vill. of Belle Terre*, 416 U.S. at 13 (Marshall, J., dissenting). When RLUIPA was enacted in 2000, planning and zoning became even more complex and confusing. Local governments were at a loss over how the federal government would insert itself into the most local of interests, land use. Over the years, that confusion has grown, and is not going to clear up on its own. This Court's attention is required to clear up that confusion and address the split among the federal courts.

For all of the above reasons, *amicus curiae* APACA respectfully requests that the Court grant the City's petition for *certiorari*.

Respectfully submitted this 25th day of August, 2011,

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