

# 25-2191

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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LOST LAKE HOLDINGS, LLC, a domestic limited liability company, MISHCONOS  
MAZAH LLC, a domestic limited liability company, RABBI MORDECHAI  
HALBERSTAM, ROSE HALBERSTAM,  
*Plaintiffs-Appellants,*

v.

TOWN OF FORESTBURGH, FORESTBURGH ZONING BOARD OF APPEALS,  
GLENN A. GABBARD, in his personal capacity and in his official capacity as Building  
Inspector of the Town of Forestburgh, THE FORESTBURGH TOWN BOARD, STEVE  
BUDOFKY, in his personal capacity, SUSAN PARKS-LANDIS, in her personal  
capacity, VINCENT GALLIGAN, in his personal capacity, DANIEL S. HOGUE, in his  
personal capacity, RICHARD ROBBINS, in his personal capacity and in his official  
capacity as Chairperson of the Planning Board of the Town of Forestburgh, DENNIS  
KETCHAM, in his capacity as Town Assessor of the Town of Forestburgh,  
*Defendants-Appellees.*

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On Appeal from the United States District Court for the  
Southern District of New York, No. 22-cv-10656-VB (Hon. Vincent L. Briccetti)

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**BRIEF OF AGUDATH ISRAEL OF AMERICA, THE JEWISH  
COALITION FOR RELIGIOUS LIBERTY, THE NATIONAL COUNCIL  
OF YOUNG ISRAEL, AND THE JEWISH COMMUNITY COUNCIL OF  
SULLIVAN COUNTY AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici* certify as follows:

Agudath Israel of America certifies that it has no parent corporation, that it does not issue stock, and thus that no publicly held corporation owns 10% or more of its stock.

The Jewish Coalition for Religious Liberty certifies that it has no parent corporation, that it does not issue stock, and thus that no publicly held corporation owns 10% or more of its stock.

The National Council of Young Israel certifies that it has no parent corporation, that it does not issue stock, and thus that no publicly held corporation owns 10% or more of its stock.

The Jewish Community Council of Sullivan County certifies that it has no parent corporation, that it does not issue stock, and thus that no publicly held corporation owns 10% or more of its stock.

/s/ John A. Meiser

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici curiae* are four organizations devoted to promoting the interests and protecting the rights of Jewish communities in the United States. They submit this brief to address an issue of grave concern to Jewish people within this Circuit and across the nation: the anti-Semitism exhibited by many local zoning boards and land-use commissions, which often wield their power to pressure Jewish residents to leave their communities or to bar them from ever moving into such communities in the first place.

**Agudath Israel of America** is a 103-year-old nonprofit Orthodox Jewish umbrella organization. Agudath Israel’s headquarters are located in New York City, and it serves over 30 states with its network of regional and state offices, affiliated synagogues, summer camps, special education, youth services, and religious study programs. Agudath Israel regularly intervenes at all levels of government—including through the submission of, or participation in, *amicus curiae* briefs—to advocate for and protect the interests of the Orthodox Jewish community in the United States.

The **Jewish Coalition for Religious Liberty** (JCRL) is an incorporated group of rabbis, lawyers, and professionals who practice Judaism and are committed to

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<sup>1</sup> Counsel for all parties consented to the filing of this brief. No party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money that was intended to fund preparing or submitting the brief; and no person other than *amici curiae*, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief. *See* Fed. R. App. P. 29(a)(4)(E).

defending religious liberty. JCRL aims to foster cooperation between Jewish and other faith communities in the public square.

The **National Council of Young Israel (NCYI)** is a Jewish synagogue organization that provides resources and services to more than 100 synagogues and their more than 25,000 member families throughout the United States. NCYI was founded in 1912 primarily to foster Torah-true Judaism in North America and protect against increasing assimilation. NCYI seeks to embrace Jewish communal needs and promote the values of Judaism, believing that traditional faith is compatible with good citizenship.

The **Jewish Community Council of Sullivan County (JCC)** was formed in 2015 to support and represent the interests of the Jewish community in Sullivan County, New York. The JCC was established specifically to unify, organize, and advocate for the needs of this community at a time when it was encountering increasing challenges and adverse treatment, including particularly through discriminatory practices by local land-use authorities. The formation of the JCC aimed to provide a coordinated voice to address these issues, foster positive relations with residents and local government, and ensure the continued vitality and welfare of the Jewish presence in Sullivan County.

