No. _____

IN THE

Supreme Court of the United States

MISSIONARIES OF SAINT JOHN THE BAPTIST, INC.,

Petitioner.

v.

JOEL FREDERIC AND ELIZABETH FREDERIC,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Kentucky

PETITION FOR WRIT OF CERTIORARI

KELLY J. SHACKELFORD
JEFFREY C. MATEER
HIRAM S. SASSER, III
DAVID J. HACKER
JEREMIAH G. DYS
RYAN N. GARDNER
FIRST LIBERTY INSTITUTE
2001 W. Plano Parkway
Suite 1600
Plano, TX 75075
(972) 941-4444

JOHN F. BASH
Counsel of Record
QUINN EMANUEL URQUHART & SULLIVAN, LLP
300 W. 6th St., Suite 2010
Austin, Texas 78701
(737) 667-6100
johnbash@quinnemanuel.com

THOMAS W. BREIDENSTEIN
BREIDENSTEIN LEGAL SERVICES, LLC
855 Greenville Avenue
Suite 300
Cincinnati, OH 45246
(513) 607-3452

OLIVIA HORTON*
QUINN EMANUEL URQUHART & SULLIVAN, LLP
555 13th Street NW, Suite 600
Washington, DC 20004
(202) 538-8077
**admitted in Texas; not admitt*
in D.C. Supervised by attorney admitted in D.C.

BROCK MASON
QUINN EMANUEL URQUHART & SULLIVAN, LLP
2755 E. Cottonwood Pkwy
Salt Lake City, UT 84121
(801) 515-7324

March 18, 2026

Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether a land-use regulation that prohibits a religious institution from building a religious structure on its own property constitutes a "substantial burden" on religious exercise under the Substantial Burden Provision of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc(a).

2. Whether a land-use regulation violates the Equal Terms Provision of RLUIPA, 42 U.S.C. § 2000cc(b)(1), by imposing express restrictions on religious assemblies or institutions that it does not impose on nonreligious assemblies or institutions.

PARTIES TO THE PROCEEDING

Petitioner is Missionaries of Saint John The Baptist, Inc., which was the appellant before the Supreme Court of Kentucky.

Respondents are Joel Frederic and Elizabeth Frederic, who were the appellees before the Supreme Court of Kentucky.

Pursuant to Rule 12.6, the following parties were appellees before the Supreme Court of Kentucky, but petitioner believes that they have no interest in the outcome of this petition: Cathleen Matchinga, Charles Meyers, City of Park Hills Board of Adjustment, Justin Odor, Mark Koenig, Robert Sweet, Sheila Burke Trust, Sheila Burke, in her capacity as Trustee for the Sheila Burke Trust, and Thomas Michael.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Missionaries of Saint John The Baptist, Inc. is a private, nonprofit organization. It has no parent corporation and does not have any shareholder that is a publicly held company.

RELATED PROCEEDINGS

Kenton Circuit Court, Fourth Division:

Frederic v. City of Park Hills Bd. of Adjustment, No. 21-CI-00766 (June 29, 2022)

Court of Appeals of Kentucky:

Frederic v. City of Park Hills Bd. of Adjustment, No. 2022-CA-0867-MR, 2023 WL 8286391 (Dec. 1, 2023)

Kentucky Supreme Court:

Missionaries of Saint John the Baptist, Inc. v. Frederic, 727 S.W.3d 400 (Dec. 18, 2025)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutory Provisions

Other Authorities

PETITION FOR WRIT OF CERTIORARI

Petitioner Missionaries of Saint John the Baptist, Inc. respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Kentucky in this case.

INTRODUCTION

The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc *et seq.*, guarantees that religious institutions will not be subjected to land-use regulations that either substantially burden their religious exercise without an adequate justification (Substantial Burden Provision), 42 U.S.C. § 2000cc(a), or treat them on less than equal terms with nonreligious assemblies and institutions (Equal Terms Provision), 42 U.S.C. § 2000cc(b)(1). The Kentucky Supreme Court's decision in this case diluted both of those guarantees. In so doing, the court deepened well-recognized conflicts among lower appellate courts on the scope of RLUIPA's land-use protections.

Petitioner is a nonprofit organization founded by an association of Roman Catholic priests that seeks to build a shrine to the Virgin Mary on a plot of land that it acquired next to its church. The Kentucky Supreme Court held that denying petitioner a permit to construct the shrine does not impose a substantial burden on petitioner's religious exercise solely because petitioner could build a smaller shrine on a different plot and because petitioner was aware of a prohibitory ordinance before it sought a permit. The court further held that even though the ordinance exempts numerous other establishments from the rule applied to places of worship, including golf courses and country

clubs, RLUIPA's guarantee of equal treatment for religious land uses was not implicated solely because some nonreligious institutions are subject to the same prohibition as petitioner. Those holdings do not comport with RLUIPA's text or purpose, nor with this Court's construction of RLUIPA's prisoner protections in *Holt v. Hobbs*, 574 U.S. 352 (2015).

In reaching its holdings, the Kentucky Supreme Court joined in longstanding, well-recognized conflicts among circuits and state supreme courts over how to construe RLUIPA's Substantial Burden and Equal Terms Provisions in the context of land-use regulations. More than a quarter century after RLUIPA's enactment, lower courts remain deeply divided on the statute's two basic guarantees, offering a multiplicity of conflicting standards, factors, and burden-shifting frameworks.

Despite these conflicts, this Court has never construed either of these provisions. Because these questions recur in communities across the country wherever religious organizations seek to build or expand, this Court's resolution of the conflicts is critical. Indeed, eight years ago, Judge Thapar noted the need for this Court's intervention to bring clarity to the existing jurisprudential muddle. *Tree of Life Christian Schools v. City of Upper Arlington*, 905 F.3d 357, 387 (6th Cir. 2018) (Thapar, J., dissenting), *cert. denied*, 587 U.S. 985 (2019). Things have only gotten worse since then—culminating in the indefensible decision below.

The Court should grant review.

OPINIONS BELOW

The opinion of the Supreme Court of Kentucky (App. 1a-39a) is reported at 727 S.W.3d 400. The decision of the Kentucky Court of Appeals (App. 40a-55a) is unreported but is available at 2023 WL 8286391. The decision of the Circuit Court for Kenton County is unreported (App. 56a-61a).

JURISDICTION

The judgment of the Supreme Court of Kentucky was entered on December 18, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this petition.

