25-2191

United States Court of Appeals for the Second Circuit

LOST LAKE HOLDINGS LLC, MISHCONOS MAZAH LLC,
RABBI MORDECHAI HALBERSTAM, ROSE HALBERSTAM
Plaintiff-Appellants,

v.

THE TOWN OF FORESTBURGH, THE FORESTBURGH TOWN BOARD, FORESTBURGH ZONING BOARD OF APPEALS, DANIEL S. HOGUE, JR., STEVE BUDOFSKY, SUSAN PARKS-LANDIS, KAREN ELLSWEIG, VINCENT GALLIGAN, RICHARD ROBBINS, GLENN A. GABBARD
Defendant-Appellees.

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

BRIEF OF HINDU AMERICAN FOUNDATION AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLANTS

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INTRODUCTION

Land use discrimination is antithetical to this nation's Constitution and laws. Left unchecked, such practices propagate a dangerous form of segregation that has "threatened to rip civil society asunder." *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 928 (2d Cir. 1988). Recognizing the threat, Congress enacted the Fair Housing Act as Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 et seq, and states like New York followed suit. Even so, more than 50 years later land use discrimination persists.

This case is an unfortunate example. When Lost Lake Holdings LLC sought to develop a plot of land it purchased in Forestburgh, New York, it was blocked for years by local officials intent on preventing Orthodox Jews from moving into the community. Defendants engaged in textbook methods of land use discrimination—weaponizing zoning laws, arbitrarily raising fees, and subjecting Lost Lake to contradictory requirements. After enduring many years of dignitary harm and economic losses, Lost Lake turned to the courts for relief but ultimately had its case dismissed as unripe.

The Hindu American Foundation offers this amicus brief to provide additional historical and doctrinal context to the Court. As the Foundation's brief explains, government authorities have long used land use laws to exclude racial and religious minorities—like Jewish and Hindu Americans—from their communities. The constitutional and statutory protections invoked by Lost Lake here were meant to remedy precisely such discrimination.

Requiring a "final" zoning or permitting decision before a plaintiff comes to court may ordinarily be sensible. But not when the process is wielded and barriers are erected to exclude a developer out of animus against a religious minority. Sanctioning such a result would turn history and this Court's precedents on their head.

INTEREST OF AMICUS CURIAE[1]

The Hindu American Foundation is a nonprofit organization that advances the understanding of Hinduism and Hindu Dharma traditions to secure the rights and dignity of Hindu Americans for present and future generations. The Foundation provides accurate and engaging educational resources, impactful advocacy to protect and promote religious liberty, and programming that empowers Hindu Americans to sustain their culture and identity. The Foundation is committed to religious liberty for Hindus and members of all faiths throughout the United States.

As relevant here, the Foundation is often consulted when Hindu Americans face obstacles in their ability to own and use land on equal terms. The Foundation works to secure these community members' religious liberty and freedom from discrimination using statutes like the Religious Land Use and Institutionalized Persons Act, the Federal Housing Act, and local law. Vindicating the rights of petitioners like Lost Lake Holdings is necessary to ensure that members of all minority faiths,

[1] No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund preparing or sub-mitting this brief; and no person other than amicus curiae or its counsel contributed money intended to fund preparing or submitting this brief.

including Hindus, can timely seek redress in court for land use violations without suffering needless further discrimination.

ARGUMENT

I. Land use restrictions have historically been used to exclude racial and religious minorities.

All too often, land use restrictions like Forestburgh's have been used to target minority religious and racial groups, preventing them from residing, worshiping, or establishing institutions in a community. As courts have consistently recognized, however, such discriminatory practices violate statutory and constitutional protections.

A. State and local governments have long used land use to exclude racial minorities.

The long and sordid history of land use discrimination by state and local governments illustrates the necessity of federal statutory and constitutional protections. In the mid-nineteenth century, for example, California's legislature enacted zoning laws to restrict Chinese residents and their businesses to containment zones, or "Chinatowns." Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment*, 40 B.C. L. Rev. 37, 41 nn.14–15 (1998). The state likewise ratified a constitution granting municipalities "all necessary power" to do the same. Cal. Const. art. XIX, § 4 (repealed 1952). The object of such measures was unmistakably "to drive [the Chinese] from

the state, and prevent others from coming hither." *In re Tiburcio Parrott*, 1 F. 481, 514 (C.C.D. Cal. 1880) (opinion of Sawyer, J.).

