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 *AMICUS CURIAE* AMERICAN HINDU JEWISH CONGRESS IN SUPPORT OF PETITIONER

Sue Ghosh Stricklett
Legal Counsel
AMERICAN HINDU JEWISH CONGRESS
501 Watchung Ave.
Watchung, NJ 07069

Edward A. Bedard
Counsel of Record
Miles C. Skedsvold
ROBBINS ALLOY BELINFANTE LITTLEFIELD, LLC
500 14th St. NW
Atlanta, GA 30318
(678) 701-9381
ebedard@robbinsfirm.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTERESTS OF AMICUS CURIAE[1]

The American Hindu Jewish Congress ("AHJC") is a national, non-partisan 501(c)(4) organization founded by American Hindu and Jewish business and community leaders committed to pragmatic, values-based engagement. Through coalition building, conferences, and direct engagement with federal and state policymakers, AHJC addresses a range of shared concerns, including rising antisemitism and anti-Hindu bias. Its membership encompasses community leaders, houses of worship, cultural associations, and civil-rights advocates across all fifty States.

As minority faith communities, Hindus and Jews share a vital interest in the robust enforcement of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). Congress wrote RLUIPA to reach land-use burdens on religious exercise "even if the burden results from a rule of general applicability," 42 U.S.C. § 2000cc(a)(2)(B), and directed that the statute "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted." *Id.* § 2000cc-3(g). Congress found that that minority, smaller, and unfamiliar religious communities are disproportionately burdened by local land-use regulation, and that such discrimination often operates through facially neutral rules invoking aesthetics,

---

[1] Pursuant to Sup. Ct. R. 37.2, amicus certifies that all parties received timely notice of amicus's intention to file this brief. Pursuant to Sup. Ct. R. 37.6, amicus certifies that no counsel for any party has authored this brief in whole or in part, no party or party's counsel has made a monetary contribution to fund its preparation or submission, and no person other than amicus or its counsel has made such a monetary contribution.

traffic, and neighborhood character. *See, e.g.*, H.R. Rep. No. 106-219, 18–24 (1999); 146 Cong. Rec. 16698 (2000) (Joint Statement of Senators Hatch and Kennedy). That pattern animates this case and AHJC's interest in it.

The substantial-burden inquiry matters most for minority faiths precisely because the burdens they face often arise from facially neutral laws. Hindu temples feature distinctive shikhara spires, ornate sculpture, and expansive programs integral to traditional mandir design. Jewish religious life imposes its own spatial requirements—an eruv, a mikvah, a yeshiva, a synagogue sited within walking distance of observant families, etc. Neutral zoning regimes built around different architectural and demographic assumptions collide with these needs, and discretionary review invoking "aesthetics" or "neighborhood character" routinely yields denials that substantially burden religious exercise.

Yet lower courts have diluted the substantial-burden standard precisely where it matters most—holding that no burden exists where a congregation could theoretically worship somewhere smaller, somewhere else, or should have known better than to acquire the land. Each narrowing falls hardest on minority faiths least able to absorb protracted litigation or to exercise political power. The Kentucky Supreme Court's decision reflects exactly that pattern. AHJC respectfully urges the Court to grant review.

SUMMARY OF ARGUMENT

More than a quarter century after Congress enacted RLUIPA, the phrase at the heart of the statute—"substantial burden"—is the subject of at least three splits of authority. Courts are divided about

what it means generally; they are divided over whether it means the same thing in RLUIPA as it does under the Religious Freedom Restoration Act ("RFRA"); and they are divided over whether it means the same thing *within* RLUIPA, depending on whether the case involves land use or prisoner rights.

These splits in authority are almost inexplicable: RLUIPA's "substantial burden" provision is simply meant to fill an enforcement gap in RFRA after this Court's decision in *City of Boerne v. Flores*, 521 U.S. 507, 514 (1997). Yet despite this Court's and others' repeated admonition that these "sister statute[s]" mean much the same thing, lower courts—even lower courts in the same jurisdiction—continue to interpret "substantial burden" differently depending on which statute and even subsection is at issue. *Holt v. Hobbs*, 574 U.S. 352, 356 (2015); *Burwell v. Hobby Lobby*, 573 U.S. 682, 730 (2014).

This state of affairs is untenable. The lower courts will remain irretrievably divided on the important questions that arise under these statutes unless and until this Court (1) corrects the fundamental misimpression that the same phrase means different things as applied to different cases and (2) clears the field of the many errors that have proliferated in the vain effort to treat these sister statutes differently.