STATEMENT

1. Congress enacted RLUIPA in 2000 to protect religious institutions from discriminatory and unduly burdensome land-use regulations. The statute's definition of "land-use regulation" encompasses any "zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land)." 42 U.S.C. § 2000cc-5(5). The statute contains two overlapping protections at issue here that parties may invoke as either claims or defenses. *Id.* § 2000cc-2(a).

First, the Substantial Burden Provision prohibits state and municipal governments from imposing or implementing a "land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or

institution," unless the government demonstrates that the burden furthers "a compelling governmental interest" and is "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1); *see id.* § 2000cc-5(4).

Second, the Equal Terms Provision prohibits governments from "impos[ing] or implement[ing] a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1).

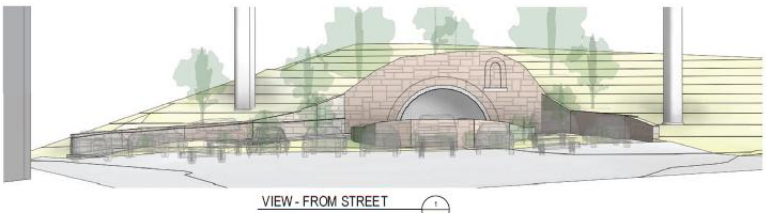
As this Court has explained, "[s]everal provisions of RLUIPA underscore its expansive protection for religious liberty." *Holt*, 574 U.S. at 358. "Congress defined 'religious exercise' capaciously to include 'any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'" *Ibid.* (citing 42 U.S.C. § 2000cc-5(7)(A)). Further, "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." 42 U.S.C. § 2000cc-5(7)(B). In addition, RLUIPA's "[r]ules of construction" provide that the statute "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the statute] and the Constitution." *Id.* § 2000cc-3(g). And "RLUIPA 'may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.'" *Holt*, 574 U.S. at 358 (quoting 42 U.S.C. § 2000cc-3(c)).

Both the Substantial Burden and Equal Terms Provisions have generated persistent, irreconcilable

circuit conflicts, *see* pp. 18-26, 32-36, *infra*, yet this Court has never interpreted either provision.

2. Petitioner is a nonprofit organization that fosters apostolic work in line with the teachings of the Catholic Church. Petitioner owns a church that was built in 1930 and is located in Park Hills, Kentucky, a suburb of Cincinnati. App. 33a. Although the church stands in a residential zone, it preexisted the zoning code and is grandfathered as a permissible nonconforming use. *Ibid.*

Petitioner sought to construct a grotto honoring the Virgin Mary on property adjacent to its lot that it had originally leased from a trust and now owns. App. 3a-4a. The grotto would be built into the hill and "consist of a shrine to the Virgin Mary, a plaza, a walking path, and a retaining wall." App. 4a. It would be 16 feet by 39 feet—about the size of a backyard swimming pool. *Ibid.* This is a drawing of the proposed structure:



App. 144a.

In petitioner's view, the shrine must be erected adjacent to the church because when the Virgin reportedly appeared in a grotto in Lourdes, France, in 1858, she requested that Saint Bernadette "tell the Priests that a chapel must be built" next to the grotto. *A Short Life of Bernadette*, EWTN (last visited Mar. 16, 2026), https://www.ewtn.com/catholicism/library/

short-life-of-bernadette-5238. As a result, petitioner seeks to build the grotto on the proposed location behind the church as part of its religious mission. App. 4a.

Petitioner applied to the Park Hills Board of Adjustment for a conditional-use permit and setback variances to allow it to construct the grotto on the adjacent lot. App. 4a. The Board granted the permit and variances over the objection of respondents Joel and Elizabeth Frederic, neighbors who complained that the grotto would exacerbate traffic problems. App. 9a. The Board concluded the grotto would "provide a service or facility which will contribute to the general well being of the neighborhood or the community" and would not "be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity." *Ibid.*

One Board member dissented, arguing that the zoning ordinance did not permit a church to receive a conditional-use permit to build a grotto because the church is not located on an "arterial street," *i.e.*, a "public thoroughfare[] which serve[s] the major movements of traffic within and through the community[.]." App. 8a, 5a & n.5 (citing Park Hills Zoning Ordinance §§ 7.0, 10.4). Neither the petitioner's church property nor the property intended for the grotto is located on an arterial street. App. 4a & nn.3-4.

3. Respondents filed a complaint against petitioner and the Board in the Kenton County Circuit Court, asserting that the grant of the permit and variances violated state and local law and seeking declaratory and injunctive relief to prohibit both the grotto and any future expansion of religious use of the property. App. 108a-112a. In opposing respondents' motion for

summary judgment, petitioner argued, *inter alia*, that denying the permit would violate RLUIPA. App. 92a-93a. The circuit court granted summary judgment to petitioner on state-law grounds. App. 59a-61a.

The Kentucky Court of Appeals reversed. App. 55a. It held that the conditional-use permit and variances were unlawful because of the arterial street requirement and that, as a result, state and local law prohibited the Board's approval and expansion of the nonconforming use. App. 49a (citing Park Hills Zoning Ordinance § 19.6(D)(3)). The court then rejected petitioner's RLUIPA argument on the ground that while prohibiting construction of the grotto may make the practice of religion more difficult for petitioner or Catholics broadly, "the Zoning Ordinance is not inherently inconsistent with their religious beliefs." App. 55a.

4. The Supreme Court of Kentucky affirmed. App. 30a. The court first found that petitioner's RLUIPA defense was "properly before us for decision." App. 19a.

Turning to the merits, the Kentucky Supreme Court acknowledged that building the grotto constitutes "religious exercise" within the meaning of RLUIPA. App. 22a. But it nevertheless rejected petitioner's arguments under both the Substantial Burden and Equal Terms Provisions. App. 25a-30a.

a. With respect to the Substantial Burden Provision, the Kentucky Supreme Court adopted as its "polestar" the framework that the Sixth Circuit set out in *Livingston Christian Schools v. Genoa Charter Township.*, 858 F.3d 996 (6th Cir. 2017), *cert. denied*, 584 U.S. 961 (2018). App. 22a. It interpreted

Livingston to require courts to apply four factors to determine whether a land-use regulation imposes a substantial burden on a claimant's exercise of religion: (i) "whether the religious institution has a feasible alternative location from which it can carry on its mission"; (ii) "[w]hether the religious institution will suffer substantial delay, uncertainty, and expense due to the imposition of the regulation"; (iii) "whether a plaintiff has imposed a substantial burden upon itself . . . [f]or example when an institutional plaintiff has obtained an interest in land without a reasonable expectation of being able to use that land for religious purposes"; and (iv) "whether there is evidence that the municipality's decisionmaking (sic) process was arbitrary, capricious, or discriminatory." App. 24a-25a (internal quotation marks omitted; alterations and sic in original).