## SUMMARY OF THE ARGUMENT

As the district court seemed to recognize early on, JA-1506, the Town of Forestburgh is not going to allow Appellants to build a residential community for Hasidic Jews. Once the developers purchased a shovel-ready property for that purpose, the Town—in the words of one prominent resident and former member of the Comprehensive Plan Review Committee—“circle[d] the wagons.” JA-1570. That former committee member (along with other residents) stoked fears that Hasidic Jews would “take over, like locusts—killing everything they encounter, draining every last resource, bleeding the beast.” *Id.*; *see also* JA-57. A member of the Town Board wrote to reassure him, “[Y]our concerns are my concerns and I will advocate for any measures that protect our town.” JA-1572. The Chair of the Town’s Planning Board, shortly before his appointment, had encouraged another resident not to worry about “the hasidic threat” seen elsewhere because, unlike other towns, “we’re energized and have the cash to fight and make their lives miserable.” JA-1558. According to the allegations here, that is exactly what the Town has since done: preventing the developers from building, shifting demands, delaying permits, and arbitrarily increasing project costs by more than \$3 million. Opening Br. 8–14.

Confronted with wanton bigotry, unable to build, and facing an endless series of arbitrary demands, the developers did what anyone would expect: They sued to vindicate their rights against such blatant discrimination. But the district court ordered them to go back to the Town and try again. In the district court’s view—despite the evident writing on the wall—the developers cannot assert their federal rights in court until it is absolutely certain that further administrative processes will

not resolve the issue. And the court found that the Town's vile animosity toward the Jewish developers was essentially beside the point. According to the court, evidence of even that severe hostility cannot relieve the need to continue trying to work things out with Town officials because it does not *guarantee* that such efforts will fail.

The district court's decision badly misunderstands the concept of prudential ripeness. As Appellants demonstrate, claims under the Fair Housing Act are not subject to judicially created ripeness limitations in the first place. Opening Br. 21–22. But even if they were, the lower court twisted the flexible, factually sensitive inquiry—which asks only whether the Town has settled its position on the matter—into an unyielding demand that landowners exhaust all possible avenues of administrative relief. This Court has never suggested anything of that sort. The district court's failure to take meaningful account of the Town's blatant anti-Semitism when assessing whether it had dug in its heels defies this Court's precedents and threatens to severely restrict landowners' access to federal court.

Worse still, these harms are not isolated. Other courts within this Circuit have likewise been reluctant to take evident animosity into account when assessing whether a land-use dispute is fit for review. That is an error which threatens Jewish communities most of all. Time and again, Jewish developers are harassed by local zoning boards and forced out of areas where anti-Semitic residents fear the presence of Jewish neighbors. That institutionalized anti-Semitism is an issue of great urgency within this Circuit and across the country. This Court must correct the lower court's error both to restore coherence to its law and to protect the rights of these vulnerable communities.

## ARGUMENT

**I. This Court must make clear that evidence of hostility plays an important role when evaluating whether zoning authorities have dug in their heels.**

Courts do not subject land-use claims to rigid exhaustion requirements that compel developers to avail themselves of every possible administrative remedy. Once zoning authorities have dug in their heels on a property's approved use and signaled that further processes would be pointless, the landowner may challenge that decision in court. There are no magic words required, and any number of facts may help answer the question.

The lower court misunderstood this inquiry. It distorted the flexible, prudential ripeness inquiry into a virtually unyielding demand for procedural exhaustion. It suggested that further processes must be attempted unless the court knows with absolute certainty how they would turn out. Worst of all, it suggested that explicit evidence of wanton and invidious animosity can never provide such certainty. This is wrong and must be corrected.

**A. Landowners may challenge zoning decisions in court once local authorities have dug in their heels as to how property may be used.**

Courts generally review land-use challenges only after local authorities have taken a “definitive position as to how [the landowner] could use the property.” *Murphy v. New Milford Zoning Comm’n*, 402 F.3d 342, 348 (2d Cir. 2005) (citing *Williamson Cnty. Reg’l Plan. Comm’n v. Hamilton Bank*, 473 U.S. 172, 186 (1985), *overruled in part on other grounds by Knick v. Township of Scott*, 588 U.S. 180 (2019)). This final-decision requirement ensures that courts do not “entangl[e]

themselves in abstract disagreements.” *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967). Courts ask whether the issue is fit for judicial decision and consider whether they would benefit from waiting until the claims “have arisen in a more concrete and final form.” *Murphy*, 402 F.3d at 347.

