

No. 17-914

IN THE
Supreme Court of the United States

LIVINGSTON CHRISTIAN SCHOOLS,
Petitioner,

v.

GENOA CHARTER TOWNSHIP,
Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals for the
Sixth Circuit**

**BRIEF OF *AMICUS CURIAE* THE ETHICS AND
RELIGIOUS LIBERTY COMMISSION OF THE
SOUTHERN BAPTIST CONVENTION
IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Under RLUIPA, the government may not enact land use restrictions that impose a “substantial burden” on religious exercise without satisfying strict scrutiny. This Court has not provided any guidance on what “substantial burden” means in this context, however, and the lower courts are divided and have reached inconsistent results. Here, the Sixth Circuit held that total exclusion of a religious school from a municipality under suspect circumstances did not impose a “substantial burden.” Should this decision be reversed?

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INTEREST OF THE *AMICUS CURIAE*¹

The Ethics & Religious Liberty Commission (“ERLC”) is the public policy and engagement arm of the Southern Baptist Convention. With more than 15 million members and over 46,000 churches nationwide, the Southern Baptist Convention is America’s largest Protestant denomination. The ERLC is charged with addressing public policy issues affecting matters such as religious liberty, freedom of speech, marriage and family, the sanctity of human life, and ethics.

In all of these areas, the ERLC’s commitments are grounded in the biblical teaching that men and women are rational creatures made in the image of God. See Genesis 1:27. From this it follows that reason, not force, should govern matters of religious persuasion—for, as the early Baptists put it, “God alone is the lord of the conscience . . . and the requiring of an implicit faith, an absolute and blind obedience, is to destroy liberty of conscience and reason also.” *London Baptist Confession of Faith*, ch. 21, ¶ 2 (1689).

The importance of religious liberty comes not only from Baptist theology, but also from experience. For centuries, Baptists faced persecution at the hands of political and ecclesiastical authorities. They were forbidden from meeting, disenfranchised, fined, imprisoned, and even killed for their beliefs. Even in post-revolutionary America, Baptists were often singled

¹ Rule 37 Statement: all parties received timely notice of *amicus*’s intent to file this brief; their consent letters have been submitted with the Clerk. Further, no counsel for any party authored this brief in whole or in part and no person or entity other than *amicus* funded its preparation or submission.

out for persecution.² Their pleas for freedom to meet together and to worship unmolested were heard and championed by many of the founders, especially James Madison and Thomas Jefferson. And the great eighteenth-century guarantees of freedom of religion and of conscience that feature so prominently in the state and federal constitutions owe much to the tireless advocacy of the Baptists.

The ERLC seeks to continue this mission today, engaging the culture with the gospel of Jesus Christ and proclaiming in the public square the importance and value of religious liberty. The thousands of churches, schools, and charitable programs represented by the ERLC have an interest in being free from unreasonable legal burdens and from being discriminated against by the government. The ERLC therefore brings a unique perspective on the impact of religious liberty decisions throughout the nation.

INTRODUCTION AND SUMMARY OF ARGUMENT

Mendicant friars may need no land or roof to fulfill their callings, but for most religious groups, including Southern Baptists, exercising religion means meeting in a specific place where they can comfortably carry out their missions of worship, service, and education. Just as the freedom of the press cannot be exercised

² See, e.g., G. Hugh Wamble, *Virginia Baptists and Religious Liberty, 1765 to 1802*, 1 J. of Baptist Stud. 38, 39-43 (2007); Letter from the Committee of the United Baptist Churches in Virginia, to George Washington (Aug. 8, 1789), *reprinted in* 1 Robert Baylor Semple, *History of the Baptists in Virginia* (rev. 1894) (1971) (“mobs, bonds, fines, and prisons were our frequent repast”); Letter from James Madison, to William Bradford (Nov. 26, 1774), <https://founders.archives.gov/documents/Madison/01-01-02-0037>.

without ink, paper, and (nowadays) internet access, and the right to keep and bear arms cannot be exercised without access to ammunition, religious exercise is often impossible without the ability to obtain and use a meeting place.