The Kentucky Supreme Court declared that "henceforth *Livingston* and its progeny will be the applicable standard for determining whether a substantial burden was imposed on the exercise of religion within the land use regulation context" in Kentucky state courts. App. 30a. It then concluded that under *Livingston*, denying petitioner a permit to construct the grotto was not a substantial burden on its religious exercise. It relied exclusively on two considerations.

First, the court stated that petitioner could "construct a smaller grotto or shrine" on the lot where the church sits. App. 25a. It viewed petitioner's inability to construct a grotto of the intended size on the lot adjacent to the church as being "a mere inconvenience." *Ibid.*

Second, the court held that petitioner "had every reason to know, and in fact explicitly acknowledged, that building the grotto was not permitted by the ordinance" because the grotto would not be adjacent to an arterial street. App. 27a. For that reason, the Court concluded petitioner's burden was self-imposed. App. 26a-27a.

Based on those two considerations, the Kentucky Supreme Court concluded that "prohibiting [petitioner's] request to build the grotto does not impose a substantial burden on [petitioner] and accordingly does not run afoul" of the Substantial Burden Provision. App. 27a. It therefore did not reach the other elements of that provision.

b. The Kentucky Supreme Court also rejected petitioner's argument under the Equal Terms Provision. Petitioner had explained that while the Park Hills zoning code expressly requires churches to be located on arterial streets as a precondition for a conditional-use permit, it does not impose the same restriction on many other land uses, including public schools, publicly owned parks, playgrounds, nursery schools, community recreation centers, libraries, and privately owned golf courses and country clubs, or to accessory structures like residential patios. App. 28a.

Despite that different statutory treatment, the Kentucky Supreme Court held there was no Equal Terms violation. App. 29a. Its sole stated rationale was that some other types of uses, such as institutions of higher education and police stations, are also subject to the arterial-street requirement. *Ibid.*

c. Justice Thompson dissented on state-law grounds. App. 31a-39a.

REASONS FOR GRANTING THE PETITION

Federal courts of appeals and state supreme courts have long diverged over the proper interpretation of both the Substantial Burden Provision and the Equal Terms Provision of RLUIPA's land-use protections. This case provides an ideal vehicle to bring clarity to those frequently litigated provisions, neither of which this Court has ever construed. The decision below joined some other appellate courts that have read the provisions far too narrowly, despite Congress's unambiguous command that they be construed broadly to protect religious exercise. 42 U.S.C. § 2000cc-3(g). This Court should grant review of both questions.

I. The Court Should Resolve What Constitutes A "Substantial Burden" Under RLUIPA

This Court should grant review to resolve what constitutes a "substantial burden" in the land-use context under RLUIPA. The Kentucky Supreme Court held that a zoning regulation that prohibits the construction of a religious shrine at petitioner's proposed site does not constitute a substantial burden because petitioner could build a smaller shrine elsewhere and because the local prohibition existed before petitioner sought permission to build. That holding conflicts with the text of RLUIPA and this Court's precedent. The decision below exacerbates the deep fractures on what qualifies as a "substantial burden" among federal and state appellate courts—a well-recognized and longstanding conflict of authority. Given RLUIPA's critical role in preserving religious liberty, this Court should grant review to clarify its application in the land-use context.

A. The Kentucky Supreme Court Misconstrued The Substantial Burden Provision

The Substantial Burden Provision states that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person * * * unless the government demonstrates that imposition of the burden * * * is in furtherance of a compelling governmental interest; and * * * is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1). The first question in analyzing a claim or defense under that provision is to determine whether the application of the land-use regulation to the claimant imposes a "substantial burden on [its] religious exercise."

The answer to that question here is self-evidently yes. As construed by the lower courts, a city ordinance completely prohibits petitioner from erecting a religious shrine on the plot of land that it selected for that purpose. It also effectively bars petitioner from erecting a shrine of the size that petitioner determined was appropriate for its religious exercise anywhere. By any measure, that imposes a substantial burden on petitioner's religious exercise. This is not a case involving merely a fee or expense for engaging in the activity; it involves a complete prohibition. Under any fair reading of RLUIPA, a complete prohibition on a claimant's chosen means of religious exercise qualifies as a substantial burden. Accordingly, the lower courts should have gone on to determine whether enforcing the ordinance in that manner was the least restrictive means of furthering a compelling governmental interest.

But instead of conducting that analysis, the Kentucky Supreme Court held that the burden was not substantial based on two legally irrelevant considerations. Neither withstands scrutiny.

1. The Kentucky Supreme Court first held that petitioner could construct a smaller shrine on its adjacent piece of land, opining that a prohibition on constructing a larger grotto on the selected site was a "mere inconvenience." App. 25a. That misunderstands the substantial-burden inquiry and conflicts with this Court's decision in *Holt*. Once it is determined that a claimant's form of religious exercise is "grounded in a sincerely held religious belief," *Holt*, 574 U.S. at 361, the question is whether the government has imposed a substantial burden on that specific activity—for example, through a monetary exaction or delay. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014); *Johnson v. Baker*, 23 F.4th 1209, 1215 (9th Cir. 2022). A court does not ask whether the claimant could instead engage in a *different* exercise of religion in a manner that does not too substantially infringe on its religious beliefs.

That follows from the text of RLUIPA. The statute protects "*any*" exercise religion, even those a court may believe are unnecessary. 42 U.S.C. § 2000cc-5(7). Under the statutory definition, religious exercise need not be "compelled by, or central to, a system of religious belief." *Id.* And importantly, "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." *Id.* Plugging that definition in to the Substantial Burden Provision, the only question is whether the enforcement of a land-

use regulation substantially burdens the use of a specific parcel of real property for an intended religious purpose. A total prohibition on using the property for that purpose clearly satisfies that standard, regardless of whether the religious exercise could occur in a different form on a different piece of property.

That view accords with the settled understanding that courts are not competent to decide matters of religious doctrine. As this Court has explained, "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice." *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). Courts are not "arbiters of scriptural interpretation" or matters of doctrinal orthodoxy. *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981). It follows that RLUIPA should not be construed to authorize courts to decide that a prohibition on a particular religious use of a particular piece of property is only an insubstantial burden because some modified version of the activity could be conducted elsewhere.

