THAI MEDITATION ASSOCIATION OF ALABAMA, INC., V. CITY OF MOBILE: ELEVENTH CIRCUIT FINDS DISTRICT COURT IMPROPERLY DISMISSED PLAINTIFF'S CLAIMS THAT CITY VIOLATED STATE AND FEDERAL RELIGIOUS PROTECTION LAWS

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In *Thai Meditation Ass'n of Alabama, Inc., v. City of Mobile*, the U.S. Court of Appeals for the Eleventh Circuit addressed whether the district court erred in its dismissal of claims brought by the Thai Meditation Association of Alabama ("the Association") against the city of Mobile, Alabama ("the City") for the denial of a permit.[1] The Association applied to the City for permits to build a "Buddhist meditation and retreat center," the prospect of which was not received well by the public.[2] Due to the Association's religious affiliation and the subsequent public outrage, the permit denial led the Association to believe that the City violated the U.S. Constitution, the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the Alabama Constitution, and state common law.[3] The Eleventh Circuit declined to decide whether the City committed these violations but held that the district court improperly dismissed the Association's federal constitutional, RLUIPA, and state constitutional claims.[4]

The Association is affiliated with a school of Buddhism that emphasizes prayer, meditation, and member attendance at religious ceremonies and lectures.[5] In 2007, the Association first met in a residential home in Mobile, although meetings at this location stopped shortly thereafter because "stiff community opposition" led the city to deny its request for the necessary zoning approval to continue meeting at this location.[6] Two years later, the Association moved its meetings to a shopping center, which did not require the same zoning approval as a residential area.[7] The shopping center, however, was ill-suited for the Association's religious practices because the road noise from the nearby street was loud and the space was too small for the Association's activities and lacked the space necessary "to host visiting

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[1] Thai Meditation Ass'n of Ala., Inc., v. City of Mobile, 980 F.3d 821, 825 (11th Cir. 2020).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.* at 826.
[6] *Id.*
[7] *Thai Meditation Ass'n*, 980 F.3d at 826.

monks for overnight retreats."[8] In 2015, with hopes of building a new meditation center, the Association purchased property in one of Mobile's residential districts.[9] Before construction on the new center could begin, the Association needed zoning approval because the property was situated in a residential area.[10] Again, the Association's zoning applications faced steep public opposition.[11] Residents questioned whether the meditation center was "even religious," "scream[ed] and yell[ed]" in community meanings concerning the application, and claimed that the center's presence in the community was "unacceptable" to members of the Christian faith.[12] The City's Planning Commission unanimously denied the zoning applications, "[c]iting concerns about site access, traffic, and compatibility with the neighborhood . . . ."[13]

After the City Council upheld the Planning Commission's denial of the application, the Association sued the City in federal court, alleging violations of federal and state law.[14] Specifically, the Association claimed that the City's actions "violated (1) RLUIPA's substantial-burden provision; (2) RLUIPA's nondiscrimination provisions; (3) RLUIPA's equal-terms provision; (4) the First Amendment's Free Exercise Clause; (5) the Fourteenth Amendment's Equal Protection Clause; (6) the Alabama Constitution; and (7) common-law principles forbidding negligent misrepresentations."[15] The district court granted summary judgment for the City with regard to the Association's claims under the First Amendment, RLUIPA's substantial-burden and equal-terms provisions, and the Alabama Constitution.[16] The Association's remaining claims under the Fourteenth Amendment, the RLUIPA's nondiscrimination provision, and Alabama common law were ultimately rejected by the district court.[17]

On appeal to the Eleventh Circuit, the Association primarily argued that the district court misapplied certain factors and standards regarding the RLUIPA substantial-burden standard and the standard for determining "a substantial burden" under the Free Exercise Clause.[18] The Association also

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[8] *Id.*
[9] *Id.*
[10] *Id.* The Association submitted plans to "construct a 2,400-square-foot meditation building, a 2,000-square-foot cottage to host visiting monks, a 600-square-foot restroom facility, and associated parking." *Id.*
[11] *Id.*
[12] *Thai Meditation Ass'n*, 980 F.3d at 826–27.
[13] *Id.* at 827.
[14] *Id.*
[15] *Id.* (internal citations omitted).
[16] *Id.*
[17] *Id.*
[18] *Thai Meditation Ass'n*, 980 F.3d at 828.

argued that the district court misinterpreted the Alabama Constitution's Religious Freedom Amendment and misapplied state law regarding its negligent misrepresentation claim.[19] The RLUIPA forbids governments from placing regulations on land that substantially burden religious exercise unless the government can show a "compelling interest" and the "least restrict means" are used to further that interest.[20] The Association claimed that the City's denial of its zoning applications substantially burdened its religious exercise because the Association's only alternative meeting place, the shopping center, was too loud for meditation and not large enough to accommodate its members and overnight guests.[21] The Eleventh Circuit has held:

> that "a 'substantial burden' must place more than an inconvenience on religious exercise," that "a 'substantial burden' is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly," and that "a substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct."[22]

