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ZONED SECULAR: SEATTLE'S PROHIBITION OF NEW RELIGIOUS FACILITIES IN INDUSTRIAL ZONES VIOLATES THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT'S "EQUAL TERMS" RULE

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Abstract: The “equal terms” rule of the Religious Land Use and Institutionalized Persons Act (RLUIPA) prohibits federal, state, and local governments from enacting land use regulations that place religious assemblies or institutions on less than equal terms with non-religious assemblies or institutions. The plain language of RLUIPA makes it clear that the equal terms rule prohibits unequal treatment of religious assemblies and institutions as compared to non-religious assemblies and institutions. RLUIPA's legislative history further reveals that Congress enacted the equal terms rule to counter zoning laws that favor secular assemblies and institutions over religious assemblies and institutions. Accordingly, federal courts have interpreted the equal terms rule to require that zoning laws treat religious assemblies and institutions no less favorably than non-religious assemblies and institutions, except where such laws are narrowly tailored to advance state interests of the highest order. In Midrash Sephardi, Inc. v. Town of Surfside, the U.S. Court of Appeals for the Eleventh Circuit held that a zoning law allowing private clubs and lodges in a business district while prohibiting synagogues and churches violated the equal terms rule. The Midrash court further held that the zoning law was not narrowly tailored because private clubs and lodges did not further the purpose of the business district any more than synagogues and churches. The city of Seattle prohibits the establishment of new religious facilities in industrial zones, while allowing the establishment of new lecture and meeting halls and new community centers. This Comment argues that Seattle's disparate treatment of religious facilities as compared to lecture and meeting halls and community centers violates the equal terms rule under a plain reading of RLUIPA, as supported by the Act's legislative history. In fact, Seattle's laws are analogous to a number of zoning laws that were amended in response to equal terms lawsuits. Seattle's laws also bear close resemblance to the law at issue in Midrash. Under Midrash, Seattle's laws are not narrowly tailored to advance interests of the highest order because religious facilities, lecture and meeting halls, and community centers are all similarly unrelated to Seattle's goal of promoting industrial development.

Zoning laws that regulate religious facilities have given rise to controversy in western Washington in recent years. Media reports have typically focused on zoning disputes centered in rural and suburban Washington, rather than within Seattle. However, the City of Seattle

1. See, e.g., Emily Heffter, Development Decisions Face Legal Challenges, SEATTLE TIMES, Feb. 19, 2003, (Times of Snohomish County), at 5 (describing a ruling by the Snohomish County Council allowing churches to build outside the urban growth area).
2. See, e.g., id.; Mike Lewis, Sims Lifts Rural Building Ban, SEATTLE POST-INTELLIGENCER, July 21, 2001, at B1 (reporting King County Executive Ron Sims's decision to lift the moratorium on
bans the construction of new religious facilities in industrial zones while allowing the construction of new lecture and meeting halls and new community centers in the same areas. Congress enacted the “equal terms” rule of the Religious Land Use and Institutionalized Persons Act (RLUIPA, or the Act) to combat zoning laws that place religious assemblies and institutions on less than equal terms with non-religious assemblies and institutions.

RLUIPA is Congress’ most recent attempt to regulate zoning laws that infringe upon religious freedom. Congress passed RLUIPA after the U.S. Supreme Court held the Religious Freedom Restoration Act of 1993 unconstitutional in City of Boerne v. Flores. Although legal scholars generally disapprove of RLUIPA, and the Act is often challenged in court on constitutional grounds, religious groups continue to rely upon it to defend, with some success, their religious land uses.

The equal terms rule of RLUIPA prohibits governments from imposing zoning laws that treat religious institutions and assemblies on
less than equal terms with non-religious assemblies and institutions. The plain language, legislative history, and judicial treatment of RLUIPA demonstrate that unequal treatment of religious assemblies through zoning laws is prohibited. The U.S. Court of Appeals for the Eleventh Circuit used RLUIPA's equal terms rule in *Midrash Sephardi, Inc. v. Town of Surfside* to strike down a zoning law that allowed private clubs and lodges in areas where synagogues and churches were banned. The *Midrash* court was the first and, to date, the only court to hold that the equal terms rule requires courts to apply strict scrutiny in assessing zoning laws that place religious facilities on less than equal footing with non-religious assemblies or institutions. In order to survive strict scrutiny, such zoning laws must advance "interests of the highest order" and be narrowly tailored in pursuit of those interests. The *Midrash* court held that the challenged law did not survive strict scrutiny because private clubs and lodges did not promote synergy in the business district any more than synagogues and churches.

This Comment argues that Seattle's prohibition of new religious facilities in industrial zones violates RLUIPA's equal terms rule. Seattle bans the construction of new religious facilities in all of its industrial zones while allowing new lecture and meeting halls in all of the same zones, and new community centers in two of them. Such unequal treatment of religious facilities violates RLUIPA's equal terms rule based on the Act's plain meaning and the intent evidenced by the Act's legislative history. Seattle's laws are nearly identical to other cities' zoning laws that treated religious assemblies and institutions less favorably than non-religious assemblies and institutions; these laws were found to be in compliance with the equal terms rule only after being amended to put non-religious assemblies and institutions on equal terms.

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11. *See infra Part I.*
13. *Id. at 1235.*
14. *See id.; Stein, supra note 8, at 43.*
16. *Id.*
17. *SEATTLE, WASH., CODE § 23.50.012 chart A (2004).*
with religious assemblies and institutions. Additionally, Seattle's laws violate RLUIPA's equal terms rule as the rule was interpreted and applied by the Midrash court. Like the law at issue in Midrash, Seattle's laws restrict religious land uses in areas where similar, secular uses are not subject to the same restrictions. Seattle's laws do not survive strict scrutiny under Midrash because they are not narrowly tailored to advance Seattle's interest in promoting industrial development.

