NO. 25-1131

IN THE

Supreme Court of the United States

MISSIONARIES OF SAINT JOHN THE BAPTIST, INC.,

Petitioner,

v.

JOEL FREDERIC, ET UX.,

Respondents.

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

BRIEF OF LIBERTY, LIFE AND LAW FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Liberty, Life and Law Foundation ("LLLF"), as *amicus curiae*, respectfully urges this Court to grant the Petition for Writ of Certiorari and reverse the decision of the Kentucky Supreme Court.

LLLF is a North Carolina nonprofit corporation established to defend fundamental constitutional liberties, including religion and speech. LLLF's founder is the author of *Death of a Christian Nation* (2010) and many *amicus curiae* briefs in this Court.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Having a place of worship, "a physical space adequate to their needs and consistent with their theological requirements," is "at the very core" of religious liberty for churches and other religious organizations. *Int'l Church of Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1069 (9th Cir. 2011). "The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes." *Id.* That core right is at the heart of this case, as Petitioner Missionaries of St. John the Baptist (the

[1] Counsel of record for all parties received notice at least 10 days prior to the due date of *amicus curiae*'s intention to file this brief. *Amicus curiae* certifies that no counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus*, its members, or its counsel, has made a monetary contribution to its preparation or submission.

Church) seeks to build an outdoor grotto on its own real property for prayerful meditation and religious ceremonies.

RLUIPA defines "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," and expressly provides that the "use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise." *See* 42 U.S.C.S. § 2000cc-5(7)(A)-(B); *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 347 (2d Cir. 2007) ("using, building, or converting real property for religious exercise purposes"). "Congress recognized that places of assembly are needed to facilitate religious practice, as well as the possibility that local governments may use zoning regulations to prevent religious groups from using land for such purposes." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1226 (11th Cir. 2004). The Church's proposed grotto indisputably falls well within the statutory definition as intended by Congress.

RLUIPA "protects individuals and religious institutions from discrimination in zoning and landmarking laws," offering "broad protection for religious liberty." *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 452 (6th Cir. 2023) (Clay, J., concurring), citing *Holt v. Hobbs*, 574 U.S. 352, 356 (2015) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014)). Indeed, RFRA[2]

[2] RFRA and RLUIPA have virtually identical "substantial burden" language. *Cf.* 42 U.S.C.S. §2000bb-1(a), §2000cc-1(a). In

did not "merely restore[] . . . pre-*Smith* decisions in ossified form" but rather "provide[s] very broad protection for religious liberty" "far beyond what th[e] Court has held" previously. *Id.* at 682, 693, 706, 715. RLUIPA places an "exceptionally demanding" burden on the government to articulate a compelling interest it cannot achieve by any less restrictive means. *Holt v. Hobbs*, 574 U.S. at 364-365; *Hobby Lobby,* 573 U.S. at 728.

Prior to RLUIPA, the Court declined to find a free exercise violation where the government managed its own internal affairs in a manner that did not coerce individuals to violate their religious beliefs. *See, e.g.*, *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988) (management of government's own land); *Bowen v. Roy*, 476 U.S. 693, 707-08 (1986) (internal government action assigning Social Security numbers). Zoning decisions were generally not found to impose a substantial burden on religious exercise. *Midrash*, 366 F.3d at 1225-1226 (collecting cases). These pre-RLUIPA cases "all considered whether the religious exercise implicated by zoning decisions was integral to a believer's faith. RLUIPA obviates the need for such analysis by providing a statutory definition of religious exercise." *Ibid.* (internal quotation marks omitted). But the analysis of "substantial burden" does not begin and end with free exercise jurisprudence. Substantial burdens on the use of land for religious

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Holt v. Hobbs, the Supreme Court described the two as "sister statute[s]" imposing "the same standard." 574 U.S. at 358.

purposes differ from the burdens commonly present in other cases.

This case involves a total prohibition of the Church's use of its own real property for a religious practice mandated by its religious doctrine. Such a complete ban exceeds the burden that additional expense or delay would impose. A substantial burden exists where the government erects an absolute bar to a religious practice that a church has determined is required by its religious doctrine—regardless of alternatives the government considers reasonable. "[I]f 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) ("preventing a religious exercise is, necessarily, a 'substantial burden' on that religious exercise.")