This Court need not resolve every question about the "substantial burden" test's sweep and force; it need only clarify that "substantial burden" means the same thing in both statutes, rectify the errors that have plagued lower court precedent, and direct the lower courts to start over. The Court should grant certiorari to put RLUIPA "substantial burden" cases back on track.

ARGUMENT

The lower courts are badly in need of this Court's direction on the meaning of the "substantial burden" test in RFRA and RLUIPA.

Congress passed RFRA to re-introduce the substantial burden test in religious-liberty litigation after *Employment Division v. Smith*, 494 U.S. 872 (1990), and it passed RLUIPA to re-apply that same substantial burden test to state prisoner and land-use cases after *City of Boerne*. Yet somehow, the lower courts have split not merely on the meaning of "substantial burden" generally, but also on whether "substantial burden" means the same thing in RFRA and RLUIPA, and even to the two types of cases under RLUIPA itself. This makes little sense.

These splits are deep, intractable, and ever-widening fractures in authority, meaning only this Court can set things right.

This Court should grant certiorari in this case to reinforce what it said in *Hobby Lobby* and *Holt*: RFRA and RLUIPA are sister statutes, and the "substantial burden" test means the same thing in both statutes and all contexts, regardless of the facts to which it is applied. And the Court should correct three errors that have distorted the substantial-burden analysis: (1) courts substituting their own judgment about whether alternative forms exercise are adequate alternatives; (2) courts balancing claims of free exercise against establishment clause concerns; and (3) courts smuggling concerns about overprotecting religious exercise into the substantial burden test, rather than addressing them at the interest-balancing stage. In other words, this Court should clear the wreckage of lower courts' misbegotten RFRA and RLUIPA

jurisprudence, and instruct them to start over with the text.

I. Congress enacted RFRA and RLUIPA as sister statutes using identical language, but the lower courts have broken them apart.

A. RFRA and RLUIPA were enacted in sequence to restore strict scrutiny for burdens on religious exercise.

The Court is well acquainted with the history behind RFRA and RLUIPA. After this Court's decision in *Smith*, which effectively exempted neutral, generally applicable laws from strict scrutiny no matter how severely they burdened religious exercise, "Congress enacted RFRA in 1993 in order to provide very broad protection for religious liberty." *Hobby Lobby*, 573 U.S. at 693. RFRA prohibited the government from "substantially burden[ing] a person's exercise of religion even if the burden result[ed] from a rule of general applicability," unless the government could satisfy strict scrutiny. *Id.* at 694 (quoting 42 U.S.C. § 2000bb-1(a)). The codified point was to "guarantee [the] application" of strict scrutiny "in all cases where free exercise of religion is substantially burdened." 42 U.S.C. § 2000bb(b)(1). In short, RFRA refocused the inquiry to the burden on religious exercise—not the character of the law imposing it.

RFRA originally applied to both the federal and state governments, but this Court later held that Congress had exceeded its authority in applying it to the states. *City of Boerne*, 521 U.S. at 536; *Hobby Lobby*, 573 U.S. at 695. So Congress responded by enacting RLUIPA, which reimposed "the same general test as RFRA" to "a more limited category of governmental

actions" based on different jurisdictional hooks. *Hobby Lobby*, 573 U.S. at 695. "RLUIPA thus allows prisoners 'to seek religious accommodations pursuant to the same standard as set forth in RFRA.'" *Holt*, 574 U.S. at 358 (quoting *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 436 (2006)). And it ostensibly protected religious observers to the same extent in the land-use context. *See* 42 U.S.C. § 2000cc.

But RLUIPA did not just reimpose RFRA. It also deliberately broadened the definition of "exercise of religion"—and imported that broader definition back into RFRA—"in an obvious effort to effect a complete separation from First Amendment case law." *Hobby Lobby*, 573 U.S. at 696 (citing 42 U.S.C. § 2000bb-2(4) (1994 ed.). "Religious Exercise" in RLUIPA (and "exercise of religion" in RFRA) now means "*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) (emphasis added). And Congress "mandated that this concept 'be construed in favor of a broad protection of religious exercise, to the maximum extent permitted[.]'" *Hobby Lobby*, 573 U.S. at 696 (quoting § 2000cc-3(g)). As a result, both statutes now share the same operative language and the same definitions.

Surely, then, lower courts understand that these substantial burden provisions *mean* the same thing, even if they apply to different types of cases? And that these terms must be construed broadly to protect any religious exercise? Alas, no.

B. The lower courts have splintered the "substantial burden" test into irreconcilable fragments—not just across circuits, but across statutes and within RLUIPA's own provisions.