Part I of this Comment analyzes the plain language and legislative history of RLUIPA's equal terms rule and judicial interpretations of the rule. Part II examines the U.S. Supreme Court's holding that necessitates strict scrutiny of zoning laws that violate RLUIPA's equal terms rule, the Midrash court's interpretation of the equal terms rule, and the Midrash court's application of strict scrutiny. Part III describes Seattle's regulation of religious facilities, lecture and meeting halls, and community centers in industrial zones. Finally, Part IV argues that Seattle's industrial zoning laws violate RLUIPA's equal terms rule under a plain reading of the rule, its legislative history, and judicial interpretations of the rule.

I. THE EQUAL TERMS RULE COMPELS EQUAL TREATMENT OF RELIGIOUS AND SECULAR INSTITUTIONS

The plain language of RLUIPA makes it clear that governments may not impose zoning laws that treat religious assemblies and institutions on less than equal terms with their non-religious counterparts. RLUIPA's legislative history reveals that Congress passed RLUIPA to prevent the unequal treatment of religious assemblies through restrictive zoning codes. Federal courts have accordingly interpreted the equal terms rule

21. See Midrash, 366 F.3d at 1228–35.
22. See SEATTLE, WASH., CODE § 23.50.012 chart A.
23. See 42 U.S.C. § 2000cc(b)(1) ("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.").
to require that governments treat religious facilities no less favorably than non-religious assemblies and institutions.\textsuperscript{25}

A. \textit{RLUIPA Expressly Prohibits Governments from Imposing Zoning Laws that Treat Religious Assemblies Less Favorably than Non-Religious Assemblies}

RLUIPA’s equal terms rule provides that governments may not place religious assemblies and institutions on less than equal terms with non-religious assemblies and institutions with regard to land use regulations.\textsuperscript{26} Congress enacted RLUIPA in response to the Supreme Court’s invalidation of the Religious Freedom Restoration Act in \textit{City of Boerne}.\textsuperscript{27} The land use section of RLUIPA\textsuperscript{28} contains two subsections: “Substantial burdens”\textsuperscript{29} and “Discrimination and exclusion.”\textsuperscript{30} The first rule under “Discrimination and exclusion” is entitled “Equal terms.”\textsuperscript{31} RLUIPA’s equal terms rule provides that “[n]o 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.”\textsuperscript{32} RLUIPA does not define the phrase “nonreligious assembly or institution.”\textsuperscript{33} It does, however, define “land use regulation” as a “zoning . . . law, or the application of such a law, that limits or restricts a claimant’s use or development of land . . . .”\textsuperscript{34} Congress also provided that RLUIPA should be construed “to the maximum extent permitted by the terms of [RLUIPA] and the Constitution.”\textsuperscript{35} RLUIPA codifies U.S. Supreme Court precedent in

\begin{itemize}
\item \textsuperscript{25} See \textit{CLUB II}, 342 F.3d at 762; \textit{Petra}, 2003 U.S. Dist. LEXIS 15105, at *36–37.
\item \textsuperscript{26} 42 U.S.C. § 2000cc(b)(1).
\item \textsuperscript{27} See Stein, \textit{supra} note 8, at 38–40.
\item \textsuperscript{28} RLUIPA also contains rules regarding institutionalized persons, see 42 U.S.C. § 2000cc-1, but these rules are outside the scope of this Comment.
\item \textsuperscript{29} \textit{Id.} § 2000cc(a).
\item \textsuperscript{30} \textit{Id.} § 2000cc(b).
\item \textsuperscript{31} \textit{Id.} § 2000cc(b)(1).
\item \textsuperscript{32} \textit{Id.}
\item \textsuperscript{33} See \textit{id.} § 2000cc.
\item \textsuperscript{34} \textit{Id.} § 2000cc-5(5).
\item \textsuperscript{35} \textit{Id.} § 2000cc-3(g).
\end{itemize}
order to provide for greater visibility and easier enforceability. The equal terms rule enforces the U.S. Supreme Court’s rule “against laws that burden religion and are not neutral and generally applicable.”

B. RLUIPA’s Legislative History Demonstrates that Congress Fashioned the Equal Terms Rule to Prohibit Zoning Laws that Treat Religious Assemblies Unequally

The legislative history of RLUIPA confirms that Congress intended to prohibit zoning laws that treat religious and non-religious assemblies unequally. A House Committee report explains that the equal terms rule “directly enforce[s] the constitutional rule that government may not discriminate against religion... with laws that are less than generally applicable.” Congress enacted the equal terms rule because zoning laws often excluded religious facilities where theaters, meeting halls, and other places of secular public assembly were allowed. For example, during one Committee hearing, senators heard testimony based on a survey of twenty-nine zoning codes from the suburban Chicago area. According to the survey, municipalities often permitted outright secular “land uses such as banquet halls, clubs, community centers, funeral parlors, fraternal organizations, health clubs, gyms, places of amusement, recreation centers, lodges, libraries, museums, municipal buildings, meeting halls, and theaters” in areas where religious assemblies and institutions were treated less favorably. Each of the twenty-nine zoning codes surveyed treated religious land uses on less than equal terms than at least one of these non-religious land uses. Congress saw this as evidence that RLUIPA’s equal terms rule was necessary.

37. Id. at S7776.
38. See id. at S7774.
41. See Hearing, supra note 24.
42. Id.
43. Id.
C. Courts Interpret the Equal Terms Rule to Require that Religious Assemblies and Institutions Be Treated No Less Favorably than Non-Religious Assemblies and Institutions

Courts have consistently interpreted the equal terms rule to prohibit zoning laws that discriminate against religious institutions and assemblies. 45 Not surprisingly, federal courts have not found a violation of RLUIPA’s equal terms rule when governments put religious facilities and non-religious assemblies and institutions on equal footing. 46 In Civil Liberties for Urban Believers v. City of Chicago, 47 a group of churches sued Chicago for violating RLUIPA’s equal terms rule. 48 Chicago’s zoning laws, last comprehensively amended in the 1950s, required churches to obtain special use permits to locate in some business and commercial districts and did not allow churches in other commercial districts. 49 Chicago allowed meeting halls, recreation buildings, and community centers in these districts without restrictions. 50 The plaintiff-churches argued that Chicago’s zoning laws violated RLUIPA’s equal terms rule because they treated meeting halls, recreation buildings, and community centers more favorably than churches. 51 In response to the lawsuit, the city amended its zoning laws in 2000 by placing nearly all of the same land use restrictions on meeting halls, recreational buildings, and community centers that had previously applied only to churches. 52 Under the 2000 changes, meeting halls, recreational buildings, and community centers had to obtain special use permits to locate in