ARGUMENT

I. THE OUTRIGHT BAN OF A RELIGIOUS EXERCISE IMPOSES A SUBSTANTIAL BURDEN.

The Kentucky Supreme Court ruling, *Missionaries of Saint John the Baptist, Inc. v. Frederic,* 2025 Ky. LEXIS 230 (Dec. 18, 2025), if upheld, effectively bars the Church's plans to construct a grotto for religious exercise. If significant delay, uncertainty, or expense creates a substantial burden, then surely an absolute ban or effective bar easily qualifies. This Court recently found that "Texas's categorical ban on religious touch" was not the least restrictive means of achieving the state's

admittedly compelling interests in prison security and preventing unnecessary suffering or emotional trauma. *Ramirez v. Collier*, 595 U.S. 411, 431 (2022). Here, there is no apparent "compelling interest" that warrants forcing the Church to abandon its construction plans.

On this important point, *Livingston* is out of step with logic, this Court's ruling in *Ramirez*, and other circuit court rulings. *Livingston* declined to follow the "effective bar" language in the unpublished *Living Waters Church of God v. Charter Twp. of Meridian*, citing a caution in Judge Moore's concurrence that the effective-bar prong was "so broad as to swallow the substantial-burden inquiry." 258 F. App'x 729, 742 (6th Cir. 2007) (Moore, J., concurring). The court reasoned that "a substantial burden would automatically exist" if the effective-bar prong were adopted. *Livingston Christian Schs. v. Genoa Charter Township*, 858 F.3d 996, 1003 (6th Cir. 2017), *cert. denied*, 584 U.S. 961 (2018), citing *Andon, LLC v. City of Newport News*, 813 F.3d 510, 516 (4th Cir. 2016) (explaining it would essentially create an "automatic exemption" from land-use regulations for religious plaintiffs, contrary to RLUIPA's intent).

Far from creating an "automatic exemption" or religious veto power, an effective bar or complete ban on a religious practice merely shifts the burden and triggers the compelling interest analysis. 42 U.S.C.S. §2000cc(a)(1).

A. Other Sixth Circuit cases affirm that an effective bar qualifies as a substantial burden under RLUIPA.

Contrary to the Kentucky Supreme Court, the Sixth Circuit acknowledges that "[t]he greater restriction (barring access to a religious practice) includes the lesser one (substantially burdening the practice)," which is all RLUIPA requires for a substantial burden. *Haight v. Thompson*, 763 F.3d 554, 565 (6th Cir. 2014) (cleaned up). *Haight* involved a prisoner's RLUIPA claim where the prison "barred access . . . altogether" to foods required for a religious ceremony, which "effectively barred the inmates from this religious practice and force[d] them to modify their behavior." *Ibid.* *Haight* also cites *DiLaura v. Township of Ann Arbor*, 112 F. App'x 445, 446 (6th Cir. 2004) (per curiam). In *DiLaura*, the township refused to grant a zoning variance to a church wanting to operate a facility for "contemplative prayer." The refusal restricted the church's ability to provide communion wine and thereby "effectively barred [the church] from using the property in the exercise of [its] religion"—a substantial burden under RLUIPA. *Ibid. See also Cavin v. Michigan Dep't of Corr.*, 927 F.3d 455, 458–59 (6th Cir. 2019) (substantial burden where prison policy prevented inmate from celebrating religious festivals with a group and from accessing religious items needed for those festivals).

B. The Seventh, Fourth, and First Circuits have defined "substantial burden" in stringent terms that require an absolute bar.

Two Seventh Circuit cases defined "substantial burden" as one that "necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable." *Civil Liberties for Urban Believers v. City of Chicago ("CLUB")*, 342 F.3d 752, 761 (7th Cir. 2003); *see also Eagle Cove Camp & Conf. Ctr., Inc. v. Town of Woodboro*, 734 F.3d 673, 680-681 (7th Cir. 2014). "In other words, in order for there to be a substantial burden, religious exercise must be *operatively impossible*. This reads more like a requirement for an *effective bar* on free exercise rather than a substantial burden on religious exercise." Andrew Denning, *RLUIPA: Calming the Interpretive Seas*, 62 U. Louisville L. Rev. 227, 233 (2023) (emphasis added). The Seventh Circuit apparently softened its harsh standard after this Court explained that RLUIPA covers "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *Holt v. Hobbs*, 574 U.S. 352, 360 (2015), citing 42 U.S.C.S. §2000cc-5(7)(A). "If that [*CLUB*] were the standard, then Schlemm would lose, for he still could dance and pray during the Ghost Feast." *Schlemm v. Wall*, 784 F.3d 362, 364 (7th Cir. 2015) (lack of game meat for a religious exercise was a substantial burden). In *Holt v. Hobbs*, and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), this Court articulated a standard much easier to satisfy.