Chinese residents of California succeeded in challenging targeted laws as discriminatory under the Fourteenth Amendment's Equal Protection Clause, adopted a little over a decade earlier. *See, e.g.*, *Ho Ah Kow v. Nunan*, 12 F. Cas. 252, 255–57 (C.C.D. Cal. 1879) (invalidating prisoner haircutting ordinance targeting the Chinese); *In re Ah Chong*, 2 F. 733, 737 (C.C.D. Cal. 1880) (invalidating fishing statute adopted "simply as a means . . . of excluding Chinese from the state"). And in the landmark case *Yick Wo v. Hopkins*, the Supreme Court overturned a San Francisco ordinance that required permits to operate laundry facilities in wooden buildings. 118 U.S. 356, 374 (1886). Though the permitting ordinance was neutral on its face, permits were routinely denied for Chinese applicants and given almost exclusively to white applicants. As the Court explained, the Equal Protection Clause protects against neutral laws administered "with an evil eye and an unequal hand." *Id.* at 373–74.

Courts upheld those protections even when sympathetic to concerns about the Chinese that mirror Forestburgh's fear of Jewish newcomers—

fears that new arrivals would "pour[] over in vast hordes" bringing "among us" their dissimilar "manners and religion." *Ho Ah Kow*, 12 F. Cas. at 256.

Nevertheless, states continued to discriminate in the early twentieth century, passing so-called "Alien Land Laws." *See* Aoki, 40 B.C. L. Rev. at 55–57. These laws prohibited land ownership by "aliens ineligible for citizenship," barring immigrants from many Asian countries from owning, leasing, or inheriting land. *Id.* 55–56; *see also id.* at 51–52 (naturalization available to "free white persons" only). By denying basic property rights to those immigrants, these laws sought to prevent racial minorities from settling permanently or participating fully in civic and economic life. *Id.* at 39–40. The laws precipitated decades of conflict, culminating in the internment of Japanese Americans. *See id.* at 62, 68. The California Supreme Court would eventually hold that the Alien Land Laws violated the Fourteenth Amendment. *Fuji v. State*, 242 P.2d 617, 630 (Cal. 1952).

On the East Coast, municipalities used zoning as a tool of racial segregation. In 1910, Baltimore enacted the nation's first zoning ordinance prohibiting African Americans from residing in predominantly

white neighborhoods. Garrett Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910–1913*, 42 Md. L. Rev. 289, 299–300 (1983). Other cities followed suit. *Id.* at 289. The Supreme Court recognized the blatantly discriminatory nature of these efforts in *Buchanan v. Warley*, 245 U.S. 60 (1917), holding that the "attempt to prevent the alienation of the property in question to a person of color" was "in direct violation" of the Fourteenth Amendment. *Id.* at 82.

But despite *Buchanan*'s ruling, the "vestiges" of "de jure residential segregation" continued to be "intertwined with the country's economic and social life." *Texas Dept. of Hous. and Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 528 (2015). And even today racial segregation in U.S. cities persists. Craig Anthony Arnold, Cedric Merlin Powell, and Catherine Fosl, *The Intransigence of Racial Injustice in American Land Use 100+ Years After* Buchanan v. Warley, *in Racial Justice in American Land Use*, 1, 28 (Craig Anthony Arnold et al. eds., 2025).

B. Authorities have also deployed land use laws to exclude religious minorities.

The same tactics used to exclude racial minorities have also been repurposed to target religious minorities—especially "new, small, or

unfamiliar" religious groups.[2] 146 Cong. Rec. 16698 (2000) (joint statement of Sen. Orrin Hatch and Sen. Edward Kennedy); *see also* Douglas Laycock, *State RFRAs and Land Use Regulation*, 32 U.C. Davis L. Rev. 755, 760 (1999). And like those targeted for racial discrimination, religious groups have often brought successful statutory and constitutional claims in federal court after being denied equality in land use.