These considerations do not demand absolute finality or require landowners to pursue further processes at all costs. Indeed, the final-decision requirement “is not mechanically applied.” *Id.* at 349. Rather, a landowner is “excused from obtaining a final decision” if such efforts would be futile because the zoning authority lacks discretion to approve the application, or because it has sufficiently staked out its position against the landowner’s request. *Id.* In this Court’s words, “a property owner need not pursue such applications when a zoning agency . . . has dug in its heels and made clear that all such applications will be denied.” *Id.*; *see also Pakdel v. City & County of San Francisco*, 594 U.S. 474, 479 (2021) (dispute is ripe “[o]nce the government is committed to a position”). “[N]othing more than *de facto* finality is necessary.” *Pakdel*, 594 U.S. at 479. Under that “relatively modest” standard, the key is whether the government (formally or otherwise) has settled its position. *See id.* at 478; *see also Grand v. City of Univ. Heights*, 159 F.4th 507, 513 (6th Cir. 2025).

This flexible approach balances the prudential interest in avoiding premature litigation with the right of landowners suffering at the hands of unlawful zoning decisions to obtain judicial intervention. To be sure, “mere doubt” that zoning authorities would approve a proposed land use is not enough. *Cf. BMG Monroe I, LLC v. Village of Monroe*, 93 F.4th 595, 603 (2d Cir. 2024) (quotation omitted). The

government must have in some way signaled that it is committed to its position and will not take opportunities change it. *See Pakdel*, 594 U.S. at 480. But “[t]here are no magic words necessary.” *Kleinknecht v. Ritter*, No. 21-2041, 2023 WL 380536, at \*3 (2d Cir. Jan. 25, 2023). And the demand is not akin to the formal requirement of exhaustion that applies in many administrative contexts. *See, e.g., Williamson County*, 473 U.S. at 192–93; *Pakdel*, 594 U.S. at 479–80; *Martin v. Town of Simsbury*, 735 F. App’x 750, 752 (2d Cir. 2018). Unlike procedural exhaustion, ripeness in land-use cases does not require a plaintiff to complete any particular steps once the answer is clear. *Cf. Pakdel*, 594 U.S. at 480 (“[A]dministrative missteps do not defeat ripeness once the government has adopted its final position.”); *Grand*, 159 F.4th at 513 (no need to continue once “zoning proceedings . . . become an empty affair”).

In short, a property owner need not go through what would be “pointless” zoning exercises before coming to federal court. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1012 n.3 (1992).

**B. Evidence of hostility undoubtedly sheds light on whether further zoning processes will be ineffective.**

A host of circumstances may be relevant when evaluating whether further land-use proceedings appear to be pointless. For example, courts “account for the nature of the [government’s] tactics”—such as when it imposes “repetitive and unfair” procedures or continually moves the “finish line . . . just one step away.” *Sherman v. Town of Chester*, 752 F.3d 554, 563 (2d Cir. 2014). Or, when local authorities suggest additional procedures that a landowner could pursue, courts

evaluate whether those avenues are actually relevant to the requested use. *See, e.g., Martin*, 735 F. App'x at 752. Courts also consider officials' own statements about the prospects of future relief. *See, e.g., Kleinknecht*, 2023 WL 380536, at \*3.

Zoning authorities' outright hostility toward a landowner's request is undoubtedly also relevant. Simple human nature confirms that people act upon their prejudices. Indeed, the entire field of antidiscrimination law relies on the commonsense understanding that biased authorities make biased decisions. *See, e.g., Title II of the Civil Rights Act of 1964*, 42 U.S.C. §§ 2000a *et seq.*; *Title VII of the Civil Rights Act of 1964*, 42 U.S.C. §§ 2000e *et seq.* Those claims—including claims under the very statute at issue here, the Fair Housing Act—often depend on the ability to show that a decisionmaker harbored some sort of animus and, thus, his actions were motivated by an unlawful discriminatory intent. *See, e.g., Village of Arlington Heights v. Metro. Housing Development Corp.*, 429 U.S. 252, 266 (1977) (discussing “sensitive inquiry into . . . circumstantial and direct evidence” of discriminatory motivations in FHA claims). Under the familiar *McDonnell Douglas* framework, courts in antidiscrimination cases in fact *presume* that a defendant's actions were motivated by his demonstrated prejudices unless he can show otherwise. *See, e.g., Doe v. Columbia Univ.*, 831 F.3d 46, 53–59 (2d Cir. 2016) (reversing dismissal of Title IX claim because facts supported “inference of sex bias,” thus requiring employer to show non-discriminatory reason for conduct). That intuition is so powerful that courts assume that animosity may still partially motivate a defendant, even where there are other reasons for his actions as well. *See, e.g., Hicks v. Baines*, 593 F.3d 159, 164–65 (2d Cir. 2010).

