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 NOTRE DAME RELIGIOUS LIBERTY CLINIC AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae is the Lindsay and Matt Moroun Religious Liberty Clinic at Notre Dame Law School.[2] As an academic institution and teaching law practice, the Clinic promotes and defends the freedom of religion for all people. It advocates for the right of all people to exercise, express, and live according to their beliefs. It defends individuals and organizations of all faiths against interference with these fundamental liberties and has represented an array of groups in cases to defend the right to religious exercise across a variety of contexts.

Among other things, the Clinic works to ensure that critical legal protections for religious exercise—like those Congress enacted in the Religious Land Use and Institutionalized Persons Act of 2000—are faithfully interpreted and applied in cases like this.

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[1] Pursuant to Rule 37.6, *amicus curiae* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus curiae*, its members, and its counsel made a monetary contribution to its preparation or submission. Respondents and counsel of record for Petitioner received notice of *amicus curiae*'s intention to file this brief at least ten days prior to the deadline.

[2] The views expressed by the Clinic do not necessarily represent those of the University of Notre Dame or Notre Dame Law School.

SUMMARY OF ARGUMENT

Protection of religious exercise cannot depend on a court's own evaluation of the importance, centrality, or necessity of a particular religious practice. This longstanding principle is deeply rooted in the guarantees of the First Amendment's Religion Clauses. And Congress explicitly codified this foundational precept into RLUIPA, which offers heightened protection for religious exercise in the land-use context.

In spite of this bedrock principle, there is widespread confusion among lower courts about the meaning of "substantial burden" under RLUIPA, which too often undermines the statute's protections. The Kentucky Supreme Court's analysis did exactly that. The court denied RLUIPA's protections because, in its view, the Catholic faith does not require the Missionaries of Saint John the Baptist to construct the precise grotto it requests. As part of its religious mission, Saint John seeks to build a shrine to honor the Blessed Virgin Mary, who appeared to Saint Bernadette in Lourdes, France, near a Catholic church that also bears her name. The shrine would be a small replica of the grotto at Lourdes, "the most important Catholic apparition site of the nineteenth century." John T. McGreevy, Catholicism and American Freedom: A History 27 (2003). The court acknowledged that barring Saint John from building the grotto as it proposes would frustrate its religious practice. Yet the court nonetheless determined that the denial did not substantially burden Saint John because it could build a *smaller* shrine at a *different* location. By the court's lights, because this

"alternative" religious practice was supposedly available, RLUIPA offered Saint John no relief.

This Court must correct that misguided analysis and set lower courts on the right path. RLUIPA's sweeping protection safeguards all forms of religious exercise, whether central to that religion or not. Whether the Catholic faith mandates that Saint John construct the shrine in the precise manner it requests is not the question. This Court should reject the Kentucky Supreme Court's effort to limit the statute's scope and make clear that whether the government substantially burdens religious exercise does not depend on what a court might have to say about the importance or necessity of the religious practice at issue.

ARGUMENT

I. Courts May Not Restrict RLUIPA's Protections Based on Their Assessment of the Significance of a Person's Religious Practices.

The civil government's own assessment of the supposed importance or centrality of an individual's particular religious practice—including whether a supposed "alternative" practice is religiously sufficient—has no bearing on whether that practice is entitled to protection under federal law. This is a basic, foundational principle of religious freedom that has been repeatedly emphasized by this Court and which Congress directly enacted into RLUIPA itself.

A. Courts Have No Role in Evaluating the Necessity or Centrality of a Religious Exercise.

This Court has long held that courts have no role in judging the significance of a person's religious practices. More than 150 years ago, this Court held that it was improper for civil courts to investigate and to decide matters "of discipline, or of faith, or ecclesiastical rule, custom, or law." *Watson v. Jones*, 80 U.S. 679, 727 (1871). In a country that protects the "full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine," the Court observed, "[t]he right to organize voluntary religious associations" to express "religious doctrine," decide "questions of faith," and "govern[]" their members "is unquestioned." *Id.* at 728–29. Permitting "secular courts" to undermine these freedoms would "lead to the total subversion of such religious bodies"—an intolerable result. *Id.*

The prohibition against courts deciding matters of faith has since been a central principle of First Amendment jurisprudence. *See, e.g.*, *Serbian E. Orthodox Diocese U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 709 (1976). Applying this principle, this Court, for example, has confirmed that the First Amendment bars courts from deciding religious questions involving the selection of clergy and ministers of the faith. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 185–86 (2012) (citing *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in N. Am.,* 344 U.S. 94, 115–16 (1952)). And the same principle "severely circumscribes the role that civil courts may play in resolving church property disputes."

