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 AMICUS CURIAE COALITION FOR JEWISH VALUES IN SUPPORT OF PETITIONER

CONOR R. HARVEY
Counsel of Record
BRADLEY W. SNEAD
MAHA GHYAS
WRIGHT CLOSE BARGER & GUZMAN, LLP
One Riverway, Suite 2200
Houston, Texas 77056
(713) 572-4321
harvey@wcbglaw.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

INTEREST OF AMICUS CURIAE[1]

The Coalition for Jewish Values ("CJV") is the largest rabbinic public policy organization in America, representing over 2,500 traditional, Orthodox rabbis. CJV promotes religious liberty, human rights, and traditional Jewish values in public policy through education, mobilization, and advocacy, including by filing amicus curiae briefs in defense of equality and freedom for religious institutions and individuals.

Orthodox Jewish observance is not confined to abstract belief. Practice depends on the physical layout of communities, the proximity of homes to places of worship, and the availability of certain structures that enable daily observance. Because these practices are often unfamiliar to the broader public and may appear minor or unnecessary to outsiders, they are particularly vulnerable when courts interpret the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc *et seq.*, narrowly or inconsistently. When legal standards allow decision-makers to discount such practices as optional or easily altered, RLUIPA's protections become uneven in application.

CJV has a direct interest in ensuring RLUIPA's protections apply with full force to religious communities whose practices, though unfamiliar to

---

[1] All parties were timely notified of the filing of this brief, as required by this Court's Rule 37.2. Pursuant to Rule 37.6, counsel for amicus curiae affirms that no counsel for a party authored this brief in whole or in part and that no person or entity other than amicus or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

many, are no less central to their faith than any other form of religious exercise.

SUMMARY OF ARGUMENT

This case presents an opportunity to answer a recurring and unsettled question under RLUIPA: what constitutes a "substantial burden" on religious exercise? *Id.* § 2000cc(a)(2)(C). Lower courts have adopted divergent and often conflicting approaches to this inquiry.

Zoning systems require individualized judgments, and unclear legal standards invite decision-makers to discount unfamiliar religious practices. A proposed use may be characterized as unnecessary or easily replaced not because it lacks religious significance, but because its significance is not apparent to those outside the tradition. That dynamic disadvantages religious communities whose practices do not conform to widely understood or conventional forms.

Orthodox Jewish practice illustrates the problem. Many religious obligations depend on location, proximity, and physical configuration. Although these features may appear unremarkable to outsiders, they are indispensable to adherents. An eruv may be nearly invisible, yet it is important to Sabbath observance. The walking distance from observant families' homes to a synagogue is not a matter of convenience but of religious necessity, given the prohibition on driving on Shabbat. A mikvah plays a central role in communal life and must be properly located. Legal rules that treat these practices as interchangeable, easily relocatable, or discretionary do not protect them. Instead, they risk allowing unfamiliarity, inconvenience, and even community

resistance to shape outcomes in a manner indistinguishable from a heckler's veto. This Court has cautioned against that dynamic. *Cf. Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022).

The Court should grant certiorari to hold that a government action substantially burdens religious exercise when it meaningfully interferes with the practice as the adherent defines and observes it. That standard follows RLUIPA's text and would bring uniformity to a divided landscape that currently leaves the same statutory protection to mean different things depending on where a religious community happens to be located.

ARGUMENT

Congress enacted RLUIPA to protect religious exercise in the land-use context, where discretionary decision-making creates a heightened risk that certain practices will be discounted or disfavored. Yet lower courts have developed inconsistent and often narrowing approaches to the statute's substantial-burden standard, often permitting government action to be upheld so long as religious exercise can be recharacterized, relocated, or reduced in form.

The substantial-burden inquiry must focus on whether government action interferes with the religious exercise as practiced by adherents, not as it might be viewed by outsiders. The current doctrinal confusion is particularly harmful in cases involving seemingly modest, location-specific, or unfamiliar religious practices. These are the types of practices that need RLUIPA's protections most.

I. RLUIPA's substantial-burden standard must have teeth.

RLUIPA applies when governments implement land-use regulations through systems involving individualized assessments of proposed uses. 42 U.S.C. § 2000cc(a)(2)(C). Such systems are susceptible to unequal treatment because they depend not only on general rules but also on discretionary judgments by local officials. *E.g.*, *Guru Nanak Sikh Soc. of Yuba City v. County of Sutter*, 456 F.3d 978, 987 n.9 (9th Cir. 2006); *Guru Nanak Sikh Soc. of Yuba City v. County of Sutter*, 326 F. Supp. 2d 1140, 1160 n.10 (E.D. Cal. 2003). Those judgments can be shaped by perceptions about the necessity or desirability of a particular use. *E.g.*, *Sylvia Dev. Corp. v. Calvert County*, 48 F.3d 810, 824 (4th Cir. 1995).