Congress recognized the importance of this need, and the danger posed to religious liberty by the arbitrary and discriminatory land-use decisions often made by local bureaucrats. In 2000, it unanimously passed the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc *et seq.* That law prohibits land-use authorities from enacting regulations that impose a “substantial burden” on religious exercise unless the government action is the least restrictive means of advancing a compelling governmental interest.

RLUIPA does not define “substantial burden,” but it does state that all of its provisions “shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted” by its terms and the Constitution. As this Court has recognized, land-use decisions by local governments can “impose a substantial burden” on religious exercise. *City of Boerne v. Flores*, 521 U.S. 507, 535 (1997). Despite all this, lower courts have been reluctant to find substantial burdens in the land-use context, and, moreover, have often based their decisions on shaky and inconsistent theoretical justifications that are unmoored from RLUIPA.

Such confusion is perhaps unsurprising given the imprecise nature of the statutory test. To complicate things further, RLUIPA was designed to restore the more expansive protection of religious liberty that existed prior to this Court’s decision in *Employment Division v. Smith*, and many courts have read the statute with this Court’s pre-*Smith* cases firmly in view.

Perversely, this has led courts to construe the statute narrowly, woodenly relying on rule statements from pre-*Smith* cases such as *Sherbert v. Verner* and *Wisconsin v. Yoder* that are ill-suited for—if not downright incoherent in—the land-use context. Other courts have favored a “plain language” analysis instead, but this tack is both methodologically flawed and basically useless: “substantial burden” is a legal term of art borrowed by Congress, not a phrase of Congress’s own invention, and the “plain language” definitions are invariably just as vague as the phrase they ostensibly define. Still other courts have adopted a totality-of-the-circumstances approach that relies more on common law reasoning than any abstract test.

This jumbled body of jurisprudence too frequently provides local authorities with ways to rationalize and defend the kind of arbitrary or discriminatory application of land-use regulations that RLUIPA sought to eradicate. Unfortunately, the cost of getting an answer in a given case through litigation is often too great for smaller churches and sects—the very groups RLUIPA was designed to protect.

* * *

This Court has not yet taken a case concerning the meaning of “substantial burden” in the land use context. Now is the time. The Sixth Circuit’s holding below deepened a circuit split about the role that discriminatory conduct should have in the “substantial burden” analysis; this and the broader issues presented in this case have percolated through the circuit courts and are of great importance. If, as this Court recently decided, a church’s right to be eligible to receive government funding for a recycled playground surface is an issue that is important enough to warrant review, see *Trinity Lutheran Church of*

Columbia, Inc. v. Comer, 137 S. Ct. 2012 (2017), then this issue, too, should be considered.

ARGUMENT

I. THE CASELAW ADDRESSING RLUIPA’S “SUBSTANTIAL BURDEN” REQUIREMENT IS CONFUSED IN THEORY AND INCON- SISTENT IN PRACTICE.

This is a suit based on subsection (a)(1) of RLUIPA. That provision forbids “impos[ing] or implement[ing] a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person” unless the government action “is the least restrictive means” of advancing “a compelling governmental interest.” 42 U.S.C. § 2000cc(a)(1). As commentators have recognized, “[t]he courts of appeals have noted with frustration that RLUIPA does not define ‘substantial burden,’ and they have offered remarkably different vague formulations of the term.” Robert M. Bernstein, *Abandoning the Use of Abstract Formulations in Interpreting RLUIPA’s Substantial Burden Provision in Religious Land Use Cases*, 36 Colum. J.L. & Arts 283, 285 (2013). These “remarkably different vague formulations” have produced a body of law that is inconsistent between (and within) circuits and that has led to contradictory results.

A. A Brief History Of RLUIPA’s “Substan- tial Burden” Requirement.

Following this Court’s decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), Congress embarked on a decade-long quest to correct what many saw as the failure to give adequate protection to religious believers. Congress’s first attempt—the Religious Freedom and Restoration Act (“RFRA”), passed in 1993—reinstated a strict-scrutiny test to gov-

ernmental actions that imposed a “substantial burden” on religious believers. 42 U.S.C. §§ 2000bb–2000bb-4. But after this Court held in *City of Boerne v. Flores* that RFRA could not be applied to the States under Section 5 of the 14th Amendment, 521 U.S. at 516-36, Congress responded by passing RLUIPA, which restored the strict scrutiny test, though based on different constitutional grants of authority and limited to government action touching on land use and prisons. See *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 897 (7th Cir. 2005) (describing statutory history).