These same inferences must apply before a decisionmaker has acted. It would be nonsensical to presume that a person’s prejudices caused his actions, yet ignore evidence of those same prejudices when attempting to predict what he might do later. Put differently: If a zoning board expresses personal animosity—or outright hatred—toward an applicant and his plans, that must be relevant to assessing whether the board appears to have “dug in its heels” against him. Past examples of protracted disputes involving discriminatory zoning practices bear this out. For example, a still-unresolved lawsuit filed in 2008 challenges a village law that limits the construction of religious facilities. *Lubavitch of Old Westbury, Inc. v. Inc. Vill. of Old Westbury*, No. 2:08-CV-05081, 2024 WL656516, at \*2 (E.D.N.Y. Feb. 16, 2024). By the time the suit was filed, the dispute was nearly a decade old; the landowners had been attempting to build an Orthodox Jewish place of worship since 1999. *Lubavitch of Old Westbury, Inc. v. Inc. Vill. of Old Westbury*, No. 2:08-CV-05081, 2023 WL 9058143, at \*1 (E.D.N.Y. Dec. 18, 2023), *report and recommendation adopted in relevant part*. As the district court observed, the village fought the Jewish development tooth and nail, making misleading arguments, rehashing already-resolved issues, and—fifteen years into the litigation—continuing to claim that the dispute was not final and ripe. *Lubavitch of Old Westbury, Inc.*, 2024 WL656516, at \*2–5. Despite years of process, the community still has not been able to construct its place of worship. *Lubavitch of Old Westbury, Inc.*, No. 2:08-CV-05081, Dkt. 252 (Oct. 30, 2025). Though particularly egregious, this case is not an isolated example. *See, e.g., Westchester Day Sch. v. Village of Mamaroneck*, 504 F.3d 338, 345–47 (2d. Cir. 2007); *Roman Cath. Diocese of*

*Rockville Centre v. Inc. Vill. of Old Westbury*, 128 F. Supp. 3d 566, 573–79 (E.D.N.Y. 2015).

The law elsewhere endorses these prospective judgments. For example, the Supreme Court has explained that a Black person need not actually apply for a job with an employer that has posted a “Whites Only” sign on its door in order to seek relief from those discriminatory hiring practices. *Int’l Brotherhood of Teamsters v. United States*, 431 U.S. 324, 365–66 (1977). The employer’s “victims would not be limited to the few who ignored the sign and subjected themselves to personal rebuffs.” *Id.* at 365. Rather, the potential applicant who is “unwilling[] to engage in [the] futile gesture” of submitting a formal application “is as much a victim of discrimination as is he who goes through the motions.” *Id.* at 366. When the writing is on the wall, the hostile decisionmaker cannot hide behind the absence of a formal application when its result is all but certain.

This Court’s decisions reflect this same commonsense understanding. In *Sherman v. Town of Chester*, a Jewish developer brought a host of claims after the town—in which citizens expressed fear that he would create a “Hassidic Village”—prevented him from building a housing subdivision for more than a decade. 752 F.3d at 558, 567. Although the town never issued a final zoning decision, the developer’s takings claim was nonetheless fit for review. *Id.* at 561–63. The government’s continued use of “repetitive and unfair procedures,” this Court explained, made the zoning process “farical.” *Id.* at 563. In the end, this Court rejected the developer’s claims of unlawful discrimination under 42 U.S.C. §§ 1981 and 1982 on the merits. But it did not turn a blind eye to the town’s “decade of

maneuvers” that “singled out [the landowner’s] development, suffocating him with red tape to make sure he could never succeed in developing” the land. *Id.* at 563, 565. These tactics, employed within a community overtly hostile to the developer, were obviously relevant to deciding whether the land-use claim was ripe for review. *See id.*; *see also, e.g., Town of Bethel v. Howard*, No. 98-9548, 1999 WL 973627, at \*3 (2d Cir. 1999) (considering whether there was “evidence of any Town bias” against land-use applicant in determining futility).

