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 Writ of Certiorari to the Supreme Court of Kentucky

BRIEF FOR PETITIONER

KELLY J. SHACKELFORD
JEFFREY C. MATEER
HIRAM S. SASSER, III
DAVID J. HACKER
RYAN N. GARDNER
TIFFANY D. DUNKIN
CAROLINE M. HOCH
FIRST LIBERTY INSTITUTE
2001 W. Plano Parkway
Suite 1600
Plano, TX 75075
(972) 941-4444

SARAH ELIZABETH BENEDICT
DINSMORE & SHOHL LLP
255 East Fifth Street
Suite 1900
Cincinnati, OH 45202
(513) 832-5340

JOHN F. BASH
Counsel of Record
ALEX VAN DYKE
OLIVIA G. HORTON
QUINN EMANUEL URQUHART & SULLIVAN, LLP
300 W. 6th St., Suite 2010
Austin, TX 78701
(737) 667-6100
johnbash@quinnemanuel.com

KADE A. ALLRED
QUINN EMANUEL URQUHART & SULLIVAN, LLP
2755 E. Cottonwood Parkway
Suite 520
Salt Lake City, UT 84121
(801) 515-7300

THOMAS W. BREIDENSTEIN
BREIDENSTEIN LEGAL SERVICES, LLC
855 Greenville Ave.
Suite 300
Cincinnati, OH 45246
(513) 607-3452

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

QUESTION PRESENTED

Whether a land-use regulation that prohibits a religious institution from building a religious structure on its own property constitutes a "substantial burden" on religious exercise under the Substantial Burden Provision of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc(a).

PARTIES TO THE PROCEEDING

Petitioner is Missionaries of Saint John the Baptist, Inc., which was the appellant before the Supreme Court of Kentucky.

Respondents are Joel Frederic and Elizabeth Frederic, who were the appellees before the Supreme Court of Kentucky.

Cathleen Matchinga, Charles Meyers, City of Park Hills Board of Adjustment, Justin Odor, Mark Koenig, Robert Sweet, Sheila Burke Trust, Sheila Burke, in her capacity as trustee for the Sheila Burke Trust, and Thomas Michael were appellees before the Supreme Court of Kentucky.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Missionaries of Saint John the Baptist, Inc. is a private, nonprofit organization. It has no parent corporation and does not have any shareholder that is a publicly held company.

RELATED PROCEEDINGS

Kenton Circuit Court, Fourth Division:

Frederic v. City of Park Hills Bd. of Adjustment, No. 21-CI-00766 (June 29, 2022)

Court of Appeals of Kentucky:

Frederic v. City of Park Hills Bd. of Adjustment, No. 2022-CA-0867-MR, 2023 WL 8286391 (Dec. 1, 2023)

Supreme Court of Kentucky:

Missionaries of Saint John the Baptist, Inc. v. Frederic, 727 S.W.3d 400 (Dec. 18, 2025)

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INTRODUCTION

Petitioner Missionaries of Saint John the Baptist, a nonprofit religious organization, seeks to build a shrine to the Virgin Mary on a plot of land that it acquired beside its church, Our Lady of Lourdes, in Park Hills, Kentucky. The design and location of the shrine are modeled on the grotto in Lourdes, France, where, according to Catholic tradition, the Virgin Mary appeared to Saint Bernadette in 1858. Petitioner envisions the grotto as "a sacred, elaborate garden" providing parishioners a "space for reflection and repose" before and after Mass. J.A. 8.

After years of planning, petitioner applied to the Park Hills Board of Adjustment for permission to build the grotto. The board approved the project, but two neighbors sued to enjoin it as prohibited by the Park Hills Zoning Ordinance, which bans religious structures next to non-arterial streets. As a defense to that suit, petitioner invoked the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc *et seq*. Petitioner argued that denying it permission to construct the grotto would "implement a land use regulation in a manner that imposes a substantial burden on [petitioner's] religious exercise" and would not be "the least restrictive means of furthering [a] compelling governmental interest." 42 U.S.C. § 2000cc(a)(1).

The Kentucky Supreme Court rejected petitioner's RLUIPA defense at the threshold on the ground that a total prohibition on petitioner's construction of its grotto on the land acquired for that purpose would not impose a "substantial burden on [petitioner's] religious exercise." It gave two reasons for that conclusion. First, the court said, petitioner

could build a significantly smaller shrine on its existing church property—apparently jammed in between the parking lot and the church in a little grassy area near the road. Pet. App. 25a; *see* pp. 34-38, *infra*. Such a considerable change in design and location, the court inexplicably concluded, amounts to a "mere inconvenience." Pet. App. 25a.

Second, the court stated that the burden here was "self-imposed," and thus not substantial, because petitioner was aware of the prohibitory local ordinance at the time that it submitted its application to the zoning board. Pet. App. 24a, 27a. That reasoning would essentially limit RLUIPA to a grandfathering protection against new zoning laws, even though Congress's principal concern was how local governments were deploying existing laws to suppress religious activity.

Neither consideration has any basis in RLUIPA's text or purpose. But the Kentucky Supreme Court's decision was in harmony with many decisions in the quarter-century since RLUIPA's enactment making the substantial-burden element far too hard to satisfy. Lower courts have asked, for example, whether a regulation would cause the claimant to *violate* its religious beliefs, even though the statute eschews such a high standard, 42 U.S.C. § 2000cc-5(7)(A); whether a religious building could be constructed on other property—even property the claimant doesn't currently own—despite the fact that RLUIPA defines "religious exercise" as specific to a given parcel of property, 42 U.S.C. § 2000cc-5(7)(B); and whether the government's permitting process was arbitrary, capricious, or discriminatory—considerations that have no bearing on whether a burden is substantial. Those erroneous holdings have complicated what should be a

common-sense inquiry into whether a land-use regulation, as implemented, pressures claimants to forgo or materially alter the use or development of their property for a specific, sincere religious exercise.

This case is an easy call under that standard. The decision below flatly prohibits petitioner from engaging in its chosen form of religious exercise on the property that it acquired for that purpose. "As a matter of ordinary meaning, * * * an action that prevents a religious exercise does not just burden that exercise substantially, it burdens it completely." *Apache Stronghold v. United States*, 145 S. Ct. 1480, 1486 (2025) (Gorsuch, J., dissenting from the denial of certiorari). That resolves the question presented here.

To the extent that lower courts have been reluctant to enforce the plain text of RLUIPA because they fear the consequences for land-use law, that is not a proper basis for unraveling Congress's handiwork. Congress enacted RLUIPA because existing zoning and landmarking regimes were suppressing religious exercise, and the statute puts local governments to a demanding burden before they may prevent landowners from using their property for religious activities. As the Third Circuit has recently held, "Congress codified a basic principle: except when the implementation of a land use regulation satisfies strict scrutiny, the choice of where the exercise of religion can take place should be left to persons with rights of access to and use of real property—not to zoning codes and landmarking laws promulgated by governments." *Anash, Inc. v. Borough of Kingston*, 184 F.4th 214, 244 (3d Cir. 2026).