This Court has already reached that holding in the context of RLUIPA's prisoner-rights protections, which contain a materially identical substantial-burden provision. In *Holt*, a Muslim prisoner alleged that prison rules requiring him to shave his beard was a substantial burden on his religious exercise. 574 U.S. at 355. This Court agreed, rejecting the holding of the lower court that the fact that prison authorities gave petitioner other means to exercise his religion rendered the shaving requirement an insubstantial burden. In particular, the Court rejected the proposition

that "the availability of alternative means of practicing religion is a relevant consideration" under RLUIPA. *Id.* at 361. "RLUIPA's 'substantial burden' inquiry," the Court held, "asks whether the government has substantially burdened religious exercise, * * * not whether the RLUIPA claimant is able to engage in other forms of religious exercise." *Id.* at 361-62.

Further, it is well-accepted that the precise location of a religious exercise can be significant. In *Dunn v. Smith*, 141 S. Ct. 725 (2021), the Court denied a state's application to vacate an injunction barring the state from excluding a death-row inmate's pastor from the execution chamber. It did not matter that the pastor could stand nearby in the "viewing room." *Id.* at 726 (Kavanaugh, J., dissenting). The inmate believed that the pastor's "presence" in the chamber itself was "integral to his faith." *Id.* at 725 (Kagan, J., concurring). And the state's failure to accommodate that belief "substantially burden[ed] [his] exercise of religion." *Ibid*; *see Ramirez v. Collier*, 595 U.S. 411, 419 (2022); *see also Ackerman v. Washington*, 16 F.4th 170, 184 (6th Cir. 2021) (explaining that courts should not "reframe the nature" of the exercise, even if a claimant "can engage in activities like the desired religious exercise") (citation and alteration omitted).

In a similar vein, the Tenth Circuit, in an opinion joined by then-Judge Gorsuch, reversed a district court's holding that an inmate's religious dietary restrictions could be met by alternative foods. *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1306 (10th Cir. 2010), *cert. denied*, 562 U.S. 967 (2010). The Court explained that "[n]either this court nor defendants are qualified to determine that a non-pork or vegetarian

diet *should* satisfy [the inmate's] religious beliefs." *Id.* at 1314 n.7; *accord Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 333 (5th Cir. 2009) ("Prison chaplains are not arbiters of the measure of religious devotion that prisoners may enjoy or the discrete way that they may practice their religion.").

Just so here. The question is whether a complete prohibition on constructing a shrine to the Virgin Mary on a selected location is a substantial burden on that contemplated form of religious exercise—not whether petitioner is able to build a smaller grotto in a different place. "[A] substantial burden can exist even if alternatives to enduring it are available." *Nije v. Dorethy*, 766 F. App'x 387, 391 (7th Cir. 2019) (per curiam, joined by Barrett, J.). And if a complete prohibition is not a substantial burden, nothing is. *Apache Stronghold v. United States*, 145 S. Ct. 1480, 1488 (2025) (Gorsuch, J., dissenting from the denial of certiorari) ("[P]reventing a religious exercise is, necessarily, a 'substantial burden' on that religious exercise.")

Of course, merely establishing a substantial burden does not mean that a claimant will prevail. The government can defeat a RLUIPA claim or defense by demonstrating that the imposition of the burden satisfies strict scrutiny. 42 U.S.C. § 2000cc(a)(1). Here, as the party opposing petitioner's religious exercise, the Frederics should have been required to meet this high bar before wielding the city's ordinances as a heckler's veto. *Cf. Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022) (stating religious exercise does not "readily give way to a 'heckler's veto'"). But the Kentucky Supreme Court relieved them of that burden without a justifiable basis.

2. The Kentucky Supreme Court also held that petitioner would not endure a substantial burden because the inability to build the grotto on the selected site was self-inflicted. The court stated that petitioner had "voluntarily submitted an application," even though it had "every reason to know * * * that building the grotto was not permitted by the [zoning] ordinance." App. 27a. In other words, petitioner's religious exercise was not substantially burdened because it knew that the city ordinance imposed the burden before it sought to engage in that form of religious exercise.

That reasoning would hollow out RLUIPA in a vast swath of cases. The statute imposes heightened scrutiny on any "land use regulation * * * that imposes a substantial burden" on religious exercise. 42 U.S.C. § 2000cc(a)(1). And this heightened protection must be construed broadly, not in a manner that "authorize[s] any government to burden any religious belief." *Id.* §§ 2000cc-3(a), (g). There is no exception for when a claimant *knows* a regulatory process will impose a substantial burden but seeks to enforce its RLUIPA rights. The statute contains no requirement to examine the claimant's actions, much less its subjective beliefs. Rather, RLUIPA focuses on the extent of the *government's* interference.

Moreover, under this reasoning, state and local governments could impose all manner of burdens on religious exercise so long as they give adequate notice to religious institutions—including by simply enacting the burdensome laws. That would empty the statute of almost all value, despite Congress's command that it be read expansively to protect religious exercise.

The Kentucky Supreme Court's holding conflicts with *Holt* in this respect as well. There, the prison's preexisting policies did not provide for religious exceptions to the prohibition on facial hair. 574 U.S. at 359. This Court nevertheless concluded that the policy substantially burdened Holt's religious exercise. *Id.* at 361-62. Nothing turned on whether Holt *knew* that the facility's policy forbade facial hair or whether the stated policies gave adequate notice. In fact, he did know the policy prohibited his growing a beard—that is why he sought an exemption under RLUIPA. *See id.* at 359.

Likewise, in *Ramirez*, no one disputed that an inmate's religious exercise was substantially burdened when officials denied a request to have his pastor lay hands on him during his execution. 595 U.S. at 426. The Court did not attach any significance to whether Ramirez knew prison officials would deny his request under their policy.

The same result should apply in the land-use context. Whether a claimant is aware of the challenged prohibition is not relevant to whether the prohibition imposes a substantial burden on religious exercise. Any other conclusion would preserve the statute's land-use protections only where the challenged prohibition allows for discretionary exceptions or where a prohibition is retroactively applied. Congress would have written a different text if the land-use provisions were limited to those contexts.

B. Federal And State Courts Are Deeply Divided Over The Proper Interpretation Of The Substantial Burden Provision

This case would give the Court the opportunity to bring clarity to lower courts on the showing required under the Substantial Burden Provision of RLUIPA's land-use section. Federal courts of appeals and state supreme courts have adopted different standards and have widely recognized that those standards are not consistent. Moreover, courts have identified at least *sixteen* different factors purportedly relevant to the analysis (only four of which the Kentucky Supreme Court adopted here). That level of disagreement calls out for this Court's review, especially given that it does not appear that any of these standards comport with the statutory text or this Court's precedents.