RLUIPA adopts a broad definition of religious exercise to address that risk. It provides that the use, building, or conversion of real property for the purposes of religious exercise falls within the statute's protection. 42 U.S.C. § 2000cc-5(7)(B). RLUIPA further directs courts to construe its provisions "in favor of a broad protection of religious exercise." *Id.* § 2000cc-3(g). In this context, the meaning of "substantial burden" is of critical importance.

Narrow interpretations of "substantial burden" permit the undervaluation of unfamiliar religious practices. When courts rely on alternative-site reasoning or generalized descriptions of religious activity, they risk reframing the religious exercise at issue in a way that diminishes its significance. *E.g.*, *Missionaries of St. John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400, 414 (Ky. 2025). A proposed use may

be reduced to a broad category of abstract religious practice and then evaluated on the assumption that it can occur anywhere or in any form. *See, e.g.*, *id.* Such reasoning allows decision-makers to treat unfamiliar religious uses as expendable or interchangeable. What appears to be a minor or optional feature to an outsider may be central to adherents' religious practice. When outsider judgments influence the substantial-burden inquiry, the result is a framework that disadvantages religious practices that are less widely understood, even absent any overt hostility.

Elastic interpretations disproportionately burden minority faiths, many of which require location-specific ritual. Laws that burden religious exercise are not always obvious. *See Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 535 (1993). The risk is acute for location-specific religious practices. Many of the most significant burdens on religious exercise do not involve outright prohibition. Instead, they arise from restrictions on placement or configuration—features that may appear incidental yet that can be integral to the practice itself. Courts may be tempted to treat such burdens as minor: a structure appears small, a location seems interchangeable, a practice looks optional. But those judgments often reflect an unfamiliarity with the religious tradition rather than an accurate assessment of its requirements.

RLUIPA's protections cannot depend on whether a practice appears important to those outside the faith. The statute protects religious exercise as defined by adherents, not as perceived by observers.

II. Doctrinal confusion renders religious minorities especially vulnerable.

Because RLUIPA does not define what constitutes a "substantial burden," courts have developed a wide range of divergent approaches. *See Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 95 (1st Cir. 2013) (collecting cases from the Second, Fourth, Sixth, Seventh, Ninth, and Eleventh Circuits). The result is a patchwork of tests that vary across jurisdictions and invite inconsistent outcomes.

A religious institution in one circuit may prevail on facts that would defeat it in another. This disparity is the direct result of courts applying irreconcilable legal standards to the same statutory text. *Compare Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 556 (4th Cir. 2013) ("[A] plaintiff can succeed on a [RLUIPA] substantial burden claim by establishing that a government regulation puts substantial pressure on it to modify its behavior"), *with Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003) ("[I]n the context of RLUIPA's broad definition of religious exercise, a land-use regulation that imposes a substantial burden on religious exercise is one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable."). Given the divergent approaches, the outcome of a RLUIPA lawsuit can depend not on any uniform legal rule, but on the happenstance of geography.

The decision below reflects that fragmentation. It relied on the availability of alternative options and on Petitioner's prior knowledge of zoning restrictions to

conclude that no substantial burden existed. Although those considerations may be relevant in some contexts, they do not answer whether a substantial burden exists. The inquiry should focus on whether government action has substantially burdened the religious exercise at issue, not on whether one thinks a claimant could have pursued a different course of action. When courts import those considerations into the substantial-burden inquiry, they effectively allow not only misconception, but also local opposition and regulatory inertia to veto religious exercise that the government has not shown any compelling interest in suppressing. Religious exercise should not give way to a "heckler's veto." *Cf. Kennedy*, 597 U.S. at 543 n.8; *Good News Club v. Milford Central Sch.*, 533 U.S. 98, 119 (2001).

Indeed, heavy reliance on alternative locations or scaled-down alternatives is especially problematic because it allows courts to substitute their own conception of the religious exercise for that of the claimant. A specific practice tied to a particular structure or location may be recast as a more general activity that can occur elsewhere. RLUIPA, however, protects "any exercise of religion." 42 U.S.C. § 2000cc-5(7)(A). That language forecloses judicial second-guessing of what is sufficiently important or central to a faith. Courts are not equipped to determine whether an alternate configuration, a different location, or a reduced version of a practice is "close enough." *Cf. Holt v. Hobbs*, 574 U.S. 352, 361–62 (2015). Such judgments require theological assessments outside judicial competence. *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981); *Presbyterian*

Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 449 (1969).