This Court should accordingly vacate the decision of the Kentucky Supreme Court and remand for further proceedings.

OPINIONS BELOW

The opinion of the Kentucky Supreme Court (Pet. App. 1a-39a) is reported at 727 S.W.3d 400. The decision of the Kentucky Court of Appeals (Pet. App. 40a-55a) is unreported but is available at 2023 WL 8286391. The decision of the Kenton Circuit Court is unreported (Pet. App. 56a-61a).

JURISDICTION

The judgment of the Kentucky Supreme Court was entered on December 18, 2025. The petition for a writ of certiorari was filed on March 18, 2026, and granted on October 1, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the petition appendix. Pet. App. 65a-83a.

STATEMENT

A. Legal Background

Beginning with *Sherbert v. Verner*, 374 U.S. 398 (1963), this Court used to evaluate Free Exercise Clause challenges to neutral laws by "ask[ing] whether [a] prohibition substantially burdened a religious practice and, if it did, whether the burden was justified by a compelling government interest." *City of Boerne v. Flores*, 521 U.S. 507, 513 (1997). The Court largely repudiated that test in *Employment*

Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990) ("*Smith*"), holding that "neutral laws of general applicability" pose no Free Exercise Clause problem, except where "other constitutional protections [are] at stake." *City of Boerne*, 521 U.S. at 513-14.

Many in Congress "criticized the Court's reasoning, and this disagreement resulted in the passage of [the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* ("RFRA")]." *City of Boerne*, 521 U.S. at 515. RFRA prohibits federal and state governments from "'substantially burden[ing]' a person's exercise of religion even if the burden results from a rule of general applicability unless the government can demonstrate the burden '(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'" *Id.* at 515-16 (quoting 42 U.S.C. § 2000bb-1). In *City of Boerne*, however, this Court held that, as applied to state governments, RFRA exceeds Congress's power under the Enforcement Clause of the Fourteenth Amendment. *Id.* at 536.

In response, Congress enacted RLUIPA by unanimous consent, and President Clinton signed it into law in 2000. Pub. L. No. 106-274, 114 Stat. 803. Congress intended RLUIPA to "provide very broad protection for religious liberty." *Holt v. Hobbs*, 574 U.S. 352, 356 (2015) (citation omitted); *see Cutter v. Wilkinson*, 544 U.S. 709, 716 (2005). Invoking the Enforcement Clause, as well as the Spending and Commerce Clauses, "RLUIPA targets two areas: Section 2 of the

Act concerns land-use regulation, 42 U.S.C. § 2000cc; and § 3 relates to religious exercise by institutionalized persons, § 2000cc-1." *Cutter*, 544 U.S. at 715.

With respect to land use, Congress was faced with "massive evidence" that "[c]hurches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation." 146 Cong. Rec. S7774-75 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy). Such suppression of religious practice was sometimes explicit, "especially in cases of black churches and Jewish shuls and synagogues," but in many cases it "lurk[ed] behind such vague and universally applicable reasons as traffic, aesthetics, or * * * [a] city's land use plan." *Ibid.*

RLUIPA's land-use provisions contain two separate protections for religious exercise. First, the statute bars discriminatory treatment of religious assemblies or institutions. 42 U.S.C. § 2000cc(b). Second, and at issue here, RLUIPA requires a state or local government entity to satisfy the RFRA standard:

> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—
>
> > (A) is in furtherance of a compelling governmental interest; and

> (B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1); *see* 42 U.S.C. § 2000cc-5(4) (defining "government"). RLUIPA defines a "land use regulation" as "a zoning or landmarking law, or the application of such a law, that limits or restricts a [RLUIPA] claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest." 42 U.S.C. § 2000cc-5(5).

A person may raise RLUIPA "as a claim or defense in a judicial proceeding." 42 U.S.C. § 2000cc-2(a). It "applies in any case" (i) that involves a federally funded program or activity; (ii) where the burden or its removal would affect interstate or international commerce; or (iii) where the burden "is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(a)(2). Once prima facie evidence of a violation is produced, "the government shall bear the burden of persuasion on any element of the claim," except as to whether the challenged land-use regulation "substantially burdens the plaintiff's exercise of religion." 42 U.S.C. § 2000cc-2(b).

Congress included several provisions in RLUIPA confirming the breadth of the statute. For example, it defined "religious exercise" to include "any exercise of religion, whether or not compelled by, or central to, a

system of religious belief" and specified that "[t]he use, building, or conversion of real property for the purpose of religious exercise" is itself a religious exercise. 42 U.S.C. § 2000cc-5(7). It made clear that not only a natural "person," but also any "religious assembly or institution," could invoke the statute. *Id.* § 2000cc(a)(1). Congress also directed that RLUIPA "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." *Id.* § 2000cc-3(g). And it stated that RLUIPA "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." *Id.* § 2000cc-3(c); *see Holt*, 574 U.S. at 358.

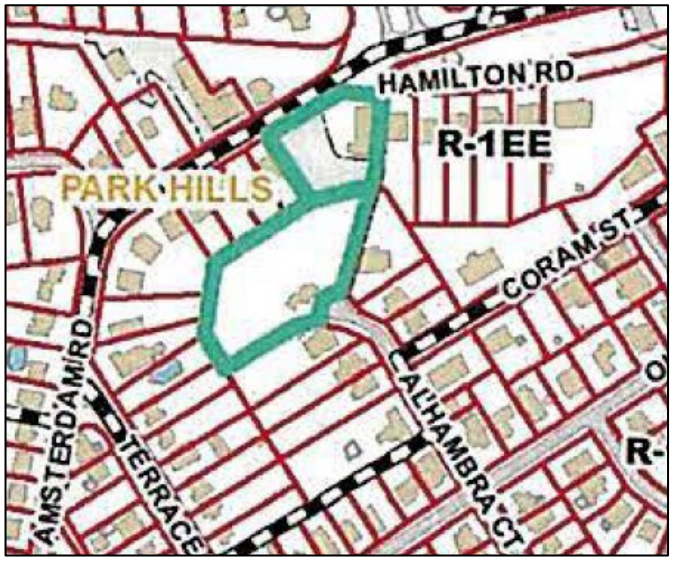
B. Factual Background

1. Since 1930, a church has stood on Amsterdam Road in Park Hills, Kentucky, a Cincinnati suburb. Pet. App. 33a, 59a, 86a. Originally built for a Lutheran congregation and later home to other faith communities, the Neogothic building has been in continuous use as a church ever since. Pet. App. 87a. Today it is home to Our Lady of Lourdes, a Catholic parish:



Id. at 4a, 33a; J.A. 26.

