No. 25-1131

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

BRIEF OF NATIONAL ASSOCIATION OF EVANGELICALS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER, MISSIONARIES OF SAINT JOHN THE BAPTIST INC.

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Evangelicals ("NAE") is the largest network of evangelical churches, denominations, and ministries in the United States. NAE supports 40 evangelical denominations and thousands of churches, ministries, and nonprofit organizations nationwide. For over 80 years, NAE has united evangelicals to promote religious liberty and has participated as *amicus curiae* in cases impacting religious freedom, such as *Holt v. Hobbs*, 574 U.S. 352 (2015) and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). NAE's current legal counsel, Professor Carl H. Esbeck, played a significant role in the Senate's enactment of the Religious Land Use and Institutionalized Persons Act (RLUIPA). 42 U.S.C. § 2000cc *et seq*. (2000).

NAE submits its brief because the outcome of this case will shape the rights of every religious community, not only the Missionaries of Saint John the Baptist (the "Missionaries")[2] before the Court,

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[1] Pursuant to Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no party, party's counsel, or other person other than *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund its preparation. Pursuant to Rule 37.2, *amicus curiae* certifies that counsel of record for all parties received notice of its intent to file this brief at least 10 days before it was due.

[2] *Missionaries* are a group of devout Catholics that own the lot adjacent to the church, and petitioned the local zoning board to allow it to construct a grotto honoring the Virgin Mary.

but for all faith communities. NAE's commitment to religious liberty compels it to stand with all faith communities, because once courts begin judging the significance of sacred places, every tradition becomes vulnerable to government intrusion. Religious freedom is a cornerstone for all constitutional rights, and government must protect it for every faith. The centrality test employed by the Kentucky Supreme Court undermines that freedom by giving government the power to determine which religious beliefs and practices are important enough to merit protection. Such a rule threatens all faiths and curtails the scope of religious liberty for all.

SUMMARY OF ARGUMENT

A community's physical places of worship shape its soul as much as its skyline. RLUIPA[3] embodies this principle. By shielding religious communities from discriminatory land-use decisions, Congress ensured that the physical spaces where Americans gather to worship remain beyond the reach of majoritarian rule. As Madison warned in his *Memorial and Remonstrance Against Religious Assessments*, the premise "that the Civil Magistrate is a competent Judge of Religious Truth" is "an arrogant pretension." James Madison, *Memorial and Remonstrance Against Religious Assessments* ¶

[3] Congress enacted RLUIPA in the wake of this Court's decision in *City of Boerne v. Flores*, 521 U.S. 507 (1997), which held that the Religious Freedom Restoration Act (RFRA) could not constitutionally be applied to state and local governments.

5 (1785). When Congress enacted RLUIPA, it answered a simple but urgent question: who decides how, where, and sometimes why Americans gather to practice their faith? RLUIPA's answer was unequivocal—the government cannot single out religious assemblies with unique burdens or treat sacred practice as a negotiable privilege.

This case arises because the Kentucky Supreme Court both ran afoul of the First Amendment's protection for religious self-definition, and disregarded the interpretive guidance reflected in RLUIPA's legislative history. As Senators Hatch and Kennedy explained, "substantial burden" should be interpreted "by reference to Supreme Court jurisprudence." 146 Cong. Rec. S7723, S7776 (2000). Had the court followed that directive, it would have applied this Court's precedents in *Sherbert v. Verner*, 374 U.S. 398 (1963), *Thomas v. Review Board*, 450 U.S. 707 (1981), *Hobby Lobby*, and *Holt*, none of which authorize a centrality inquiry. Instead, Kentucky's high court imported the Sixth Circuit's test in *Livingston Christian Schools v. Genoa Charter Township*, 858 F.3d 996 (6th Cir. 2017), a circuit court decision issued seventeen years after RLUIPA's enactment. *Livingston* is not Supreme Court jurisprudence. Congress could not have directed courts to follow a test that did not exist. That should have ended the matter.

The Kentucky Supreme Court also failed to apply the strict scrutiny standard that Congress

mandated and this Court has consistently enforced. Under RLUIPA, once a claimant demonstrates a substantial burden on religious exercise, the burden shifts to the government to prove that the challenged action serves a compelling interest and is the least restrictive means of achieving that interest. 42 U.S.C. § 2000cc(a)(1). This Court applied that framework in *Holt* and *Ramirez v. Collier*, 595 U.S. 411 (2022). The Kentucky Supreme Court did not.