Further, while a regulation that completely prevents religious activity constitutes sufficient grounds for a substantial-burden claim under the RLUIPA, sufficient grounds may still exist where a regulation substantially burdens the exercise of religion without completely preventing it.[23]

In rejecting the Association's substantial-burden claim, however, the district court misinterpreted Eleventh Circuit precedent to mean that a government regulation substantially burdens religion only if it "'require[s] [p]laintiffs to forego their religious beliefs.'"[24] The Eleventh Circuit stated that the district court "just latched onto the wrong language" from its precedent, because a regulation that burdens the exercise of religion to such an extreme extent "is *sufficient* to demonstrate a substantial burden—but it is not . . . *necessary*."[25] Accordingly, the Eleventh Circuit vacated the district court's judgment on this issue and remanded for the court to properly apply the RLUIPA's substantial-burden standard.[26] The Eleventh Circuit also

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[19] *Id.*
[20] *Id.*; *see* 42 U.S.C. § 2000cc(a)(1).
[21] *Thai Meditation Ass'n*, 980 F.3d at 830.
[22] *Id.* at 829–30 (quoting Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1227 (11th Cir. 2004)). The standard articulated in *Midrash* is the prevailing standard for RLUIPA substantial-burden claims in the Eleventh Circuit. *Id.* at 828.
[23] *Id.* at 830–31.
[24] *Id.* at 830 (quoting Thai Meditation Ass'n of Ala., Inc. v. City of Mobile, 349 F. Supp. 3d 1165, 1189 (S.D. Ala. 2018)).
[25] *Id.* at 830–31.
[26] *Thai Meditation Ass'n*, 980 F.3d at 831.

vacated and remanded the district court's judgment on the Association's First Amendment Free Exercise Clause claim.[27] The Eleventh Circuit justified this by stating that, in rejecting the Association's Free Exercise claim, the district court "simply cross-referenced" the faulty analysis it used in evaluating the Association's substantial-burden claim.[28] Because this analysis was incorrect, the lower court's conclusion that the City's actions did not violate the Free Exercise Clause because they "d[id] not restrict Plaintiffs' current religious practice but, rather, prevent[ed] a change in their religious practice," must be "reconsider[ed] alongside the substantial-burden claim."[29]

The RLUIPA's equal-terms provision prohibits governments from placing a regulation on land "'that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.'"[30] To show that that the City violated the equal-terms provision, the Association was required to provide "'evidence that a similarly situated nonreligious comparator received differential treatment under the challenged regulation.'"[31] The district court rejected the Association's equal-terms claim because the nonreligious comparator chosen by the Association, a hunting and fishing club, was not actually a comparator.[32] The district court distinguished the Association and the comparator on two grounds: (1) the club was not new to the neighborhood, as it had been in that location for nearly a century; and (2) the club sought zoning permission to expand and renovate its buildings rather than put the land to an entirely new use.[33] The Eleventh Circuit stated that these "two features suffice to distinguish [the club] for comparator purposes," and affirmed the district court's rejection of the Association's equal-terms claim.[34]

The Eleventh Circuit then addressed the Association's claim that the City's denial of its zoning applications constituted discrimination on the basis of religion "in violation of RLUIPA's nondiscrimination provision and the Fourteenth Amendment's Equal Protection Clause."[35] The district court rejected this claim on the grounds that the Association failed to show that the

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[27] *Id.* at 833; *see* U.S. CONST. amend. I ("Congress shall make no law . . . prohibiting the free exercise [of religion.]").
[28] *Thai Meditation Ass'n*, 980 F.3d at 833.
[29] *Id.*
[30] *Id.* (quoting 42 U.S.C. § 2000cc(b)(1)).
[31] *Id.* (quoting Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cnty., 450 F.3d 1295, 1311 (11th Cir. 2006)).
[32] *Id.* at 833–34.
[33] *Id.* at 834.
[34] *Thai Meditation Ass'n*, 980 F.3d at 834.
[35] *Id.*; *see* 42 U.S.C. § 2000cc(b)(2) ("No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or denomination); U.S. CONST. amend. XIV, § 1 ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.").

"City officials who had rejected [its zoning] applications were motivated by discriminatory intent."[36] The Eleventh Circuit agreed with this conclusion.[37] In doing so, the court first noted that its review of the district court's findings regarding the presence or absence "of discriminatory intent [was] only for clear error."[38] As such, if the Eleventh Circuit had reversed the district court's judgment on this issue, the Association would have to have shown that the judgment was implausible in light of the entire record, which it could not do.[39] While the Eleventh Circuit acknowledged that the Association presented evidence that "could reasonably be understood as reflecting local residents' anti-Buddhist sentiment," the Association did not present the requisite evidence showing that the City officials who denied the zoning applications expressed the same sentiments or ratified those sentiments in some capacity.[40] The closest evidence that might have shown the City had a discriminatory intent in denying the application was comments made by the City's attorney, including statements that the meditation center was "not a religious facility," and that it was "not the Baptist church or the Episcopal church."[41] However, the city attorney was not a member or decisionmaker of the Planning Commission or City Council, and the Eleventh Circuit would not "impute the discriminatory intent . . . of a subordinate *non*-decisionmaker to the final decisionmakers."[42]