Petitioner, a nonprofit organization that supports apostolic work consistent with Catholic teaching, acquired the property in 2015. J.A. 62-63; Pet. App. 4a, 59a. Behind the church, a small hill rises on a separate, adjoining parcel abutting Alhambra Court. Pet. App. 4a, 41a, 85a. In this map, the top area encircled by the green line contains the church, the bottom area the hill:



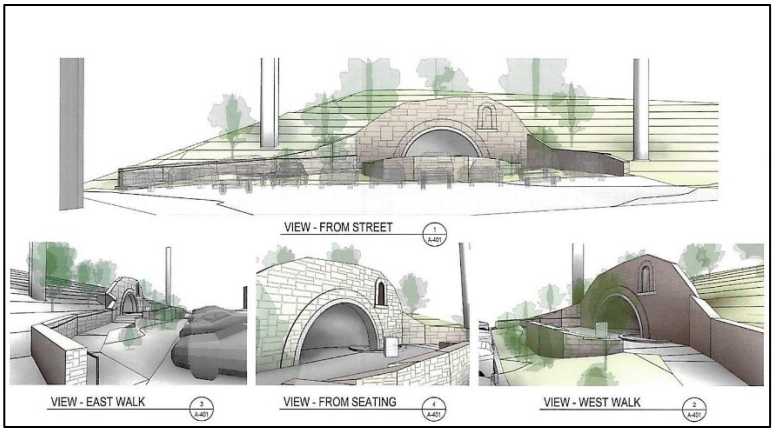
J.A. 23 (cropped).

In 2016, petitioner entered into a perpetual lease with the trust that owns the adjacent hill lot. J.A. 7, 125. The parties had the "mutually agreed intent" of building a small grotto on the hill, which is undeveloped:



J.A. 7; Pet. App. 4a; J.A. 17, at 28:55 (screenshot).

The grotto is intended to be a quiet place of reflection for worshippers and other visitors to the grounds, used primarily by parishioners before and after Mass. Pet. App. 126a-27a. The project would consist of the grotto itself, which would be built into the hillside, as well as "a plaza, a walking path, and a retaining wall." *Id.* at 4a, 140a. The visible plaza in front of the grotto would measure 17 by 39 feet, which is about the size of a backyard pool. *Id.* at 4a, 140a, 143a. Most of the project would sit on the hill lot, while the edge of the plaza would extend onto the church lot. *Id.* at 49a-50a; J.A. 12-13.



Pet. App. 143a (cropped).

The design of the grotto is inspired by the Marian grotto-shrine built into a mountainside cave in Lourdes, France. According to Catholic tradition, the Virgin Mary appeared to Saint Bernadette there in 1858 and asked her "to tell the priests to build a chapel." J.A. 102. The grotto is not meant to be merely viewed from a distance. Rather, the faithful

enter it, and it is intended to give them the spiritual experience of visiting Lourdes.

2. Park Hills has established various zoning rules through the Park Hills Zoning Ordinance ("Ordinance"), which is administered by the Park Hills Board of Adjustment ("Board"). Pet. App. 4a-5a, 33a. Petitioner's property sits in a zone reserved for single- and two-family homes. *Id.* at 45a, 74a. In that zone, the Ordinance permits "[c]hurches and other buildings for the purpose of religious worship" only if "they are located adjacent to an arterial street." Ordinance § 10.4(C)(2) (Pet. App. 74a). An "arterial street" is a "[p]ublic thoroughfare[] which serve[s] the major movements of traffic within and through the community, as identified in the adopted comprehensive plan for the city of Park Hills." Ordinance § 7.0 (quoted in Pet. App. 48a).

Although Amsterdam Road was designated as an arterial street when the church was built, it no longer has that designation. J.A. 62-63. But because the church existed before Park Hills adopted its zoning code in 1974, the church is permitted to remain standing as a grandfathered "nonconforming use." Pet. App. 33a, 59a; *see* Ky. Rev. Stat. § 100.253 (Pet. App. 68a-69a). The Ordinance, however, forbids "the enlargement or extension of a nonconforming use." Ordinance § 19.6(B) and (D)(3) (Pet. App. 80a-81a).

Even when the Ordinance does not flatly prohibit the construction of a religious building, the landowner must still obtain a "conditional use" permit. Ordinance §§ 9.13, 10.4(C) (Pet. App. 70a, 74a). The Board

may grant a conditional-use permit only if it finds, *inter alia*, that the building and use "will contribute to the general well being of the neighborhood or the community" and "will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity." Ordinance § 9.13(A)(1)-(2) (Pet. App. 70a).

In 2021, petitioner applied to the Board for a conditional-use permit and setback variances to allow it to construct the grotto. J.A. 7-10. Its application described the grotto as "a sacred, elaborate garden with two small statues * * * and space for reflection and repose" that was intended "for use by the existing parishioners primarily before and after mass." J.A. 7-8. The application included a site plan, drawings of the grotto, and letters of support from members of the community. *Id.* at 11-16; Pet. App. 6a, 130a-36a.

The county planning staff reviewed the application and found that the grotto "is a desirable accessory use to the church and will provide a service which will contribute to the general well-being of the community." Pet. App. 122a; *see id.* at 6a-7a. The staff nonetheless recommended denial solely because the property is not "located adjacent to an arterial street." *Id.* at 124a-25a; *see id.* at 7a-8a.

The month after petitioner applied, the Board held a public hearing. Pet. App. 8a. Father Sean Kopczynski, who serves as petitioner's secretary, testified. Pet. App. 8a; J.A. 17, at 27:15-41:10; J.A. 127. He explained that the proposed grotto would be "a religious shrine to honor the Mother of God"—a "simple, humble, beautiful, noble structure." J.A. 17, at 29:24,

30:47. Because "Our Lady's main attribute is humility," he explained, "we're trying to make a more humble grotto for her and more proportional to the location and church itself," scaling it down from an earlier design. *Id.* at 32:00. The grotto "truly is proportional," he said, and "[t]he proportionality * * * comes from the statues" measuring under five feet that petitioner already owns and intends to place in the grotto "where they belong." *Id.* at 30:20, 41:03. Father Kopczynski added that, given the experience of other shrines in the area, he saw no reason to believe that the grotto would increase traffic, and he noted that petitioner had taken steps to avoid any environmental problems with the hillside. *Id.* at 34:30-36:00.

Several community members spoke in support of the project. Pet. App. 8a. Others spoke in opposition, including respondent Joel Frederic, a neighbor. *Ibid.* Their primary concern was that the grotto would exacerbate traffic problems. *Ibid.* One Board member noted, however, that he was "relieved that it is a smaller version of what was first mentioned" and that the shrine "fits so well with the Community." J.A. 102; J.A. 17, at 01:32:21-01:32:45.

The Board voted 4-1 to grant the permit and the variances. Pet. App. 8a. It found that the grotto "is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood or the community." *Id.* at 9a. It further found that the proposed grotto would not "be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity." *Ibid.* And it concluded that the variances would not "alter

the essential character of the general vicinity" or "cause a hazard or nuisance to the public." *Id.* at 10a. The sole dissenting Board member argued that the Board should deny the permit and variances because the property is not "located on an arterial street" and expressed concerns about traffic. *Id.* at 8a.

As a condition of granting the permit and variances, the Board required the trust to deed the hill lot to petitioner within six months. Pet. App. 8a-10a. The trust did so two months after the hearing. J.A. 124-28; Pet. App. 8a & n.6, 42a, 57a, 85a.