Instead, the Kentucky Supreme Court relied on the Sixth Circuit's *Livingston* centrality test, asked whether a Marian grotto is "central" to Catholic worship, and found no substantial burden. That approach made the right to build a grotto venerating the Virgin Mary—a tradition rooted in centuries of Catholic devotion—subject not to the faith of the congregation, but to a judge's sense of what counts as "central" to the Catholic faith. That threshold determination ended the inquiry before strict scrutiny ever began. The result was stark: the Missionaries had secured a 4-1 approval from its local zoning board only to see that democratic judgment reversed by appellate courts that never required the government to justify its burden, never examined least restrictive means, and effectively gave two neighbors to the parcel a "heckler's veto." That is not the framework Congress enacted. That is not the standard this Court has applied. And that is not the law.

NAE's argument unfolds in three parts. First, RLUIPA's text, structure, and legislative history foreclose a centrality test. Congress chose every word with care. The phrase "whether or not compelled by, or central to, a system of religious belief" is not surplusage; it is a command. 42 U.S.C. § 2000cc-5(7)(A). Second, this Court's decisions in *Hobby Lobby* and *Holt* confirm that strict scrutiny, not a theological inquiry, governs RLUIPA claims. Third, the First Amendment's protection for church autonomy—like this Court's pre-*Smith*[4] framework—bars courts from ranking religious practices or scrutinizing the logic and hierarchy of belief. RLUIPA ensures that government may not trap religious claimants in a Catch-22[5] where compliance means violating faith and resistance means violating the law.

The consequences of the Kentucky Supreme Court's approach are not fanciful but real, and have a disparate impact on people of faith, irrespective of race, religion, or creed. Across the country, zoning authorities have denied black congregations and Jewish communities the right to assemble, sometimes citing pretextual bases such as traffic-related congestion and noise or aesthetics (identical to the concerns asserted by Respondents), and even sometimes admitting outright bias, or even animus.

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[4] *Employment Division v. Smith*, 494 U.S. 872 (1990).

[5] "That's some catch, that Catch-22." "It's the best there is." The Kentucky Supreme Court's logic is no different: seeking an exception proves awareness, and awareness defeats the claim.

At bottom, the question here is straightforward: Does RLUIPA permit courts to decide which religious practices deserve protection based on their perceived centrality? The statute and its legislative history, this Court's precedent, and the First Amendment, say no.

ARGUMENT

I. RLUIPA's Text and Legislative History Foreclose the Centrality Test.

A. In September 2000, Congress enacted RLUIPA to guarantee robust protection for all forms of religious exercise, without regard to their doctrinal rank within a particular faith. The statute provides 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). And Congress directed courts to construe RLUIPA in favor of "broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." *Hobby Lobby*, 573 U.S. at 696 (quoting 42 U.S.C. § 2000cc-3(g)). RLUIPA also provides that using, building, or converting real property for religious purposes qualifies as religious exercise. *Id.* § 2000cc-5(7)(B). This text is clear and direct. Congress left no room for courts to rank religious land use, and other forms of worship, by their perceived importance. The law's deliberate breadth is meant to protect all forms of religious exercise.

Congress had reason to act. Just seven years before RLUIPA's enactment, this Court confronted outright religious animus in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). There, city councilmen asked "if we could not practice this religion in our homeland, why bring it to this country?"; declared the practitioners "in violation of everything this country stands for"; and a police chaplain urged the council "not to permit this Church to exist." *Id.* at 541–42. The Court found the ordinances disclosed "animosity to Santeria adherents and their religious practices." *Id.* at 542. RLUIPA was enacted against this backdrop. The centrality test revives the same danger in subtler form: theological second-guessing cloaked in neutral-sounding land-use rationales.

Despite the Kentucky Supreme Court quoting RLUIPA's definition of "religious exercise," it failed to substantively address it and questioned the necessity of the religious practice of the Missionaries. The court's decision revived the very centrality test Congress rejected. By relying on the factors set forth in *Livingston*, and questioning whether the church could fulfill its mission with a smaller shrine elsewhere, the Kentucky Supreme Court substituted its own assessment of religious significance for that of the Missionaries. *See Missionaries of Saint John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400, 414–15 (Ky. 2025), *cert. docketed*, No. 25-1131 (Mar. 26, 2026).

