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 THE MUSLIM PUBLIC AFFAIRS COUNCIL AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Muslim Public Affairs Council is a nonprofit public affairs organization that has worked since its founding in 1988 to enhance American pluralism, improve understanding, and speak out on policies that affect American Muslims. Through engaging the government, media, and communities, MPAC leads the way in bolstering more nuanced portrayals of Muslims in American society and partnering with diverse communities to encourage civic responsibility.

MPAC submits this brief to highlight RLUIPA's vital role in protecting vulnerable religious groups from discrimination in zoning and land use decisions. Although RLUIPA was intended to safeguard against discrimination in land use laws and local zoning boards' application of those laws, many courts have watered down its core protections. Too often, these diluted standards permit state and local governments, without meaningful scrutiny, to thwart religious communities' attempts to use property for religious practice. Amid heightened anti-Muslim prejudice, the erosion of RLUIPA's protections leaves American Muslims vulnerable to discrimination in local land use administration. That misapplication undermines RLUIPA's core purpose and should be corrected.

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[1] No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparing or submitting this brief, and no person other than amicus curiae or its counsel contributed money intended to fund preparing or submitting this brief. All parties were timely notified of the intent to file this brief in accordance with Supreme Court Rule 37.2(a).

INTRODUCTION AND SUMMARY

The questions presented by this petition—concerning the construction of RLUIPA's "substantial burden" and "equal terms" provisions—are both exceedingly worthy of this Court's review. One (if not both) of those provisions is at issue in nearly every RLUIPA land use claim, yet this Court has never opined on either. And without any guidance, the lower courts have fallen into two acknowledged splits of authority, such that RLUIPA's crucial protections vary depending on where the plaintiff happens to be in the country. As the petition details, the Kentucky Supreme Court's multiple legal errors below are especially problematic.

Religious minorities—and especially Muslim groups—will suffer disproportionately if the Court does not correct the growing lower-court confusion over what RLUIPA means. All too often, Muslim Americans face brazen discrimination in local land use proceedings. Local zoning regimes confer broad discretion on officials, and that discretion is routinely wielded against Muslims. Organized community opposition, explicit Islamophobia, and pretextual appeals to traffic or noise concerns have repeatedly blocked Muslim congregations from building mosques, Islamic schools, and cemeteries. Because Muslim communities tend to be smaller or newer to a locality, they often lack the political power to fight back in ways that more established faiths take for granted and, thus, must rely on the courts to vindicate their fundamental freedoms.

RLUIPA was Congress's answer to precisely this problem. After extensive hearings documenting the discriminatory use of zoning authority against religious minorities, Congress enacted RLUIPA to provide

a federal check on local officials' discretion. That purpose has grown more urgent since RLUIPA was passed, as anti-Muslim sentiment has only intensified across the country. When courts strip RLUIPA of its force, they abandon the communities Congress most sought to protect.

The Court should grant review.

ARGUMENT

I. Muslim groups face rampant discrimination and mistreatment in the land use context.

The questions presented by the petition are frequently recurring and deeply important to the Muslim American community. Local zoning regimes are a well-documented source of discrimination against religious minorities. Such regimes typically rely on vague, open-ended standards that confer broad discretion on local officials. Von G. Keetch & Matthew K. Richards, *The Need for Legislation to Enshrine the Free Exercise Clause in the Land Use Context*, 32 U.C. Davis L. Rev. 725, 727–28 (1999). Those standards enable officials to identify "seemingly plausible grounds"—traffic, sewage, noise, property values, and the like—for delaying or denying religious-use applications. *Id.* at 728. And courts are reluctant to strike down local zoning decisions, citing federalism concerns and confidence in local land use processes. Douglas Laycock & Luke W. Goodrich, *RLUIPA: Necessary, Modest, and Under-Enforced*, 39 Fordham Urb. L.J. 1021, 1048 (2012). The result is a framework that makes it "easy" for officials to "disguise" discriminatory decision-making. *Id.* at 1022.