1. The conflict among lower courts is deeply entrenched and widely acknowledged. The First Circuit, for example, observed more than a decade ago that "[a] number of other circuits have announced tests" for what constitutes a substantial burden, "but the standards they have announced have not been consistent." *Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 95 (1st Cir. 2013) (citing decisions of the Fourth, Sixth, Seventh, Ninth, and Eleventh Circuits). Without this Court's guidance, "[c]ourts have struggled to determine what is and what is not a substantial burden," and "different circuits have come up with varying interpretations." 3 RELIGIOUS ORGANIZATIONS & THE LAW § 29:18 (2025).

This confusion has proliferated throughout state and federal courts. The Michigan Supreme Court has "reject[ed] th[e] definition of 'substantial burden'" adopted by the Sixth Circuit, creating a conflict

between federal and state courts in Michigan. *Greater Bible Way Temple of Jackson v. City of Jackson*, 733 N.W.2d 734, 750 n.23 (2007), *cert. denied* 552 U.S. 1332 (2008). The Eleventh Circuit has rejected the Fourth Circuit's test as too "demanding." *Vision Warriors Church, Inc. v. Cherokee Cnty. Bd. of Comm'rs*, 2024 WL 125969, at *7 (11th Cir. Jan. 11, 2024). The Sixth Circuit has rejected the Second, Seventh, and Ninth Circuits' consideration of "arbitrary, capricious, or discriminatory" decisionmaking when identifying a substantial burden. *Livingston*, 858 F.3d at 1004-05; *see also Roman Cath. Bishop*, 724 F.3d at 97 (First Circuit siding with the Second, Seventh, and Ninth Circuits). And the Sixth and Fourth Circuits have rejected the First Circuit's willingness to consider "discrimination" as evidence of a substantial burden. *See Livingston*, 858 F.3d at 1005; *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 556-57 (4th Cir. 2013); *Roman Cath. Bishop*, 724 F.3d at 96.

Even a brief review of lower-court precedential decisions show that they are all over the map. The Michigan Supreme Court has established a "coercion" standard: "[A] 'substantial burden' on one's 'religious exercise' exists where there is governmental action that coerces one into acting contrary to one's religious beliefs by way of doing something that one's religion prohibits or refraining from doing something that one's religion requires." *Greater Bible Way*, 733 N.W.2d at 750. On that view, "a 'substantial burden' exists when one is forced to choose between violating a law (or forfeiting an important benefit) and violating one's religious tenets." *Ibid.* That cramped understanding of a substantial burden is in considerable tension (to say the least) with RLUIPA's text, which

states that religious exercise "includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief," 42 U.S.C. § 2000cc-5(7)(A).

The Oregon Supreme Court has adopted a slightly more relaxed version of that erroneous standard, where "pressure" to abandon religious principles (not just being "forced" to do so) can suffice: "[A] government regulation imposes a substantial burden on religious exercise only if it 'pressures' or 'forces' a choice between following religious precepts and forfeiting certain benefits, on the one hand, and abandoning one or more of those precepts in order to obtain the benefits, on the other." *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. City of West Linn*, 111 P.3d 1123, 1130 (Or. 2005).

Taking a different approach entirely, the Maryland Supreme Court focuses on alternative "means" for claimants to comply with religious precepts: "[A] land use regulation, or a zoning authority's application of it, imposes a substantial burden on religious exercise only if it leaves the aggrieved religious institution without a reasonable means to observe a particular religious precept." *Trinity Assembly of God of Balt. City, Inc. v. People's Counsel for Balt. Cnty*, 962 A.2d 404, 429 (Md. 2008). "If, however, the religious institution may adhere to that precept through some viable alternative mode," no substantial burden exists, "even though it may make that exercise more difficult or expensive"—seemingly no matter the cost. *Ibid.* Indeed, in serious tension with RLUIPA's instruction that it "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise," 42 U.S.C. § 2000cc-3(c), the Maryland Supreme Court has held

that "a zoning authority need not subsidize a religious group by applying a regulation in a manner that makes it easier or cheaper for the group to follow its beliefs," *Trinity Assembly of God*, 962 A.2d at 430.

The Fourth Circuit asks whether the land-use regulation would require the claimant to acquire a different piece of property—a seemingly fatal test in a wide array of cases. Accordingly, "an impediment is substantial if the property would serve an unmet religious need, the restriction on religious use is absolute rather than conditional, and the organization must acquire a different property as a result." *Alive Church of the Nazarene, Inc. v. Prince William County*, 59 F.4th 92, 106 (4th Cir. 2023) (citation omitted); *see Canaan Christian Church v. Montgomery County*, 29 F.4th 182, 194 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 566 (2023). "An impediment is absolute where land use restrictions wholly prevent a religious organization from building any house of worship on its property, rather than simply imposing limitations on the building." *Alive Church*, 59 F.4th at 106. So, for example, a restriction on a building's size is not an absolute impediment because "it would still allow a religious institution to construct a building." *Ibid.* That is a remarkable standard: A zoning ordinance could force a church or mosque to be the size of a studio apartment, and the claimant's RLUIPA defense would fail at the threshold. And even when facing "an absolute impediment to religious practice," a burden is self-imposed if the clamant "acquire[d] land knowing that it is subject to certain restrictions." *Ibid.* For the reasons stated above, that conception of a "self-imposed" burden guts the statute.

Other courts have adopted seemingly more relaxed standards. For example, the Second Circuit asks whether the challenged land-use regulation "directly coerces the religious institution to change its behavior," but it applies that standard less stringently than the Michigan Supreme Court. *Fortress Bible Church v. Feiner*, 694 F.3d 208, 218-19 (2d Cir. 2012) (internal quotation marks omitted). Under its view, coercion exists if the regulation has "more than a minimal impact on religious exercise, and there must be a close nexus between the two." *Id.* at 219. Applying that standard, the Second Circuit has explained that "[a] denial of a religious institution's building application is likely not a substantial burden if it leaves open the possibility of modification and resubmission." *Ibid.* A "definitive" denial is not a substantial burden only if the claimant can engage in the same religious exercise through minimal adjustments—for example, "where a school could easily rearrange existing classrooms to meet its religious needs in the face of a rejected application to renovate." *Westchester Day Sch. v. Village of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007).

For its part, the Eleventh Circuit has held that "a 'substantial burden' is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly," such as "pressure that tends to force adherents to forego religious precepts or "pressure that mandates religious conduct." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004), *cert. denied*, 543 U.S. 1146 (2005). The Eleventh Circuit has stressed that "it isn't necessary for a plaintiff to prove * * * that the government required her to completely surrender her religious beliefs; modified behavior, if the result of government coercion or pressure, can be enough."