B. The canon against surplusage offers an additional textualist basis for rejecting the decision

below. As Justice Scalia and Bryan Garner explained, the surplusage canon reflects a fundamental rule of interpretation: "If possible, every word and every provision is to be given effect. . . . None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence." A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 174 (2012). The centrality test renders the phrase "whether or not compelled by, or central to" a dead letter—precisely the interpretive error the surplusage canon forbids.[6] Indeed, if RLUIPA's "substantial burden" test already required a centrality inquiry the statute's definition of "religious exercise" would be meaningless—exactly what this Court has warned against. *See Corley v. United States*, 556 U.S. 303, 314 (2009) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.") (cleaned up). RLUIPA's text forecloses any judicial inquiry into the centrality of religious practice. The decision below misreads the statute, thereby ignoring the ordinary meaning of its

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[6] *See*, *e.g.*, *Yellowbear v. Lampert*, 741 F.3d 48, 55 (10th Cir. 2014)("The term 'substantial,' after all, doesn't mean complete or total, so a 'substantial burden' need not be a complete or total one."); *Feliciano v. DOT*, 605 U.S. 38, 52 (2025) ("Linguistically, our reading leaves no part of the statute ignored or left without work to do."); *Fulton v. City of Phil.*, 593 U.S. 522, 564 (2021) (Alito, J., concurring in the judgment) ("What I look for in the Constitution is precisely what I look for in a statute: the original meaning of the text.") (quoting A. Scalia, *A Matter of Interpretation* 38 (1997)).

terms. The result leaves religious communities less secure in practicing their faith as they understand it.

C. By disregarding the plain statutory language and adopting a centrality test by judicial fiat, the Kentucky Supreme Court ignored Congress's deliberate decision to codify broad protections for religious rights under RLUIPA. The legislative history confirms this intent. Congress crafted RLUIPA's broad definition of "religious exercise" in direct response to both judicial narrowing of religious liberty protections, and persistent discrimination in local land use decisions. *See* 146 Cong. Rec. at S7777, S7778. RLUIPA's enactment followed *City of Boerne*, which ruled unconstitutional RFRA's application to state and local governments.

Legislators responded by holding nine hearings over three years and gathering "massive evidence" of widespread discrimination against religious groups in land use. 146 Cong. Rec. at S7774. The record revealed that churches—especially those belonging to small, new, or unfamiliar denominations—were often treated more harshly than comparable secular assemblies. *See id.* (Joint Statement of Senators Hatch and Kennedy) ("Zoning codes frequently exclude churches in places where they permit theaters, meeting halls, and other places where large groups of people assemble for secular purposes."); DOJ, Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act (Sept. 22, 2020) ("RLUIPA Report"). These findings reinforced what religious rights scholars had

documented for decades: discriminatory zoning is a pervasive reality for many faith communities.[7]

To correct these inequities, Congress intentionally incorporated RFRA's strict scrutiny standard into RLUIPA, which itself had been codified to address the holding in *Smith*, 494 U.S. 872, which "largely eliminated the strict scrutiny test for free exercise cases." *See* 146 Cong. Rec. at S7774, S7778. By expressly importing strict scrutiny from RFRA—which itself was a direct response to *Smith*—Congress *intended* to create expanded safeguards for religious liberty in the land use context. The Hatch-Kennedy Joint Statement is dispositive as to what Congress intended. Congress specified exactly how courts must interpret RLUIPA's substantial burden provision:

> 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*. *Id.* at S7776 (emphasis added).

This directive has gained binding interpretive force. *See Holt*, 574 U.S. at 358 (relying on Hatch-

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[7] *See*, *e.g.*, Carl H. Esbeck, *Church Autonomy, Textualism, and Originalism: SCOTUS's Use of History to Give Definition to Church Autonomy Doctrine*, 108 Marq. L. Rev. 705, 710-12 (2026); Storzer & Picarello, *The Religious Land Use and Institutionalized Persons Act of 2000: A Constitutional Response to Unconstitutional Zoning Practices*, 9 GEO. MASON L. REV. 929 (2001).