Despite this clear statutory lineage, the lower courts' interpretations of what constitutes a "substantial burden" have always been deeply fractured. The splintering has occurred along three distinct axes. *First*, the circuits have adopted irreconcilable tests for what constitutes a substantial burden under RLUIPA's land-use provision—the Petition documents this conflict in detail. *Second*, courts have divided over whether "substantial burden" means the same thing under RFRA and RLUIPA—despite this Court's repeated statements that the statutes are interchangeable. And *third*, courts have applied different standards *within* RLUIPA to its land-use and prisoner provisions—reading a single phrase in a single statute to mean different things depending on which section a claimant invokes.

These fractures compound one another. A free-exercise claim can now succeed or fail based not on the severity of the burden at issue, but rather the circuit the case is brought in, the statute it invokes, and the sub-provision of RLUIPA that applies.

1. The inter-circuit split on RLUIPA's substantial-burden provision in the land-use context is deep and still growing.

To begin, lower courts are deeply split on what "substantial burden" means in the land-use context. The Petition documents the breadth of the conflict, and we will not belabor it here. To summarize: Courts

have identified at least 16 different factors purportedly relevant to the substantial-burden analysis. Pet. 18. The Sixth Circuit has rejected the approaches of the Second, Seventh, and Ninth Circuits. *See Livingston Christian Schools v. Genoa Charter Township*, 858 F.3d 996, 1004–05 (6th Cir. 2017). The Eleventh Circuit has rejected the Fourth Circuit's test as too "demanding." *Vision Warriors Church, Inc. v. Cherokee County Board of Commissioners*, 22-1073, 2024 WL 125969, at *7 (11th Cir. Jan. 11, 2024). And the First Circuit has acknowledged, not that it needed to, that "the standards [announced by other circuits] have not been consistent." *Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 95 (1st Cir. 2013).

2. The lower courts have also split on whether "substantial burden" means the same thing under RFRA and RLUIPA.

The inter-circuit split is reason enough to grant certiorari. But the fracture runs deeper—courts have also effectively split on whether "substantial burden" means the same thing under RFRA and RLUIPA.

Some have simply ignored RFRA precedent in interpreting RLUIPA. *E.g.*, *Adkins v. Kaspar*, 393 F.3d 559, 568 (5th Cir. 2004) (treating the meaning of "substantial burden" under RLUIPA as "a question of first impression in this circuit," ignoring RFRA precedent, *e.g. Diaz v. Collins*, 114 F.3d 69 (5th Cir. 1997)). Others have dreamed up differences in meaning to grapple with the differences in factual circumstances governed by the two statutes. And many lower courts have injected various factors and considerations that

bear little relationship to the question posed by RLUIPA's (and, by that same token, RFRA's) text.

For example, some prison cases deny that prohibitions on group worship impose a substantial burden on religious exercise, pointing to the lack of outside ministers to lead group worship, even though it is the prison's policies that require an outside minister to be present for group worship in the first place. *See, e.g., Adkins v. Kaspar*, 393 F.3d at 571; *Baranowski v. Hart*, 486 F.3d 112, 125 (5th Cir. 2007).

The problem is particularly acute in RLUIPA land-use cases. There, lower courts consistently show hostility to the (textually mandated) idea that RLUIPA affords better treatment to religious exercise than secular activities. These courts reject delay and expense as substantial burdens if the government's refusal or denial of permission to build or expand is not utterly final. *See, e.g. Westchester Day School v. Village of Mamaroneck*, 386 F.3d 183, 188 (2d Cir. 2004); *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. City of West Linn*, 111 P.3d 1123, 1130 (Or. 2005). Others water down the substantial burden inquiry by asking whether the government's regulation makes religious exercise "effectively impracticable" across the entire jurisdiction. *Greater Bible Way Temple of Jackson v. City of Jackson*, 733 N.W.2d 734, 750 (Mich. 2007); *San Jose Christian College v. City of Morgan Hill,* 360 F.3d 1024, 1035 (9th Cir. 2004).

Many of these same courts also rely on the fact that the action burdening the plaintiff's exercise is neutral and generally applicable, *see, e.g., Vision Church v. Village of Long Grove*, 468 F.3d 975, 998 (7th Cir. 2006), or require some special showing of animus to demonstrate a substantial burden, *Civil Liberties of*

Urban Believers v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003) ("*CLUB*"), even though RLUIPA expressly renounces the former, 42 U.S.C. § 2000cc-1(a), and has a different provision (the equal treatment provision) to deal with the latter, 42 U.S.C. § 2000cc(b).