The Fourth Circuit spoke of an even more comprehensive ban — "the County . . . *completely prevented* Bethel from building *any* church on its property, rather than simply imposing limitations on a new building." *Bethel World Outreach Ministries v. Montgomery Cnty. Council*,706 F.3d 548, 558 (4th Cir. 2013) (emphasis added). A decade later, the court explained that a burden 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), citing *Jesus Christ Is the Answer Ministries v. Balt. Cty.*, 915 F.3d 256, 261 (4th Cir. 2019). But—citing *Bethel*, 706 F.3d at 557-558—the court explained that "[a]n 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 . . . if a land-use restriction would limit the building's size, that restriction is not an absolute impediment, as it would still allow a religious institution to construct a building." *Alive Church*, 59 F.4th at 106 (emphasis added).

The First Circuit applied a similarly stringent standard, effectively barring the use of property for religious purposes. *Roman Catholic Bishop v. City of Springfield*, 724 F.3d 78, 95 (1st Cir. 2013) (city ordinance created historic district consisting solely of Bishop's church, which could not alter exterior or demolish without historic commission's approval).

C. The Eighth and Eleventh Circuits recognize that an absolute ban qualifies as a substantial burden.

The Eleventh Circuit observed that "an individual's exercise of religion is 'substantially burdened' if a regulation *completely prevents* the individual from engaging in religiously mandated activity. . . ." *Midrash*, 366 F.3d at 1227. Eschewing the Seventh Circuit standard, *Midrash* found a substantial burden where there is "significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly" or "tends to force adherents to forego religious precepts." *Ibid.* Thus "the Eleventh Circuit provides a more sympathetic standard to religious organizations, which better comports with the statute than does the Seventh Circuit's articulation." Denning, *Calming the Interpretive Seas*, 62 U. Louisville L. Rev. at 233.

The Eleventh Circuit followed *Midrash* in *Thai Meditation Association of Alabama, Inc. v. City of Mobile, Alabama.* A RLUIPA claimant need not prove that the government has required a complete surrender of religious beliefs—"modified behavior, if the result of government coercion or pressure, can be enough." 980 F.3d 821, 831 (11th Cir. 2020).

The Eighth Circuit is consistent with the Eleventh. In a RFRA case, a bankruptcy trustee was unable to recover debtors' contributions *from their church*, even absent a penalty or the denial of a government benefit, because it would have *effectively prevented* their religious exercise of tithing, thus imposing a substantial burden. *In re Young*, 82 F.3d

1407, 1418 (8th Cir. 1996). Similarly, in *Murphy v. Mo. Dep't of Corrs.*, a complete ban on "communal worship" substantially burdened an inmate's religious exercise. 372 F.3d 979, 988 (8th Cir. 2004).

D. The Ninth and Tenth Circuits readily acknowledge that a total ban constitutes a substantial burden.

The Ninth Circuit had "little difficulty . . . concluding that an outright ban on a particular religious exercise is a substantial burden on that religious exercise." *Greene v. Solano Cnty. Jail*, 513 F.3d 982, 988 (9th Cir. 2008), citing *Meyer v. Teslik*, 411 F. Supp. 2d 983, 989 (W.D. Wis. 2006) (ban on group worship substantially burdened inmate's religious exercise—"[i]t is difficult to imagine a burden more substantial than banning an individual from engaging in a specific religious practice"). "Of course, when a regulation outright bans religious exercise, it amounts to a substantial burden." *Johnson v. Baker*, 23 F.4th 1209, 1215 (9th Cir. 2022) (prisoner's access to prayer oil barred); *see also Jones v. Slade*, 23 F.4th 1124, 1144 (9th Cir. 2022) (excluding religious texts from prison during Ramadan was substantial burden even without a penalty or denial of benefits).