45. See, e.g., Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1231 (11th Cir. 2004) (holding that differential treatment of synagogues as compared to private clubs and lodges violates the equal terms rule), cert. denied, ___ U.S. ___ (Feb. 22, 2005), 125 S. Ct. 1295 (2005); Petra Presbyterian Church v. Village of Northbrook, No. 03 C 1936, 2003 U.S. Dist. LEXIS 15105, at *35-36 (N.D. Ill. Aug. 28, 2003) (noting that the equal terms rule prohibits governments from treating religious assemblies and institutions on less than equal terms with secular assemblies and institutions).

46. See CLUB II, 342 F.3d 752, 762 (7th Cir. 2003); Petra, 2003 U.S. Dist. LEXIS 15105, at *36-37.

47. 342 F.3d 752 (7th Cir. 2003).

48. Id. at 759-60.

49. Civil Liberties for Urban Believers v. City of Chi. (CLUB I), 157 F. Supp. 2d 903, 906 (N.D. Ill. 2001), aff’d, 342 F.3d 752 (7th Cir. 2003).

50. See id.

51. CLUB II, 342 F.3d at 759-60.

52. Id. at 758 (describing the changes Chicago made to its zoning laws in response to the churches’ lawsuit).
Chicago's business and commercial districts, just like churches. The U.S. Court of Appeals for the Seventh Circuit found that these changes brought Chicago's zoning laws into compliance with RLUIPA's equal terms rule.

Similarly, in *Petra Presbyterian Church v. Village of Northbrook*, the defendant village amended its zoning laws to place religious institutions on equal footing with non-religious institutions, thereby avoiding violation of RLUIPA's equal terms rule. Petra Presbyterian Church (Petra) bought a building in one of Northbrook's industrial zones in October 2001. Petra used its industrial building to hold bible studies, prayer meetings, and choir practices. A 1988 Northbrook ordinance banned religious organizations in that industrial zone, but permitted other membership organizations and similar institutions, such as community centers. In March 2003, Petra sought a temporary restraining order to prevent Northbrook from enforcing the 1988 ordinance, claiming that the law violated RLUIPA's equal terms rule. In April and June 2003, Northbrook amended its industrial zoning laws to exclude similar, non-religious organizations, including community centers, from industrial zones. The U.S. District Court for the Northern District of Illinois found that the April and June 2003 amendments put religious assemblies and institutions on equal footing with non-religious assemblies and institutions, and thus satisfied the requirements of RLUIPA's equal terms rule.

In sum, Congress enacted RLUIPA after reviewing evidence of zoning codes that treated religious assemblies and institutions less favorably than non-religious assemblies and institutions. To remedy this problem, RLUIPA's equal terms rule expressly prohibits governments from imposing land use regulations that put religious assemblies and institutions on less than equal footing with non-religious counterparts. Federal courts have held that the equal terms rule is not violated where

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53. *Id.*
54. *Id.* at 762.
56. *Id.* at *10–11, *35–37.
57. *Id.* at *6, *9.
58. *Id.* at *12.
59. *Id.* at *3–5.
60. *Id.* at *14, *33, *35–36.
61. *Id.* at *10–12.
62. *Id.* at *36–37.
governments treat religious assemblies and institutions no less favorably than non-religious assemblies and institutions.

II. COURTS MAY UPHOLD UNEQUAL ZONING LAWS ONLY IF THEY SURVIVE STRICT SCRUTINY

Under the U.S. Supreme Court's holding in Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, laws targeting conduct motivated by religious belief that are not generally applicable may be upheld only if they survive strict scrutiny. When a court applies strict scrutiny to a law, it asks whether the law advances "interests of the highest order" and is "narrowly tailored in pursuit of those interests." RLUIPA's equal terms rule codifies the Lukumi Court's strict scrutiny requirement with respect to land use laws that burden religious facilities and are not neutral and generally applicable. Therefore, notwithstanding RLUIPA's express prohibition of discriminatory zoning regulations, courts may uphold zoning laws that violate the equal terms rule where such laws are narrowly tailored to advance state interests of the highest order.

In Midrash, the Eleventh Circuit indicated that a zoning law that violated the equal terms rule could still be upheld if it survived strict scrutiny. The zoning law at issue in Midrash banned churches and synagogues in a business district while allowing private clubs and lodges. The court recognized that the equal terms rule prohibits governments from treating religious assemblies and institutions less favorably than assemblies and institutions within the same "natural perimeter" of "assembly or institution." The court found that the town of Surfside violated the equal terms rule by treating clubs and lodges more favorably than synagogues. The court concluded that Surfside's

64. Id. at 546.
65. Id.
67. See id.
69. Id. at 1219–20.
70. Id. at 1230.
71. Id. at 1231.
zoning law was not narrowly tailored because clubs and lodges did not promote synergy in the business district any more than synagogues.\textsuperscript{72}

\subsection*{A. \textit{Laws Targeting Religion that Are Not Generally Applicable to Religious and Similar Non-Religious Conduct Are Subject to Strict Scrutiny}}

The U.S. Supreme Court held in \textit{Lukumi} that strict scrutiny applies to laws that regulate religiously motivated conduct and are not generally applicable to analogous, non-religious conduct.\textsuperscript{73} In \textit{Lukumi}, the Court examined a series of ordinances that had the effect of banning ritualistic animal sacrifices performed by devotees of the Santeria religion, but allowed the killing of animals for food consumption and other purposes such as hunting, pest control, and scientific testing.\textsuperscript{74} The city justified the ordinances on the grounds of public health and preventing cruelty to animals.\textsuperscript{75} The Church of the Lukumi Babalu Aye, which performed animal sacrifices as part of the Santeria religion, sued the city, its mayor, and the city council, alleging violations of its rights under the First Amendment's Free Exercise Clause.\textsuperscript{76}