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

This bedrock principle makes sense. Permitting civil courts to engage in these inquiries would exacerbate tensions that the First Amendment's Religion Clauses are designed to ease. On one hand, allowing civil courts to wade into "controversies over religious doctrine and practice" would threaten the free exercise of religion by "inhibiting the free development of doctrine" and inserting "secular interests [into] matters of purely ecclesiastical concern." *Mary Elizabeth*, 393 U.S. at 449. Claimants might be incentivized, for example, to articulate their beliefs in a particular way, or to adopt certain beliefs over others. On the other hand, resolving a religious controversy in favor of either side risks a civil court "establishing" that religious view or practice. *Id.* And, even if a court did not formally give preference to any faith, it might unwittingly discriminate against faiths whose tenets were unfamiliar or not well understood. *Cf. Carson v. Makin*, 596 U.S. 767, 787 (2022) ("scrutinizing whether and how" a person exercises his faith "raise[s] serious concerns about state entanglement with religion and denominational favoritism"). Civil resolution of these sorts of controversies would thus undermine the very protections the First Amendment is designed to afford. *See Larson v. Valente*, 456 U.S. 228, 244 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.").

Indeed, the Founders understood that civil authorities should stay out of religious affairs. They

recognized that civil courts lacked competence to understand, let alone to decide, the beliefs of any given religious community. James Madison, for example, rejected the notion that "the civil magistrate is a competent judge of religious truths" as "an arrogant pretension falsified by the contradictory opinions of rulers in all ages and throughout the world." James Madison, *Memorial and Remonstrance Against Religious Assessments*, in *The Separation of Church and State: Writings on a Fundamental Freedom by America's Founders* 56, 64 (Forrest Church ed., 2004). Others observed that permitting "fallible and uninspired" civil leaders to "set[] up their own opinions and modes of thinking" as infallibly true deprives citizens of their natural right to choose their own religious beliefs. Act for Religious Freedom of 1786, Va. Code Ann. § 57-1 (West 2012) (drafted by Thomas Jefferson). Such an establishment of religion would not only threaten dissenting citizens' right to exercise their chosen religion, but would also risk "corrupt[ing] the principles of that very religion" with secular, "worldly" concerns. *Id.*

Echoing these concerns, courts have carefully circumscribed their role in matters of religious doctrine. Early on, this Court rejected the argument that "judges of the civil courts can be as competent in the ecclesiastical law and religious faith" as those who practice it. *Watson*, 80 U.S. at 729. Citing a lack of both competency and authority, the Court has since repeatedly refused to ask whether a particular belief or practice is *required* by a religious tradition in determining whether the exercise is protected. *See Levitan v. Ashcroft*, 281 F.3d 1313, 1320 (D.C. Cir. 2002) ("Neither the Supreme Court nor this court has ever adopted a rule limiting protection to practices

that are compelled by a litigant's religion."). For example, in *Thomas v. Review Board of the Indiana Employment Security Division*, this Court faulted a state court for concluding that the claimant's personal beliefs were unprotected after errantly "giving significant weight to the fact that" they were not widely shared among other members of his religion. 450 U.S. 707, 715 (1981). This Court made clear that "the guarantee of free exercise is not limited to beliefs which are shared by all members of a religious sect." *Id.* at 715–16. This is so because "[i]t is not within the judicial function and judicial competence to inquire whether" a person "correctly perceived" what his faith requires, *id.*, or to say that his beliefs are "mistaken or insubstantial." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014).

Nor should courts "question the *centrality* of particular beliefs or practices to a faith." *Hernandez v. C.I.R.*, 490 U.S. 680, 699 (1989) (emphasis added); *cf. Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 458 (1988) (declining to adopt a rule based on the "centrality" of religious practice). This is perhaps particularly important in cases concerning individuals who hold minority beliefs with which judges are less familiar. *See, e.g.*, *United States v. Zimmerman,* 514 F.3d 851, 853 (9th Cir. 2007) (rejecting lower court's conclusion that refusing blood sample was not protected religious exercise and confirming that believer need not "show that his beliefs are central to a mainstream religion"); *Lovelace v. Lee*, 472 F.3d 174 (4th Cir. 2006) (prison officials substantially burdened inmate's religious exercise when they removed him from a Ramadan observance pass list after he allegedly broke the fast, thus

precluding him from participating in group services or other prayers).