Still others refuse to find a substantial burden if the plaintiff acquired land knowing a regulation existed, even if the rule or decision would otherwise impose a substantial burden. *See, e.g. Canaan Christian Church v. Montgomery County*, 29 F.4th 182, 194 (4th Cir. 2022); *Andon, LLC v. City of Newport News*, 813 F.3d 510, 515 (4th Cir. 2016); *Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007).

And some appear to reduce the substantial burden test to asking whether the rule or decision requires a plaintiff to violate their religious beliefs. *Greater Bible Way*, 733 N.W.2d at 750; *Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App'x 729, 737 (6th Cir.2007).

Some courts do acknowledge, either explicitly or implicitly, that "substantial burden" is supposed to mean the same thing in both statutes, *see, e.g. Schlemm v. Wall*, 784 F.3d 362, 364 (7th Cir. 2015) (stating that the Seventh Circuit's "effectively impracticable" standard under RLUIPA "did not survive *Hobby Lobby* and *Holt*," both RFRA cases); *Murphy v. Missouri Dept. Of Corr.*, 372 F.3d 979, 987 (8th Cir. 2004) ("Congress intended that the language of [RLUIPA] is to be applied just as it was under RFRA"); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004) (defining substantial burden by reference to *Cheffer v. Reno*, 55 F.3d 1517 (11th Cir. 1995) to a pre-RLUIPA prison case decided under RFRA).

But even as they do, lower courts are still fashioning ways to differentiate "substantial burden" based on factors outside the text of the statute. Indeed, the *en banc* Ninth Circuit just recently applied a narrow, coercion-based definition under RFRA in government-land cases—despite the fact that it applies a broader, plain-meaning definition under RLUIPA. *Compare Apache Stronghold v. United States* 101 F.4th 1036, 1050–54 (9th Cir. 2024) (relying on this Court's pre-*Smith* decision in *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988)) *with San Jose Christian College*, 360 F.3d at 1034–35. And it did so despite holding in the very same opinion that RFRA and RLUIPA are "interpreted uniformly." *Id.* at 1043.

The lower courts, in other words, vary wildly in their application of the substantial burden test depending on whether they are applying RFRA or RLUIPA—even though those statutes clearly use the phrase in the same way to mean the same thing.

The inter-statute divergence is indefensible. The same phrase appearing in twin statutes cannot bear different meanings absent clear textual instruction—and there is none. And indeed, this Court has repeatedly treated the two statutes as interchangeable. *Holt*, 574 U.S. at 358 ("the same standard" (quotation omitted)); *Ramirez v. Collier*, 595 U.S. 411, 424 (2022) ("sister statute"); *Little Sisters of the Poor Sts. Peter and Paul Home v. Pennsylvania*, 591 U.S. 657, 703 n.13 (2020) (Alito and Gorsuch, J.J., concurring) ("twin"); *Hobby Lobby*, 573 U.S. at 695 (RLUIPA "imposes the same general test as RFRA"). At least seven circuits agree with this observation, if not its implications. *See Apache Stronghold*, 101 F.4th at 1140 (Murguia, C.J., dissenting) (collecting cases from the Third,

Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits). Yet without this Court's intervention, intra-statute splits will only persist and deepen.

3. Courts have even fractured "substantial burden" within RLUIPA itself, applying different standards to land-use and prisoner claims.

Courts have also interpreted the phrase differently within RLUIPA itself.

The Fourth Circuit, for example, has held that "[u]nlike in an institutionalized persons RLUIPA substantial burden case, where a plaintiff must show that the defendant pressured him to violate his beliefs," a plaintiff can succeed in the land-use context "by establishing that a government regulation puts substantial pressure on it to modify its *behavior* as opposed to its *beliefs*." *Canaan Christian Church*, 29 F.4th at 194 (quotation omitted); *see also Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548 (4th Cir. 2013) ("in considering whether the County imposed a substantial burden on Bethel's religious exercise, the district court erred in applying, without any modification for the land use context, the standard applicable in RLUIPA institutionalized persons cases"). This remains the governing approach in the Fourth Circuit, even after *Holt*. *See Alive Church of the Nazarene, Inc. v. Prince William County*, 59 F.4th 92 (4th Cir. 2023).