Muslim Americans face frequent, egregious, and often overt discrimination when navigating land use

regimes. Time and again, local communities have reacted to a Muslim group's proposed projects with intense hostility, gross ignorance, and blatant Islamophobia. The following examples are illustrative—but not at all exhaustive.

In New York, officials were flooded with messages opposing the construction of a new mosque in Long Island, such as "the takeover has started" and "Does anybody remember that there were two towers in Manhattan or did people forget[?]" Amended Complaint ¶ 133, *Muslims on Long Island, Inc.* v. *Town of Oyster Bay*, No. 2:25-cv-00428, 2025 WL 2796577 (E.D.N.Y. Sept. 12, 2025). In Tennessee, a mosque project resulted in bomb threats and a protest of several hundred opponents carrying signs like "Mosque Leaders Support Killing Converts." Verified Complaint ¶¶ 28, 33, *Islamic Ctr. of Murfreesboro* v. *Rutherford Cnty.*, No. 12-cv-00738, 2012 WL 3011012 (M.D. Tenn. 2012).

In Oklahoma, more than 200 people gathered to organize an opposition to a planned mosque, and a local nonprofit circulated flyers that detailed "criticisms of Islam" and linked Islam to terrorism. Samson Tamijani, *"Strategy" meeting organizes opposition to planned Broken Arrow mosque,* KJRH (Jan. 15, 2026), https://perma.cc/SFS9-VP4A. And in New Jersey, Muslims trying to build a mosque were told in a zoning hearing to "go back where you're from." Sergio Bichao, *Bayonne Muslims Get $400k Settlement, Proceed with Mosque Plans*, N.J. 101.5 (Jan. 31, 2018), https://perma.cc/E3P3-58BB. Their temporary place of worship was also vandalized with graffiti profaning the name of Allah, and pamphlets and newspaper outlets encouraged boycotts of businesses that supported the Muslim group. *Ibid.*

In response to such local hostility, local governments fall into a familiar pattern: Zoning boards depart from settled practice to deny or delay Muslim congregations' proposals. For instance, in *Islamic Society of Basking Ridge* v. *Township of Bernards*, 226 F. Supp. 3d 320, 329, 331 (D.N.J. 2016), a Muslim congregation's proposal to build a mosque was subjected to unusual delay and scrutiny, with the township deviating from its ordinary practices to apply parking requirements it had never before enforced. During the review process, the congregation's mailbox was stomped on and marked with an "ISIS" sticker. *Id.* at 327. The court held that the township discriminatorily enforced its parking ordinance by showing more favorable treatment to Christian churches. *Id.* at 348–49.

Another example is *United States* v. *County of Culpeper*, 245 F. Supp. 3d 758 (W.D. Va. 2017). There, an Islamic center sought a special sewage permit to build a mosque—a permit the county had historically granted "as a matter of course." *Id.* at 760. While it reviewed the application, the county received emails and calls from residents containing "disparaging anti-Muslim comments," including references to terrorism and the September 11 attacks. *Id.* at 763. Despite never having denied such a permit for a religious use, the county rejected the application. *Id.* at 763–64. As the district court recognized, the facts suggested that "the denial was not based on an insufficient application or other good-faith reasons, but rather on anti–Muslim prejudice." *Id.* at 765.

Such recurring discrimination inflicts concrete and substantial harms on Muslim communities. When local authorities delay permits or require repeated resubmissions, they force Muslim congregations to

expend already limited resources. *E.g.*, Amended Complaint ¶ 4, *Muslims on Long Island*, 2025 WL 2796577. When officials deny permits for the construction of mosques, Islamic schools, or cemeteries, they impede core religious practices—including the ability of community members to assemble for religious services, receive religious education, conduct prayers, hold funerals, and gather for communal life. See Complaint ¶¶ 10–14, *Omar Islamic Center Inc.* v. *City of Meriden*, No. 3:19-cv-00488, 2019 WL 9667797 (D. Conn. Apr. 2019); *Culpeper*, 245 F. Supp. 3d at 762 (observing that a Muslim congregation needed a larger mosque to provide "separate worship facilities for women," a "dedicated space for studying religious texts," and a washing facility for ablution). The exclusion of such institutions can leave Muslim groups entirely without a place to worship or practice their faith in their own communities.