At bottom, the First Amendment "forbids civil courts" from "determin[ing] matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion." *Mary Elizabeth*, 393 U.S. at 450. This prohibition reinforces the central guarantees of the Religion Clauses by ensuring civil authorities do not wade into, influence, or dictate a person's religious beliefs.

B. RLUIPA Forbids Courts from Second-Guessing the Significance of Particular Religious Exercises.

Congress explicitly codified this bedrock principle in RLUIPA to ensure the law's protections are not denied based on a court's own view of any given religious belief or practice. RLUIPA generally prohibits the government from "substantial[ly] burden[ing] . . . religious exercise" of a person or organization, "unless the government demonstrates that imposition of the burden" "is the least restrictive means of furthering [a] compelling governmental interest." 42 U.S.C. § 2000cc(a)(1). Congress defined its scope broadly, offering reprieve to believers from burdens on "*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). Congress's instruction for courts to stay out of questions about the supposed significance or necessity of any given religious practice could hardly be clearer.

This instruction makes sense. Congress enacted RLUIPA "'in order to provide very broad protection for religious liberty.'" *Holt v. Hobbs*, 574 U.S. 352, 356

(2015) (quoting *Hobby Lobby,* 573 U.S. at 693). Congress passed RLUIPA in response to specific evidence of widespread discrimination against religious individuals and organizations by state and local government officials overseeing a variety of land-use decisions. *See, e.g.*, H.R. Rep. No. 106-219, at 18–24 (1999).[3] As co-sponsors Senators Orrin Hatch and Ted Kennedy observed, RLUIPA "is a targeted bill that addresses the two frequently occurring burdens on religious liberty" and "is based on three years of hearings . . . that addressed in great detail . . . the need for legislation." 146 Cong. Rec. 16,698 (2000) (joint statement of Sens. Hatch and Kennedy); *see also* U.S. Dep't of Justice Civil Rights Div., *Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act* 3–4 (2020), https://bit.ly/48rikLv. Indeed, as Professor Douglas Laycock testified to the Senate Committee on the Judiciary, "if there is any area of regulation where you can make a clear record of widespread discrimination, it would be zoning and land use regulation." *Congress' Constitutional Role in Protecting Religious Liberty:*

[3] RLUIPA's enactment followed three years of consideration, including numerous Congressional hearings and reports. 146 Cong. Rec. 16698 (2000) (joint statement of Sens. Hatch and Kennedy on the Religious Land Use and Institutionalized Persons Act of 2000). Some of these hearings and reports, like this House Judiciary Committee Report, considered a predecessor bill with a materially equivalent definition of "religious exercise" as the final statute. *Compare* 42 U.S.C. § 2000cc-5(7)(A), *with* Religious Liberty Protection Act of 1999, H.R. 1691, 106th Cong. § 8(1) (1999). All this testimony and evidence led Congress to recognize the "nationwide problem" of "frequent[] discriminat[ion] against" houses of worship that RLUIPA is designed to address. 146 Cong. Rec. 16,698, 16,698–99 (2000) (joint statement of Sens. Hatch and Kennedy).

Hearing Before the S. Comm. on the Judiciary, 105th Cong. 43 (1997) (statement of Douglas Laycock, Professor, Univ. of Tex.).

The Congressional Record detailing RLUIPA's enactment confirms that the statute must be applied to cover *all* sincere religious exercise—regardless whether others might surmise that the practice is not sufficiently "important" or that similar and supposedly "alternative" religious practices remain available. As one Report from the House Judiciary Committee emphasized, the statute's broad definition of religious exercise explicitly "clarifies that the burdened religious activity need not be compulsory or central to a religious belief system as a condition for [bringing a] claim." H.R. Rep. No. 106-219, at 13 (1999). Congress's examples of offensive zoning restrictions bear this out. In one example, an Orthodox Jewish rabbi faced criminal penalties for leading prayers in a garage located in a single-family, residential area. *Id.* at 10–11. As the Congressional Record explains, the court observed that the services "[we]re not integral to [his] faith" and then concluded that the government's zoning interest outweighed the rabbi's interest in exercising his religion. *Id.* (citing *Protecting Religious Liberty After* Boerne v. Flores *(Part III): Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 28 (1998) (statement of Steven T. McFarland, Director, Center for Law and Religion Freedom of the Christian Legal Society)). Congress derided this effort to limit his religious exercise.