Other circuits have reached the same result without saying so. As discussed in § I(B)(2), above, courts frequently import land-use specific considerations into their RLUIPA analysis, under the guise of interpreting the "substantial burden" requirement, but without bothering to reconcile those requirements

with the "substantial burden" test in prisoner cases. For example, the Sixth Circuit's *Livingston* framework and the Eleventh Circuit's six-factor test in *Thai Meditation Association of Alabama, Inc. v. City of Mobile*, 980 F.3d 821, 831–32 (11th Cir. 2020), are both land-use-specific frameworks that differ from how those circuits analyze substantial burden in the prisoner context. *Compare Livingston*, 858 F.3d at 1003–04 (agreeing that "the availability of other properties defeats a substantial burden claim") *with Ackerman v. Washington*, 16 F.4th 170, 183 (6th Cir. 2021) ("whether the RLUIPA claimant is able to engage in other forms of religious exercise makes no difference" (quotation omitted)); *see also Sumrall v. Ga. Dept. of Corr.*, 154 F.4th 1304, 1315 (11th Cir. 2025) (defining substantial burden without reference to the *Thai Meditation* factors).

Contrast all that with the Eighth Circuit, which says that the substantial burden test under RLUIPA "is to be applied just as it was under RFRA," regardless of context. *Murphy v. Missouri Department of Corrections,* 372 F.3d 979 (8th Cir. 2004), and it is clear that courts have not only split about what "substantial burden" means *under* RLUIPA, or even between RFRA and RLUIPA, but *within* RLUIPA, as well.

C. These distinct approaches make no sense.

Besides the fact that RLUIPA was specifically enacted to fill the enforcement void in RFRA left by City of Boerne, *see Burwell*, 573 U.S. at 695, both use essentially the same terminology, *compare* 42 U.S.C. § 2000bb–1(a) *with* 42 U.S.C. § 2000cc(a)(1) *and* 42 U.S.C. § 2000cc-1(a). Both were plainly passed with an eye on restoring the pre-*Smith* test. *Compare* 146

Cong. Rec. S7776 (July 27, 2000) (joint statement of Sens. Hatch and Kennedy on RLUIPA); *with* 42 U.S.C.A. § 2000bb(b)(1), S.Rep. No. 103–111, p. 8, 12 (1993), H.R. Rep. No. 103–88, pp. 6–7 (1993) (hereinafter the "House Report"), and 139 Cong. Rec. 26178 (1993). And both foreswear any inquiry into the centrality of a given religious practice. *See* 42 U.S.C. § 2000bb-2(4), § 2000cc–5(7)(A).

So the phrase "substantial burden" must mean the same thing in both statutes, even if their jurisdictional hooks differ.

Certainly, treating RLUIPA claimants differently depending on whether they challenge land use or prisoner treatment makes no sense, since both are governed by the same substantive provision. Same phrase, same statute, same Congress.[2]

II. Only this Court can resolve these fractures.

Twenty-six years of development have produced deeper entrenchment, not convergence—even after *Hobby Lobby*, *Holt*, and *Ramirez*. And as these fractures show, the fundamental problem is that lower courts are bending over backwards to adjust the "substantial burden" test to fit the context of any given case.

Some circuits, like the Seventh, have made progress toward reunifying these sister statutes. *See*

---

[2]Congress placed contextual flexibility in the compelling-interest prong, not the threshold. See 146 Cong. Rec. S7775 ("The compelling interest test is a standard that responds to facts and context."); *Cutter v. Wilkinson*, 544 U.S. 709, 722–23 (2005) (same).

Schlemm, 784 F.3d at 364. But one positive step in nearly three decades is proof that this is not a problem that is going to solve itself.

And for every step forward, there's often a step back. Despite Judge Easterbrook's acknowledgment in *Schlemm* that *Holt* and *Hobby Lobby* had made the Seventh Circuit's prior "effectively impracticable" test untenable, other courts in the Seventh Circuit continue to apply it. *See, e.g.*, *Society of Divine Word v. United States Citizenship and Immigration Svcs.,* 129 F.4th 437, 450 (7th Cir. 2025); *see also Richmond v. Walker*, No. 3:23-cv-649, 2024 WL 1573918, at *2 (N.D. Ind. Apr. 11, 2024); *Stafford v. Conklin*, No. 3:19-CV-00078, 2021 WL 5113972, at *3 (N.D. Ind. Nov. 3, 2021). And the Sixth Circuit effectively adopted it *after Holt* and *Hobby Lobby*. *See Livingston*, 858 F.3d 996 (requiring RLUIPA land-use plaintiffs to show "that they were unable to carry out some core function of their religious activities" in order to prevail). Indeed, the Sixth Circuit's *Livingston* test is precisely the standard that the Kentucky Supreme Court adopted in this case. *Missionaries of St. John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400, 413 (Ky. 2025) ("we agree … that the Sixth Circuit's jurisprudence as delineated in *Livingston* … should be our polestar").