II. RLUIPA was designed to protect religious minorities from zoning discrimination, and Muslim Americans often rely on its protections.

RLUIPA was crafted as a bulwark against the type of discrimination too often faced by Muslim groups in the land use context. The Congress that enacted RLUIPA knew well that anti-religion prejudice, and hostility toward religious minorities in particular, infect discretionary land use decisions. And RLUIPA was designed to rectify local governments' use of zoning and landmarking powers to burden religious exercise or to discriminate against religious land uses. Eric Treene, *RLUIPA and Mosques: Enforcing a Fundamental Right in Challenging Times*, 10 First Amend. L. Rev. 330, 331 (2012).

Such widespread zoning discrimination against religious uses was documented in RLUIPA's congressional hearings. RLUIPA's sponsors condemned zoning codes that "frequently exclude[d] churches" but permitted secular buildings. 146 Cong. Rec. S7774–75 (daily ed. July 27, 2000) (joint statement of Sen. Orrin Hatch and Sen. Edward Kennedy). Such hearings also documented how zoning-board discrimination, and the community hostility prompting it, tended to "lurk[] behind such vague and universally applicable reasons as traffic, aesthetics," or inconsistency with local land use schemes. *Ibid.*

But Congress also knew that the burden of discrimination did not fall on all faith groups equally. The sponsors' joint statement offering RLUIPA to the Senate emphasized how "[s]mall religious groups" were overburdened by facial anti-religion discrimination and "in the highly individualized and discretionary processes of land use regulation." *E.g.*, *id.* at S7774, S7777. The sponsors cited research by Professor Douglas Laycock, *id.* at S7775, which details how "small faiths" fare worse in land use disputes at the state level despite the strength of their claims. See Douglas Laycock, *State RFRAs and Land Use Regulation*, 32 U.C. Davis L. Rev. 755, 770–71 (1999).

Congressional witnesses discussed multiple, specific instances of anti-Muslim discrimination by local boards that cooperated with other faith groups. One witness testified that his hometown rejected a mosque, citing parking constraints—but "somehow [found] enough parking" for a Methodist church. Religious Liberty Protection Act of 1998: Hearing on H.R. 4019 Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 105th Cong. 68 (1998)

(statement of Marc D. Stern, Dir. of Legal Dep't, Am. Jewish Cong.). The same witness informed Congress that another municipality gave parking variances to every church that sought one—that is, "until a mosque came along." Protecting Religious Freedom After Boerne v. Flores: Hearing Before the H. Subcomm. on the Constitution of the H. Comm. on the Judiciary, 105th Cong. 35 (July 14, 1997) (statement of Marc Stern, Dir. of Legal Dep't, Am. Jewish Cong.).

Concerns about pervasive discrimination led to broad, cross-coalition support, including among Muslim groups who saw RLUIPA as a bedrock protection against zoning-related discrimination. As one Representative noted, the support from a broad range of religious communities was "enormous." 145 Cong. Rec. H5581 (daily ed. July 15, 1999) (statement of Rep. Tony P. Hall). More than seventy religious and civil liberties groups rallied around RLUIPA, including Protestant, Catholic, Jewish, and Muslim groups. *Ibid.*

RLUIPA's importance to the Muslim community has only grown since its passage. Soon after the statute's enactment, the September 11, 2001 attacks intensified "[v]ocal expressions of concern about mosques in American cities." *Not in This Neighborhood! Zoning Battles*, Harv. Univ. Pluralism Project 3 (2020). That community pressure, as predicted by RLUIPA's witnesses and sponsors, often came cloaked in nonspecific appeals to traffic or parking issues. See Kimberly Winston, *Zoning Islam Out*, ARC (Dec. 9, 2025), https://perma.cc/NT8B-RN7J (describing how a "majority-Christian town" allowed a mosque to expand only after a seven-year dispute that, "depending on

whom you ask[,] was either about traffic or Islamophobia").