In another example, county officials sought to restrict the operational hours of a church to the typical business hours of a "commercial" facility. *Id.* at 11.

Congress complained that such a restriction would prevent the church from "lawfully engag[ing] in any act of service or devotion during those forbidden hours"—acts that would obviously encompass many practices beyond those formally *required* by the church's doctrinal beliefs. *Id.* Indeed, Congress heard repeatedly about infringements on all sorts of religious exercises, including practices that might seem optional or replaceable to outsiders. *See, e.g.*, 146 Cong. Rec. 19124, 19126 (2000) (statement of Rep. Hyde) (zoning officials ordered inner-city church offering worship services and bible studies and serving the poor and homeless to relocate); 146 Cong. Rec. 14,283, 14,285 (2000) (statement of Sen. Hatch) (city official ordered church to limit attendance and shut down long-running meal program).

Congress responded to this pattern of discrimination with force. It "defined 'religious exercise' capaciously to include 'any exercise of religion'"—even if not an exercise that is "compelled by, or central to, a system of religious belief." *Holt*, 574 U.S. at 358 (quoting 42 U.S.C. § 2000cc-5(7)(A)). It prohibited the government from imposing a substantial burden on all forms of protected religious exercise—"even if alternatives to enduring [the burden] are available." *Nije v. Dorethy*, 766 F. App'x 387, 391 (7th Cir. 2019) (per curiam, joined by Barrett, J.). And it "mandated" that these requirements "'shall be construed in favor of a broad protection of religious exercise.'" *Holt*, 574 U.S. at 358 (quoting 42 U.S.C. § 2000cc-3(g)). Given this expansive definition, "it is not for [courts] to say that . . . religious beliefs are mistaken or insubstantial" when evaluating whether the government has imposed a sufficient burden on them. *Hobby Lobby*, 573 U.S. at 725; *see also Haight*

v. Thompson, 763 F.3d 554, 566 (6th Cir. 2014) ("[N]either RLUIPA nor for that matter the First Amendment permits governments or courts to inquire into the centrality to a faith of certain religious practices.").

In short, "even if [courts] must evaluate the substantiality of the *burden* [on a given practice], courts do not ask whether the *particular exercise* of religion is a substantial part of the plaintiff's faith." *New Doe Child #1 v. Congress of the U.S.*, 891 F.3d 578, 587 (6th Cir. 2018) (emphasis added); *see also* Michael C. Dorf, *Incidental Burdens on Fundamental Rights*, 109 Harv. L. Rev. 1175, 1216 (1996) ("[T]he substantiality inquiry [under RFRA] should not turn on the centrality or importance of the burdened practice to the religion. To decide whether a particular practice is of central importance to a faith would require a religious judgment, which secular courts are ill-equipped to render.").

II. Lower Courts Need Guidance on How to Properly Evaluate "Substantial Burdens" Under RLUIPA.

Although RLUIPA soundly rejects the notion that courts may limit its protections to only those religious practices that are core to a person's faith, courts are still getting this wrong. More generally, courts across the country struggle to understand how to evaluate "substantial burdens" on religion in RLUIPA land-use cases. This Court should step in to provide that guidance—and particularly to make clear that the question of whether religious exercise has been substantially burdened cannot turn on a court's own estimation of the supposed religious significance or fungibility of that practice.

A. The Decision Below Reflects Courts' Confusion Over How to Evaluate Religious Burdens in Land-Use Cases.

Congress failed to provide a definition of "substantial burden" under RLUIPA. *See* Sherif Girgis, *Defining "Substantial Burdens" on Religion and Other Liberties*, 108 Va. L. Rev. 1759, 1770–71 (2022) ("Congress . . . clarified only what is *not* required for such a burden (namely, that the affected conduct be 'compelled by, or central to' one's faith)."). That gap has led to an array of competing—and often unsatisfying—approaches. *See id.* at 1771; Pet. Part I.B. The decisions of both the Kentucky Supreme Court and the intermediate appellate court in this case demonstrate the confusion over religious burdens in land-use cases—and the damage it has caused in the law.