The Court found that the ordinances were not neutral with respect to religion or generally applicable to similar, non-religious conduct.\textsuperscript{77} The ordinances were not neutral with respect to religion because they prohibited ritualistic, religious animal sacrifices but permitted other types of animal killing.\textsuperscript{78} The ordinances were not generally applicable because while the city promoted public health and prevented cruelty to animals by prohibiting ritualistic animal sacrifices, it left unregulated a hunter's ability to bring home an unsanitary kill, the unsanitary disposal of garbage by restaurants, the euthanasia of stray animals, and the infliction of pain and suffering on animals in scientific studies.\textsuperscript{79}

The Court applied strict scrutiny to the ordinances, asking whether they were narrowly tailored to advance a government interest of the

\begin{thebibliography}{99}
\bibitem{72} Id. at 1234.
\bibitem{74} Id. at 524--29, 542--46.
\bibitem{75} Id. at 543.
\bibitem{76} Id. at 528.
\bibitem{77} Id. at 532--46.
\bibitem{78} Id. at 532--42.
\bibitem{79} Id. at 542--46.
\end{thebibliography}
highest order. The Court held that the ordinances were not narrowly tailored because they singled out religious conduct that implicated public health and animal cruelty concerns while ignoring secular conduct that implicated those same concerns. The *Lukumi* Court made explicit the rule that courts must apply strict scrutiny to laws that regulate conduct undertaken for religious reasons and are not generally applicable to similar, non-religious conduct.

Similarly, zoning laws that violate RLUIPA's equal terms rule must survive strict scrutiny in order to be constitutional. The equal terms rule codifies, in the context of land use laws, *Lukumi*’s Free Exercise Clause rule against laws that regulate religious conduct but are not neutral and generally applicable as applied to similar, non-religious conduct. The *Lukumi* Court applied strict scrutiny to the ordinances that regulated religious conduct but did not apply to similar, non-religious conduct. Therefore, in accordance with the equal terms rule's codification of *Lukumi* in the land use context, courts may uphold zoning laws that violate the equal terms rule only if they are narrowly tailored to advance a government interest of the highest order.

B. *The Midrash* Court Indicated that Laws that Violate the Equal Terms Rule May Still Survive Strict Scrutiny

The *Midrash* court suggested that zoning laws that violate RLUIPA’s express terms by treating religious assemblies and institutions on less than equal terms with non-religious assemblies and institutions may survive strict scrutiny. The court had to decide what level of scrutiny to

80. *Id.* at 546–47.
81. *Id.*
82. *Id.* at 546.
85. *See* *Lukumi*, 508 U.S. at 546.
apply to a zoning law that violated the equal terms rule. The defendant-town argued that a law in violation of the equal terms rule could be justified if it passed a rational basis review. The plaintiff-synagogues argued for strict scrutiny review. The United States, intervenor in the case, argued for strict liability. The court held that because the equal terms rule codified *Lukumi* in the land use context, zoning laws that violate the equal terms rule may nevertheless be upheld if they are narrowly tailored to advance a government interest of the highest order.

C. The Midrash Court Held that the Equal Terms Rule Prohibits Zoning Religious Institutions on Less than Equal Terms with Similarly Situated Secular Institutions

The *Midrash* court interpreted the equal terms rule to prohibit governments from treating religious assemblies and institutions on less than equal terms with non-religious entities that fall within the "natural perimeter" of "assemblies and institutions." The court observed that the equal terms rule is concerned with the natural perimeter of "assemblies or institutions" and that the first step in analyzing equal terms cases is determining whether a given entity qualifies as an assembly or institution. Using common dictionary definitions, the court

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*Land Use and Institutionalized Persons Act of 2000 to Leave Local Governments Nearly Powerless to Zone Houses of Worship*, 58 SMU L. Rev. 465, 470–71 (2005) (arguing that the *Midrash* court should have applied rational basis review instead of strict scrutiny).

87. *Midrash*, 366 F.3d at 1231.
88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.* at 1232.
92. See *id.* at 1230. The court also agreed with the *CLUB II* court’s conclusion that the plain terms and structure of RLUIPA indicate that the equal terms rule operates independently of all the other rules in RLUIPA. *Id.* at 1229 (citing *CLUB II*, 342 F.3d 752, 762 (7th Cir. 2003)). But see Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch, No. CIV.A. 00-3366, 2005 WL 3542477, *9 (D. N.J. Dec. 27, 2005) (disagreeing with the *Midrash* court that the equal terms rule and the substantial burdens rule are separate); Guru Nanak Sikh Soc’y of Yuba City v. County of Sutter, 326 F. Supp. 2d 1140, 1154–55 (E.D. Cal. 2003) (suggesting in dicta that the substantial burdens rule and the equal terms rule are not independent of each other); Kruse, *supra* note 86, at 471 (arguing that the language and legislative history of RLUIPA indicate that equal terms plaintiffs must show a substantial burden on their religious exercise). A discussion of whether or not the substantial burdens and equal terms rules should be interpreted as independent of each other is outside the scope of this Comment.
defined an “assembly” as a “group gathered for a common purpose,”94 and an “institution” as an “established organization, esp[ecially] one of a public character.”95 The court decided that governments violate the equal terms rule when they treat religious assemblies and institutions differently from land uses that fall within the same natural perimeter of “assembly or institution.”96

D. The Law at Issue in Midrash Violated the Equal Terms Rule by Favoring Secular Institutions and Assemblies over Religious Assemblies and Institutions