For example, in *Fortress Bible Church v. Feiner*, the Town of Greenburgh, New York employed a multi-year environmental review to obstruct a Pentecostal congregation's construction of its church, ultimately denying the proposed project. 694 F.3d 208, 213–15 (2d Cir. 2012). Fortress Bible Church sued, alleging violations of RLUIPA, the Free Exercise Clause, the Equal Protection Clause, and several New York statutes. Finding evidence that the town had manipulated the land use process and that its environmental concerns were pretext for religious discrimination, this Court held that the town had violated both RLUIPA and the First Amendment. *Id.* at 218, 221.

[2] Discriminatory land regulations targeting Jews and some other groups can implicate both religious and racial animus. *See, e.g.*, *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617–18 (1987) (holding that Jews could assert racial discrimination claims under 42 U.S.C. § 1982).

Land use discrimination is not unique to a single religious or racial minority. *See, e.g.*, *El v. People's Emergency Center*, 315 F. Supp. 3d. 837, 842 (E.D. Pa. 2018) (upholding Muslim tenant's FHA claims based on housing provider's discriminatory statements). And, unfortunately, the Hindu community and Dharmic traditions are no stranger to these practices. *See, e.g.*, *Mehta v. Village of Bolingbrook*, 196 F. Supp. 3d 855, 866–69 (N.D. Ill. 2016) (finding in favor of Hindu family on FHA claims alleging harassment by municipal officials). Across the country, local officials have attempted to pass discriminatory zoning ordinances to prevent Dharmic traditions from building houses of worship. *See, e.g.*, Brief for Christian Legal Society et. al. as Amici Curiae Supporting Appellants, *Thai Meditation Assoc. of Ala., Inc. v. City of Mobile*, 980 F.3d 821 (2020) (No. 22–11674), 2022 WL 16549182. In other cases, officials have flatly denied land use applications even when the proposed uses meet all zoning requirements. *See* Statement of Interest of U.S. Dep't of Justice, *Jagannath Org. for Glob. Awareness v. Howard Cnty.*, No. 17-CV-02436 (D. Md. July 23, 2018), https://perma.cc/YT6U-3GPG.

In yet another illustrative example, a Hindu congregation in Sayreville, New Jersey, sought to convert a former YMCA into a temple,

only to face resistance from the planning board and persistent community opposition. *See* The Pluralism Project at Harvard University, *Not in This Neighborhood! Zoning Battles* (2020), https://perma.cc/LKA7-THS9. Vandals defaced the building with anti-Hindu graffiti like "Get out Hindoos," and the congregation received relief only after seeking judicial intervention. *Id.*

Even when prejudice is not so blatant, Hindu congregations are often forced to jump through regulatory hoops to exercise their religious rights. *See Kali Bari Temple v. Bd. of Adjustment of Twp. of Readington*, 638 A.2d 839, 844 (N.J. App. Div. 1994) (holding that township's denial of a variance was "arbitrary"). The risks of such discrimination are particularly acute for religious minorities.

Hindus know this well. Only 1% of the U.S. population adheres to the Hindu faith, and, compared to other countries, the U.S. is home to the "highest share[] of people raised Hindu who no longer identify as Hindu." Gregory A. Smith et al., *Decline of Christianity in the U.S. Has Slowed, May Have Leveled Off*, *Pew Research Center* (February 26, 2025), https://perma.cc/9ZGB-UATW; *see also 2023–24 U.S. Religious Landscape Study Interactive Database*, *Pew Research Center*

https://perma.cc/RE5T-6SPN (last visited Dec. 15, 2025); Kirsten Lesage, Kelsey Jo Starr, and William Miner, *Around the World, Many People Are Leaving Their Childhood Religions*, *Pew Research Center* (March 26, 2025), https://perma.cc/Z8C2-DM6Z.

Jewish communities, particularly Orthodox ones, have likewise been frequent victims of discriminatory land use practices. *See* Michael P. Seng, *The Fair Housing Act and Religious Freedom*, 11 Tex. J. C.L. & C.R. 1, 5 (2005). For example, in *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, 945 F.3d 83 (2d Cir. 2019), a New York community enacted zoning laws "with discriminatory purpose" to block an Orthodox congregation from building a rabbinical college. *Id.* at 119–20. This Court's opinion cited residents' statements that Orthodox Jews intended to "take over this [V]illage," force villagers' tax dollars to finance the Jewish "lifestyle," and "destroy everything that everybody here worked for all their life." *Id.* at 120–21.