Kennedy statement to construe RLUIPA). It forecloses the Kentucky Supreme Court's reliance on the Sixth Circuit's *Livingston* test. RLUIPA was enacted in 2000; *Livingston* was decided in 2017. Congress could not have directed courts to follow a test that did not exist. *Livingston* appears nowhere in this Court's jurisprudence, yet the Kentucky Supreme Court treated it as controlling, and referred to it as its "polestar".

Had the Kentucky Supreme Court followed Congress's directive, it would have applied this Court's precedents in *Sherbert*, *Thomas*, *Hobby Lobby*, and *Holt*. Each applied strict scrutiny. Each required the government to demonstrate a compelling interest pursued through the least restrictive means. And none authorized a centrality inquiry. *Sherbert* established that governmental action burdening religious exercise triggers strict scrutiny. *Thomas*, 450 U.S. at 716, held that courts "are not arbiters of scriptural interpretation." *Hobby Lobby*, 573 U.S. at 724, held that courts have "no business" evaluating whether a religious belief is "reasonable." And *Holt*, applying RLUIPA's identical statutory language, held unanimously that a Muslim prisoner's religious practice was protected without any centrality inquiry. 574 U.S. at 361–62. This is the "Supreme Court jurisprudence" Congress directed lower courts to follow. The Kentucky Supreme Court ignored it.

D. This case reveals how RLUIPA's protections can be eroded at each stage when courts lose sight of its text and purpose. The procedural history is telling.

The Park Hills Board of Adjustment granted the Missionaries a conditional use permit to build a Marian grotto, despite neighbor opposition, and the trial court later upheld that outcome on summary judgment. The public body closest to the facts approved the church's request. The court reviewing the same record agreed. Only later did appellate courts displace both local judgment and trial-level review.

It was only on appeal that RLUIPA became the vehicle for reversal, and both appellate courts got it wrong at every turn. The Kentucky Court of Appeals held that the ordinance merely made worship "somewhat more difficult," precisely the centrality analysis Congress forbade. *Frederic v. City of Park Hills Bd. of Adjustment*, No. 2022-CA-0867-MR, 2023 WL 8286391, at *6–7 (Ky. Ct. App. Dec. 1, 2023), *not to be published, aff'd on other grounds sub nom. Missionaries*, 727 S.W.3d 400. The Kentucky Supreme Court affirmed on different grounds but compounded the error. It acknowledged that a Marian grotto constitutes "religious exercise" under RLUIPA, then imported the Sixth Circuit's *Livingston* test to evaluate "substantial burden." *Missionaries*, 727 S.W.3d at 413–14. That test weighs feasible alternatives, delay, self-imposed burden, and arbitrariness, factors that appear nowhere in RLUIPA's text and nowhere in this Court's jurisprudence. *Id.* at 414. The result: the court concluded Missionaries could build a smaller shrine elsewhere, dismissed the denial as "mere

inconvenience," and never applied strict scrutiny. *Id.* at 414–16.

This approach is contrary to the Hatch-Kennedy directive. Congress instructed courts to interpret "substantial burden" by reference to "Supreme Court jurisprudence." 146 Cong. Rec. at S7776. *Livingston* is a circuit court decision issued seventeen years after RLUIPA's enactment. It is not Supreme Court jurisprudence. Had the Kentucky Supreme Court followed Congress's directive, it would have applied *Sherbert*, *Thomas*, *Hobby Lobby*, and *Holt*—each of which applied strict scrutiny and none of which authorized a centrality inquiry.

The *Livingston* framework repeats errors this Court has never endorsed. In *Lakewood, Ohio Congregation of Jehovah's Witnesses, Inc. v. City of Lakewood*, the Sixth Circuit called a city's refusal to allow a congregation's first church an "inconvenient economic burden" rather than a constitutional violation. 699 F.2d 303, 306 (6th Cir. 1983). In *Mount Elliott Cemetery Association v. City of Troy*, the court concluded that "burial in a Catholic cemetery [is not] a fundamental or essential tenet" of Catholicism. 171 F.3d 398, 404 (6th Cir. 1999). Congress enacted RLUIPA to repudiate this line of reasoning. Both appellate courts in Kentucky embraced it.