The Tenth Circuit specifically observed that "[t]he term 'substantial,' . . . doesn't mean complete or total, so a 'substantial burden' need not be a complete or total one." If the lesser burden qualifies as substantial, then surely a *complete ban* or *effective bar* easily qualifies. *Yellowbear v. Lampert*, 741 F.3d 48, 55 (10th Cir. 2014) (access to sweat lodge barred). A

substantial burden exists when (at the very least) the government (1) "requires the plaintiff to participate in an activity prohibited by a sincerely held religious belief," (2) "prevents the plaintiff from participating in an activity motivated by a sincerely held religious belief," *or* (3) "places considerable pressure on the plaintiff to violate a sincerely held religious belief", e.g., "by presenting an illusory or Hobson's choice where the only realistically possible course of action available to the plaintiff trenches on sincere religious exercise." *Ibid*. These alternatives show that a burden may be "substantial" "even if it does not compel or order the claimant to betray a sincerely held religious belief" (*ibid*.)—but a total ban most certainly qualifies. As then-Judge Gorsuch explained, the government can substantially burden religious exercise by putting a plaintiff to the "choice" of forgoing religious exercise or else losing a "benefit" or suffering a "penalty." *Id*. at 56. But in *Yellowbear*, the prison gave the plaintiff no "degree of choice in the matter"; it simply "prevent[ed] the plaintiff from participating in [a religious] activity"—which "easily" qualifies as a substantial burden. *Id*. at 55-56.

II. THE KENTUCKY SUPREME COURT FLOUTS CHURCH AUTONOMY BY SUGGESTING AN ALTERNATIVE THAT IS NOT "FEASIBLE" BECAUSE IT CONFLICTS WITH THE CHURCH'S RELIGIOUS DOCTRINE.

The Kentucky Supreme Court adopted the Sixth Circuit *Livingston* ruling as its "polestar" in determining whether a "substantial burden" exists

under RLUIPA. *MSJB,* 2025 Ky. LEXIS 230 at *26. The key factors *Livingston* articulated include "whether the religious institution has a feasible alternative location from which it can carry on its mission." *Livingston*, 858 F.3d at 1004 (citing *Westchester*, 504 F.3d at 352). *MSJB* at *26. The court suggests that the Church could "construct a smaller grotto or shrine on property it already own[s]." *Id*. at * 27. But—as the Petition explains—this alternative is not truly "feasible" because it conflicts with the Church's religious faith and doctrine—an area historically protected by the doctrine of church autonomy. *See* Pet. 5-6 ("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").

Church autonomy "radiates ... a spirit of freedom for religious organizations, an independence from secular control or manipulation." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC,* 565 U.S. 171, 185-186 (2012), citing *Watson v. Jones*, 80 U.S. 679, 728-729 (1872); *see Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952). This important doctrine has historically encompassed several subjects, including religious faith and doctrine. "The law knows no heresy, and is committed to the support of no dogma . . . ." *Watson v. Jones*, 80 U.S. at 728.

Church autonomy is a "structural limit on the government's constitutional authority" that properly recognizes church and state as separate spheres with separate powers. Carl H. Esbeck, *Church Autonomy,*

Textualism, and Originalism: SCOTUS's use of History to Give Definition to Church Autonomy Doctrine, 108 Marq. 108 Marq. L. Rev. 705, 716 (Spring 2025). In short, "institutional religion is vested with a discrete zone of reserved operations." *Ibid*. Church autonomy provides "a zone of protection for an entity's internal governance that is derived from the organization's religious character . . . a categorical immunity—something like a government-free zone." Carl H. Esbeck, *An Extended Essay on Church Autonomy*, 22 Federalist Soc'y Rev. 244, 245 (2021).

Church autonomy does not automatically grant churches absolute immunity from all zoning regulations. In many cases, a church will need to comply with a neutral, generally applicable regulation. But church autonomy does protect a church's right to determine its religious doctrine. Here, the Church's faith and doctrine is intertwined with whether the court's proposed alternative—a smaller grotto at a different location, in conflict with the Church's "faith and doctrine"—is truly feasible. The court may not rewrite the Church's religious doctrine to support its conclusion that the alternative is feasible.

Protection of the Church's rights as an independent ontological entity has broad implications for preserving religious liberty more generally. "The free exercise rights of individuals . . . cannot be adequately protected unless the autonomy of religious institutions is also protected." *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Review Comm'n*, 605 U.S. 238, 257 (2025) (Thomas, J., concurring).

CONCLUSION

This Court should grant the Petition and reverse the Kentucky Supreme Court ruling.

Respectfully submitted,

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