C. Proceedings Below

1. Following the Board's approval, respondents, neighbors who say they are concerned about traffic, sued petitioner and the Board in Kenton Circuit Court, arguing that the Board lacked authority to grant the permit and setback variances. Pet. App. 10a-11a, 108a-12a. Petitioner defended the approval on state-law grounds but also invoked RLUIPA as a defense. Petitioner argued that prohibiting the grotto would "substantially interfere with religious exercise" and that "[t]here was no compelling reason to prevent the grotto from proceeding to construction." *Id.* at 92a (quotation marks omitted); see *id.* at 12a, 92a-93a.

In response, respondents argued that petitioner's church has "operated, as a church, with religious practice and services, for decades" and "[i]t cannot be said that the denial of an expansion, and construction of a grotto, renders the use of the real property for the purpose of religious worship effectively impracticable." J.A. 49 (quotation marks omitted). They did not suggest that petitioner's beliefs about the appropriate size and location of the grotto were not genuine and

religiously grounded, nor did they assert that petitioner could feasibly carry out this religious exercise by constructing the grotto elsewhere. *See* J.A. 102; Pet. App. 12a. Respondents also claimed that the Ordinance "further[s] the Government's compelling interests in traffic management and road safety and [is] the least restrictive means of furthering those interests." J.A. 50; *see* Pet. App. 12a.

The Circuit Court concluded that respondents had not shown the Board acted arbitrarily or outside its authority. Pet. App. 59a-61a.

2. The Kentucky Court of Appeals reversed. Pet. App. 41a. It first concluded that the Ordinance did not permit the Board to grant petitioner a conditional-use permit or variances to construct the grotto. *Id.* at 43a, 49a. The court determined that the church property sits on a "collector street," not an arterial street, and that constructing a grotto "large or small" behind the church would unlawfully expand the existing nonconforming use—particularly because most of the grotto would sit on adjacent land that "was never used for a nonconforming purpose." *Id.* at 48a-50a. The court then rejected petitioner's RLUIPA defense, stating that applying the Ordinance to prohibit the grotto "may make practice of religion somewhat more difficult" but is "not inherently inconsistent with" petitioner's beliefs. *Id.* at 54a-55a.

3. The Kentucky Supreme Court granted discretionary review of the Court of Appeals' RLUIPA holding and then affirmed. Pet. App. 16a-17a, 30a. The Kentucky Supreme Court accepted most premises of petitioner's RLUIPA defense. It held that building the grotto "constitutes a religious exercise"; it never questioned the sincerity of petitioner's beliefs; and it

acknowledged that denying petitioner's application would "prohibit[] [petitioner's] request to build the grotto." *Id.* at 22a-25a, 27a. The "dispositive issue" was whether "the prevention of that pursuit constitutes a substantial burden." *Id.* at 22a.

To address that issue, the Kentucky Supreme Court said that it would adopt as its "polestar" the Sixth Circuit's RLUIPA substantial-burden framework. *See Livingston Christian Schs. v. Genoa Charter Twp.*, 858 F.3d 996, 1003-04 (6th Cir. 2017), *cert. denied*, 584 U.S. 961 (2018). Pet. App. 22a-25a. As the Kentucky Supreme Court described that framework, courts weigh whether the institution "has a feasible alternative location" for the religious exercise; whether the regulation imposes "substantial delay, uncertainty, and expense"; whether the burden is "self-imposed," such as where the plaintiff purchases land without a reasonable expectation of religious use; and whether the government's decisionmaking was "arbitrary, capricious, or discriminatory." *Id.* at 24a-25a (quotation marks omitted). The court then concluded that the first and third factors establish that denying petitioner a permit to construct the grotto would not be a substantial burden on its religious exercise.

First, the Kentucky Supreme Court stated that petitioner "has not asserted that it could not construct a smaller grotto or shrine on the property it already owned, i.e., not on the acquired [hill] property"—a suggestion that respondents had raised for the first time in their brief in that court. Pet. App. 25a. The court viewed petitioner's inability to construct the grotto of its choosing in the place of its choosing as a "mere inconvenience." *Ibid.*

Second, based on the cover letter of petitioner's application to the Board, which sought a waiver from the arterial-street requirement, the Kentucky Supreme Court concluded that petitioner "had every reason to know, and in fact explicitly acknowledged, that building the grotto was not permitted by the ordinance." Pet. App. 27a; see *id.* at 127a-29a. The court therefore held that petitioner had "imposed a burden upon itself." *Id.* at 26a-27a.

Based on those two considerations, the Kentucky Supreme Court held that "prohibiting [petitioner's] request to build the grotto does not impose a substantial burden on [petitioner] and accordingly does not run afoul" of RLUIPA. Pet. App. 27a. One Justice dissented on state-law grounds. *Id.* at 31a-39a.

SUMMARY OF ARGUMENT

Prohibiting petitioner from constructing a shrine on the land that it acquired for that purpose imposes a "substantial burden" on petitioner's "religious exercise" within the meaning of RLUIPA.

A. A land-use regulation imposes "a substantial burden on the religious exercise of a person," 42 U.S.C. § 2000cc(a)(1), when, as implemented, the regulation pressures a RLUIPA claimant to forgo or materially alter the use or development of the claimant's property for a specific religious exercise that the claimant sincerely seeks to carry out. Such pressure can occur either where the land-use regulation prohibits the exercise altogether or where it imposes significant adverse consequences on the exercise, such as through exactions, delays, or conditions. That standard follows from several features of RLUIPA and this Court's precedents in related contexts.

Here, the Ordinance flatly prohibits petitioner's desired religious activity—constructing a sacred Marian shrine on the land that it acquired for that purpose. A complete prohibition of a particular religious activity on a specific parcel is necessarily a "substantial burden" on that religious exercise.

Lower courts, including the Kentucky Supreme Court in this case, have made the threshold substantial-burden showing needlessly hard by invoking a host of irrelevant factors. Under a proper understanding of "substantial burden," for example, it is not necessary to show that the prohibition would cause the claimant to violate its religious beliefs or outright coerce the claimant to forgo a religious exercise. And it is irrelevant whether the claimant could conduct the religious activity on other property; whether the claimant acquired its property after the law was enacted or with knowledge of it; and whether the government acted arbitrarily in denying a permit. While RLUIPA has real limiting principles—it applies only to zoning and landmarking laws, for example, and the claimant's belief must be sincere—lower courts have shielded land-use laws from scrutiny in far too many cases with no footing in the statute.

B. Neither of the Kentucky Supreme Court's reasons for finding no substantial burden withstands scrutiny.

The possibility that petitioner could construct a smaller—much smaller—shrine on its original property, between the parking lot and the church, does not dispel the burden. That would be a different "religious exercise" altogether, both under the categorical language of RLUIPA's definition of that term and common sense. An elegant grotto on a semi-secluded

hillside is not the same thing as a small shrine wedged between the parking lot and the church and abutting the main road. The Ordinance therefore totally prohibits petitioner's chosen form of religious exercise—a clear substantial burden. And even if every shrine of any size and location somehow counted as the same religious exercise, the difference in scale and location here would still be a substantial burden on that exercise, not a "mere inconvenience."