The record here shows courts struggling to understand, and badly misapplying, the law of RLUIPA. For its part, the Kentucky Court of Appeals relied on a twenty-year-old Eastern District of Michigan case to make short work of the argument that failure to build a Marian grotto would substantially burden Saint John's religious exercise. Pet.App.54 (citing *Episcopal Student Found. v. City of Ann Arbor*, 341 F. Supp. 2d 691, 701 (E.D. Mich. 2004)). In its view, denying permission to build the proposed grotto posed no problem because the inability to build a grotto "is not inherently inconsistent with [Saint John's] religious beliefs." Pet.App.55. Stated differently, the court appears to have required Saint John to show that its chosen religious exercise—building a grotto to honor the

Blessed Virgin Mary—was mandated by or central to its Catholic faith.

Although it rejected the lower court's reliance on *Episcopal Student Foundation*, Pet.App.30, the Kentucky Supreme Court ultimately reached much the same conclusion. To do so, the Kentucky Supreme turned to a convoluted multi-factor test for "substantial burden" from the Sixth Circuit, which asked a variety of questions including the availability of alternative locations for the church to "carry out its mission" and whether the church had adequate notice of the City's zoning rules. Pet.App.25; *see Livingston Christian Schs. v. Genoa Charter Twp.*, 858 F.3d 996 (6th Cir. 2017). Yet, applying this supposed test, the court reached essentially the same conclusion as the intermediate appellate court before it: that the Board's actions here imposed but a "mere inconvenience" on religious exercise. Pet.App.25. Inability to build the grotto, the Kentucky Supreme Court held, did not impose a religious burden with the requisite "degree of severity" because Saint John arguably could "build a smaller shrine or grotto than what it desires" in some other location. Pet.App.25. In other words, the Kentucky Supreme Court essentially discounted any "inconvenience" to Saint John because, in its view, the religious community could simply exercise its religion differently.

That is not how the law works. Courts may not substitute their *own* judgment about whether an "alternative is just as good religiously." Girgis, *Defining "Substantial Burdens"*, *supra*, at 1794. Here, Saint John seeks to build a Marian grotto on a particular plot of its land adjacent to the church. Pet.5. That location derives from the community's

religious beliefs about the appropriate way to honor the Blessed Virgin Mary. Pet.5–6. Building the grotto elsewhere (or more modestly), as the Kentucky Supreme Court suggested, would not be religiously "just as good" in Saint John's view. This proposed alternative thus cannot defeat Saint John's claim of a substantial religious burden.

Yet Kentucky's courts are hardly alone in their confusion. Across the country, courts have taken divergent approaches to evaluate whether the government's restriction of a religious exercise has imposed a "substantial burden" within the meaning of RLUIPA. *See Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 95 (1st Cir. 2013) (citing inconsistent standards across circuits); *see generally* Pet. Part I.B. Vague multifactor tests proliferate, often without much engagement with why the listed factors are relevant or how exactly they interrelate.[4] This case presents an important opportunity for this Court to clarify the law and resolve these conflicts.

B. This Court Must Clarify that "Substantial Burden" Does Not Turn on the Supposed Importance of a Religious Practice.

This Court must clarify the law not just to bring much needed uniformity to it. It must also do so to

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[4] *See, e.g.*, *Spirit of Aloha Temple v. County of Maui*, 132 F.4th 1148, 1156 (9th Cir. 2025); *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, 83 F.4th 922, 927 & n.1 (11th Cir. 2023); *Livingston Christian Schs.*, 858 F.3d at 1004–05; *Roman Catholic Bishop of Springfield*, 724 F.3d at 96–97. For their part, Petitioners count at least *sixteen* different factors that courts around the country consult when assessing whether a land-use regulation substantially burdens religious exercise. Pet.24.

remind lower courts that—under *any* approach—a court's own evaluation of the significance of a person's religious practices cannot factor into the assessment of "substantial burden" under RLUIPA.