**C. The lower court wrongly disregarded the Town’s rampant animosity toward the developers.**

The court below effectively turned a blind eye toward the Town’s obvious hostility to the developers’ Hasidic community. It suggested that the government’s animosity toward a land-use applicant—perhaps no matter how severe—can never demonstrate that further zoning applications will be ineffective. That theory misconstrues this Court’s law and must be corrected.

Throughout much of this case, the lower court seemed to agree that the Town of Forestburgh has dug in its heels against the Hasidic developers. In considering the plaintiffs’ motion for a preliminary injunction, the court rightly rejected the argument that their claims were not ready for review. JA-1504. Notably, the court rejected the arguments that, before going to federal court, the developers were required to (a) seek, and be denied, a variance and (b) appeal the zoning board’s decision or seek modifications of the original project approvals. JA-1505–06. These hurdles, the lower court concluded, “would be a useless and perfunctory exercise that would not aid the Court in adjudicating their claims” because “the parties have

clearly staked out their positions.” JA-1506. More than a year later, the district court changed its tune on the mistaken assumption that this Court’s intervening cases required it to do so. *Lost Lake Holdings LLC v. Town of Forestburgh*, 2025 WL 1899026, at \*5 & n.1 (S.D.N.Y. July 9, 2025). In the lower court’s view, this Court’s decision in *BMG Monroe I, LLC v. Village of Monroe*, 93 F.4th 595 (2d Cir. 2024), required the developers to pursue further zoning processes before coming to court.

*BMG Monroe* did nothing to change the obvious conclusion that this dispute is ripe for review. The district court seems primarily to have believed that *BMG Monroe* altered what it means to reach a final decision—suggesting that developers must make at least one application for a variance for a decision to be final. *Lost Lake*, 2025 WL 1899026, at \*7–9. As Appellants point out, that seems irrelevant here, where they have appealed the denial of their permits with the appropriate authority and do not seek any “modifications” for which a variance would be appropriate. Opening Br. 23–28. But more to the point, whether a variance application would normally be required does not affect the district court’s earlier conclusion that the developers are excused from pursuing further processes here *because they would be futile*. Indeed, as the lower court at least purported to recognize, *BMG Monroe* reaffirmed the general rules on futility described above and reiterated that developers need not pursue variances or other administrative relief where doing so would be pointless, such as where the government has staked out its position and made clear that those requests would be denied. *BMG Monroe*, 93 F.4th at 601 (discussing *Murphy*, 402 F.3d at 348–53); *see also Murphy*, 402 F.3d at 349 (“finality requirement is not mechanically applied”). Nor did *BMG Monroe* alter

those facts that might show that further proceedings will be a “useless and perfunctory exercise.” JA-1506.

At most, the lower court appears to have drastically overread this Court’s observation in *BMG Monroe* that “*mere doubt* that a variance application would be granted is insufficient to establish futility.” *Lost Lake*, 2025 WL 1899026, at \*10 (quoting *BMG Monroe*, 93 F.4th at 603) (emphasis added). That, of course, is true—and it was true well before *BMG Monroe*. See, e.g., *Dreher v. Doherty*, 531 F. App’x 82, 83 (2d Cir. 2013). But it does not support the district court’s decision to discount “evidence of alleged hostility toward a planned development” simply because it “does not guarantee that a variance application would be denied.” *Lost Lake*, 2025 WL 1899026, at \*6; see *id.* at \*10. To be sure, “mere allegations” of bad faith or stray remarks standing alone might not suffice. See, e.g., *Goldfine v. Kelly*, 80 F. Supp. 2d 153, 161 (S.D.N.Y. 2000). But the anti-Jewish vitriol and procedural gamesmanship alleged in this case far surpass that standard, despite the lower court’s effort to minimize those allegations, see *Lost Lake*, 2025 WL 1899026, at \*10. The district court ultimately set an unachievably high bar for the kind of hostility that might make the difference. No evidence could ever “guarantee” that an application will be denied—especially early in a case, where no discovery has been had. Such an impossibly demanding standard would destroy the idea that finality is not an absolute and unyielding requirement. It would also render the futility exception meaningless. The very premise of that exception is that, sometimes, a court can *anticipate* that further processes are unlikely to change the positions of the parties even before they have been attempted.