Like RFRA, RLUIPA was viewed as resurrecting the broader religious liberty protections that existed prior to *Smith*. For example, the sponsors of RLUIPA explained that

The Act does not include a definition of the term “substantial burden” because it is not the intent of this Act to create a new standard for the definition of “substantial burden” on religious exercise. Instead, that term as used in the Act should be interpreted by reference to Supreme Court jurisprudence. Nothing in this Act, including the requirement in Section 5(g) that its terms be broadly construed, is intended to change that principle. The term “substantial burden” as used in this Act is not intended to be given any broader interpretation than the Supreme Court’s articulation of the concept of substantial burden or religious exercise.

146 Cong. Rec. S7774, S7776 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy).

But realizing this promise has proved easier said than done. Undergirding the senators’ interpretation

was the assumption that this Court’s pre-*Smith* jurisprudence was a well-developed body of religion-friendly case law that set forth a clear and broadly applicable definition of “substantial burden” that could be readily applied in the land-use context. This assumption was wrong in three ways.

First, there was no broad and well-developed body of Supreme Court case law. In fact, this Court’s jurisprudence grew out of narrow circumstances, focusing on the employment and public benefits contexts. See *Sherbert v. Venner*, 374 U.S. 398, 399-402 (1963); *Wisconsin v. Yoder*, 406 U.S. 205, 218, 235-36 (1972); *Thomas v. Review Bd. of the Ind. Emp’t Sec. Div.*, 450 U.S. 707, 717-18 (1981); *Hobbie v. Unemp’t Appeals Comm’n*, 480 U.S. 136, 141 (1987). Notably, the Court never confronted free-exercise challenges to land-use restrictions.

Second, the pre-*Smith* cases did not provide a robust definition of “substantial burden.” The cases made clear that state action that forced a religious believer to choose between his faith and a public benefit or punishment imposed a substantial burden on his exercise of religion, but provided little guidance outside of this extreme case. See, e.g., *Sherbert*, 374 U.S. at 399-402; *Yoder*, 406 U.S. at 218.

Third, as some lower courts have found, the guidance that the Court did give is ill-suited for the land-use context. As the Second Circuit has explained,

a religious institution is not ordinarily faced with the . . . dilemma of choosing between religious precepts and government benefits. When a municipality denies a religious institution the right to expand its facilities, it is more difficult to speak of substantial pressure to change religious

behavior, because in light of the denial the renovation simply cannot proceed.

Westchester Day Sch. v. Vill. of Mamaroneck, 504 F.3d 338, 348–49 (2d Cir. 2007); see also Bernstein, *supra*, at 293 (“Religious institutions subject to land use ordinances do not experience burdens in the same way as welfare applicants.”).

In the absence of guidance from this Court, the lower courts have split into three distinct camps. One cohort has attempted to glean legal meaning for the land-use context from the *Sherbert* and *Yoder* definitions of “substantial burden,” another has sought to craft a test using the “plain meaning” of the term, and a third, smaller group has abandoned abstract definitions entirely in favor a totality-of-the-circumstances approach guided by prior case law. This three-way split is well developed and deserving of this Court’s attention. Further, the two dominant approaches (*Sherbert/Yoder* and plain meaning) have proven to be unworkable in practice, producing contradictory results and departing from both RLUIPA’s text and the intentions of its drafters.

B. Defining “Substantial Burden” Through Wooden Application Of The *Sherbert/Yoder* Framework.

In *Sherbert*, this Court considered a Free Exercise claim raised by a Seventh-Day Adventist who sought unemployment compensation after being fired for refusing to work on her Sabbath day. 374 U.S. at 399–402. As the Court explained, by denying Ms. Sherbert unemployment benefits, the government forced her to “choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand.” *Id.* at 404. Similarly,

in *Yoder*, the Court considered the Free Exercise claim of an Amish family seeking an exemption from Wisconsin’s compulsory school-attendance law, concluding that the law “affirmatively compel[led] [plaintiffs], under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs.” 406 U.S. at 218.