The Midrash court examined a RLUIPA challenge to a city ordinance that allowed private clubs and lodges in a business district where synagogues and churches were banned.97 Two synagogues that shared leased property above street level in the town of Surfside’s business district brought the suit challenging the zoning law.98 Surfside’s zoning laws excluded churches and synagogues from the business district, but allowed lodge halls and private clubs above street level in the same business district.99 Surfside had denied one of the synagogues a special use permit and variance from the zoning laws.100 The synagogues then sued Surfside under RLUIPA’s equal terms rule, alleging that the ordinance violated RLUIPA.101

The court concluded that Surfside’s law violated RLUIPA’s equal terms rule.102 The court reasoned that private clubs and lodges fell within the natural perimeter of “assembly” because Surfside’s code defined private clubs in a manner that comports with a natural and ordinary understanding of an “assembly” as a group gathered for a common purpose.103 Because private clubs and lodges are “assemblies,”

94. Id. at 1230–31.
95. Id. (quoting BLACK’S LAW DICTIONARY 801 (7th ed. 1999)).
96. See id. at 1230.
97. Id. at 1219–20.
98. Id.
99. Id. At the time of the lawsuit, Surfside did not have any private clubs or lodges in its business district. Id.
100. Id.
101. Id. at 1228–29.
102. Id. at 1231.
103. Id. (Surfside’s zoning laws defined a private club as “a building and facilities or premises, owned and operated by a corporation, association, person or persons for social, educational or recreational purposes, but not primarily for profit and not primarily to render a service which is
Surfside’s differential treatment of synagogues and private clubs and lodges constituted a violation of RLUIPA’s equal terms rule. Relying on the Act’s legislative history, the court noted that Surfside’s law was exactly the type of zoning regulation that Congress was concerned with when it enacted RLUIPA.

E. The Law at Issue in Midrash Failed to Survive Strict Scrutiny Because Clubs and Lodges Did Not Advance State Interests More than Synagogues

The Midrash court applied the strict scrutiny standard identified in Lukumi to Surfside’s law. The court asked whether Surfside’s law advanced interests of the highest order and whether it was narrowly tailored in pursuit of those interests. In response, Surfside argued that excluding churches and synagogues from the business district was justified because churches and synagogues did “not cater to or stimulate the shopping and retail needs of Surfside residents in a way that comports with the objectives of the business district.” The town argued further that private clubs and lodges were different from synagogues and churches because as entertainment uses they promoted “synergy” in the business district.

The Midrash court held that Surfside’s zoning law was not narrowly tailored to advance the town’s interest in promoting synergy in the business district. The court found no evidence that private clubs and lodges would have contributed to the business district any more than the synagogues. The court noted that some private clubs and lodges only hold activities on a weekly, monthly, or bi-monthly basis, and sometimes after normal business hours. Satisfied that Surfside’s law

104. Id.
106. Id. at 1235.
107. Id. (quoting Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 546 (1993)).
108. Id. at 1233.
109. Id.
110. Id.
111. Id. at 1233–34.
112. Id.
excluding churches and synagogues from the business district was not narrowly tailored, the court did not decide whether Surfside’s interest in promoting synergy in the business district was of “the highest order.” The court held that the law did not survive strict scrutiny.

In sum, under *Lukumi*, laws that target conduct motivated by religious belief and that are not generally applicable to similar non-religious conduct must be narrowly tailored to advance state interests of the highest order. In accordance with *Lukumi*, courts may uphold zoning laws that violate the equal terms rule if they survive strict scrutiny. Faced with the decision of what level of scrutiny to apply to a law that violated the equal terms rule, the Midrash court decided that *Lukumi* compelled strict scrutiny review. The Midrash court also decided that the equal terms rule prohibited governments from putting religious assemblies and institutions on less than equal footing with non-religious organizations in the same natural perimeter of “assembly or institution.” The court then held that Surfside’s zoning law violated RLUIPA’s equal terms rule because it treated churches and synagogues on less than equal terms with the non-religious assemblies of private clubs and lodges. Applying strict scrutiny, the court concluded that the law did not survive strict scrutiny because private clubs and lodges did not promote synergy in the business district any more than synagogues.

III. SEATTLE’S CODE TREATS SECULAR AND SECTARIAN LAND USES IN INDUSTRIAL ZONES DIFFERENTLY

Seattle regulates religious facilities differently than lecture and meeting halls and community centers in its various industrial zones. New religious facilities may not be constructed in any of Seattle’s industrial zones or placed in a building built after October 5, 1987. New lecture and meeting halls may be constructed in all of Seattle’s industrial zones, while new community centers may be constructed in two of them. The zoning laws categorize these three land uses as either institutions or assemblies and they can be the site of a variety of

113. *Id.* at 1235.
114. *Id.*
116. *Id.*
117. *Id.*
118. *Id.* §§ 23.50.012 chart A, 23.84.030.
overlapping activities and events.  

A. New Religious Facilities Are Not Allowed in Seattle’s Industrial Zones

Seattle established four different industrial zones in 1987 to support industrial growth in the city, none of which permit the construction of new religious facilities. Seattle’s industrial zones are “intended to support existing industrial activity and related businesses and provide for new industrial development, as well as increased employment opportunities.”

Seattle divides industrial land into four categories: General Industrial 1 (IG1), General Industrial 2 (IG2), Industrial Commercial (IC), and Industrial Buffer (IB). IG1 zones have the most established industrial character of all of Seattle’s industrial zones. The purpose of an IG1 zone is to protect marine- and rail-related industrial areas from inappropriate and unrelated retail and commercial uses. IG2 zones have a less established industrial character than IG1 zones. These zones allow for a broader range of commercial and non-commercial uses than IG1 zones. IC zones permit even more non-industrial uses, and are designed to promote the development of businesses that incorporate a mix of industrial and commercial activities. IB zones are the least industrial of Seattle’s industrial zones.