The split on the meaning of "substantial burden" may be deep and longstanding, but it is not stale. Dozens of RFRA and RLUIPA cases are decided in the lower courts with each passing year, and as this brief shows, the split has only deepened and widened over time. Scholars and practitioners alike agree that these are important and recurring questions. *See* Douglas Laycock & Luke W. Goodrich, *RLUIPA: Necessary, Modest, and Under-Enforced*, 39 Fordham Urb. L.J. 1021 (2012); Michael A. Helfland, *The Substantial*

Burden Puzzle, 2016 U. Ill. L. Rev. Online 1 (2016); Michael A. Helfand, *Substantial Burdens as Civil Penalties*, 108 Iowa L. Rev. 2189 (2023). Clarifying these kind of nationwide, persistent splits of authority on important issues is precisely what this Court's certiorari jurisdiction is for.

III. Lower courts' tests are also imbued with numerous errors that require correction from this Court.

Lower courts have not merely disagreed about how to *apply* "substantial burden"—they have also imported a series of analytical errors that bear no relationship to the statutory text. Three errors in particular account for the bulk of the confusion: (1) courts substitute their own judgment about the adequacy of religious alternatives for the claimant's; (2) courts narrow the threshold based on Establishment Clause anxieties rooted in the now-abrogated *Lemon* framework; and (3) courts collapse Congress's two-stage structure by performing justification-stage balancing at the threshold stage. Clearing these errors from the field would do more to resolve the splits than any single doctrinal formula.[3]

---

[3] Before addressing these errors, one framing point bears emphasis. This entire analysis concerns *incidental* burdens on religion—laws that are facially neutral and generally applicable but happen to impede religious exercise. Targeted burdens are per se violations of the Free Exercise Clause and do not require substantial-burden analysis at all. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). The question before this Court is what happens when a neutral, generally applicable regulation substantially burdens religious exercise—the precise scenario RFRA and RLUIPA were enacted to address.

A. Lower courts err by substituting their own assessment of whether religious alternatives are adequate—the inquiry must respect the claimant's religious judgment.

The most consequential error in the lower courts treatment of what constitutes a "substantial burden" is a theological one: courts routinely decide *for themselves* whether an alternative means of religious exercise is "adequate"—effectively making judgments about what a claimant's faith requires.

This error is twofold. *First*, it turns the federal judiciary into the Roman Curia. *Second*, it violates RLUIPA's plain statutory text by reintroducing a centrality and compulsion analysis.

1. Start with the judicial role. In this case, the Kentucky Supreme Court adopted *Livingston*'s framework as its "polestar" and held that no substantial burden existed because the Missionaries could "construct a smaller grotto or shrine" on a different lot—characterizing an outright prohibition on constructing a Marian shrine at the Missionaries' chosen site as "a mere inconvenience." *Missionaries*, 727 S.W.3d at 411. The court thereby treated a 16-by-39-foot replica of the Lourdes grotto adjacent to Our Lady of Lourdes Church as interchangeable with a smaller structure elsewhere—a determination that required the court to decide that the specific form, scale, and location of the grotto were religiously inessential. That is an ecclesiastical judgment, not a legal one. The Ninth Circuit rejected identical reasoning in *International Church of Foursquare Gospel v. City of San Leandro*, holding that any such determination "runs counter to the Supreme Court's admonition" against inquiring into the

truth of stated religious beliefs. 673 F.3d 1059, 1069 (9th Cir. 2011).

The lower courts have this allocation exactly backward. *Livingston*, the Kentucky Supreme Court, and courts following their lead decide for *themselves* whether a smaller grotto in a different place, a different property in another township, or a year-to-year lease in an adjacent county is religiously adequate. They make the theological judgment and leave the claimant to contest it. This Court should make clear that the allocation runs the other way: courts accept the claimant's assertion of what is religiously adequate and decide only the non-theological questions. *See Thomas v. Review Board*, 450 U.S. 707, 715–16 (1981) ("Courts are not arbiters of scriptural interpretation."). Such tests raise the very entanglement concerns that *Cutter v. Wilkinson*, held RLUIPA was designed to avoid. 544 U.S. 709, 720 (2005).

2. Now turn to RLUIPA's text. Congress deliberately discarded the centrality inquiry. 42 U.S.C. § 2000cc-5(7)(A) (protected religious exercise "includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief"). And this Court has enforced that command. *Hobby Lobby*, 573 U.S. at 723–24 (courts have "no business" evaluating whether a religious belief "is reasonable"); *Holt*, 574 U.S. at 360–61 (declining to evaluate religious significance and rejecting the argument that the availability of alternative religious practices negated the burden). Yet lower courts persist in making precisely this kind of judgment.