Thai Meditation Ass'n of Ala., Inc. v. City of Mobile, 980 F.3d 821, 831 (11th Cir. 2020).

The Ninth Circuit has held that "[a] land use regulation imposes a substantial burden when it is oppressive to a significantly great extent," as assessed through the "totality of the circumstances." *Spirit of Aloha Temple v. County of Maui*, 132 F.4th 1148, 1156 (9th Cir. 2025) (citation omitted), *cert. denied*, 2025 WL 3506988 (2025). Under that standard, the Ninth Circuit has found a substantial burden when the "net effect" of a land-use decision is to "lessen the possibility that [a religious entity] could find a suitable property" for its religious exercise. *Guru Nanak Sikh Soc'y of Yuba City v. County of Sutter*, 456 F.3d 978, 991-92 (9th Cir. 2006). And it has reversed district courts that found that religious entities have ready alternatives when that determination reflected a "rejection of the Church's characterization of its core beliefs." *Int'l Church of Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1069 (9th Cir. 2011), *cert. denied*, 565 U.S. 882 (2011).

Finally, the First and Sixth Circuits have declined to provide any overarching standard at all, resting instead on a list of non-exhaustive factors. *Roman Cath. Bishop*, 724 F.3d at 95; *Livingston.*, 858 F.3d at 1004-05; *see Be the Bush Recovery Ministries v. Coffee County*, 2025 WL 2806783, at *8 (6th Cir. Oct. 2, 2025).

2. Compounding this confusion for trial courts and litigants, the various tests offered by appellate courts have generated no less than sixteen different factors courts should consider in deciding whether a land-use restriction amounts to a substantial burden, with different courts emphasizing some and not others:

1. whether a regulation targets religion;
2. whether regulators used a process with a predetermined outcome;
3. whether a restriction was imposed arbitrarily;
4. whether a regulation is neutral and generally applicable;
5. whether any denials of a proposed land use are absolute or conditional;
6. whether a conditional denial is itself a substantial burden;
7. whether a denial is final;
8. whether the claimant has adequate alternatives;
9. whether any harms are self-imposed;
10. whether the claimant has suffered any delay, uncertainty, or expense because of a regulation;
11. whether the claimant is prevented from using other properties in a given area;
12. whether the claimant has demonstrated a need for a new space;
13. whether a regulation deprives claimants of any viable means to engage in religious exercise;
14. whether there is a nexus between a regulation and religious conduct;
15. whether a property or proposed use would serve an unmet religious need; and
16. whether a religious entity is being forced to acquire new property.

See, e.g., *Roman Cath. Bishop*, 724 F.3d at 96; *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 195 (2d Cir. 2014), *cert. denied*, 575 U.S. 963 (2015); *Spirit of Aloha Temple*, 132 F.4th at 1156; *Thai Meditation*, 980 F.3d at 831-32; *Alive Church*, 59 F.4th at 106. A legal landscape with this many different considerations gives little guidance. Parties and courts would benefit from a clear articulation of the standards and relevant considerations by this Court.

Moreover, many of these factors have no obvious relation to whether a regulation imposes a substantial burden on religious exercise. For example, although factors like whether the regulator acted arbitrarily or with a predetermined outcome are certainly relevant to whether the government has a compelling interest, they do not pertain to whether the burden is itself substantial. And for the reasons explained above, factors like "whether a regulation deprives claimants of any viable means to engage in religious exercise" are far too demanding to the extent that they are invoked as a floor for a substantial burden.

Adding to this confusion are concerns raised by multiple courts, including the Second, Sixth, and Seventh Circuits, that interpreting "substantial burden" broadly in favor of religious land use could run afoul of the Establishment Clause as interpreted by this Court's now-abrogated decision in *Lemon v. Kurtzman*, 403 U. S. 602 (1971). *See, e.g.*, *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 900 (7th Cir. 2005); *Westchester Day Sch. v. Vill. of Mamaroneck*, 386 F.3d 183, 189 (2d Cir. 2004); *Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App'x 729, 741 n.6 (6th Cir.

2007), *cert. denied*, 553 U.S. 1093 (2008). Courts have therefore restricted this provision in a manner comparable to the unduly narrow understanding of Title VII's religious accommodation provision before this Court issued critical guidance in *Groff v. DeJoy*, 600 U.S. 447, 460 (2023).

3. Under the standards adopted by some other courts, petitioner would have been able to establish that barring it from constructing a shrine on adjacent property was a substantial burden.

For example, in *Westchester Day School*, *supra*, the Second Circuit held that denying a permit to allow a religious school to construct new facilities on its existing property constituted a substantial burden on the school's religious exercise. 504 F.3d at 352. The school's existing facilities were inadequate for its needs, and the school needed to expand. The school could not just "reallocat[e] space within its existing buildings"—its religious exercise required new construction. *Id.* Even though the school could continue to use its old buildings, prohibiting the new construction on the school's existing property substantially burdened its religious exercise. *See also Thai Meditation*, 980 F.3d at 831.

Similarly, in *International Church of Foursquare Gospel*, the Ninth Circuit held that denying a church's applications for rezoning and a conditional-use permit constituted a substantial burden. 673 F.3d at 1067-68. The church had purchased a new lot to accommodate its expanding congregation, and the denials prohibited it from constructing facilities of an adequate size. *Id.* at 1067. Importantly, the Ninth Circuit rejected the argument that the church had an adequate alternative to constructing a larger building because

it could use its smaller existing facilities and hold multiple services to accommodate its congregation—essentially the same argument that the Kentucky Supreme Court credited here. *Id.* at 1069. As the Ninth Circuit made clear, that decision was not for the court to make, because the church believed that only the larger building was suitable for its religious exercise. *Id.* The district court's contrary determination ran "counter to the Supreme Court's admonition that * * * courts should not inquire into the truth or falsity of stated religious beliefs." *Id.*

That same reasoning applies here. Petitioner believes it is God's will that petitioner construct a shrine to the Virgin Mary on its adjoining property. The zoning ordinance has prohibited that construction entirely. And it is not for the courts to determine whether a smaller shrine, located in a different place, constitutes an adequate alternative.

C. This Case Presents An Ideal Vehicle To Resolve The Important And Recurring Question Of What Qualifies As A Substantial Burden

This case provides a clean vehicle for resolving the meaning of a "substantial burden" under RLUIPA's land-use provision and to offer guidance to lower courts in applying that standard. The question of the proper standard was resolved below and was outcome-determinative. There is little question that petitioner could prevail on that element under a more relaxed test. *See* pp. 26-27, *supra*.