In the end, the lower court gave little justification for its sudden change of heart. The court’s earlier observation that “the parties have clearly staked out their positions” and any further procedures would not change things, JA-1506, remains true. And it is all this Court asks before entertaining a claim such as this. *See Vill. Green at Sayville, LLC v. Town of Islip*, 43 F.4th 287, 294, 297–98 (2d Cir. 2022). Regrettably, other courts within the Circuit have shown the same eagerness to kick land-use claims down the road in similar circumstances. *See, e.g., Bloomingburg Jewish Educ. Ctr. v. Vill. of Bloomingburg*, 111 F. Supp. 3d 459, 479–80 (S.D.N.Y. 2015); *S&R Dev. Estates, LLC v. Bass*, 588 F. Supp. 2d 452, 461–64 (S.D.N.Y. 2008); *see also Islamic Cmty. Ctr. for Mid Westchester v. City of Yonkers Landmark Pres. Bd.*, 258 F. Supp. 3d 405, 415–17 (S.D.N.Y. 2017) (anti-Muslim animus); *Dix v. City of New York*, No. 01 CIV. 6186 (LAP), 2002 WL 31175251, at \*5–9 (S.D.N.Y. Sept. 30, 2002) (anti-LGBT animus).

\* \* \*

Without question, courts must meaningfully assess each situation so that mere skepticism over the prospect of further procedures or unsupported accusations of bad faith do not alone allow plaintiffs to rush into court. But that is not reason for courts to brush aside actual demonstrations of animosity toward a land-use applicant. The record is replete with evidence that the Town has rallied against the developers and their supposed “hasidic threat.” JA-1558. That evidence should not be ignored.

## II. **Failing to account for prejudice in land-use processes threatens special harm to Jewish communities.**

The harms in erecting unjustified roadblocks to court are neither hypothetical nor abstract. As their Opening Brief details, Appellants are staring down a long road of additional costs and delays, presently unable to build their residential community. Previously discussed cases show that those delays may drag on for years, frustrating the community’s ability *ever* to get off the ground. These are severe impediments that affect real people. And they stand to be borne especially by members of the Jewish community, who routinely encounter animosity—indeed outright bigotry—in zoning decisions within this Circuit and across the country.

Zoning’s largely discretionary process leaves ample room for authorities to discriminate against disfavored groups, a reality that has led to pervasive discrimination against religious communities in particular. It is for this very reason that the Fair Housing Act targets the denial of housing opportunities on the basis of religion. Even more telling, Congress later enacted the Religious Land Use and Institutionalized Persons Act to provide additional protections for religious communities against the discrimination they often face in land-use decisions. *See* 42 U.S.C. § 2000cc(a)(1); *Holt v. Hobbs*, 574 U.S. 352, 356 (2015). Congress did so in response to evidence of widespread discrimination against religious groups by local land-use officials. *See, e.g.*, H.R. Rep. No. 106-219, at 18–24 (1999); 146 Cong. Rec. 16,698–99 (2000) (joint statement of Sens. Hatch and Kennedy); U.S. Dep’t of Just., Civil Rights Div., *Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act* 3–4 (2020). As Professor Doug Laycock testified to the Senate Committee on the Judiciary, “if there is any

area of regulation where you can make a clear record of widespread discrimination, it would be zoning and land use regulation.” *Congress’ Constitutional Role in Protecting Religious Liberty: Hearing Before the S. Comm. on the Judiciary*, 105th Cong. 43 (1997) (statement of Douglas Laycock).

That discrimination falls particularly heavily on Jews. Though “Jews account for only 2% of the population,” they account for 17–20% of land-use cases. H.R. Rep. No. 106-219, at 21. These cases often come from Orthodox communities, whose religious practices require particular property uses. *See generally* Michael Lewyn, *Intentional Discrimination and Haredi Jews*, 51 Real Est. L.J. 25 (2022). To give only one example, many Orthodox communities live in close proximity within an *eruv*—an area frequently demarcated by attaching rods or strips to utility poles—in which, under Jewish law, Jews are permitted to carry or push objects outside of their home on the Sabbath. Michael Lewyn, *The Law of the Eruv*, 48 Real Est. L.J. 473, 474–78 (2020). Those communities are often at the mercy of local officials to receive approval for the installation of the *eruv*, without which many members of the community—such as young mothers or the wheelchair bound—“are virtually trapped in their homes.” *Id.* at 477–78.