For example, in *Livingston* (which again, is the "polestar" for the decision below), the Sixth Circuit independently assessed whether alternative properties constituted adequate alternatives for a Christian

school, concluding that the school "had failed to show that any of its core religious beliefs could not be carried out" at another location. The court instructed that courts may consider the *objective* "reasonableness of a plaintiff's expectations in being able to use the land in question for religious purposes." 858 F.3d at 1004. That instruction is just a centrality analysis in different clothes: it requires courts to decide whether a religious institution's desire to build a particular structure in a particular place is "reasonable" considering the religious significance of the choice.

To the extent courts consider alternatives at all as part of the substantial-burden inquiry, courts can only evaluate the *secular* adequacy—*e.g.*, the cost of an alternative, geographic feasibility, etc.—of *religiously* adequate alternatives. And the religious adequacy of a given alternative needs to be answered by the claimant, not the courts. *See, e.g.*, Sherif Girgis, *Defining "Substantial Burdens" on Religion and Other Liberties*, 108 Va. L. Rev. 1759, 1794–1804 (2022).[4]

---

[4] Prof. Sherif Girgis's framework draws on parallel doctrines across constitutional liberties (free speech, Second Amendment, substantive due process) to derive a general adequate-alternatives principle. *See also* Sherif Girgis, *Fragility, Not Superiority? Assessing the Fairness of Special Religious Protections*, 171 U. Pa. L. Rev. 147 (2022) (arguing religion is more "fragile" and more "exposed" to regulatory burden than other activities, making adequate alternatives especially scarce). Dr. Gabrielle M. Girgis has likewise argued that the Establishment Clause does not forbid courts from considering the subjective religious significance of burdens. *See* Gabrielle Girgis, *What Is a "Substantial Burden" on Religion Under RFRA and the First Amendment?* 97 Wash. U. L. Rev. 1755 (2020). RLUIPA also has a separate provision addressing regulations that "totally exclude[]" or "unreasonably limit[]" religious assemblies, institutions, or structures.

B. Lower courts have narrowed the substantial-burden threshold based on Establishment Clause anxieties and a fear of "overprotecting" religion—concerns that no longer have doctrinal support and that misallocate the statutory structure.

A second category of error is institutional rather than theological. Multiple circuits have narrowed the "substantial burden" threshold based on Establishment Clause fears—specifically the concern that reading the statutes broadly would have the "primary effect" of advancing religion, would "impermissibly favor" religious land uses, or would grant religious institutions "a blanket immunity from land-use regulation." These concerns trace directly to *Lemon v. Kurtzman*, 403 U.S. 602 (1971)—a framework this Court has since abrogated.

The Seventh Circuit's "effectively impracticable" standard in *CLUB* was driven in significant part by the fear that anything less demanding would require municipalities "not merely to treat religious land uses on an equal footing with nonreligious land uses, but rather to favor them in the form of an outright exemption from land-use regulations." 342 F.3d at 762. That framing—treating the statutorily mandated protection as impermissible "favoritism"—is a classic *Lemon* effects-prong concern. *World Outreach Conference Center v. City of Chicago* warned that "the adjective 'substantial' must be taken seriously lest RLUIPA be interpreted to grant churches a blanket immunity

---

42 U.S.C. § 2000cc(b)(3). If "substantial burden" already required near-total preclusion, that provision would be surplusage.

from land-use regulation." 591 F.3d 531, 539 (7th Cir. 2009) . The Eleventh Circuit was more explicit still, reasoning that "[m]unicipalities that allow religious exemptions to alleviate even the small burden of walking a few extra blocks would run the risk of impermissibly favoring religion over other secular institutions[.]" *Midrash Sephardi,* 366 F.3d at 1228. And the Second Circuit expressly linked its caution to the Establishment Clause, explaining that "RLUIPA occupies a treacherous narrow zone between the Free Exercise Clause … and the Establishment Clause." *Westchester Day School*, 386 F.3d at 189.

The same anxiety appears in the Sixth Circuit's *Livingston* framework adopted by the Kentucky Supreme Court below: "Holding that a religious institution is substantially burdened any time that it cannot locate within such a small area … would be tantamount to giving religious institutions a free pass from zoning laws." 858 F.3d at 1011. And it surfaces in the First Circuit's cautious, contextual approach. *See Roman Catholic Bishop of Springfield*, 724 F.3d at 95–96. Whether courts frame the concern as an Establishment Clause problem, an "overprotection" worry, or a "blanket immunity" fear, it is the same underlying anxiety—and it has systematically distorted the threshold inquiry across circuits.