In the decades since RLUIPA's passage, conflicts over mosques and Muslim schools have proliferated. Although Muslims comprise just 1 to 2% of the population, in RLUIPA's first ten years the proportion of Justice Department RLUIPA investigations involving discrimination against mosques or Muslim schools was 14%. Treene, *supra*, 10 First Amend. L. Rev. at 345. That proportion only increased over time: From 2010 to 2016, the percentage of Justice Department RLUIPA investigations involving Muslim groups rose to 40%. Asma T. Uddin, *A Religious Double Standard: Post-9/11 Challenges to Muslims' Religious Land Usage*, 27 Mich. J. Race & L. 223, 228 (2021). And the Department of Justice has acknowledged that Muslim mosques and schools remain increasingly and particularly vulnerable to zoning discrimination, "often under community pressure." U.S. Dep't of Just., Report on the Tenth Anniversary of the Religious Land Use and Institutionalized Persons Act 13 (2010).

Although Muslim litigants must often pursue relief under RLUIPA for land use discrimination, they remain disproportionately burdened by RLUIPA issues. See Gadeir Ibrahim Abbas, Shuruq Daas & Zeynab Warraich, *Muslim Litigants Are Using the Courts to Protect Human Rights and Ensure Social Justice*, 50 Hum. Rts. 10, 11 (2024). Robust RLUIPA protections are all the more crucial amid increasing anti-Muslim hostility. And yet, courts across the country have watered down RLUIPA's protections, denying faith communities and religious minorities the protection that RLUIPA promised.

III. Courts across the country, including the court below, have construed RLUIPA in ways that frustrate the statute's purpose.

Despite Congress's goal of eliminating discriminatory zoning practices, some lower courts have failed to give RLUIPA its intended effect. In these jurisdictions, RLUIPA's essential provisions are watered down, leaving many religious plaintiffs—Muslim groups and other minority faiths most of all—unprotected by the safeguards that Congress intended.

Start with RLUIPA's requirement that plaintiffs suffer a "substantial burden." Instead of providing a concrete definition of what constitutes a "substantial burden," several circuits have cobbled together malleable (and inconsistent) multifactor tests. The Eleventh Circuit, for instance, has a non-exhaustive six-factor balancing test. *Thai Meditation Ass'n of Ala., Inc.* v. *City of Mobile*, 980 F.3d 821, 831–32 (11th Cir. 2020). The First Circuit uses a three-factor balancing test, but it "do[es] not suggest that this is an exhaustive list." *Roman Catholic Bishop of Springfield* v. *City of Springfield*, 724 F.3d 78, 96–97 (1st Cir. 2013). And the Ninth Circuit does not even bother to list any factors—it just "look[s] to the totality of the circumstances." *New Harvest Christian Fellowship* v. *City of Salinas*, 29 F.4th 596, 602 (9th Cir. 2022).

Here, the Kentucky Supreme Court adopted a four-factor standard that it attributes to the Sixth Circuit. *Missionaries of Saint John the Baptist, Inc.* v. *Frederic*, 727 S.W.3d 400, 414 (Ky. 2025); Pet. App. 24a–25a; *see also Livingston Christian Schs.* v. *Genoa Charter Township*, 858 F.3d 996, 1004–05 (6th Cir. 2017) (setting out the Sixth Circuit's substantial burden test but describing Kentucky's fourth factor as

more properly considered as part of the narrow tailoring analysis). But as this Court has recognized, "open-ended balancing tests" and "[v]ague standards" can be manipulated by judges, who, "like other government officers, [cannot] always be trusted to safeguard the rights of the people." *Crawford* v. *Washington*, 541 U.S. 36, 63, 67–68 (2004) (rejecting a "nine-factor balancing test" employed by lower courts). "[E]ven the Third Branch of Government" may be prone to letting their priors affect a case's outcome when they are asked to apply an indeterminate balancing test. See *N.Y. State Rifle & Pistol Ass'n Inc.* v. *Bruen*, 597 U.S. 1, 23 (2022). And since RLUIPA's goal was to cabin the wide discretion wielded by local government officials, it makes little sense to interpret RLUIPA to grant similar latitude to judges.