Neither case purported to offer a generally applicable “test,” or definition of “substantial burden.” Nor did they suggest that exemptions were appropriate only when the government policy put the plaintiff on the horns of an analogous dilemma. Nevertheless, many courts have attempted to follow the commands of legislative history by rigidly applying the *Sherbert/Yoder* “test” to land-use cases. See, e.g., *Civil Liberties for Urban Believers v. City of Chi.*, 342 F.3d 752, 760–61 (7th Cir. 2003) (relying on *Sherbert* and concluding that a substantial burden exists if the exercise of religion has been rendered “effectively impracticable”); *Bethel World Outreach Ministries v. Montgomery Cty. Council*, 706 F.3d 548, 556 (4th Cir. 2013) (concluding that the relevant test is whether the “government regulation puts substantial pressure on it to modify its behavior”). This approach has obvious appeal and fits with the standard narrative of what RLUIPA was designed to accomplish. But forcing a test developed in materially different circumstances onto land-use disputes has produced results inconsistent with RLUIPA itself. Cf. 42 U.S.C. § 2000cc-3(g) (requiring that RLUIPA be “construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution”).

For instance, in *Civil Liberties for Urban Believers*, a coalition of several churches claimed that Chicago’s zoning ordinance regime imposed a substantial bur-

den on their ability to find suitable locations to meet. 342 F.3d at 755–56. The Seventh Circuit acknowledged that the zoning ordinances made it more costly and inconvenient for the churches to find suitable locations, but concluded that these obstacles were not “substantial” since they did not make the exercise of religion “effectively impracticable.” *Id.* at 761. “Significantly,” the court noted, “each of the five individual plaintiff churches ha[d] successfully located within Chicago’s city limits. That they expended considerable time and money so to do does not entitle them to relief under RLUIPA’s substantial burden provision.” *Id.* This is an administrable standard, but it runs contrary to the explicit command that RLUIPA’s terms be interpreted as broadly as possible.

Similarly, in *Episcopal Student Found. v. City of Ann Arbor*, an episcopal church that served students at the University of Michigan sought permission to tear down its building and to replace it with one that better suited its needs. 341 F. Supp. 2d 691, 693–95 (E.D. Mich. 2004). After the city denied the church’s request, the church sought judicial relief under RLUIPA. Among the reasons the district court gave in concluding that there was no substantial burden was the fact that the church could lease other properties near campus. *Id.* at 705; see also *Elijah Grp., Inc. v. City of Leon Valley, Tex.*, No. CIV.A.SA-08-CV-097, 2009 WL 3247996, at *6 (W.D. Tex. Oct. 2, 2009) (“there are other locations in the City where the Church can conduct church services”), *rev’d on other grounds*, 643 F.3d 419 (5th Cir. 2011). But there will always be “alternatives” *somewhere*. Indeed, the panel below found total exclusion from the town was insufficient to demonstrate a substantial burden in part because there were other “alternatives.” Far from affording the strong protections that RLUIPA provides,

the approach taken by these courts essentially forces religious groups to negative every conceivable plot of land that a jurisdiction decides should be acceptable.

Many courts have shied away from such an unduly narrow interpretation, but the *Sherbert/Yoder* framework adopted in these cases has little to do with the actual outcomes. For example, in a suit by a church challenging a zoning ordinance that prohibited it from using land it had purchased to construct a church building, the Seventh Circuit (just two years after *Civil Liberties of Urban Believers*) concluded that the availability of alternative sites was *not* dispositive. *Sts. Constantine & Helen Greek Orthodox Church, Inc.*, 396 F.3d at 899–900. Similarly, in *Bethel World Outreach Ministries*, 706 F.3d at 557, the Fourth Circuit concluded that a regulation that pressured a church to abandon a pre-existing plan to construct a church on property it had already purchased imposed a substantial burden on the church “even though other suitable properties might be available, because the ‘delay, uncertainty, and expense’ of selling the current property and finding a new one [we]re themselves burdensome.” *Id.* (quoting *Sts. Constantine & Helen Greek Orthodox Church, Inc.*, 396 F.3d at 899–901); see also *Cottonwood Christian Ctr. v. Cypress Redev. Agency*, 218 F. Supp. 2d 1203, 1226 (C.D. Cal. 2002) (“Preventing a church from building a worship site fundamentally inhibits its ability to practice its religion. Churches are central to the religious exercise of most religions. If Cottonwood could not build a church, it could not exist.”).