It is equally irrelevant that petitioner knew about the Ordinance when it sought a permit. Congress enacted RLUIPA because it was concerned that *existing* zoning laws unduly suppressed religious activity, and nothing in the text suggests that Congress intended only to grandfather buildings and religious activities that preexisted such laws. Nor does the statute make a claimant's subjective knowledge relevant, a view that would perversely penalize religious institutions for studying local laws before buying land or applying for permits. And at any rate, the Kentucky Supreme Court's rationale is inapt here, because the record does not show that petitioner was aware of a complete prohibition at the time it acquired the property or submitted its application.

ARGUMENT

THE PROHIBITION OF PETITIONER'S GROTTO IS A SUBSTANTIAL BURDEN ON THAT RELIGIOUS EXERCISE

Respondents seek to enforce the Ordinance to prohibit petitioner from constructing an immersive religious shrine on the plot that it leased and ultimately acquired for that purpose. A complete prohibition on the use of a specific parcel of real property for a

particular religious activity is "a substantial burden on the religious exercise of a person" within the meaning of RLUIPA. 42 U.S.C. § 2000cc(a)(1). The two considerations cited by the Kentucky Supreme Court—the possibility that petitioner could build a smaller shrine on its original parcel and the fact that petitioner was aware of the Ordinance before it sought a variance—are irrelevant to the substantial-burden inquiry. This Court should accordingly vacate and remand.

A. A Prohibition On A Particular Form Of Religious Exercise On A Specific Parcel Of Property Is A Substantial Burden

The total prohibition on the construction of a grotto on the property that petitioner acquired for that purpose imposes a "substantial burden" on petitioner's "religious exercise" within the meaning of RLUIPA.

1. The critical statutory phrase in this case is "a substantial burden on the religious exercise of a person, including a religious assembly or institution." 42 U.S.C. § 2000cc(a)(1). Several features of RLUIPA bear on the meaning of that phrase.

First, the religious exercise at issue need not be a mandatory or central aspect of a religious tradition. RLUIPA provides that "[t]he term 'religious exercise' includes 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). Accordingly, a RLUIPA claimant need not show that the enforcement of a land-use regulation will cause the claimant to violate its religious beliefs or that the particular exercise plays an important role in the relevant religious tradition. For example, prohibiting a local congregation

from constructing a spire it sincerely regards as part of its worship would be a substantial burden even if the congregation did not believe that building one was a religious obligation.

This Court already held as much in *Holt*, 574 U.S. at 352, in the context of RLUIPA's prisoner protections, 42 U.S.C. § 2000cc-1. There, the district court had "suggest[ed] that the burden on [the inmate's] religious exercise" of the prison's grooming policy "was slight because, according to [the inmate's] testimony, his religion would 'credit' him for attempting to follow his religious beliefs, even if that attempt proved to be unsuccessful." 574 U.S. at 362. This Court rejected that reasoning, explaining that RLUIPA "applies to an exercise of religion regardless of whether it is 'compelled.'" *Ibid.* (quoting 42 U.S.C. § 2000cc-5(7)(A)). For that reason, lower courts have erred in framing the standard as whether "there is governmental action that coerces one into acting contrary to one's religious beliefs by way of doing something that one's religion prohibits or refraining from doing something that one's religion requires," *Greater Bible Way Temple of Jackson v. City of Jackson*, 733 N.W.2d 734, 750 (Mich. 2007), *cert. denied*, 552 U.S. 1332 (2008). *See also, e.g.*, *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).

Second, Congress provided that RLUIPA "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). And Congress went so far as to clarify that RLUIPA "may require a government to incur expenses in its own operations to avoid imposing a

substantial burden on religious exercise." *Id.* § 2000cc-3(c). Taken alongside the capacious definition of "religious exercise," those provisions "underscore [RLUIPA's] expansive protection for religious liberty." *Holt*, 574 U.S. at 358.

Third, Congress made clear that the substantial-burden analysis is specific to a given parcel of real property. RLUIPA defines the use of a specific parcel for religious exercise as itself a discrete form of "religious exercise": "The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use *the property* for that purpose." 42 U.S.C. § 2000cc-5(7)(B) (emphasis added). The use of the definite article in that definition makes clear that Congress was defining religious exercise in relation to the use of a specific parcel of real property, and the same activity on a different parcel would be a distinct "religious exercise." Had Congress intended to define "religious exercise" as merely the use of *some* real property for a given activity, it would have at least omitted the definite article: "religious exercise of the person or entity that uses or intends to use ~~the~~ property for that purpose."

For that reason, lower courts that have found no substantial burden because the activity could be conducted elsewhere—including the Kentucky Supreme Court in this case, Pet. App. 25a—have misconstrued the statute. Where landowners are prohibited from using "the property" they own for a particular religious activity, that amounts to a total prohibition on that statutorily defined form of religious exercise. Conducting the activity on some other parcel would by definition be a different religious exercise. At a bare

minimum, those courts that have held that there is no substantial burden because the claimant could in theory buy new property on which to conduct the religious activity are clearly in error. *See, e.g.*, *Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007), *cert. denied*, 552 U.S. 1131 (2008).

Fourth, it is irrelevant whether the challenged land-use regulation preexisted the claimant's acquisition of the property interest. As explained above, Congress was confronted with an extensive record of how then-existing zoning and landmarking laws were stifling religious practice—in particular for "new * * * churches"—and it sought to remedy that problem with RLUIPA. 146 Cong. Rec. S7774-75 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy). Nothing in the statute's text or history suggests that Congress sought to guard against only the enactment of new burdensome regulations or merely to grandfather pre-RLUIPA uses.

In fact, the statutory text indicates just the opposite. Congress provided that RLUIPA claims and defenses were available not just to long-term property owners—a group that might in theory include some who acquired an interest in property before a burdensome regulation went into effect—but also to claimants who merely have "a contract or option to acquire such an interest." 42 U.S.C. § 2000cc-5(5). It is implausible in the extreme that Congress sought to protect only parties who acquire such short-term interests right before a challenged land-use regulation is enacted.

Fifth, the term "substantial burden," while undefined, invokes the pre-*Smith* line of precedent that

Congress partially replicated in RLUIPA. Those Free Exercise Clause decisions therefore inform the requisite severity of the burden. Under *Sherbert*, for example, the Court described the burden as one that would "impede the observance" of religion; put "pressure upon [an individual] to forego [a particular religious practice]"; or "deter[] or discourage[] the exercise of First Amendment rights." 374 U.S. at 404-05. And in *Thomas v. Review Board of Indiana Employment Security Division,* 450 U.S. 707 (1981), the Court held that the necessary burden exists when the government puts "substantial pressure on an adherent to modify his behavior and to violate his beliefs," even if "the compulsion may be indirect." *Id.* at 717-18; *see Hobbie v. Unemployment Appeals Comm'n of Fla.,* 480 U.S. 136, 141 (1987). Further, this Court has construed the term "substantial burden" in RFRA, RLUIPA's predecessor statute, to encompass significant monetary exactions, even when there was no chance that the claimant would change its religious practice on their account. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014) ("*Hobby Lobby*").