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119. Compare Squire Park Comm., Seattle Hearing Exam’r Decision S-93-003 (Aug. 13, 1993) (authorizing a homeless shelter as an accessory use for a religious facility), and Steven D. Matasy, Seattle Hearing Exam’r Decision MUP-93-031 (Nov. 23, 1993) (listing food banks as an accessory use for a religious facility), with United Indians of All Tribes Found., Seattle Hearing Exam’r Decisions S-99-001 & S-99-002 (Sept. 14, 1999) (listing a variety of authorized community center uses such as food banks, emergency homeless shelters, needle exchange programs, facilities available for rental for special events, recreation, child care, and office and work spaces for community groups), and SEATTLE, WASH., CODE § 23.84.030 (defining an entertainment use as a site for “cultural...events”).

120. See SEATTLE, WASH., CODE § 23.34.090(A) (stating that Seattle’s industrial zones are intended to support existing industrial activity and provide for new industrial development).

121. See id. § 23.50.012 chart A.

122. Id. § 23.34.090(A).

123. Id. § 23.50.002(A).


125. Id.

126. See id.

127. See id.

128. Id.
zones. They are transitional zones located between heavy industrial zones and zones with a more residential character. In addition to these four categories of industrial zones, Seattle has special zoning laws for IG1 and IG2 zones located in the Duwamish Manufacturing/Industrial Center (Duwamish M/I Center). In 2000, the Seattle City Council passed new zoning laws for the IG1 and IG2 zones located in the Duwamish M/I Center in an effort to prevent this industrial land from being converted to non-industrial uses.

The Seattle Municipal Code (Code) groups land uses into broad categories such as Manufacturing, High Impact Uses, Commercial, Salvage and Recycling, Utilities, and Institutions. These categories contain specific land uses such as light manufacturing, kennels, parking lots, motion picture theaters, railroad switchyards, and colleges. These land uses are either prohibited, permitted as administrative conditional uses, permitted as Seattle City Council conditional uses, permitted only in buildings that existed on October 5, 1987, or permitted outright.

The Code prohibits new religious facilities from being built in all four categories of industrial zones, including the IG1 and IG2 zones located in the Duwamish M/I Center. In all of Seattle's industrial zones, religious facilities are only allowed in buildings that existed on October 5, 1987. The Code defines a religious facility as an institution used primarily for religious worship. Religious facilities fall under the category of "Institutions." Religious facilities in Seattle are the site of

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129. See id.
130. See id.
133. See SEATTLE, WASH., CODE § 23.50.012 chart A. The following is a complete list of the major land use categories on § 23.50.012 chart A: manufacturing, high-impact uses, commercial, salvage and recycling, utilities, institutions, public facilities, park and pool/ride lots, residential, live-work units, open space, and agricultural uses. Id.
134. See id.
135. Id.
136. Id.
137. Id.
138. Id. § 23.84.018(12).
139. Id. § 23.50.012 chart A.
not only religious worship, but also homeless shelters and food banks. The Seattle City Council decided to prohibit new institutional land uses, such as religious facilities, in industrial zones because of concerns that such institutions would create conflicts with industrial activities. The City Council was also concerned that religious facilities and other institutional land uses would reduce the amount of land available for industrial use and would attract large numbers of people to the area, potentially conflicting with industrial activities.

A religious organization cannot obtain a variance from the Code’s ban on new religious facilities in industrial zones. Variances are not issued for land uses otherwise prohibited in a zone. A religious organization that owns land in an industrial zone could ask the City Council to amend the Official Land Use Map to rezone its portion of industrial land into a zoning category that allows new religious facilities. An amendment to the Official Land Use Map is a “quasi-judicial decision[ ]” made by the City Council and based on a Hearing Examiner’s record and recommendation. An application for rezoning requires the applicant to pay filing fees, undergo public hearings, present detailed building plans, and submit an environmental impact statement—all in pursuit of a building project that the City Council may never approve.

B. New Lecture and Meeting Halls and Community Centers Are Allowed in Seattle’s Industrial Zones

Seattle permits new lecture and meeting halls in all four categories of industrial zones, including the IG1 and IG2 zones in the Duwamish M/I Center. Additionally, lecture and meeting halls are not subject to size

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142. See id.

143. See SEATTLE, WASH., CODE § 23.40.020(A).

144. Id.

145. See id. § 23.76.004.

146. Id. § 23.76.004(C).

147. Id. § 23.76.040. The City Council makes the final decision on an application for an amendment to the Official Land Use Map. Id. § 23.76.056(D).

148. Id. § 23.50.012 chart A.
limitations in the IG1 zones in the Duwamish M/I. The Code does not define the term “lecture and meeting hall.” However, the Code does list lecture and meeting halls under the land use category “places of public assembly,” defined as a location for “an entertainment use in which cultural, entertainment, athletic, or other events are provided for spectators either in or out of doors.” Lecture and meeting halls are non-religious. They are also distinct from labor union meeting halls.

The Code allows new community centers in Seattle’s industrial zones, though not as widely as new lecture and meeting halls. Seattle allows new community centers in the Duwamish M/I Center’s IG1 and IG2 zones. In all other industrial zones, Seattle only allows community centers in buildings that existed on October 5, 1987, just like religious facilities. Community centers fall under the land use category of “institutions.” They are operated by a nonprofit organization and used for civic or recreational purposes. Community centers are open to the public on an equal basis and serve people on the premises, rather than carrying out solely administrative functions. Community centers are inherently non-religious in that they must be open to the public on an equal basis. A community center’s activities can include classes,
events sponsored by nonprofit organizations, and community programs for the elderly. In practice, Seattle's community centers also function as food banks, homeless shelters, child care facilities, and needle exchange programs, in addition to supporting other uses.

In sum, Seattle divides its industrial land into various categories based on the intensity of industrial activity. Seattle groups land uses into broad categories and regulates their use in industrial zones. Seattle bans new religious facilities in its industrial zones. The Code classifies religious facilities as an "institutional" land use and only allows them in buildings that existed on October 5, 1987. Religious facilities are used primarily for religious worship, but are also the site of homeless shelters and food banks, among other uses. In contrast, Seattle allows new lecture and meeting halls throughout Seattle's industrial lands, with no size restrictions in the IG1 zones in the Duwamish M/I Center. The Code categorizes lecture and meeting halls as assemblies. Lecture and meeting halls host a variety of cultural and entertainment events. Seattle permits new community centers in the IG1 and IG2 zones in the Duwamish M/I Center. The Code categorizes community centers as institutions. They are used for community service projects, classes, homeless shelters, child-care, and needle exchange programs, as well as other activities.