Murky standards that emphasize considerations such as these favor practices that align with majority expectations. Religious uses that are widely recognized are less likely to be questioned, whereas minority or less familiar practices are more likely to be discounted, thereby influencing the future application of legal standards and leading to outcomes that further disadvantage certain faith communities. *See Reaching Hearts Int'l, Inc. v. Prince George's County*, 584 F. Supp. 2d 766, 771, 787 n.15 (D. Md. 2008). That asymmetry is not incidental. It is the predictable result of leaving "substantial burden" undefined. When the standard is vague, decision-makers fill the gap with intuitions that track familiarity. A practice that resembles mainstream Protestant worship, for example, may be more likely to be considered significant; a minority faith practice that depends on a wire boundary, a walking radius, or a ritual bath may be more likely to be viewed as dispensable. Employing the same text for all faith traditions, RLUIPA should prevent this dynamic.

III. RLUIPA must protect location-specific religious exercise, as demonstrated by Orthodox Jewish observance.

The doctrinal confusion described above has concrete consequences for religious communities whose practices depend on the kinds of location-specific arrangements that unclear substantial-burden standards are most likely to discount. Orthodox Jewish practice illustrates this with particular clarity, because several of its religious

obligations depend on geography, proximity, and physical structures that may appear trivial or optional to those unfamiliar with the tradition.

Consider eruvin, devices used to observe the Sabbath. An eruv is a boundary, often consisting of unobtrusive wires or similar markers, that enables observant Jews to carry items within a defined area on Shabbat and specific holidays. To an outsider, the eruv may be difficult to detect and appear insignificant. Yet its religious significance is substantial. Without a valid eruv, adherents may be unable to carry keys, push a stroller, transport food, or engage in a variety of other activities outside the home during periods of religious observance.

A similar dynamic arises with respect to the location of a synagogue. Observant Jews are prohibited from driving on Shabbat and certain holidays. The location of a synagogue relative to adherents' homes is therefore not just a matter of convenience; it determines whether communal worship is possible at all. A synagogue located beyond walking distance is effectively inaccessible during key periods of religious observance, making worship impossible. A different location is not a meaningful substitute if it prevents adherents from participating in the practice.

Mikvaot provide a third illustration. A mikvah is a ritual bath used to maintain the laws of family purity. Women are required to immerse after their menstrual cycle. Without access to a proper mikvah, fundamental aspects of family life under Jewish law cannot be fulfilled.

Examples such as these demonstrate that religious exercise depends on considerations that are often not apparent to those outside the tradition, and that the substantial-burden inquiry must be conducted from the perspective of the believer rather than the observer. When courts substitute their own judgments about what is necessary, central, or sufficient to a religious practice, they risk substantially burdening religious exercise. RLUIPA avoids that problem by protecting "any" religious exercise and by directing courts to construe its provisions broadly. 42 U.S.C. § 2000cc-3(g). That directive reflects a recognition that courts are not positioned to rank or evaluate religious practices. *Thomas*, 450 U.S. at 716; *Hull Church*, 393 U.S. at 449. The Court should hold that a government action substantially burdens religious exercise under RLUIPA when it meaningfully interferes with the practice as defined and observed by the adherent, regardless of whether an outsider would view the specific location, structure, or configuration as necessary, desirable, or easily replaced.

* * *

This Court has not yet clarified the meaning of "substantial burden" under RLUIPA's land-use provisions. Lacking guidance, the result, after more than two decades of litigation, is a legal landscape in which religious communities' ability to protect their land-use rights depends largely on the circuit in which they happen to reside.

This case is an ideal vehicle to clarify the law and presents the substantial-burden question in a context that illustrates the practical consequences of doctrinal

ambiguity: a prohibition on construction of a religious shrine on a plot of land that Petitioner acquired and now owns for the express purpose of religious exercise. This Court's guidance would promote uniformity and ensure that RLUIPA's protections reach their fullest extent.

Without such guidance, RLUIPA will remain uneven in application, particularly for religious communities whose practices depend on place-specific arrangements that may be unfamiliar to those outside the tradition. This Court's intervention is necessary to bring consistency to RLUIPA's substantial-burden provision and to ensure that the statute applies to its fullest extent.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

CONOR R. HARVEY
Counsel of Record
BRADLEY W. SNEAD
MAHA GHYAS
WRIGHT CLOSE BARGER
& GUZMAN, LLP
One Riverway, Suite 2200
Houston, Texas 77056
(713) 572-4321
harvey@wcbglaw.com

Counsel for Amicus Curiae
Coalition for Jewish Values