Courts have attempted to harmonize these diverging lines of authority by noting that the second group ostensibly had a reasonable expectation that they would receive the relevant permits whereas the cases in the former group did not. See *Petra Presbyterian*

Church v. Vill. of Northbrook, 489 F.3d 846, 851 (7th Cir. 2007); *Andon, LLC v. City of Newport News, Va.*, 813 F.3d 510, 516 (4th Cir. 2016). This would be a fair point on another test, perhaps, but it is not clear *why* this distinction should matter: the inconvenience in cases like *Sts. Constantine & Helen Greek Orthodox Church* did not make finding a place to worship “entirely impracticable”; indeed, the inconvenience was just as monetary as in *Civil Liberties*. The reasoning in these cases smacks of outcome oriented judging, rather than principled construction.

C. Defining “Substantial Burden” By Using The Words’ “Plain Meaning.”

Perhaps because of these difficulties, other courts have attempted to define “substantial burden” using the words’ “ordinary, contemporary, common meaning.” See, *e.g.*, *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004). Using the normal tools of statutory interpretation would seem to have the advantage of following the law, rather than what others have said about it. Unfortunately, in this context, this approach is both unjustified and unhelpful.

“Substantial burden” is not a phrase of Congress’s own devising, but a legal term of art with a long history of legal usage stretching back more than a century.³ “The idea of a substantial burden is important to a number of areas of the law” including “cases involving the Commerce Clause, the Second Amendment right to keep and bear arms, regulation of access to the constitutional right to abortion, and to statutory protections of the free exercise of religion.”

³ See, *e.g.*, *Colonial City Traction Co. v. Kingston City R.R.*, 44 N.Y.S. 732, 735 (N.Y. App. Div.), *aff’d*, 47 N.3. 810 (N.Y. 1897); *Crescent Cotton Oil Co. v. Mississippi*, 257 U.S. 129, 135 (1921).

R. George Wright, *Substantial Burdens in the Law*, 46 S.W. L. Rev. 1, 1 (2016) (footnotes omitted).

Any interpretation of “substantial burden” that seeks to be faithful to the text must therefore take into account the legal meaning of the phrase. “As Justice Frankfurter eloquently expressed it: ‘[i]f a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.’” Antonin Scalia & Bryan A. Garner, *Reading Law* 73 (2012) (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)). When it comes to interpreting RLUIPA, however, the purported textualists have simply ignored this reality.

And on a more practical level, the definitions these courts have offered simply do not clarify things; indeed, they are just as vague as the thing ostensibly defined. See, e.g., *San Jose Christian*, 360 F.2d at 1034 (“burden” means “something that is oppressive”; “substantial” means “significantly great”). Unsurprisingly, the definition appears to play a minimal role in judicial analysis. A comparison of *San Jose Christian* with the Ninth Circuit’s subsequent decision in *Guru Nanak Sikh Society v. County of Sutter*, 456 F.3d 978, 992 (9th Cir. 2006), is illustrative.

In *San Jose Christian*, the Ninth Circuit held that a city’s denial of a Christian college’s rezoning application did not impose a substantial burden. 360 F.2d at 1035-36. Two years later, that court applied the same “textualist” standard to a city’s denial of a conditional use permit to a Sikh house of worship, concluding that it *did* present a substantial burden. 456 F.3d at 992. There are factual distinctions between the two cases that can plausibly explain the difference in outcomes. Cf. *Hillcrest Christian Sch. v. City of L.A.*, No. CV 05-08788, 2007 WL 4662042, at *5 (C.D. Cal. July

12, 2007). But, as with the *Sherbert/Yoder* cases compared above—e.g., *Civil Liberties for Urban Believers* and *Sts. Constantine & Helen Greek Orthodox Church, Inc.*—the problem is not that the cases came out differently, but that the statutory “test” had little to do with the outcome. As Bernstein puts it:

Each court anchors its result in the Ninth Circuit’s definition of a substantial burden, but the test can hardly be detected in the background of either court’s analysis.