IV. SEATTLE LAW VIOLATES THE EQUAL TERMS RULE BY IMPERMISSIBLY DISFAVORING SECTARIAN LAND USES

Seattle's industrial zoning laws violate RLUIPA's equal terms rule. These zoning laws are contrary to the plain language of the equal terms rule, a fact confirmed by the Act's legislative history. Seattle's laws are similar to the laws at issue in Civil Liberties for Urban Believers and Petra Presbyterian Church. Seattle's laws are also similar to the law

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161. See United Indians of All Tribes Found., Seattle Hearing Exam'r Decision S-99-001 (Sept. 14, 1999) (listing a variety of authorized community center uses such as food banks, emergency homeless shelters, needle exchange programs, facility rental for special events, recreation, child care, and office and work spaces for community groups).

163. See 42 U.S.C. § 2000cc(b)(1) (2000) ("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.").


165. See CLUB I, 157 F. Supp. 2d 903, 906 (N.D. Ill. 2001), aff'd, 342 F.3d 752 (7th Cir. 2003); Petra Presbyterian Church v. Village of Northbrook, No. 03 C 1936, 2003 U.S. Dist. LEXIS 15105,
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struck down in *Midrash*. Like the law at issue in *Midrash*, Seattle’s laws violate RLUIPA’s equal terms rule by restricting religious land uses where similar, secular uses are not subject to the same restrictions. Seattle’s laws would not survive strict scrutiny under *Midrash* because they are not narrowly tailored to advance Seattle’s interest in promoting industrial development.

A. Seattle’s Zoning Laws Violate RLUIPA’s Equal Terms Rule by FAVORING SECULAR INSTITUTIONS AND ASSEMBLIES OVER RELIGIOUS ASSEMBLIES AND INSTITUTIONS

Seattle violates the plain language and legislative intent of RLUIPA’s equal terms rule by allowing new lecture and meeting halls and community centers where it bans new religious facilities. The equal terms rule prohibits the government from imposing or implementing a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution. The Code explicitly treats religious facilities, lecture and meeting halls, and community centers as assemblies and institutions. Lecture and meeting halls and community centers are non-religious. Seattle treats religious facilities on less than equal terms with lecture and meeting halls and community centers by banning new religious facilities where new lecture and meeting halls and community centers are allowed. RLUIPA’s legislative history indicates that Congress intended the equal terms rule to address precisely this situation—"[z]oning codes [that] exclude churches in places where they permit..."

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167. See infra Part IV.B.

168. See infra Part IV.C.


171. *SEATTLE, WASH., CODE* §§ 23.50.012 chart A, 23.84.030.

172. See § 23.84.030 (listing lecture and meeting halls as an “entertainment” land use); *ANDERSON, supra* note 160 (stating that membership in a community group typically cannot be based on creed).

173. *SEATTLE, WASH., CODE* § 23.50.012 chart A.

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theaters, meeting halls, and other places where large groups of people assemble for secular purposes."

Seattle’s laws are similar to the zoning laws from the suburban Chicago area that Congress reviewed before enacting RLUIPA.

Seattle’s laws are also similar to the zoning laws at issue in *Civil Liberties for Urban Believers* and *Petra Presbyterian Church*. In *Civil Liberties for Urban Believers*, Chicago amended zoning laws that had previously allowed meeting halls and community centers where religious facilities were banned. In *Petra Presbyterian Church*, Northbrook amended a zoning law that was almost identical to Seattle’s laws: it allowed community centers in an industrial zone but not religious facilities.

B. Seattle’s Industrial Zoning Laws Closely Resemble the Law that Violated the Equal Terms Rule in Midrash

Seattle’s laws are similar to the Surfside law invalidated by the *Midrash* court in that they put religious facilities on less than equal footing with land uses that fall within the natural perimeter of “assembly or institution.” The *Midrash* court found that private clubs and lodges fell within the natural perimeter of “assembly” because Surfside’s code defined them to comport with the natural and ordinary understanding of the term “assemblies.” Under Seattle’s laws, lecture and meeting halls and community centers similarly fall within the natural perimeter of “assembly or institution” because the Code explicitly categorizes or defines them as assemblies or institutions, and their authorized uses overlap with the authorized uses of religious facilities. Like Surfside,

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175. *See Hearing, supra* note 24 (describing a study of twenty-nine zoning codes in the Chicago area where each code treated at least one non-religious assembly or institution more favorably than religious assemblies and institutions).

176. *See CLUB II, 342 F.3d 752, 758 (7th Cir. 2003).*


179. *Id. at 1231.*

180. *SEATTLE, WASH., CODE §§ 23.50.012 chart A, 23.84.030 (2004).*

181. *Compare* Squire Park Comm., Seattle Hearing Exam’r Decision S-93-003 (Aug. 13, 1993) (authorizing a homeless shelter as an accessory use for a religious facility), and Steven D. Matasy, Seattle Hearing Exam’r Decision MUP-93-031 (Nov. 23, 1993) (listing food banks as an accessory
Seattle puts religious assemblies and institutions on less than equal footing with non-religious assemblies and institutions by allowing new lecture and meeting halls and new community centers where new religious facilities are banned.\(^{182}\)

While Seattle’s laws allow religious facilities in industrial zones in buildings that existed on October 5, 1987,\(^{183}\) something Surfside banned altogether,\(^{184}\) this does not put Seattle in compliance with the equal terms rule. Religious facilities in Seattle’s industrial zones receive unequal treatment in comparison to lecture and meeting halls and community centers.\(^{185}\) That Seattle could treat religious facilities more unequally does not change the fact that it treats them on less than equal terms with lecture and meeting halls and community centers.\(^{186}\)