But Jewish communities—and especially Orthodox communities—have routinely encountered “institutionalized anti-Semitism” through “hostile zoning laws,” particularly in New York. *Strengthening Relationships and Advocating for the Community: Agudath Israel Promotes Legislative Agenda in Albany*, Agudath Israel (Mar. 11, 2019), <https://bit.ly/3XDaEji>; *see generally* Charlotte Elisheva Fonrobert, *Installations of Jewish Law in Public Urban Space: An American Eruv*

*Controversy*, 90 Chi.-Kent L. Rev. 63 (2015) (discussing legal battles over installations of *eruvim*). In many ways, America has fulfilled George Washington’s promise to the Jewish people that they would “merit and enjoy the good will” of their fellow citizens and “sit in safety” in the new nation. Letter from George Washington to the Hebrew Congregation in Newport, Rhode Island (Aug. 18, 1790), <https://bit.ly/4aaSxsK>. But even as the United States has generally been a welcome home to the Jewish people, anti-Semitism is a lamentably familiar story for many across the country—and anti-Semitism has exploded recently in many areas of life. See Press Release, ADL, ADL Records Dramatic Increase in U.S. Antisemitic Incidents Following Oct. 7 Hamas Massacre (Oct. 24, 2023), <https://bit.ly/4oPvJIW>; Am. Jewish Committee, *The State of Antisemitism in America Report: 2024*, <https://bit.ly/4rQGtmI>. Often, anti-Semitism manifests in vile harassment by neighbors who seek to push Jewish communities out.<sup>2</sup> See, e.g., *Hate Thy Neighbor: Online Hate in Local Communities*, ADL (June 6, 2024), <https://bit.ly/4r2V51R>. Land-use decisions present a unique opportunity to enact that hatred, as they give hostile neighborhoods the ability to prevent Jewish communities from ever arriving in the first place. See, e.g., Luke Tress, *Upstate NY Legal Battle Underlines Hasidic Community Growing Pains*, Times of Israel (May 8, 2025), <https://bit.ly/4q7sl77> (“[D]isputes [in New York] have exposed alleged antisemitism that takes place in quiet small town bureaucracy, . . . motivated by both generic resistance to

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<sup>2</sup> Harassment of this kind is particularly problematic for Orthodox Jews, whose religious dress and grooming practices make them “very identifiably Jewish,” and thus especially prone to attack. See Bret Stephens, *To Be (Visibly) Jewish in the Ivy League*, N.Y. Times (Apr. 23, 2024), <https://bit.ly/3MD4NbF>.

community change . . . and anti-Jewish animus.”); Lewyn, *Intentional Discrimination and Haredi Jews*, *supra*, at 27–28 (discussing neighborhood opposition to Orthodox Jews). It is little surprise, then, that so many cases in this area involve Jewish communities who have suffered at the hands of hostile officials.<sup>3</sup>

The need to end these vicious patterns has taken on great urgency for Jewish communities. As Nathan Diament, executive director for the Union of Orthodox Jewish Congregations of America, testified before Congress, “in too many localities around the country, Government officials and community leaders have felt comfortable making anti-Orthodox statements . . . and undertaking anti-Orthodox actions.” *Confronting the Rise in Anti-Semitic Domestic Terrorism: Hearing Before the H. Subcomm. on Intel. and Counterterrorism*, 116th Cong. 58, at 20 (2020). These officials have “referred to Orthodox Jews as ‘invading the community,’ as ‘dirty,’ or as ‘religious zealots’” and have repeatedly stifled their efforts to build. *Id.* at 21. Many of those examples come from within this Circuit, *see id.*, where Jewish

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<sup>3</sup> See, e.g., *Bloomingburg*, 111 F. Supp. 3d at 466–67 (alleging “determined and concerted resistance by the local governments and public officials” who “are working together to prevent Hasidic Jews from moving into the vicinity” by obstructing a housing development project and a private religious school); *Bikur Cholim, Inc. v. Village of Suffern*, 664 F. Supp. 2d 267, 270 (S.D.N.Y. 2009) (consolidated actions by landowners and the United States challenging denial of a variance to use property as a guesthouse for observant Jews visiting the sick at nearby hospital); *C. UTA of Monsey v. Village of Airmont*, No. 18 CV 11103 (VB), 2020 WL 377706, at \*3–4 (S.D.N.Y. Jan. 23, 2020) (multiple delays in an attempt to stall a Jewish school’s building permit application); *Lubavitch*, 2023 WL 9058143, at \*2 (discrimination against a synagogue and its Rabbi by refusing to grant permits); *Chabad Lubavitch of the Beaches, Inc. v. Inc. Vill. of Atl. Beach*, No. 22-CV-4141, 2022 WL 22946691, at \*3–4, 7–9 (E.D.N.Y. Sept. 6, 2022) (using eminent domain to force a planned synagogue to sell its property).