This anxiety rests on a doctrinal foundation that no longer exists. In *Kennedy v. Bremerton School District*, this Court declared that it "long ago abandoned *Lemon* and its endorsement test offshoot." 597 U.S. 507, 534 (2022). *Groff v. DeJoy*, 600 U.S. 447 (2023), confirmed the abrogation. The "primary effect" language, the "endorsement" framing, and the "entanglement" concept that animated the lower courts' threshold-narrowing are all *Lemon* constructs. Under

the historical-practices framework that replaced *Lemon*, accommodation of religious exercise has deep historical roots—and the Religion Clauses have "complementary purposes, not warring ones." *Kennedy*, 597 U.S. at 536 (quotation omitted). The idea that faithfully enforcing a religious-exercise statute risks an Establishment Clause violation reflects the *Lemon*-era assumption that the Free Exercise and Establishment Clauses stand in tension. This Court has rejected that assumption. *See Cutter*, 544 U.S. at 719 (RLUIPA poses no Establishment Clause problem); *id.* at 727 n.1 (Thomas, J., concurring) (calling the *Lemon* test "discredited.").

C. Lower courts err by trying to use the substantial burden test to avoid overprotecting religious exercise, when RLUIPA's text and structure leave that inquiry to the justification stage.

Even setting *Lemon*'s abrogation aside, the "overprotection" concern just discussed reflects a fundamental misunderstanding of the statutory structure. Congress addressed concerns about overprotection through strict scrutiny at the justification stage—not through narrowing the threshold. The text of the statutes separates threshold from justification. Nothing in the substantial-burden provision directs courts to weigh government interests. 42 U.S.C. § 2000cc(a)(1)(A)–(B), 2000cc-1(a)(1)–(2). Courts that fold government-side considerations into the threshold effectively apply intermediate scrutiny disguised as a threshold test. They perform the justification-stage analysis at the threshold stage, before the government has ever been required to defend its regulation under strict scrutiny.

Strict scrutiny provides the meaningful check Congress anticipated. *Hobby Lobby*, 573 U.S. at 736 (RFRA's interest balancing provides "a workable test for striking sensible balances"). *Cutter*, 544 U.S. at 722–23 ("no reason to believe that RLUIPA would not be applied in an appropriately balanced way"). *Ramirez*, 595 U.S. at 426–27 (applying strict scrutiny and accepting a compelling interest in execution-chamber security while finding failure on least restrictive means). Strict scrutiny is not "fatal in fact." *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 237 (1995) (quotation omitted). As Professors Laycock and Goodrich have documented, RLUIPA is "actually somewhat under-enforced," because courts read "substantial burden" so strictly that few plaintiffs ever reach the compelling-interest stage—rendering it a dead letter. 39 Fordham Urb. L.J. at 1021. The legislative history confirms Congress's awareness of this design: "This Act does not provide religious institutions with immunity from land use regulation." 146 Cong. Rec. S7776 (daily ed. July 27, 2000) (Hatch-Kennedy Joint Statement). Congress acknowledged the concern about overprotection and addressed it through strict scrutiny, not through an elevated threshold.

Applying the threshold generously while maintaining rigorous scrutiny is not "overprotecting" religion. It is giving effect to what Congress enacted. RLUIPA's broad construction clause reinforces the point: "This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3(g). The phrase "to the maximum extent permitted … by the Constitution" signals that the Establishment Clause functions as an *external* constraint, not one to be *imported into*

the substantial-burden definition. After *Kennedy*, the doctrinal foundation for these narrowings no longer exists. And even before *Kennedy*, the narrowings rested on a misreading of the statutory structure. Courts should be instructed to abandon both.

CONCLUSION

The Court should grant the petition for a writ of certiorari, and on the merits clarify that "substantial burden" means the same thing in both statutes, excise the errors that have plagued lower court precedent, and direct the lower courts to start over.

Respectfully submitted this 27th day of April, 2026.

Sue Ghosh Stricklett
Legal Counsel
AMERICAN HINDU JEWISH CONGRESS
501 Watchung Ave.
Watchung, NJ 07069

Edward A. Bedard
Counsel of Record
Miles C. Skedsvold
ROBBINS ALLOY BELINFANTE LITTLEFIELD, LLC
500 14th St. NW
Atlanta, GA 30318
(678) 701-9381
ebedard@robbinsfirm.com