Another example is *Chabad Lubavitch of the Beaches, Inc. v. Village of Atlantic Beach*, No. 22-CV-4141 (E.D.N.Y. filed Jul. 14, 2022). There, a village tried to use eminent domain to seize a building after it was purchased by Chabad. Order Granting Preliminary Injunction at 7–9,

Chabad, No. 22-CV-4141 (E.D.N.Y. Sept. 6, 2022), Dkt. No. 51. The Jewish group hoped to renovate the building and open a community center. *Id.* On social media residents characterized Chabad's menorah lighting ceremony as "disrespectful" and said that Chabad's presence would "'change the dynamic' in Atlantic Beach and 'trampl[e] all over [their] beautiful village.'" *Id.* at 12. The Eastern District of New York granted a preliminary injunction in favor of Chabad. *Id.* at 31.

The parallels between this case, *Tartikov*, and *Chabad* are hard to miss—and here, the hostile sentiments were shared by town officials as well. For instance, Town Planning Board Chair Robbins wrote that he was strategizing "about how to prevent Lost Lake from overwhelming the town," JA 1569, and forwarded an email that spoke of Jews taking over "like locusts . . . draining every last resource, bleeding the beast . . . , and destroying Forestburgh as we know and love it today," JA 1570.

The through line across these episodes is clear: facially neutral land use restrictions have historically been wielded by state and local authorities to exclude unwanted racial and religious minorities. Yet time and again, courts have recognized that such discriminatory conduct violates the law.

C. Congress adopted the Fair Housing Act to address such discrimination.

Recognizing the long history of discrimination and the need for clear judicial relief, Congress enacted the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601–3619, which forbids housing discrimination on the basis of race or religion. The Supreme Court has been clear that the FHA prohibits "unlawful practices includ[ing] zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification." *Texas Dept. of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 528 (2015).

In enacting the FHA, Congress recognized that the evils of housing discrimination are pervasive and have harmful downstream consequences. Housing discrimination "isolates racial minorities from the public life of the community [and] means inferior public education, recreation, health, sanitation, and transportation services and facilities, and often means denial of access to training and employment and business opportunities." To Prescribe Penalties for Certain Acts of Violence or Intimidation: Hearings Before the H. Comm. on Rules, 90th Cong. 4 (1968) (statement of Rep. Emmanuel Celler). In other words, land

use and housing discrimination has wide-reaching impacts that harm the minority community.

More fundamentally, housing discrimination "is the simple rejection of one human being by another without any justification but superior power." 114 Cong. Rec. 3422 (1968) (testimony of Sen. Walter F. Mondale). The FHA's purpose and text are thus clear: Congress saw housing discrimination as a violation of basic rights and created an explicit statutory cause of action to address those violations.

II. Discriminatory zoning claims cannot turn on finality alone.

The district court here dismissed Lost Lake's discrimination claims as unripe because the zoning board had not issued a "final" decision. That ruling rests on a rigid application of finality that the Supreme Court has rejected, especially in cases like this one that allege discrimination. The finality requirement was never intended to "close [the] doors" of federal courts to racial or religious groups who suffered overt and invidious discrimination through land-use regulation. *Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, 88 F.4th 344, 351 (2d Cir. 2023). Yet the district court's approach would allow the adversarial regulator to impose endless burdens on would-be plaintiffs, and to bleed minority

communities dry while compounding their dignitary harm. *Cf.* JA-1558 (Town Planning Board Chair stating before his appointment: "Please don't be scared about the [H]asidic threat – we're energized and have the cash to fight and make their lives miserable . . . to fight them tooth and nail.").

The Supreme Court has repeatedly explained that its finality doctrine is only intended to weed out "actual, concrete" (or "ripe") disputes form hypothetical ones. *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 193 (1985), overruled on other grounds by *Knick v. Township of Scott*, 588 U.S. 180 (2019). That purpose is generally satisfied when a plaintiff has suffered a concrete injury, and insistence on further procedural or administrative steps converts a "relatively modest" prudential hurdle into an exhaustion requirement. *Pakdel v. City & County of San Francisco*, 594 U.S. 474, 478–79 (2021). Thus, the Supreme Court has admonished that "nothing more than *de facto* finality is necessary." *Id.* at 479.