The standard for a "substantial burden" in the land-use context—and whether factors like alternative sites, size modifications, and foreknowledge of a

challenged ordinance are relevant—is an important and recurring question. Congress enacted the statute 26 years ago, and while numerous federal and state appellate courts have addressed the question, this Court never has. Because establishing a "substantial burden" is a necessary threshold showing, many RLUIPA cases are won or lost on this ground. But the state and federal courts are deeply divided on the basic standard. Their distinct rules for resolving the issue often rely on ad hoc lists of questionable factors that provide little guidance to judges or religious institutions. This Court's guidance is thus sorely needed.

II. The Court Should Resolve the Persistent Division Over RLUIPA's Equal Terms Provision.

RLUIPA's Equal Terms Provision also calls out for this Court's definitive construction. As Judge Thapar explained eight years ago:

> There comes a time with every law when the Supreme Court must revisit what the circuits are doing. That time has come. Every circuit to address the issue has given its own gloss to the Equal Terms provision. Whether a religious plaintiff can succeed under the Equal Terms provision thus depends entirely on where it sues.

Tree of Life, 905 F.3d at 387 (dissenting). That observation is even more true today than when it was written. The conflict Judge Thapar described has only deepened in recent years.

The Kentucky Supreme Court's decision here offered perhaps the most dubious interpretation yet. It

held that denying a permit to petitioner would not violate the Equal Terms Provision because *some* secular entities face the same prohibition as places of worship, even though numerous other secular entities do not. No court had previously endorsed such a facially erroneous rule. This case thus presents an ideal vehicle to resolve the deep, well-recognized conflict.

A. The Kentucky Supreme Court Misconstrued The Equal Terms Provision

The Equal Terms Provision states that the government may not impose a land-use regulation that treats "a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1). Here, it is undisputed that numerous nonreligious assemblies and institutions—including those where comparable numbers of people congregate—are exempt from the ordinance barring conditional-use permits unless the proposed structure is located next to an arterial street. As the statute quoted in the decision below states on its face, the following entities may obtain a conditional-use permit even if they are not adjacent to an arterial street: cemeteries; nursery schools; public and parochial schools; publicly owned or operated parks, playgrounds, golf courses, community recreational centers, and libraries; and privately owned or operated recreational facilities, including golf courses and country clubs. App. 28a-29a (quoting App. 74a-75a). In contrast, "[c]hurches and other buildings for the purpose of religious worship" may obtain conditional-use permits only if "they are located adjacent to an arterial street." App. 28a.

The ordinance on its face therefore does not apply the same terms to places of worship as it does to many nonreligious assemblies and institutions. That distinction facially violates RLUIPA. And the Kentucky Supreme Court did not even suggest that the difference in treatment is justified by some consideration that applies in a special way to places of worship.

Instead, the Kentucky Supreme Court relied on the fact that some nonreligious buildings are also subject to the arterial-street requirement, including police stations and institutions of higher education. App. 29a. But that is not sufficient to satisfy the Equal Terms Provision. On that view, a city ordinance could treat religious institutions worse than all other property uses but one and evade RLUIPA. That cannot be what Congress meant.

The Kentucky Supreme Court's observation that parochial schools are also exempt from the arterial-street requirement does not rescue the ordinance. The court appeared to believe that because at least one type of religious institution faces no restriction, churches cannot claim unequal treatment. But the Equal Terms Provision prohibits treating "a religious assembly or institution on *less than equal terms* with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1) (emphasis added). The comparison the statute demands runs between religious and nonreligious uses, not among different categories of religious uses.

The Kentucky Supreme Court's approach also runs headlong into this Court's Free Exercise Clause precedents, which confirm that when any comparable secular activity is treated more favorably than religious exercise, heightened scrutiny applies. In *Tandon v.*

Newsom, 593 U.S. 61 (2021) (per curiam), for example, this Court held that strict scrutiny is triggered when government treats "*any* comparable secular activity" more favorably than religious exercise regardless of whether it "treats some comparable secular businesses or other activities as poorly" and made clear that comparability is assessed against "the asserted government interest that justifies the regulation at issue." *Id.* at 593 U.S. at 62. Similarly, in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020) (per curiam), the Court took a broad view of secular comparators, finding that allowing acupuncture facilities, chemical plants, and transportation services to operate while restricting religious assemblies was constitutionally significant without requiring that those uses be identical to religious ones in all respects. *Id.* at 17.

It would be remarkable if RLUIPA, which was enacted to close perceived gaps in this Court's Free Exercise Clause jurisprudence, offered substantially less protection than those precedents against discriminatory treatment. *See* 146 Cong. Rec. S7774–76 (2000) (statement of Sen. Hatch); 146 Cong. Rec. H7190 (2000) (statement of Rep. Canady); *see also Cutter v. Wilkinson*, 544 U.S. 709, 714-15 (2005) (describing RLUIPA as Congress's response to Free Exercise Clause precedents).

B. Courts Are Deeply And Irreconcilably Divided Over The Meaning Of The Equal Terms Provision

As Judge Thapar explained, the circuits are sharply divided over the meaning of the Equal Terms Provision.

1. Seven circuits—the First, Second, Third, Fourth, Sixth, Seventh, and Tenth—hold that to prevail under the Equal Terms Provision, a plaintiff must identify a nonreligious comparator that is "similarly situated" to the religious institution and yet treated more favorably. *See Signs for Jesus v. Town of Pembroke*, 977 F.3d 93, 109-10 (1st Cir. 2020); *Third Church of Christ, Scientist v. City of New York*, 626 F.3d 667, 670 (2d Cir. 2010); *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 264 (3d Cir. 2007), *cert. denied*, 553 U.S. 1065 (2008); *Canaan Christian Church*, 29 F.4th at 196; *Tree of Life*, 905 F.3d at 368; *River of Life Kingdom Ministries v. Village of Hazel Crest*, 611 F.3d 367, 371 (7th Cir. 2010); *Rocky Mountain Christian Church v. Bd. of Cty. Comm'rs*, 613 F.3d 1229, 1236-37 (10th Cir. 2010), *cert. denied*, 562 U.S. 1136 (2011).

But although these circuits share a "similarly situated" requirement, each has given that phrase its own meaning, producing sub-interpretations so divergent that they effectively function as distinct tests.