Those RLUIPA antecedents confirm that many lower courts have established an unduly demanding formulation of the test for a substantial burden in asking whether a regulation "directly coerces the religious institution to change its behavior," *Fortress Bible Church v. Feiner*, 694 F.3d 208, 218-19 (2d Cir. 2012); *see, e.g.*, *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004) ("'substantial burden' is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly"), *cert. denied*, 543 U.S. 1146 (2005).

Sixth, the plain meaning of "substantial burden on the religious exercise of a person" does not encompass an inquiry into whether "the municipality's decisionmaking * * * process was arbitrary, capricious, or discriminatory," which the Kentucky Supreme Court and other courts have deemed relevant. Pet. App. 25a (citation omitted); *see, e.g.*, *Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 96-97 (1st Cir. 2013); *see also* Pet. 24 (listing similar considerations about the government's decisionmaking process that courts have invoked). That consideration has no connection to whether the burden imposed by the government is substantial. Indeed, a discriminatory application of a land-use regulation would violate RLUIPA's separate bar on discriminatory conduct. *See* 42 U.S.C. § 2000cc(b); *Livingston*, 858 F.3d at 1005 (treating discrimination as part of the substantial-burden inquiry "would obviate the need for § 2000cc(b)(1)-(2)").

Finally, this Court has long held that the Judiciary should not be in the business of questioning whether a particular practice or belief truly has religious significance. *See, e.g.*, *Hobby Lobby*, 573 U.S. at 725; *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989); *Thomas*, 450 U.S. at 714. There is no reason to conclude that Congress intended to depart from that principle in RLUIPA, particularly given the command that the statute be construed broadly to protect religious exercise, 42 U.S.C. § 2000cc-3(g).

Putting each of those textual features together, a land-use regulation imposes "a substantial burden on the religious exercise of a person," 42 U.S.C. § 2000cc(a)(1), when, as implemented, the regulation pressures claimants to forgo or materially alter the

use or development of their property for a specific, sincere religious exercise. Such pressure can occur either where the land-use regulation prohibits the exercise altogether or where it impedes the exercise through adverse consequences, such as exactions, delays, conditions, or administrative hurdles. That analysis will often be "context-specific," and courts can apply the substantial-burden standard "in the common-sense manner that [they] would use in applying any such test." *Groff v. DeJoy*, 600 U.S. 447, 468-69, 471 (2023) (Title VII's "undue hardship" test).

2. This case easily satisfies that standard. Respondents invoked the Ordinance to completely bar petitioner from building a sacred grotto on the hillside parcel that it leased and then acquired for that very purpose. Pet. App. 4a, 8a n.6, 49a-50a, 111a-12a.

That is self-evidently a substantial burden. "There can hardly be a more substantial burden on a religious practice or exercise than its outright prohibition." *Davis v. Wigen*, 82 F.4th 204, 212 (3d Cir. 2023). As Justice Gorsuch has explained, "[a]s a matter of ordinary meaning, * * * an action that prevents a religious exercise does not just burden that exercise substantially, it burdens it completely." *Apache Stronghold*, 145 S. Ct. at 1486 (Gorsuch, J., dissenting from the denial of certiorari). And as the Second Circuit concluded in a similar case, "[w]hen a municipality denies a religious institution the right to expand its facilities, it is more difficult to speak of substantial pressure to change religious behavior, because in light of the denial the renovation simply cannot proceed." *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007).

This Court's precedents confirm as much. For example, in *Holt*, the Court held that a prisoner "easily" showed that a prison's grooming policy prohibiting him from "grow[ing] a ½-inch beard in accordance with his religious beliefs" had "substantially burdened that exercise of religion." 574 U.S. at 355-56, 361. Similarly, in *Ramirez*, Texas categorically banned "religious touch and audible prayer" in the execution chamber, and the State did not even "dispute that any burden [its] policy imposes on [the inmate's] religious exercise is substantial." *Ramirez v. Collier*, 595 U.S. 411, 426 (2022); *accord Dunn v. Smith*, 592 U.S. 1255, 1255-58 (2021) (Kagan, J., concurring in denial of application to vacate injunction).

Although those cases arose in the context of RLUIPA's prisoner protections, the same conclusion follows here. The relevant text of the prisoner and land-use provisions is identical: "a substantial burden on the religious exercise of a person." 42 U.S.C. § 2000cc-1(a); *id.* § 2000cc(a)(1). It goes almost without saying that "identical words used in different parts of the same statute are . . . presumed to have the same meaning." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 86 (2006) (citation omitted). Nothing in RLUIPA's text suggests that Congress intended to impose a more demanding standard on landowners than prisoners. In fact, because RLUIPA's land-use provisions cover a broader set of claimants and circumstances, the Third Circuit has held that there is a "strong textual basis" for concluding that they should be interpreted more expansively than its prisoner provisions. *Anash*, 184 F.4th at 239.

Further, in applying RFRA, which contains "the same standard" as RLUIPA, *Holt*, 574 U.S. at 358, this Court has held that the threat of severe financial penalties for following one's religious beliefs is a substantial burden. *Hobby Lobby*, 573 U.S. at 720-26. If financial pressure to abandon a religious exercise is a substantial burden, then a total prohibition necessarily qualifies as well. In fact, here, were petitioner to construct the grotto without the permit and variances it seeks, the Board could compel removal of the structure "at the cost of the violator" and "have judgment in personam for such cost," Ordinance § 9.13(B)(1) (Pet. App. 71a); Ordinance § 19.6(A)(5) (Pet. App. 79a-80a). Petitioner could even face criminal prosecution and incur fines of up to $500 per day. Ky. Rev. Stat. § 100.991.

In short, prohibiting petitioner from constructing a sacred grotto on the parcel that it acquired for that purpose is necessarily a substantial burden on petitioner's religious exercise. If a complete prohibition on using land to erect a particular religious structure is not a substantial burden, nothing is.

3. For decades, lower courts have refused to enforce the plain text of RLUIPA by making the substantial-burden element very difficult to satisfy, even going so far as to require claimants to purchase *new* property for their religious exercise and asking whether the government's decisionmaking process was arbitrary and capricious, effectively excluding non-arbitrary but burdensome decisions from RLUIPA's purview. *See* Pet. 18-26. That reluctance may stem from concerns about the practical consequences of subjecting land-use regulations to

strict scrutiny. *See, e.g.*, *Anash*, 184 F.4th at 250 (Restrepo, J., dissenting).

Congress, however, intended RLUIPA to be strong medicine and to break down barriers to religious exercise. *See Holt*, 574 U.S. at 356; 146 Cong. Rec. S7774-76 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy). In signing RLUIPA, President Clinton extolled "the importance the free exercise of religion plays in our democratic society." Statement on Signing the Religious Land Use and Institutionalized Persons Act of 2000, 36 Weekly Comp. Pres. Doc. 2168 (Sept. 22, 2000). The law was designed to effect real change in zoning rules and to carve out a broad area of protection for religious exercise. For the last quarter-century, however, courts have unduly limited the statute's reach, frustrating that legislative purpose.