The "self-imposed burden" factor compounds the error. The Kentucky Supreme Court concluded that the Missionaries' awareness of the ordinance undermined its claim. *Missionaries*, 727 S.W.3d at 415. But that reasoning traps religious claimants in

an inescapable Catch-22: they cannot seek a permit without knowledge of the ordinance, yet that knowledge is held against them as proof that any burden is self-inflicted. If foreknowledge defeats RLUIPA's protections, the statute protects nothing. Even the Sixth Circuit has recognized this problem, clarifying that the self-imposed burden factor applies only when a plaintiff lacked a "reasonable expectation" under the ordinance and not simply because the plaintiff knew the rules. *Cath. Healthcare Int'l v. Genoa Charter Twp.*, 82 F.4th 442, 454 (6th Cir. 2023). The state appellate courts ignored the distinction.

The Equal Terms analysis fares no better. The Kentucky Supreme Court concluded the ordinance did not single out religious institutions because some secular entities faced similar restrictions and some religious entities did not. *See Missionaries*, 727 S.W.3d at 416. That analysis misses the point. RLUIPA's Equal Terms provision prohibits governments from treating religious assemblies "on less than equal terms" with nonreligious assemblies. 42 U.S.C. § 2000cc(b)(1). The question is not whether some secular uses are also burdened, but whether any comparable secular assembly is treated more favorably.

Here, golf courses, country clubs, parks, playgrounds, community centers, and libraries are exempt from the arterial-street requirement. Churches are not. These secular assemblies serve as gathering places generating comparable traffic and

noise. The Kentucky Supreme Court never analyzed whether they were proper comparators. Instead, it pointed to other restricted uses—police stations, hospitals—and concluded no discrimination existed. *Missionaries*, 727 S.W.3d at 416. That approach eviscerates the Equal Terms provision.

This Court made the standard clear in *Tandon v. Newsom*: strict scrutiny is triggered "whenever [a regulation treats] *any* comparable secular activity more favorably than religious exercise." 593 U.S. 61, 62 (2021). Congress designed the Equal Terms provision to counter zoning patterns that favor secular uses while burdening religious ones. *See* 146 Cong. Rec. at S7774 (finding that churches "are frequently discriminated against on the face of zoning codes"). The Kentucky Supreme Court's approach—tallying restricted uses rather than comparing comparable assemblies—invites precisely the selective burdening Congress sought to prohibit.

When courts substitute their own standards for those Congress enacted, RLUIPA's protections erode. The zoning board and trial court applied the law correctly. The appellate courts did not. The judgment should be reversed.

II. *Hobby Lobby* and *Holt* Confirm the Proper Standard.

A. This Court has clarified that Congress enacted RLUIPA and its counterpart, RFRA, "to provide very broad protection for religious liberty," and without allowing courts to measure the centrality

of religious exercise. *Holt*, 574 U.S. at 356; *Hobby Lobby*, 573 U.S. at 693. Both statutes use identical operative language to define and protect religious exercise, and both set the same demanding burden standard for government action: the government may not substantially burden a person's exercise of religion unless it can show a compelling interest pursued by the least restrictive means. 42 U.S.C. § 2000bb-1(a)–(b).

This symmetry is deliberate. In *Holt*, this Court held that RLUIPA's Section 3 "mirrors RFRA" and that prisoners "pursu[e] the same standard as set forth in RFRA." 574 U.S. at 357–58. *Hobby Lobby* confirmed that "exercise of religion" must be interpreted identically under both statutes. 573 U.S. at 695–96. RLUIPA borrowed RFRA's strict scrutiny standard; RFRA incorporated RLUIPA's expansive definition of religious exercise. Lower courts may not carve out exceptions Congress rejected.

Individualized assessments supply the trigger for strict scrutiny under RLUIPA. The statute commands strict scrutiny review whenever land use regulation involves discretionary, case-by-case decision-making, because Congress recognized that such systems "readily lend themselves to discrimination." 146 Cong. Rec. at S7775. When a government imposes a substantial burden through individualized determinations—rather than through generally applicable rules—RLUIPA requires that the government justify its action by showing a compelling interest pursued by the least restrictive means. *See*

42 U.S.C. § 2000cc(a)(1).[8] This Court directs lower courts to apply the strict scrutiny standard where religious exercise is burdened by administrative discretion or legal exceptions. *See Lukumi*, 508 U.S. at 546. This was the standard that the state appellate courts failed to apply in this matter.

