

No. 25-1131

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**In the Supreme Court of the United States**

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MISSIONARIES OF SAINT JOHN THE BAPTIST, INC.,

*Petitioner,*

*v.*

JOEL FREDERIC, ET UX.

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On Petition for Writ of Certiorari  
to the Supreme Court of Kentucky

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**BRIEF OF *AMICUS CURIAE*  
PROTECT THE FIRST FOUNDATION  
SUPPORTING PETITIONER**

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## INTRODUCTION, SUMMARY, AND INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The petition should be granted to clarify that a law that forbids a religious institution from building a religious structure necessarily imposes a substantial burden on religious exercise under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §2000cc *et seq.*, and must therefore pass strict scrutiny. Congress enacted RLUIPA after compiling extensive evidence that zoning laws and discretionary permitting regimes were being used to burden and exclude religious institutions in violation of their rights under the First Amendment. That record revealed a consistent pattern: Religious entities trying to find places to worship were often denied permits based on shifting and contradictory rationales, subjected to overt hostility in public proceedings, and treated less favorably than comparable secular entities.

Guided by this shameful history, Congress concluded that existing legal protections were inadequate to protect First Amendment rights and that robust statutory safeguards were necessary. The statute's protections, including the "substantial burden" provision at issue, were designed to provide strong, enforceable limits on local zoning practices

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<sup>1</sup> This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amicus curiae* or its counsel has made a monetary contribution toward the brief's preparation or submission. Counsel of record for all parties received timely notice of *amicus*' intent to file.

that had historically been used to exclude religious institutions.

By finding that RLUIPA does not even apply to petitioner's efforts here to obtain a permit to create a shrine to the Virgin Mary, the decision below undermines that framework. It does so by permitting a zoning regime that conditions religious land use on compliance with requirements not imposed on comparable secular uses and allowing pretextual justifications to justify exclusion.

This error is particularly troubling to *amicus* Protect the First Foundation (PT1), a nonprofit, nonpartisan organization that advocates for religious freedom. PT1 agrees with petitioner (at 18-27, 31-35) that, in rejecting petitioner's RLUIPA defense, the lower courts put themselves on the textually indefensible side of two circuit splits. This Court should grant review to resolve those splits and reverse for that reason alone.

PT1 writes separately to show that—in addition to bungling the text—the decision below also frustrates RLUIPA's purpose. RLUIPA was enacted in response to widespread and well-documented religious discrimination in land-use regulation, creating widespread and systematic violations of the First Amendment. The lower court's holding directly undermines that purpose and threatens to impose irreparable harm on religious institutions. This provides yet another powerful reason for this Court's review.

**STATEMENT**

Petitioner sought to exercise its religious beliefs by constructing a modest grotto dedicated to the Virgin Mary next to its church. App.4a. Because the local zoning code required such structures to be built on arterial streets, App.5a-6a, petitioner sought an exemption to that requirement to build the grotto, App.6a. The board initially granted the permit. App.8a-10a. But respondents—who lived nearby—objected and sued to invalidate the permit. App.10a.

The trial court rejected their challenge, App.60a-61a; see also App.13a-14a, but the Kentucky Court of Appeals reversed, holding that RLUIPA did not apply and that the zoning code forbade the grotto, App.14a-16a. The Supreme Court of Kentucky affirmed. App.3a. The court held that strict scrutiny under RLUIPA did not apply because petitioner could not show either a substantial burden or that denying its permit would treat petitioner's permit request differently than similar requests of secular entities. App.27a-30a. The court reasoned that petitioner did not experience the kind of delay, uncertainty, or expense necessary to constitute a substantial burden because petitioner knew when applying for the permit that zoning laws restricted religious structures to arterial streets. App.27a. And the court dubiously suggested that, by trying to obtain a permit despite that knowledge, petitioner burdened its own religious beliefs. App.27a.

The court also rejected petitioner's claim under RLUIPA's equal-terms provision, reasoning that while many comparable secular structures were *not* required to be built on arterial streets, others were. App.29a.

## **ADDITIONAL REASONS FOR GRANTING THE PETITION**

In addition to furthering two splits of authority and being wrong on the text, see generally Pet., the decision below merits this Court's review because such review is needed to vindicate RLUIPA's purpose of protecting faith communities' rights under the First Amendment.