To be sure, even courts that have employed analyses similar to the approach taken by the lower courts here have understood that they should not scrutinize the importance or necessity of a party's chosen religious practice.[5] But, unfortunately, Kentucky's courts are not the only ones that have missed that message. Indeed, a number of other courts have employed a variety of competing (and often highly malleable) approaches to focus on exactly those forbidden questions. *See, e.g.*, *Mahoney v. Doe*, 642 F.3d 1112, 1121 (D.C. Cir. 2011) (affirming the "propriety of inquiring into the importance of a religious practice when assessing whether a substantial burden exists" under RFRA and RLUIPA (quotation omitted)); *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore Cnty.*, 962 A.2d 404, 432 (Md. 2008) (no substantial burden where evangelization effort was "really one of 'desire' or 'want' rather than one of 'need'"); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1228 (11th Cir. 2004) (no substantial burden where zoning ordinance excluding houses of worship from certain areas would force some Orthodox Jewish congregants either to violate their religious belief prohibiting them from driving cars on the Sabbath to gather for worship or to miss Sabbath services); *Corp.*

[5] *See, e.g.*, *Johnson v. Baker*, 23 F.4th 1209, 1215 (9th Cir. 2022) ("RLUIPA's plain text . . . prohibits courts from peering into the centrality of a religious practice or whether a particular practice is necessary to the religion."); *Haight*, 763 F.3d at 566.

of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. City of West Linn, 86 P.3d 1140, 1150 (Or. Ct. App. 2004) (no substantial burden where church failed to show that its proposed building was "the only one that met its requirements" or "that a building of the particular proposed size was required for religious purposes"); *cf. Patel v. U.S. Bureau of Prisons*, 515 F.3d 807, 813 (8th Cir. 2008) (substantial burden exists only where the government "significantly inhibit[s] or constrain[s] conduct or expression that manifests some central tenet of a person's individual religious beliefs" (quotation omitted)). And, more generally, there is an overriding risk that courts will view the question of religious burdens as one about intruding on "religious duties," thus inviting them to "gainsay plaintiffs' view on what really matters to their religion." Girgis, *Defining "Substantial Burdens"*, *supra*, at 1773–74.

This Court should take the opportunity to correct those errors now. Under any approach to evaluating substantial burden, the necessity or importance of the religious exercise is beside the point. Of course, this does not mean that courts have no role in evaluating whether a religious practice has in fact been substantially burdened. *Cf.* Girgis, *Defining "Substantial Burdens"*, *supra*, at 1793–1815 (criticizing centrality tests and proposing instead an analysis where courts ask whether alternatives are *religiously adequate* from the claimants' perspective and accessible without incurring *substantial costs*). Nor does this basic limitation on the role of civil authorities lead to a supposed floodgates problem whereby every RLUIPA plaintiff seeking permission to engage in religious activity must prevail. Rather, it simply directs courts to their appropriate role in the

analysis. *See* Dorf, *Incidental Burdens*, *supra*, at 1216. That includes, at the outset, the court asking whether the claim "is grounded in a sincerely held religious belief." *Holt*, 574 U.S. at 361; *see also, e.g.*, *Hobby Lobby*, 573 U.S. at 718 ("[T]he scope of RLUIPA shows that Congress was confident of the ability of the federal courts to weed out insincere claims."); *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, 980 F.3d 821, 829–31 (11th Cir. 2020); *Greater Bible Way Temple v. Jackson*, 733 N.W.2d 734, 746 (Mich. 2007). And, courts must still determine that whatever impediment has been imposed on that religious exercise is a substantial burden to its fulfillment. "[A] 'substantial burden' must place more than an inconvenience on religious exercise." *Midrash*, 366 F.3d at 1227; *see also Livingston Christian Schs.*, 858 F.3d at 1003 ("[N]ot just any imposition on religious exercise will constitute a violation of RLUIPA."). And, finally, even if the government *has* substantially burdened religious exercise, RLUIPA directs the court to ask whether the government has "demonstrate[d] that imposition of the burden" "is the least restrictive means of furthering [a] compelling governmental interest." 42 U.S.C. § 2000cc(a)(1).

These sorts of inquiries—not the centrality of religious exercise—are appropriate ways for courts to evaluate a RLUIPA claim. The Kentucky Supreme Court's rejection of Saint John's RLUIPA argument based on its own view of what exactly the Catholic faith requires, or whether the Missionaries of Saint John the Baptist might remain Catholics in good standing even with a different grotto, is decidedly not. This Court must make that clear.

CONCLUSION

RLUIPA protects all forms of sincere religious exercise, whether compelled by a religious belief or not. To ensure the statute is faithfully applied and to prevent the arbitrary restriction of its scope based on courts' own interpretation of the supposed importance of religious practices, this Court should grant certiorari and reverse the decision below.

Respectfully submitted,

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