leaders have likewise called on local officials to put an end to the bigotry. *See, e.g., Agudah CEO Advocates for Zoning Change to Allow Houses of Worship in Rockland County Village*, Agudath Israel of America (June 29, 2018), <https://bit.ly/4i8JMkS>. Indeed, these are issues on which *amici* themselves have been outspoken, working to promote real change. *See, e.g., Br. of JCRL as Amicus Curiae, Tree of Life Christian Schs. v. City of Upper Arlington*, No. 18-944 (U.S. Feb. 19, 2019), <https://bit.ly/48y2WgX>; Sandy Eller, *Agudah National Leadership Mission Advocates in Washington at Critical Time*, Agudath Israel of America (Apr. 11, 2024), <https://bit.ly/4pdrNfl>; *Religious Land Use*, Agudath Israel of America (last accessed Dec. 15, 2025), <https://bit.ly/4pqQ95Q> (providing resources for Jewish communities facing opposition from local land-use officials).

Of course, many Americans reject these hateful (and, frankly, un-American) attitudes toward Jewish communities—and State and federal officials have also taken note of the problem. In fact, the United States filed statements of interest below, urging the district court to find the developers’ claims ripe for review. *See* Dkt. 50, 181. The federal government has also intervened to confront similar actions elsewhere. *See, e.g.,* Press Release, U.S. Dep’t of Just., Justice Department Secures Agreement Requiring New York Village to End Discrimination Against Orthodox Jewish Residents (Oct. 20, 2023), <https://bit.ly/4pehIPc>. New York Attorney General Letitia James likewise supported the federal government’s position in this case and observed that “[t]he allegations in [this case] are deeply troubling.” Letter from New York State Attorney General Letitia James to Interim U.S. Attorney Jay Clayton at 1 (May 5, 2025), <https://bit.ly/3M8n6oJ>. She recognized that “Orthodox

Jewish communities . . . have too often faced bias masked as bureaucratic decision-making in matters of zoning, housing, and land use.” *Id.* And she noted her increased concern after “subsequent evidence that the town may have ‘dug in its heels’ on discriminatory grounds” against the developer—urging that it is “critically important that this case be allowed to play out.” *Id.* at 2.

Courts within this Circuit are well familiar with this pattern of anti-Semitism. The court below acknowledged “the sensitive historical and religious context in which this case arises” and “the biased and anti-Semitic statements allegedly made by Sullivan County residents at public hearings and in online forums.” *Lost Lake*, 2025 WL 1899026, at \*12. Indeed, the problem is especially acute in this Circuit, where New York City and its surrounding areas are centers of Orthodox Jewish life. Thus, lawsuits challenging discriminatory zoning practices against Jewish communities within this Circuit abound. *See supra* n.3. Yet, unfortunately, many courts kick those disputes down the road, leaving these communities to suffer through a morass of delays and added costs.

Ensuring that victims of this vile hatred receive timely access to court is necessary to fulfill the promises of federal law. As this Circuit has rightly recognized, courts “do not close [their] doors to litigants properly seeking federal review simply because their grievances touch on local zoning matters.” *Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, 88 F.4th 344, 351 (2d Cir. 2023). This is especially true where, as here, the claims are brought to vindicate rights that defend specifically against such unjust discrimination. This Court must correct the

decision below to uphold those guarantees and to protect the Jewish community—and all people—from actions like the Town’s here.

### CONCLUSION

This Court should correct the lower court’s errant course by making clear that land-use applicants need not pursue additional zoning processes when evidence of local authorities’ hostility and bigotry show that they have dug in their heels against the applicants and the communities they seek to build. *Amici* urge this Court to reverse the decision below and hold that the claims in this case are ripe for review.<sup>4</sup>

Dated: December 15, 2025

Respectfully submitted,

/s/ John A. Meiser

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<sup>4</sup> *Amici curiae* thank students Annabella Biancheri, Brandon Enriquez, and Dovid Rimmer for their assistance in preparing this brief.

### CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5), Fed. R. App. P. 32(a)(7)(B), L.R. 29.3, and L.R. 32.1(a)(4)(a) because it contains 5,664 words, excluding the portions exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because it was prepared in Microsoft Word using 14-point Times New Roman, a proportionally spaced font.

Dated: December 15, 2025

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### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the Second Circuit by using the Court's electronic filing system. I further certify that service was accomplished on all parties via the Court's electronic filing system.

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