Finality keeps federal courts from becoming "zoning boards of appeal." *Sullivan v. Town of Salem*, 805 F.2d 81, 82 (2d Cir. 1986). But plaintiffs need only get a decision from "the initial decisionmaker," i.e.,

the appropriate zoning board, before bringing their claims in court. *Pakdel*, 594 U.S. at 478. Lower courts go astray when they "mechanically appl[y]" the finality requirement and fail to conduct "a fact-sensitive inquiry" as this Court's clear precedent directs. *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 349–50 (2d Cir. 2005).

This Court has accordingly recognized that a plaintiff need not pursue a zoning application to the finality threshold when the plaintiff has suffered an independent injury. And this Court has made clear that "the manipulation of a zoning process out of discriminatory animus" constitutes just such an injury. *Sunrise Detox V, LLC v. City of White Plains*, 769 F.3d 118, 123 (2d Cir. 2014) (citing *Groome Res. Ltd. v. Parish of Jefferson*, 234 F.3d 192, 199–200 (5th Cir. 2000)); *accord Lubavitch of Old Westbury, Inc. v. Incorporated Village of Old Westbury*, 2021 WL 4472852, at *15 (E.D.N.Y. Sept. 30, 2021) (noting that courts apply the independent-injury exception to avoid a "rote application of" finality).

In keeping with that purpose, this Court has applied the independent-injury exception to address the pattern of municipalities using land use regulation to engage in religious discrimination, particularly against Jewish communities. For example, when the town of

Rockland, New York, manipulated its zoning procedures to discriminate against a Jewish school by refusing to set a hearing date to consider their appeal, this Court ruled for the Jewish school. *See Ateres Bais Yaakov Academy*, 88 F.4th at 349, 353. Although the town hadn't *technically* reached a final decision, the town's actions constituted "*de facto* finality." *Id.* at 351–52 (citing *Pakdel*, 594 U.S. at 479).

Lower courts have followed this Court's lead. In *WG Woodmere*, for example, a village imposed the requirement of a Draft Environmental Impact Statement (DEIS) to add more cost and time to an already burdensome permit process on a parcel containing a private country club, purchased by a real estate developer to be converted into single-family lots. *WG Woodmere LLC v. Inc. Vill. of Woodsburgh*, No. 23-CV-6966, 2024 WL 4225562, at *1, *5 (E.D.N.Y. Sept. 18, 2024), reconsideration denied, No. 23-CV-6966, 2024 WL 4614962 (E.D.N.Y. Oct. 30, 2024). Although the permitting process was not yet final, the district court found "sufficient 'indicia of finality'" because plaintiffs had already spent "almost two years and nearly $2 million" to submit their DEIS application and had submitted variance applications that were denied or not decided. *Id.* at *4–5 (quoting *Vill. Green at Sayville, LLC v. Town of*

Islip, 43 F.4th 287, 298 (2d Cir. 2022)). The district court concluded that the zoning requirements were likely "pretext[ual]" and at best a "deliberate effort to delay" vindication in court. *WG Woodmere LLC v. Inc. Vill. of Woodsburgh*, No. 23-CV-6966, 2024 WL 4614962, at *3 (E.D.N.Y. Oct. 30, 2024). The sudden invocation of an extensive years-long environmental review is just like Forestburgh's spurious invocation of SEQRA here. *See* Brief of Plaintiff-Appellants at 54.

Likewise, another district court ruled for a Jewish community because it had endured "unfair and unreasonable" manipulation of land regulations. *Lubavitch*, 2021 WL 4472852, at *13–14. The court pointed to the length of the zoning dispute, the millions of dollars plaintiffs spent seeking approval, the "allegations of open hostility," and the village's "malicious intent and bad faith negotiations" in finding that "a final decision [wa]s not necessary" before the plaintiffs could seek redress in the courts. *Id.* at *13–15. As the court explained, when a community suffers from the discriminatory manipulation of zoning regulations, continued administrative procedures "would do nothing to further define [the] injury." *Id.* (quoting *Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 90 (2d Cir. 2002)).