Bernstein, *supra*, at 297.

D. Abandoning Abstract Tests In Favor Of A Multi-Factor Approach.

The confusion and inconsistency of both the *Sherbert/Yoder* and the dictionary approaches makes litigating a RLUIPA claim little different from a game of chance. Courts will announce distinctions in given cases, of course, but litigants have little *ex ante* guidance about what matters and what does not. Further, the government-friendly language used in many of these opinions encourages municipalities to fight claims, even when they are ultimately found to have acted wrongly, further exacerbating the underlying burden on churches by super-adding the delay and cost of litigation.

Over the last few years, however, a handful of courts have abandoned the quest to distill a bright-line test from the statute’s text or purpose, admitting that neither pre-*Smith* jurisprudence nor Webster’s Dictionary provide sufficient guidance for deciding most land-use cases. For example, in *World Outreach Conference Center v. City of Chicago*, 591 F.3d 531, 539 (7th Cir. 2009), the Seventh Circuit—while noting that both words, “substantial” and “burden,” must be taken seriously—helpfully concluded that “sub-

stantiality is a relative term—whether a given burden is substantial depends on its magnitude in relation to the needs and resources of the religious organization in question.” *Id.*⁴

Similarly, in *Roman Catholic Bishop of Springfield v. City of Springfield*, the First Circuit explained that, “[i]n the absence of Supreme Court guidance, we do not adopt any abstract test, but rather identify some relevant factors and use a functional approach to the facts of a particular case.” 724 F.3d 78, 95 (1st Cir. 2013). These (non-exclusive) factors are

1. “[W]hether the regulation at issue appears to target a religion, religious practice, or members of a religious organization because of hostility to that religion itself”;
2. “[W]hether local regulators have subjected the religious organization to a process that may appear neutral on its face but in practice is designed to reach a predetermined outcome contrary to the group’s requests”; and
3. “[W]hether the land use restriction was ‘imposed on the religious institution arbitrarily, capriciously, or unlawfully.’”

Id. at 96-97.

This approach is more faithful to the statute’s text and to the purported intent of its drafters. This is because the lack of a bright-line rule is baked into the statute. As one scholar has helpfully explained, “substantial,” in the sense of “substantial burden,” is a philosophically “thick” concept; it contains both a de-

⁴ Curiously, *World Outreach* did not overrule or distinguish earlier circuit precedent purporting to apply the *Yoder/Sherbert* test; it simply ignored it. Indeed that decision did not mention the “substantial burden” jurisprudence of any court.

scriptive *and* an evaluative element. Wright, *supra*, at 1-3. To say something is “substantial” is to say something about the thing described, its context, and the evaluative judgment of the one making the pronouncement. *Id.*

II. THIS CASE PRESENTS AN IMPORTANT AND REOCCURRING QUESTION OF LAW.

The fractured approach taken by the lower courts gives local authorities ample cover to make the kind of arbitrary and discriminatory land-use decisions that RLUIPA was specifically designed to eliminate. With this Court’s guidance, the factor-based approach could mature into a stable, and readily applicable body of law that is faithful to what Congress enacted. As it stands, however, it is just a promising minority rule at odds with established case law in other circuits.

RLUIPA is now nearly 18 years old. But despite the confusion in the lower courts and Congress’s view that the statute was necessary to protect religious organizations from unnecessary and harmful regulations, this Court has never provided any guidance regarding what “substantial burden” means. See Pet. App. 9a.; *Roman Catholic Bishop of Springfield*, 724 F.3d at 94–95. Until it does, religious organizations will face the doubled burden of an under-enforced statute and a confused case law.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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