Separate from their malleable nature, the specific factors here themselves have serious problems. For instance, one of the Sixth Circuit's "substantial burden" factors considers whether a "feasible alternative location" exists for the religious group to "carry on its mission." *Livingston Christian Schools*, 858 F.3d at 1004. But that inquiry requires courts to make independent judgments about the group's "core function[s]." *Id.* at 1006. And there is no "principle of law or logic" that can serve as a useful guide when "[j]udging the centrality of different religious practices." *Emp. Div.* v. *Smith*, 494 U.S. 872, 887 (1990).

This case demonstrates the dangers of such an inquiry. When the Kentucky Supreme Court applied its four-factor test, it concluded that St. John's inability to construct its proposed grotto in honor of the Virgin Mary was a "mere inconvenience." Pet. App. 25a. It decided as much because—in the court's eyes—St. John had a "feasible alternative" of constructing a smaller

shrine elsewhere. *Ibid.* But Congress did not entrust civil courts to assess whether one shrine to the Virgin Mary is a "feasible alternative" to another. *Ibid.* That is precisely the sort of "ecclesiastical question[]" courts have no power to resolve. See *Presbyterian Church in the U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969).

The Kentucky Supreme Court's reasoning that St. John has no RLUIPA claim because any burden here was self-imposed is equally problematic. That was the case, in the court's view, because St. John knew of the zoning restriction before it applied. See Pet. App. 27a. Yet this "knowledge" test finds no home in the text of RLUIPA and guts the protections of RLUIPA essentially anytime there is a preexisting land use regulation. Nothing in RLUIPA supports treating a plaintiff's awareness of a restriction as a reason to deny relief. Congress required only that the government impose a "substantial burden"—not that the burden come as a surprise. The rule also creates a perverse dynamic: the longer an otherwise impermissible restriction has been on the books, the more insulated it becomes from challenge. That cannot be what Congress intended when it enacted RLUIPA to root out entrenched patterns of zoning discrimination against religious minorities. This Court should intervene and correct the lower courts' confusion over RLUIPA's "substantial burden" provision.

Turning to the "equal terms" provision, the need for this Court's review is the same. "Every circuit to address the issue has given its own gloss" to this portion of RLUIPA, with some courts imposing a "heightened pleading burden on the plaintiff" of showing not just unequal terms, but unequal terms across similarly situated institutions. *Tree of Life Christian Schs.* v. *City*

of Upper Arlington, 905 F.3d 357, 379, 387 (6th Cir. 2018) (Thapar, J., dissenting) (imploring the Supreme Court to "revisit what the circuits are doing").

Worse still, the Kentucky Supreme Court's interpretation is especially egregious. It found no "equal terms" problem even though the land use ordinance at issue *on its face* imposes additional requirements on places of worship not applicable to many secular institutions. Pet. App. 29a. The court thus blessed the ordinance's explicitly unequal terms for religious groups as equal.

The court justified this because *some* secular institutions "must also" meet the same additional requirements. *Ibid.* Yet such reasoning has been expressly rejected by this Court in the First Amendment context: strict scrutiny applies when regulations "treat *any* comparable secular activity" better than religious exercise, so the fact that some secular activities are treated "as poorly or even less favorably" is "no answer." See *Tandon* v. *Newsom*, 593 U.S. 61, 62 (2021). Review is necessary to correct this departure from this Court's clear guidance and ensure that RLUIPA truly protects against all unequal zoning terms.

* * *

This Court should grant certiorari to articulate correct and administrable standards for lower courts to implement RLUIPA. So long as the circuits remain fractured and standardless, religious minorities will remain subject to arbitrary decisionmaking that varies from circuit to circuit and judge to judge.

CONCLUSION

This Court should grant review.

Respectfully submitted,

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