Moreover, there is no principled basis for distinguishing between land use and institutionalized person claims. Congress directed courts to interpret "substantial burden" consistently with this Court's jurisprudence and mandated broad protection for religious exercise across both contexts. *See* 146 Cong. Rec. at S7776, S7778; 42 U.S.C. § 2000cc-3(g). *Holt* exemplifies this standardized approach: the Court applied the same "exceptionally demanding" least-restrictive-means standard to an institutionalized person's claim, without ever suggesting the rule should be limited to that setting. *See* 574 U.S. at 353. By relying on *Livingston* and introducing a centrality inquiry, the Kentucky Supreme Court's decision runs afoul of *Holt*, and thereby RLUIPA's command that strict scrutiny applies equally, regardless of context.

This Court's precedent is emphatic: judges have no role in evaluating the reasonableness or importance of religious beliefs. In *Hobby Lobby*, the

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[8] This illustrates why the Kentucky Supreme Court's rationale on "self-imposed" burdens is circular: an individualized assessment process necessarily presumes foreknowledge of the underlying local regulation, since a claimant cannot seek a permit or request an exception without understanding those requirements.

Court held that "courts have no business addressing whether the religious belief asserted in a RFRA case is reasonable." 573 U.S. at 724 (cleaned up). In *Thomas*, the Court declared that "[c]ourts are not arbiters of scriptural interpretation." 450 U.S. at 716. Even *Smith*, while limiting free exercise exemptions, reaffirmed that courts must "not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim." 494 U.S. at 887.

Some lower courts applying RLUIPA have understood their role. As the Tenth Circuit explained, the inquiry "isn't into the merit of the plaintiff's religious beliefs or the relative importance of the religious exercise"; it "focuses only on the coercive impact of the government's actions." *Yellowbear*, 741 F.3d at 55. The judiciary's role is to assess burden—nothing more. This Court has long held that when civil factfinders undertake to judge the "truth or falsity" of religious claims, they "enter a forbidden domain." *United States v. Ballard*, 322 U.S. 78, 87 (1944). So too here: courts applying RLUIPA may evaluate burden, but they may not appraise theological importance.

Through past precedent, this Court has already established the proper approach under RLUIPA: any substantial burden on religious exercise triggers strict scrutiny, with no room for courts to weigh the importance or centrality of a practice.

III. Centrality Tests Collide with the First Amendment's Church Autonomy Doctrine and Religious Liberty.

A. The First Amendment's church autonomy doctrine bars civil courts from deciding which religious practices matter enough to deserve protection. This Court recognized that boundary as early as *Watson v. Jones*, 80 U.S. 679 (1872), [9] and modern scholarship has traced the doctrine's continuity through this Court's later cases. *See* Esbeck, supra, at 710–12. Professor Esbeck's scholarship on church autonomy identifies protected areas that include the administration of rituals and sacred spaces—the very domain implicated here. *Id.* at 710–11. Church autonomy does not exempt churches from neutral zoning rules, but it reserves doctrine and religious meaning to churches. *Id.* at 716. As a structural limit on government power, the doctrine preserves a government-free zone where religious communities remain free to "select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions." *Id.*; *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos,* 483 U.S. 327, 341–42 (1987) (Brennan, J., concurring).

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[9] This Court's recent decisions have reaffirmed *Watson*, including *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732 (2020), and *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012) (both addressing the ministerial exception, a subpart of church autonomy doctrine).

The centrality test collides with that foundational principle. Once a court asks whether a practice is "essential," "peripheral," or insufficiently important, it leaves law and enters theology. That is why this Court's cases, rooted in the First Amendment, hold that judges are not arbiters of scriptural meaning or religious doctrine.[10] The Kentucky Supreme Court crossed that line by treating a Marian grotto as something a court could evaluate for theological weight rather than something Catholic authorities could define for themselves. The Kentucky Supreme Court's centrality inquiry commits precisely the error James Madison identified: it makes judges arbiters of theological significance.

That constitutional error is plain here. Whether a Marian grotto is "central" to Catholic worship is a question for Catholic authorities, not civil judges. When a court weighs the significance of a shrine to the Virgin Mary, it ventures as far into forbidden ground as if it were judging the importance of the sacrament of confession, Communion, or the Real Presence in the Eucharist. Even if such inquiry were permissible (it is not), the Kentucky Supreme Court failed to grasp the grotto's religious importance, reducing it to a decorative feature and overlooking its spiritual meaning in Catholic tradition.[11] *See*

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[10] As this Court has repeatedly held, questions of religious meaning, doctrinal importance, and ritual necessity are off limits to judicial adjudication. *See* Esbeck, supra, at 713 n.30 (collecting this Court's church autonomy cases).