C. Seattle’s Laws Fail to Survive Strict Scrutiny Because Favored Secular Land Uses Do No More to Advance State Interests than Disfavored Sectarian Uses Within the Same Natural Perimeter

Seattle’s justification for excluding religious facilities and allowing lecture and meeting halls and community centers does not survive the Midrash court’s strict scrutiny test. In Midrash, Surfside produced no satisfactory evidence that private clubs and lodges would have contributed to its business district more than synagogues.\(^{187}\) Similarly, nothing in the Seattle Code’s definitions of “lecture and meeting hall” and “community center” suggests that these institutions sustain or

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use for a religious facility), with United Indians of All Tribes Found., Seattle Hearing Exam'r Decision S-99-001 (September 14, 1999) (listing a variety of authorized community center uses such as food banks, emergency homeless shelters, needle exchange programs, facilities available for rental for special events, recreation, child care, and office and work spaces for community groups), and SEATTLE, WASH., CODE § 23.84.030 (defining an entertainment use as a site for “cultural…events”).

182. See SEATTLE, WASH., CODE § 23.50.012 chart A (allowing new lecture and meeting halls and new community centers where new religious facilities are banned).

183. Id.

184. Midrash, 366 F.3d at 1220.

185. SEATTLE, WASH., CODE § 23.50.012 chart A.

186. See 42 U.S.C. § 2000cc(b)(1) (2000). RLUIPA’s equal terms rule does not require that unequal treatment be of any certain intensity. Arguably, Surfside did not treat private clubs and lodges substantially more favorably than synagogues since private clubs and lodges were only allowed above street level in the business district. Midrash, 366 F.3d at 1220. However, the court still found disparate treatment in violation of the equal terms rule. Id. at 1231.

187. Midrash, 366 F.3d at 1234.
promote industrial development more than religious facilities. 188 Seattle's industrial zones are "intended to support existing industrial activity and related businesses and provide for new industrial development, as well as increased employment opportunities." 189 Religious facilities do not advance these goals because they are used "primarily for religious worship." 190 Lecture and meeting halls and community centers also do not do not further the goals that Seattle has set for its industrial zones. 191 Lecture and meeting halls are "entertainment" land uses, not industrial land uses. 192 They are not labor union halls where members may hold meetings after work. 193 Community centers are not industrial land uses; instead, they are, like religious facilities, "institutional" land uses. 194 According to the Code, community centers are used for civic or recreational purposes. 195 Just as churches, synagogues, private clubs, and lodges were unrelated to promoting synergy in Midrash, 196 religious facilities, lecture and meeting halls, and community centers are all unrelated to industrial development or advancing the goals Seattle has set for its industrial zones. 197 Seattle's ban on new religious facilities in industrial zones is not narrowly tailored to promote industrial development because the Code allows similar, non-industrial, secular institutions in those same

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188. See SEATTLE, WASH., CODE § 23.84.030 (listing lecture and meeting halls as an "entertainment" land use); id. § 23.84.018(3) (describing community centers as used for civic or recreational purposes).

189. Id. § 23.34.090(A).

190. Id. § 23.84.018(12).

191. See id. § 23.84.030 (describing lecture and meeting halls as "entertainment" land uses); id. § 23.84.018(3) (stating that community centers are used for civic or recreational purposes).

192. Id. § 23.84.030.

193. See MATRIX, supra note 132, at 20 (explaining that the city usually permits union halls as office land uses). Because labor union meeting halls are an "office" land use, the city permits them in all of Seattle's industrial zones, including the Duwamish M/I Center. SEATTLE, WASH., CODE § 23.50.012 chart A. There is no evidence in the Seattle Municipal Code or elsewhere that the "lecture and meeting halls" category would include union halls. This Comment thus presumes that labor union meeting halls only fall in the "office" land use category.

194. SEATTLE, WASH., CODE § 23.50.012 chart A.

195. Id. § 23.84.018(3).


197. See SEATTLE, WASH., CODE § 23.84.030 (describing lecture and meeting halls as "entertainment" land uses); id. § 23.84.018(3) (stating that community centers are used for civic or recreational purposes).
industrial zones.\textsuperscript{198}

In sum, Seattle’s laws prohibiting new religious facilities in industrial zones while allowing new lecture and meeting halls and community centers violate the equal terms rule based on the plain language of RLUIPA. The Act’s legislative history confirms that Seattle’s industrial zoning laws are the type Congress had in mind when it enacted RLUIPA’s equal terms rule. Seattle’s laws are similar to the zoning regulations amended in \textit{Civil Liberties for Urban Believers} and \textit{Petra Presbyterian Church}. In those cases, local governments amended zoning laws that allowed meeting halls and community centers where religious assemblies were banned. Seattle’s laws are similar to the Surfside law that the \textit{Midrash} court found violated RLUIPA’s equal terms rule. They do not pass the \textit{Midrash} court’s strict scrutiny test: Seattle’s laws are not narrowly tailored to promote industrial development.

V. CONCLUSION

The City of Seattle impermissibly bans new religious facilities in industrial zones while allowing new lecture and meeting halls and community centers in the same zoning areas. Such unequal treatment of religious facilities violates RLUIPA’s equal terms rule under the plain language of the statute, and as evidenced by the Act’s legislative history. Seattle’s laws are analogous to the zoning regulations amended in \textit{Civil Liberties for Urban Believers} and \textit{Petra Presbyterian Church}. Seattle’s laws violate the equal terms rule under the \textit{Midrash} court’s interpretation of the Act. Moreover, Seattle’s Code would not survive the \textit{Midrash} court’s strict scrutiny test because favored secular land uses do no more to advance the City’s interests than disfavored sectarian uses within the same natural perimeter. In short, Seattle has not narrowly tailored its zoning regulations because religious facilities, lecture and meeting halls, and community centers are all unrelated to the goals set for industrial zones. Like the cities of Chicago and Northbrook, Seattle should amend its industrial zoning laws so that religious facilities are not zoned on less than equal terms with lecture and meeting halls and community centers.

\textsuperscript{198} Cf. \textit{Midrash}, 366 F.3d at 1235.