Despite such rulings, housing discrimination persists in New York. *See* U.S. Dep't. of Housing and Urban Development, Ensuring Fair Housing Amidst Ongoing Religious Discrimination in the United States (2023). For example, in 2020, the New York Attorney General intervened in a lawsuit alleging that the Town of Chester, New York, "engaged in a systematic effort to prevent Hasidic Jewish families from moving to Chester by blocking the construction of a housing development" in "gross" violation of the Fair Housing Act. *See* Press Release, Letitia James, Attorney General, New York State, AG James Issues Statement on Orange County Jewish Discrimination Case (May 8, 2020), https://perma.cc/HQ7Q-4GDB. Only after the New York AG intervened did the town agree to change its discriminatory policies. *Id.*

Attorney General James also published a letter expressing concern over the "deeply troubling" allegations against Forestburgh in this case. Letter from Letitia James, Att'y Gen. of N.Y., to Jay Clayton, Interim U.S. Att'y, S.D.N.Y. (May 5, 2025), https://perma.cc/8YCB-AY5D (expressing "strong support" for the U.S. Attorney's Statement of Interest filed in the case); *see also* Statement of Interest of the United States, *Lost Lake Holdings, LLC v. Town of Forestburgh*, No. 7:22-cv-10656 (S.D.N.Y.

Mar. 7, 2025). Attorney General James's letter specifically highlighted Forestburgh's Local Law 3 for implicating state and federal religious protections, as well as combative emails referring to the "Hasidic threat" sent by Forestburgh officials. *Id.* at 2. The letter also noted the "dark history" of "zoning laws and land use regulations" being weaponized to drive out Jews. *Id.* This bipartisan agreement between the top federal and state prosecutors in New York is indicative of the egregiousness of Forestburgh's discriminatory conduct.

That said, it should not take the backing of the New York AG to convince a town to comply with the Constitution and federal law. But in part because courts occasionally insist on a stringent finality requirement, municipalities are often emboldened to roll the dice. *See, e.g.*, *Harper v. Village of Hillburn*, Case No. 25-CV-342, 2025 WL 265673, at *1–2 (S.D.N.Y. 2025) (alleging unconstitutional housing practices against Orthodox Jews); *Indig v. Village of Pomona*, Case No. 18-10204, 2024 WL 4008231, at *15–19 (S.D.N.Y. 2024) (same).

In sum, finality was never intended to force a suffering litigant to endure additional "unfair procedures in order to obtain" judicial review. *MacDonald, Sommer & Frates v. Yolo Cnty.*, 477 U.S. 340, 350, n.7

(1986). When reviewing these claims, courts must be guided in their review by the factual and historical context that necessitated laws protecting religious and racial minorities from land use discrimination. A proper and historically grounded application of the independent-injury exception ensures that courthouse doors within this circuit remain open to remedy a historically prevalent means of discrimination.

III. This case exemplifies the harms the finality requirement was never meant to shield.

This case highlights the perils of mechanically applying a rigid finality requirement. Here, Lost Lake alleges that Forestburgh officials violated the Constitution and federal law by engaging in blatant discrimination to prevent a religious minority from living in their town. The evidence uncovered clearly supports Lost Lake's claims. The Town now insists that prudential ripeness considerations prevent this Court from taking the Town at its word. Blessing this scheme would sanction the very evils that required Constitutional and statutory protection of religious minorities from land use discrimination.

Forestburgh is alleged to have engaged in exactly the type of "manipulation of a zoning process out of discriminatory animus" that constitutes an "independent injury." *Sunrise Detox*, 769 F.3d at 123.

Indeed, Lost Lake's alleged discriminatory animus against Orthodox Jews was evident from the outset.