In addition to its federal claims, the Association made two claims under Alabama law. First, the Association claimed that the City's actions violated the Alabama Religious Freedoms Amendment ("ARFA") of the Alabama Constitution.[43] The Association argued that under ARFA, plaintiffs are only required to show that government action "burdened," rather than "substantially burdened" religious exercise.[44] The district court disagreed and stated that it "expressly 'refuse[d] to hold a government violates ARFA when its actions incidentally'—rather than substantially—'burden a plaintiff's religious exercise.'"[45] However, the Eleventh Circuit ultimately agreed with the Association's reading of ARFA as only requiring a governmental action that places a burden on religious exercise rather than a

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[36] *Thai Meditation Ass'n*, 980 F.3d at 834–35.
[37] *Id.* at 836.
[38] *Id.* at 835 (citing Stout by Stout v. Jefferson Cnty. Bd. of Educ., 882 F.3d 988, 1006 (11th Cir. 2018)).
[39] *Id.*
[40] *Id.* at 834–36.
[41] *Id.* at 836.
[42] *Thai Meditation Ass'n*, 980 F.3d at 836 (citing Matthews v. Columbia Cnty., 294 F.3d 1294, 1297–98 (11th Cir. 2002)).
[43] *Id.* at 836–37; *see* ALA. CONST. art. I, § 3.01(V).
[44] *Thai Meditation Ass'n*, 980 F.3d at 837.
[45] *Id.*

substantial burden.[46] The court relied on "[t]wo cardinal rules of [statutory] construction" to reach this conclusion: (1) courts must give effect to the words' plain meaning and interpret ordinary language to "'mean exactly what it says,'"[47] and (2) courts "cannot supply words purposely omitted" from statutes.[48] Notably, ARFA's text is replete with the word "burden," and does not use the word "substantial" to qualify it.[49] As such, the Eleventh Circuit stated that ARFA is "perfectly clear both in what it says and in what it doesn't," and that, contrary to the district court's ruling, ARFA "never once uses the phrase 'substantial burden.'"[50] Therefore, because ARFA makes it clear that that "*any* burden—even an incidental or insubstantial one—suffices to trigger strict scrutiny," the Eleventh Circuit vacated the district court's judgment on the issue and remanded "for further proceedings consistent with [its] interpretation" of ARFA.[51]

The Association's second state law claim was that the City's actions constituted common-law negligent misrepresentation.[52] Specifically, the Association claimed that the city planners communicated that the Association's proposal for the newly-purchased property "would be treated as a 'religious' use for zoning purposes."[53] However, the district court swiftly dispensed with this claim, and the Eleventh Circuit affirmed.[54] The Association failed to prove that: (1) the city planner actually stated the property would be treated as a religious use for zoning purposes, (2) the city planner intended to deceive the Association, (3) the Association relied on the alleged statement, or (4) the Association suffered any damages from such reliance.[55] The court noted that although the Association took issue with each of the district court's determinations here, it "ha[d] not shown [that the district court committed] any reversible error."[56] Accordingly, the Eleventh Circuit affirmed the district court's rejection of the Association's negligent misrepresentation claim.[57]

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[46] *Id.* at 838–39.
[47] *Id.* at 839 (quoting IMED Corp. v. Sys. Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)).
[48] *Id.* (quoting State v. Calumet & Hecla Consol. Copper Co., 66 So. 2d 726, 729 (Ala. 1953)).
[49] *Id.* at 839.
[50] *Thai Meditation Ass'n*, 980 F.3d at 839.
[51] *Id.* at 840.
[52] *Id.*
[53] *Id.*
[54] *Id.* at 841.
[55] *Id.* at 840–41 (stating the elements of a negligent misrepresentation claim under Alabama law).
[56] *Thai Meditation Ass'n*, 980 F.3d at 841.
[57] *Id.*

The Eleventh Circuit's decision in *Thai Meditation Association* is highly relevant to religious organizations struggling to gain zoning approval in communities where the applicant organization is a part of a religious minority. The court's holding suggests that plaintiffs bringing claims under the Religious Land Use and Institutionalized Persons Act's substantial-burden provision do not have to prove the disputed government action completely precludes religious exercise, just that it places more than a minor, trivial burden on that exercise. This decision has an even greater impact on Alabama plaintiffs, however, because the Eleventh Circuit's interpretation of the Alabama Religious Freedoms Amendment provides more protection from governmental interference with religious exercise than does federal law. This means that Alabama plaintiffs disputing governmental action that impedes religious exercise could succeed under state law where they would otherwise fail under federal law. Going forward, the Eleventh Circuit's opinion in this case will likely be considered by similarly situated plaintiffs in determining whether to bring claims under federal or state law—especially plaintiffs in Alabama who are members of a religious minority.