For example, the Third Circuit, which originated the approach, asks whether the comparator is similarly situated "as to the regulatory purpose." *Lighthouse*, 510 F.3d at 264. The First Circuit has adopted a similar formulation, requiring that comparators be similarly situated "with respect to the purpose of the underlying regulation." *Signs for Jesus*, 977 F.3d at 109.

The Seventh Circuit, sitting en banc, rejected those formulations in favor of asking whether the secular comparator is similarly situated with respect to a zoning code's objective criteria, reasoning that an inquiry into regulatory purpose "invites speculation

concerning the reason behind exclusion of churches" and creates opportunities for "zoning classifications thinly disguised as neutral but actually systematically unfavorable to churches." *River of Life*, 611 F.3d at 371. The Sixth Circuit likewise asks whether the comparator is similarly situated with regard to "the legitimate zoning criteria set forth in the municipal ordinance." *Tree of Life*, 905 F.3d at 368. Consistent with their interpretations of RLUIPA's Substantial Burden Provision, the Sixth and Seventh Circuits justified their interpretations of the Equal Terms Provision in part on concerns that broader religious protections would violate the Establishment Clause. *Tree of Life*, 905 F.3d at 368; *River of Life*, 611 F.3d at 370.

The Fourth Circuit requires a comparator "similarly situated with regard to the regulation at issue"—a formulation seemingly more demanding than the regulatory-purpose test and the zoning-criteria test. *Canaan Christian Church*, 29 F.4th at 196 (quoting *Tree of Life*, 905 F.3d at 368).

The practical effect of these approaches at the outset is severe. As Judge Sykes warned in her *River of Life* dissent, they effectively prevent plaintiffs from bringing facial challenges under the Equal Terms Provision because "[z]oning authorities will have little difficulty articulating their objectives in such a way as to prevent an excluded religious assembly from identifying a better-treated nonreligious comparator." 611 F.3d at 386-87. Judge Richardson made a similar point in his *Canaan Christian Church* concurrence, questioning whether any "similarly situated" requirement should apply to facial challenges at all and arguing that "only the as-applied challenge requires [a

religious adherent] to bring forward a comparator of any kind." 29 F.4th at 200.

2. The Fifth and Ninth Circuits have charted a different course, rejecting the threshold comparator requirement in favor of a burden-shifting framework. Under their approach, a plaintiff establishes a prima facie Equal Terms Provision violation simply by pointing to an "express distinction" between religious and nonreligious assemblies in the text of the ordinance. The burden then shifts to the government to prove that any nonreligious use treated more favorably is not similarly situated to the religious plaintiff.

The Ninth Circuit first articulated this approach in *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163 (9th Cir. 2011), holding that "the express distinction drawn by the ordinance establishes a prima facie case for unequal treatment." *Id.* at 1171. The Fifth Circuit adopted the same framework in *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279 (5th Cir. 2012), citing *Centro Familiar*. *Id.* at 291-92. The Ninth Circuit reaffirmed and elaborated on the approach a decade later in *New Harvest Christian Fellowship v. City of Salinas*, 29 F.4th 596 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 567 (2023), which catalogued the circuit conflict and acknowledged that its framework makes it "easier for the plaintiff to make out a prima facie case." *Id.* at 607 n.10.

3. A third line of authority, anchored by the Eleventh Circuit, dispenses with the similarly-situated requirement altogether for facial challenges. Drawing on this Court's Free Exercise Clause precedents, the Eleventh Circuit asks simply whether the zoning code treats a religious assembly or institution differently

than a nonreligious one and subjects any such differential treatment to strict scrutiny (which defies the plain language of the statute). *Midrash Sephardi*, 366 F.3d at 1229-30. The Eleventh Circuit's framework reserves the comparator inquiry for the narrow category of as-applied selective-enforcement claims. *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County*, 450 F.3d 1295, 1308, 1311 (11th Cir. 2006).

4. The Kentucky Supreme Court's decision does not fit within any of the foregoing approaches because it deemed sufficient to defeat petitioner's RLUIPA defense that there are *some* nonreligious institutions treated similarly. It made no finding that the institutions exempt from the arterial-street requirements, such as country clubs and nursery schools, are differently situated. And it is hard to see how they could be: Those property uses often generate traffic and parking issues—and not only on Saturday evenings and Sundays.

Given the divergent approaches of lower courts—including on such fundamental issues as who bears the burden of outcome-determinative questions—this Court should resolve the proper meaning of the Equal Terms Provision. It has been eight years since Judge Thapar expressed the need for further review, and there is no reasonable prospect that the conflict will resolve itself.

C. The Proper Understanding Of The Equal Terms Provision Is An Important Question Squarely Presented Here

This case is an ideal vehicle for resolving the Equal Terms conflict. The relevant facts are simple and

undisputed: The decision below block-quotes the ordinance requiring different treatment of places of worship and other land uses. The legal question is purely one of statutory interpretation, and the issue has been addressed through three levels of state courts. Ten federal courts of appeals have already addressed the question of the appropriate standard, so this Court would have the benefit of the views of numerous other jurists.

The costs of continued confusion are substantial. As the many cases in lower courts show, local land-use ordinances often treat religious buildings less favorably than other edifices. Municipal planning agencies, religious organizations, and lower courts alike would benefit from a definitive resolution of the standard for establishing an Equal Terms Provision violation. As things stand, the effective scope of a statute meant to provide a uniform national standard for applying land-use restrictions to houses of worship and other religious institutions varies widely by geography.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

KELLY J. SHACKELFORD
JEFFREY C. MATEER
HIRAM S. SASSER, III
DAVID J. HACKER
JEREMIAH G. DYS
RYAN N. GARDNER
FIRST LIBERTY INSTITUTE
2001 W. Plano Parkway
Suite 1600

JOHN F. BASH
Counsel of Record
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
300 W. 6th St., Suite 2010
Austin, Texas 78701
(737) 667-6100
johnbash@quinnemanuel.com

Plano, TX 75075
(972) 941-4444

THOMAS W. BREIDENSTEIN
BREIDENSTEIN LEGAL SERVICES, LLC
855 Greenville Avenue
Suite 300
Cincinnati, OH 45246
(513) 607-3452

OLIVIA HORTON*
QUINN EMANUEL URQUHART & SULLIVAN, LLP
555 13th Street NW, Suite 600
Washington, DC 20004
(202) 538-8077
**admitted in Texas; not admitted in D.C. Supervised by attorney admitted in D.C.*

BROCK MASON
QUINN EMANUEL URQUHART & SULLIVAN, LLP
2755 E. Cottonwood Pkwy
Salt Lake City, UT 84121
(801) 515-7324

March 18, 2026

Counsel for Petitioner