### **I. Congress Enacted RLUIPA to Address Widespread and Well-documented Discrimination Against Religious Institutions in Land-use Regulation in Violation of the First Amendment.**

After this Court held that neutral laws of general applicability do not violate the First Amendment regardless of their impact on religious exercise, see *Employment Div. v. Smith*, 494 U.S. 872, 878-882 (1990), Congress enacted the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §2000bb *et seq.*, to restore heightened protections for religious exercise. But the Court later held that RFRA itself exceeded Congress' powers as applied against the states. *City of Boerne v. Flores*, 521 U.S. 507, 532-536 (1997). Congress responded to RFRA's narrowing construction by enacting RLUIPA. *Holt v. Hobbs*, 574 U.S. 352, 357 (2015). But it only did so after conducting a series of hearings to identify and specifically address the greatest consistent government violations of religious liberty. As shown below, in those hearings, Congress heard extensive evidence of government abuses of power to exclude or burden religious activity for arbitrary, pretextual, or

openly discriminatory reasons in, as relevant here, land-use restrictions.

1. One type of evidence that Congress considered involved instances where religious institutions were denied permits to build or use property for worship for reasons unrelated to legitimate land-use concerns.

For example, one city denied a permit to The Church of Jesus Christ of Latter-day Saints after the Church sought to build a temple on a property that had once been a church for another congregation. H.R. Rep. No. 106-219, at 22 (1999).<sup>2</sup> The city found that the temple would not be “in the best interests of and promote the public health, safety, morals, convenience, order, prosperity, and general welfare of the City” and cited a desire to “have no more churches in the community.” *Ibid.* Another denied a permit to an Orthodox Jewish community seeking to build a synagogue for failing to include sufficient parking spaces, even though its congregants, due to religious observance, would not use vehicles on the Sabbath. *Id.* at 23. When the community agreed to construct the requisite parking, the city flipped and denied the permit because of traffic concerns. *Ibid.* These examples, and countless others like them, show that when rational basis is the standard, religious exercise can be blocked for almost any reason.

Other examples before Congress followed much the same pattern. Cities would offer ostensibly neutral

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<sup>2</sup> This report was prepared by the House Committee on the Judiciary when it was considering the Religious Liberty Protection Act of 1999, H.R. 1691, 106th Cong., a bill that eventually became the House-passed predecessor of RLUIPA.

justifications, such as concerns about traffic, parking, safety, or neighborhood character. *Id.* at 20. And they would then employ these justifications as necessary to deny requested permits. Some religious institutions were excluded from residential zones for generating “too much traffic” while being excluded from commercial zones for not generating “enough.” 146 Cong. Rec. S7774–S7775 (daily ed. July 27, 2000) (joint statement of Sen. Hatch and Sen. Kennedy). Others were denied permits to use even “existing buildings that non-religious assemblies had previously used” for similar secular purposes. H.R. Rep. No. 106-219, at 21. One clear reason for RLUIPA’s passage, then, was to prevent cities from offering ostensibly neutral justifications to prevent unwanted religious buildings and land uses in their community. RLUIPA provided a way for Congress to respond to these arbitrary, shifting, and contradictory rationales that local governments gave as reasons for denying permits to religious organizations.

While those pretextual reasons were bad enough, some efforts to deny permits to religious organizations were taken without even a veneer of religious neutrality. Congress heard, for example, substantial testimony of far more invidious—and openly bigoted—discrimination against religious groups in the zoning process. One participant in a zoning hearing suggested to Jews that “Hitler should have killed more of” them. H.R. Rep. No. 106-219, at 23. Another begged the zoning board to “keep these God damned Pentecostals” out of the community. *Ibid.* And while it would be easy to waive these examples away as outliers from a fringe subgroup, that would be factually incorrect. Congress

also heard testimony about how one zoning board “invited testimony” concerning the perceived impact of “substantial Orthodox Jewish populations” on the surrounding community before it would approve a permit request. *Ibid.* What could go wrong?

2. Then came the evidence of discrimination against religious entities who were not *denied* permits but nevertheless received less favorable treatment than comparable secular entities.

Congress heard that religious groups were often subject to more restrictive permitting processes than comparable nonreligious assemblies. In many jurisdictions, secular gathering places—such as community centers, health clubs, backyard barbecues, and banquet halls—were permitted in areas where religious gatherings, including bible study and prayer meetings, were prohibited. 146 Cong. Rec. S7774-S7775, *supra*. In one example, Orthodox Jewish residents were prohibited from holding prayer meetings in a residential area, even though other comparable forms of secular assembly were allowed. H.R. Rep. No. 106-219, at 22. Because their religious beliefs prohibited travel by vehicle on the Sabbath, the inability to gather locally effectively forced them to choose between remaining in their homes and practicing their religion. *Ibid.*<sup>3</sup>

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<sup>3</sup> A functionally identical fact pattern played out in another case where a petition is currently pending before this Court—showing that RLUIPA did not make the problem go away entirely. See Pet. at 3-4, *Grand v. City of Univ. Heights*, No. 25-965 (docketed Feb. 17, 2026).