At the same time, other aspects of the statute contain limiting principles that have real teeth.

First, a RLUIPA claimant's request for an exemption from a land-use regulation "must be sincerely based on a religious belief and not some other motivation." *Holt*, 574 U.S. at 360-61. Although courts do not question the correctness of the belief as a religious matter, an opposing party may challenge its sincerity, as occurs often in the prisoner context. *See Cutter*, 544 U.S. at 725 n.13; *Ramirez*, 595 U.S. at 425-26; *see also Hobby Lobby*, 573 U.S. at 718 (noting "the propensity of some prisoners to assert claims of dubious sincerity"). That is a meaningful limit on RLUIPA claims. For example, if a RLUIPA claimant challenged a historic-preservation law barring it from painting its parish hall a different color, the government could challenge whether the claimant really believed that

the color of the building had religious significance or was instead seeking to exploit RLUIPA to serve its aesthetic preferences.

Second, even if a religious exercise is substantially burdened, land-use regulations are still permissible if they advance "a compelling governmental interest" and are "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1). For example, laws prohibiting the construction of large buildings in residential or industrial areas may well serve fire prevention or other important interests that could satisfy that standard, depending in part on whether the challenged application is the least restrictive means of advancing those interests.* As this Court has stated in the prisoner context, RLUIPA does not "elevate accommodation of religious observances over" compelling interests such as "an institution's need to maintain order and safety," and "[c]ontext matters in the application of [the compelling-interest] standard." *Cutter*, 544 U.S. at 722-23 (quotation marks omitted).

With that said, less compelling interests like aesthetics, preserving the "character" of a neighborhood or commercial district, or maintaining property values

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* That standard could not be met here. Although respondents have invoked a supposed traffic concern, BIO 2, 7, 28, 34-35, the government body charged with evaluating that concern found—after a public hearing at which parking and traffic objections were raised—that the grotto would "contribute to the general well being of the neighborhood or the community" and would not "be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity." Pet. App. 8a-9a, 12a. The Board told the Circuit Court that "any increase in traffic is speculative and without foundation" and that there was "no compelling reason" to prohibit the grotto. *Id.* at 92a-93a.

are unlikely to justify prohibiting the construction of a religious building or the use of property for religious activities. If Congress intended anything in RLUIPA, it was that local communities could not use zoning laws to block synagogues, mosques, or churches because they do not fit in.

Importantly, racial classifications and speech restrictions rarely satisfy strict scrutiny because seldom will a racial distinction or regulation of speech be the least restrictive means to further a compelling interest. *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 485 (2025); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206-07 (2023). But there may well be significant categories of land-use restrictions that are the narrowest means to promote public safety or other compelling interests.

Third, RLUIPA reaches only burdens imposed through a "land use regulation," defined as "a zoning or landmarking law, or the application of such a law." 42 U.S.C. § 2000cc-5(5). While the scope of that definition is not at issue here, courts have held that not every state or local law that affects property qualifies; generally applicable building-code requirements governing matters like fire extinguishers and emergency lighting, for example, may not. *Anash*, 184 F.4th at 234-35.

In short, enforcing the plain text of RLUIPA will not prevent States and localities from protecting important public interests. But it will often demand significant justifications before land-use laws can impede the erection of religious structures and the use of property for religious activities. That is precisely what Congress intended.

B. The Kentucky Supreme Court's Analysis Was Flawed

In concluding that prohibiting petitioner's grotto was not a substantial burden, the Kentucky Supreme Court adopted a four-factor test that it attributed to the Sixth Circuit (although the cited Sixth Circuit decision had actually declined to adopt the fourth factor, *see Livingston*, 858 F.3d at 1004-05). Pet. App. 24a-25a. It then ruled that two of the factors—the feasibility of an alternative location for the religious exercise and whether the burden was "self-imposed"—established no substantial burden in this case. *Id.* at 25a-27a.

That analysis was flawed. For the reasons explained above, pp. 21-27, *supra*, those two factors, plus "whether there is evidence that the municipality's decisionmaking process was arbitrary, capricious, or discriminatory," are legally irrelevant. Pet. App. 25a (quotation marks and sic omitted). The other factor—"[w]hether the religious institution will suffer substantial delay, uncertainty, and expense due to the imposition of the regulation," *id.* at 24a (quotation marks omitted; brackets in original)—would be relevant in a case that did not involve a total prohibition, but it is beside the point here. The Court should accordingly reject the Kentucky Supreme Court's analysis and conclusion.

1. The Kentucky Supreme Court first held that the prohibition was a "mere inconvenience" because petitioner had not disputed in its appellate briefing that it could build a smaller version of the grotto on the lot where the church already sits. Pet. App. 25a. That conclusion was erroneous.

a. For two independent reasons, constructing a smaller shrine on a different piece of property is simply a different religious exercise altogether.

First, as explained above, RLUIPA is property-specific. *See* pp. 23-24, *supra*. It defines "religious exercise" in part as constructing a building on a particular parcel of real property. 42 U.S.C. § 2000cc-5(7)(B). For that reason, a prohibition on constructing a religious building on a given parcel is a total prohibition on *that* religious exercise—and thus self-evidently a substantial burden on that exercise. The alternative of constructing the same building on a different parcel, however "feasible," is simply a different religious exercise under the statutory definition.

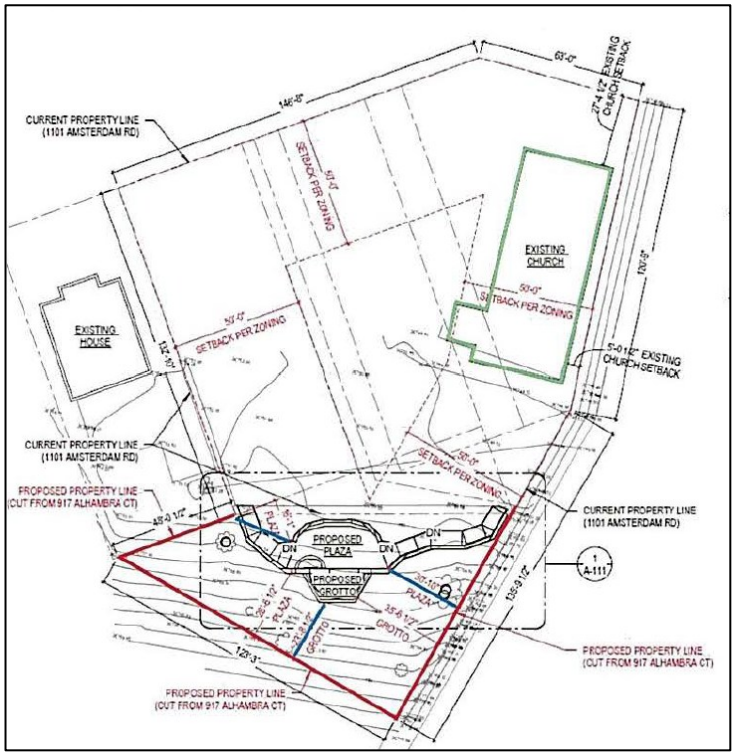
Second, even ignoring that categorical definition, relocating petitioner's planned grotto to the church parcel would be a different religious exercise.