[11] For Catholics, grottos are deeply significant as places where key events in the life of Jesus and Mary unfolded. Tradition

Missionaries, 727 S.W.3d at 414–15 (concluding, without meaningful analysis, that the Missionaries' inability to build the grotto amounted to "a mere inconvenience"). That approach violates both church autonomy and federal law.

B. *Smith* changed free exercise doctrine by holding that neutral, generally applicable laws do not violate the Free Exercise Clause even when they substantially burden religious practice. 494 U.S. at 878. That departure from *Sherbert* and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) prompted Congress to restore stronger protection through RFRA and later through RLUIPA. *See Hobby Lobby*, 573 U.S. at 747. But neither *Sherbert* nor *Thomas* authorized courts to police the boundaries of doctrine.

In *Sherbert*, the Court held that forcing a claimant to choose between "the precepts of her religion" and unemployment benefits imposed the same kind of burden as a fine on worship. 374 U.S. at 403–04. The inquiry should have focused on coercion,

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holds that the Virgin Mary gave birth to Jesus Christ in a cave-like stable in Bethlehem, linking grottos closely with her. Marian apparitions, such as at Lourdes, have often been reported in or near grottos, making them revered sites of prayer and healing. Grotto altars worldwide, including at Vatican City and the University of Notre Dame, stand as enduring symbols of Catholic devotion. *See* Missionaries of Saint John the Baptist, *Grottos of the World*, https://www.ourladyoflourdes.info/ (last visited Mar. 28, 2026); Missionaries of Saint John the Baptist, *Lourdes Grottos Around the World*, https://www.ourladyoflourdes.info/lourdes-grottos-around-the-world/ (last visited Mar. 28, 2026).

not on whether Sabbath observance ranked high enough within her faith. *Thomas* reinforced the same point: courts must not act as "arbiters of scriptural interpretation" or "dissect" the acceptability of religious beliefs. 450 U.S. at 715–16. The question was whether the claimant acted from religious conviction and whether the government put substantial pressure on him to violate his beliefs—not whether the practice was logical, widely shared, or central. *Id*. at 714, 718.

Congress codified that framework in RLUIPA. The statute defines "religious exercise" to include conduct "whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). Legislative history from RLUIPA's precursor—the House-passed Religious Liberty Protection Act—repeated the same message: to merit protection, "[r]eligious exercise need not be compulsory or central to the claimant's religious belief system[.]" H.R. Rep. No. 106–219, at 30 (July 1, 1999). Congress adopted that language in response to RFRA litigation and carried it forward into RLUIPA to confirm that the full spectrum of religious conduct is protected. The no-centrality rule thus restored the original First Amendment baseline rather than inventing a new one.

C. A centrality test threatens every faith, and runs afoul of Supreme Court precedent. This Court's decisions in *Holt* and *Hobby Lobby* rejected that mode of analysis and directed courts to focus on government-imposed religious burdens. Yet the

record shows that minority and unfamiliar faiths still bear the heaviest costs when officials and courts treat sacred practice as negotiable. [12]

Government data confirm the pattern: Muslim and Jewish communities make up about 3% of the U.S. population but account for 33% of RLUIPA investigations, while Buddhist and Hindu communities comprise 1.5% of the population but 6.6% of investigations. DOJ, RLUIPA Report at 12–14. Concrete examples show why. Sikh communities have faced permitting barriers to build gurdwaras. [13] Muslim congregations have been denied permits for mosques.[14] Jewish communities have struggled to establish eruvs.[15] Native American communities have been blocked from constructing sweat lodges[16]

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[12] *See*, *e.g.*, H.R. Rep. No. 106-219 at 18–24; 146 Cong. Rec. at S7774; Storzer & Picarello, supra, note 6.

[13] *Guru Nanak Sikh Soc'y of Yuba City v. Cty. of Sutter*, 456 F.3d 978 (9th Cir. 2006) (holding that denying permits for a Sikh gurdwara imposed a substantial burden under RLUIPA).

[14] *See*, *e.g.*, *United States v. City of Lilburn*, No. 1:11-cv-02871-JOF (N.D. Ga. Aug. 2011) (involving a DOJ suit for a Shia Muslim community that settled on terms permitting mosque construction).