3. Congress also considered how courts often *upheld* zoning decisions that burdened religious exercise and noted that, in recent years, the “success rate of churches in the relatively few reported cases has \* \* \* declined.” *Id.* at 21 & n.94 (collecting cases). In one cited case, the Ninth Circuit upheld the decision to deny a small church a permit to meet in a residential area because the church would allegedly create noise, traffic, and parking concerns and “adversely affect the character of the neighborhood.” *Christian Gospel Church, Inc. v. City of San Francisco*, 896 F.2d 1221, 1223 (9th Cir. 1990). In another, the Eleventh Circuit approved categorical restrictions on “organized, publicly attended religious activities” after concluding that such limitations did not even rise to the level of significant constitutional harm. *Grosz v. City of Miami Beach*, 721 F.2d 729, 739 (11th Cir. 1983). These examples show that it was not just cities and their citizens that were hostile or unsympathetic to their religious neighbors’ efforts to find a spot of their choosing on which to worship. Often, the pre-RLUIPA courts were complicit too.

This extensive evidence, and much more besides, led Congress to the unavoidable conclusion that discrimination against religious institutions in land-use regulation—with resultant First Amendment violations—was “very widespread” and often covert. 146 Cong. Rec. S7774-S7775, *supra*. Congress therefore designed and enacted RLUIPA to rein in such discriminatory abuses by imposing meaningful constraints on governmental authority, thereby ensuring that religious exercise would not be burdened by discretionary, inconsistent, or

discriminatory land-use decisions. *Ibid.* As reflected in the joint statements of RLUIPA’s sponsors, *id.* at S7774-S7776, the statute was a “critical[] effort” to address ongoing threats to religious liberty and to provide a high level of protection commensurate with the importance of the right at stake, *id.* at S7774 (introduction by Sen. Hatch). In Congress’s considered view, then, RLUIPA was necessary to prevent and redress ongoing, massive violations of the First Amendment.

**II. The Decision Below Sanctions the Very Discrimination RLUIPA Was Designed to Prevent and Thereby Threatens to Irreparably Harm Religious Organizations in Violation of the First Amendment.**

The decision below permits precisely the type of unconstitutional burden on religion that Congress enacted RLUIPA to eliminate if the government cannot satisfy strict scrutiny. Petitioner’s attempt to build a shrine where it feels religiously compelled to build is not only burdened by the decision below. It is forbidden. As Justice Gorsuch rightly recognizes, “preventing a religious exercise is, necessarily, a ‘substantial burden’ on that religious exercise.” *Apache Stronghold v. United States*, 145 S. Ct. 1480, 1488 (Gorsuch, J., dissenting from the denial of certiorari), *reh’g denied mem.*, 146 S. Ct. 285 (2025). Respondents’ claims should therefore have been subject to strict scrutiny. See 42 U.S.C. §2000cc(a)(1).<sup>4</sup>

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<sup>4</sup> Even if outright prohibitions do not categorically qualify as substantial burdens, the lower court’s holding nonetheless unduly narrows the definition. If explicitly prohibitive zoning

By adopting an interpretation of RLUIPA that reaches a contrary conclusion, the Kentucky Supreme Court imposed an unduly narrow limitation on RLUIPA’s “substantial burden” provision. That holding undermines the statute’s core protections and invites a return to the pre-RLUIPA landscape of widespread religious discrimination in land-use regulation described above. This departure from Congress’s purpose provides another need for this Court’s review beyond the split petitioner identifies.

In short, the lower courts desperately need this Court’s guidance on how to interpret this foundational term in RLUIPA.<sup>5</sup> Delaying any longer when the split is as developed as it is makes little practical sense. As this Court recently reiterated, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025) (quoting *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam)); accord *Mirabelli v. Bonta*, 146 S. Ct. 797, 803 (2026) (per curiam). The same is necessarily true when the First Amendment freedoms that are being violated have been codified by statute. See *Ramirez v. Collier*, 595 U.S. 411, 433 (2022) (finding irreparable harm in an RLUIPA case from being “unable to engage in protected religious exercise”); accord *Opulent Life Church v. City of Holly*

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regulations are deemed non-burdensome simply because they are known in advance, App.27a, then even facially discriminatory restrictions on religious land use would evade evaluation of RLUIPA’s least-restrictive-means requirement.

<sup>5</sup> For the same reason, this Court should also grant the petition as to the second question presented.

*Springs*, 697 F.3d 279, 295-296 (5th Cir. 2012) (same);  
*Jolly v. Coughlin*, 76 F.3d 468, 482 (2nd Cir. 1996)  
(same).

### CONCLUSION

The Court should grant the petition to provide guidance to the lower courts on the proper meaning of “substantial burden” in RLUIPA and to guarantee that religious entities are protected from unwarranted and unconstitutional intrusions into their efforts to worship on their land.

Respectfully submitted,

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