Even before Lost Lake purchased the property, town officials openly worried that the Hasidic Jewish community "tend to take everything off the tax rolls and I'm not big on that." ECF No. 1 ¶ 37. When Lost Lake purchased the project and site in July 2020, the news sparked anti-Semitic animus among certain county residents online, such as "[t]he takeover continues." ECF No. 1 ¶¶ 103-05. A month after Lost Lake purchased the project, the Town Supervisor made clear at a Town Board meeting that "[t]here will be much more oversight than [the original non-Hasidic Jewish developer] had." *Id.*

True to its word, the Town Board geared up for a fight. The Town retained an attorney and began to prepare for litigation, even though "no building permit applications were pending, and no litigation had been threatened by or on behalf" of Lost Lake. ECF No. 1 ¶ 125. And then the Town Board, anticipating civil rights claims prior to any litigation, passed a resolution preemptively indemnifying town officials. ECF No. 1 ¶¶139–41.

With counsel retained and town officials indemnified, the Town Board proceeded to frustrate any attempts by Lost Lake to develop the project. In July 2021, for instance, the Town Board passed a targeted resolution that increased the "Parks & Playground" fee by one thousand percent—a fee that affected only the Lost Lake project, and that increased the cost of developing the project by nearly $4 million. ECF No. 1 ¶¶ 142–50.

As the case law above confirms, Lost Lake's allegations of animus and targeted, discriminatory barriers are more than enough to show an independent injury for purposes of the Fourteenth Amendment and statutory law. Perpetrators of discrimination ought not be allowed to use prudential ripeness doctrines to prevent the victims of their discrimination from accessing the courts.

IV. Lost Lake's facial challenges are ripe.

The district court also erred in finding Lost Lake's claims to be as-applied challenges rather than facial challenges. Although the court acknowledged that "facial challenges are automatically ripe," ECF No. 186 at 14, it reasoned that a facial challenge "'considers only the text of the statute itself, not its application to the particular circumstances of an

individual.'" ECF 186 at 14 (citing *Field Day, LLC v. City of Suffolk*, 462 F.3d 167, 174 (2d Cir. 2006). From there, the district court concluded that Lost Lake's challenges were as-applied because even a "cursory review of plaintiffs' complaint and arguments reveals that plaintiffs challenged the application of such resolutions . . . to them." *Id.*

The district court misapplied the law. As this Court has explained, in the discrimination context, a law need not discriminate on the face of its text to be invalid. *See Chinese American Citizens Alliance of Greater New York v. Adams,* 116 F.4th 161, 171 (2d Cir. 2024) (internal citation omitted). In line with the Supreme Court, this Court has recognized that an otherwise facially neutral statute is invalid "if it was motivated by discriminatory animus and its application results in a discriminatory effect." *Id.* The same is true for proving violations of the FHA. *See Mhany Mgmt., Inc. v. County of Nassau*, 819 F.3d 581, 606 (2d Cir. 2016) (internal quotations omitted) (noting that to state a prima facie case of disparate treatment, a plaintiff need only show that "animus against the protected groups was a significant factor in the position taken by the municipal decision-makers themselves or by those to whom the decision-makers were knowingly responsive.").

Lost Lake clearly brought a facial challenge under the Constitution and federal and state laws asserting that Defendants have acted against it with discriminatory animus. And Lost Lake's challenge to the one thousand percent increase in the "Parks & Playground" fee plausibly alleges discrimination on the face of the resolution. At the very least, Lost Lake's facial claims must be allowed to proceed.

CONCLUSION

Viewing the ripeness and finality doctrines through the lens of history places those doctrines in their rightful place. Rightly understood, finality was never intended to block injured minorities from accessing court. Abuse of land use regulations to target and discriminate against a religious group creates a justiciable injury and controversy. This Court should reverse the decision below.

Respectfully submitted,

/s/ Steven W. Burnett

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CERTIFICATE OF COMPLIANCE

This brief complies with Fed. R. App. P. 32(a)(7)(B) because it contains 6,150 words, excluding the parts exempted by Fed. R. App. P. 32(f).

This brief also complies with the typeface and type-style requirements of Fed. R. App. P. 32(a) because it has been prepared in a proportionally spaced, 14-point Century Schoolbook font.

Dated: December 15, 2025

/s/ *Steven W. Burnett*
Steven W. Burnett

CERTIFICATE OF SERVICE

I certify that on December 15, 2025, I served this document on all parties or their counsel of record via ACMS.

Dated: December 15, 2025

/s/ *Steven W. Burnett*
Steven W. Burnett