[15] *Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002) (reversing denial of an injunction and finding likely success on a Free Exercise claim after officials ordered removal of eruv markers).

[16] *Ramapough Mountain Indians, Inc. v. Township of Mahwah*, No. 2:18-cv-9228 (D.N.J. July 3, 2019).

and from securing access for incarcerated adherents.[17]

Local zoning records show the same pattern in another form. Orthodox synagogues denied permits for lacking parking, then denied again for hypothetical traffic when parking was provided; elderly Jews prohibited from gathering for prayer while similar secular meetings were allowed; cities rezoning land immediately after churches applied to use it. H.R. Rep. No. 106-219, at 21–23. These incidents point in one direction: when government evaluates the importance of religious conduct, discrimination follows and all faiths are threatened.

D. This case also exposes how a centrality test empowers "hecklers" to veto religious exercise. Two neighbors sued to block a Marian grotto even though the Park Hills Board approved the project and the trial court upheld that local decision. But both appellate courts sided with the objectors and nullified the judgment of the community's politically accountable bodies.

The *Livingston* framework made that result possible. By treating "feasible alternatives" as part of the threshold inquiry, it lets hecklers defeat religious land uses simply by proposing other ways the claimant might practice its faith. That is what happened here: the neighbors argued the church could

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[17] *Yellowbear*, 741 F.3d 48.

build a smaller shrine elsewhere[18], the appellate courts accepted that view, without applying strict scrutiny. The effect was decisive because the wrong test decided the case before the government had to justify anything.

Had the courts below applied the correct framework, the result would have been different. The hostility of neighbors in the form of "traffic," "lighting problems" and "noise" concerns does not satisfy that standard.[19] Community displeasure with unfamiliar religious practices does not satisfy that standard. A heckler's veto is not a compelling governmental interest under any strict scrutiny formulation this Court has ever endorsed. *See Tandon*, 593 U.S. at 62; *Lukumi*, 508 U.S. at 546. Particularly prescient, Hatch-Kennedy warned against zoning decisions driven by neighbors' objections framed as traffic, aesthetics, or other "vague and universally applicable reasons." *See* 146 Cong. Rec. at S7774, S7775. That is what occurred here.

That is not the framework Congress enacted or this Court has applied. *Holt* and *Hobby Lobby* direct courts to ask whether the government burdened the specific religious exercise at issue—not whether some other form of worship might suffice. 574 U.S. at 361–

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[18] *Appellees Joel & Elizabeth Frederic's Br.* at 18–20, *Missionaries of Saint John the Baptist, Inc. v. Frederic*, No. 2024-SC-0006 (Ky.).

[19] *Id.* at 4; *Appellants Joel & Elizabeth Frederic's Br.* at 11–12, *Frederic v. City of Park Hills Bd. of Adjustment*, No. 2022-CA-0867 (Ky. Ct. App.).

62; 573 U.S. at 724–26. RLUIPA makes alternatives relevant only after a substantial burden is shown and the government must prove least restrictive means. 42 U.S.C. § 2000cc(a)(1). Because the Kentucky Supreme Court never found a substantial burden, it never required the government to justify its action, and the neighbors' objections were never tested under the standard Congress prescribed.

The consequences were severe. The church was forced to choose between abandoning a religious tradition and violating the law. "If [] consequences [like these] do not amount to a substantial burden, it is hard to see what would." *Hobby Lobby*, 573 U.S. at 691.

IV. Conclusion.

The First Amendment itself forbids courts from weighing the centrality or compulsion of religious practice, and RLUIPA gives statutory force to that constitutional directive. Congress fashioned the statute to provide vigorous and uniform protection for all religious exercise, regardless of its perceived importance within a faith tradition. By including the language "whether or not compelled by, or central to," Congress stressed that courts are not to rank, weigh, or assess the theological significance of any given practice. That command echoes through the ages from James Madison's admonishments in his *Memorial and Remonstrance Against Religious Assessments* through the First Amendment itself, and aligns directly with this Court's precedents. Judges

are not arbiters of scriptural interpretation or religious doctrine.

The Court should hear this case and hold that RLUIPA's substantial burden provision does not authorize courts to assess whether a religious belief or practice is central to the claimant's faith. This Court should grant the petition and reverse the judgment of the Kentucky Supreme Court.

Respectfully submitted,

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