As an initial matter, respondents never argued at the Board hearing or in the Circuit Court that petitioner could achieve its religious purposes by building a smaller shrine on the church lot. *See* Pet. App. 12a; Supp. Pet. App. 11a. As a result, petitioner never had occasion to address the purported feasibility of a significantly smaller "alternative" directly through testimony. Even courts that consider alternative locations do not require a claimant to anticipate and rebut every conceivable substitute. *See Westchester Day Sch.*, 504 F.3d at 352 (limiting the inquiry only to whether there are "quick, reliable, and financially feasible alternatives").

It was only in the Kentucky Supreme Court that respondents first speculated, without citation or elaboration, that petitioner could "build a shrine within

the church's preexisting, non-conforming footprint," though "the scope of the project to do so would likely be smaller in scope than [petitioner] would like." J.A. 118. This Court has cautioned against allowing such a "*post hoc*" suggestion "in response to litigation" to function as a kind of heckler's veto against religious practice. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022) (citation omitted).

At any rate, petitioner explained below, citing diagrams in the record, that respondents' alternative proposal "makes no sense" because "they are asserting that [petitioner] can build its grotto in its parking lot." J.A. 133-34. The diagrams confirm the point. The site plan below shows the existing church on the original parcel at 1101 Amsterdam Road and the proposed plaza and grotto on part of the hillside parcel adjacent to 917 Alhambra Court. The church and Amsterdam Road are at the top right, and the paved parking lot occupies the center. Apart from the paved lot, the church parcel offers only small strips of flat lawn hemmed in by the church, the parking lot, and Amsterdam Road. Nothing there resembles the wooded hillside into which the grotto is designed to be built:



J.A. 27 (cropped). Relocating the grotto would therefore mean either tearing up the church parking lot—leaving parishioners nowhere to park and obviously imposing a substantial burden—or abandoning the hillside design and shrinking the shrine to fit a roadside lawn.

Presumably for that reason, the Kentucky Supreme Court appeared to acknowledge that petitioner could not build a grotto of the same size on its existing property. But it still found no substantial burden because petitioner had not disputed that it could "build a smaller shrine" there. Pet. App. 25a. Of course, one could construct a shrine small enough to fit almost anywhere; some devout Catholics have shrines in their bedrooms. But a small shrine that could slot into the

limited grassy space between the parking lot and the church, near Amsterdam Road—depicted in the photos below—is obviously quite different from an immersive grotto on the semi-secluded hillside.





J.A. 26 (first photo, cropped); *NKY churchgoers' fight heads to U.S. Supreme Court after zoning rulings*, Local 12 (Oct. 1, 2026) (second photo).†

† https://local12.com/news/local/nky-churchgoers-fight-heads-us-supreme-court-after-zoning-rulings-lady-lourdes-park-hills-

Petitioner has planned the grotto as "a beautiful place to pray"—"a place of quiet, repose, and reflection for [the] existing congregation." J.A. 17, at 30:15. Forcing congregants to crowd onto the grassy patch between the parking lot and the church, while other parishioners are going to and from their cars and motorists are driving along Amsterdam Road, would not provide remotely the same spiritual experience. Moreover, the grotto was planned to be visually proportionate to the two statues, one of which is 4' 10", that the parish already has. *Id.* at 30:25; J.A. 105; *see* Pet. App. 127a, 140a. The proportionality would be lost under the decision below.

By deeming the difference between the proposed grotto on the hill and a smaller version wedged into available space on the original property to be a "mere inconvenience," Pet. App. 25a, the Kentucky Supreme Court may have intended to suggest that the difference has no religious significance. If so, its reasoning exceeded the proper judicial role. The claimant, not the courts, defines the religious exercise.

In *Hobby Lobby*, for instance, the Court declined to second-guess where RFRA claimants drew their line between permissible and forbidden health-insurance coverage because "it is not for [courts] to say that * * * religious beliefs are mistaken or insubstantial." 573 U.S. at 725. The judicial function is the "narrow" one of determining whether the line drawn reflects "an honest conviction." *Ibid.* (quoting *Thomas*, 450 U.S. at 716); *see also Holt*, 574 U.S. at 361-62. Any attempt to smuggle a centrality requirement into RLUIPA not

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only defies the statute's plain text, *see* 42 U.S.C. § 2000cc-5(7)(A), but also risks rendering the statute unconstitutional, *see Kravitz v. Purcell*, 87 F.4th 111, 124-27 (2d Cir. 2023) (discussing the risk of courts conflating a substantial burden with a centrality test).

In this case, respondents never challenged petitioner's sincerity below, and nothing in the record indicates that petitioner is insincere in its belief that building the proposed grotto on the hill will create the sort of contemplative religious experience that will best serve the spiritual needs of its congregants. Any suggestion that petitioner is religiously indifferent to the location or size of the shrine, moreover, is belied by the fact that it acquired new property specifically for that purpose and spent years developing the design of the grotto and seeking regulatory approvals. Pet. App. 4a, 8a n.6, 126a-27a; Supp. Pet. App. 11a. A nonprofit organization would not put such time and effort into a project only to avoid a "mere inconvenience."

At the certiorari stage, respondents emphasized that the claimed burden "concerns only [petitioner's] preferred scale," which petitioner had earlier reduced from its original plan. BIO 26; *see* Pet. App. 27a. But petitioner's voluntary decision to decrease the grotto's size does not suggest that an even smaller shrine would amount to an equivalent religious exercise. When Michelangelo took over the construction of St. Peter's and reduced its planned size, no one would have said that further shrinking the basilica to the size of a chapel would carry no religious significance. And in *Holt*, the prisoner believed that his faith required him not to trim his beard at all and sought a ½-inch beard only as a "compromise." 574 U.S. at 359.

The Court measured the burden against the exercise he chose and did not hold his willingness to compromise against him. As this Court has repeatedly held, it is the adherent who draws the line regarding what is consistent with its religious convictions, not the courts or third parties. *See Hobby Lobby*, 573 U.S. at 725; *Thomas*, 450 U.S. at 715.

b. Because building a smaller shrine in a different location is simply a different religious exercise, a denial of the permit and variances here would amount to a total prohibition on a specific religious exercise, *i.e.*, building the contemplated grotto on the hill. For the reasons explained above, a total prohibition is inherently a substantial burden on *that* exercise. *See* pp. 27-29, *supra*. The possibility that the claimant could engage in different religious activities instead does not change that conclusion.

This Court has already reached that holding in the context of RLUIPA's prisoner-rights protections. In *Holt*, the district court had rejected the Muslim prisoner's objection to the grooming policy in part because he was still permitted to practice his religion in other ways. 574 U.S. at 361. This Court reversed, holding that while "the availability of alternative means of practicing religion is a relevant consideration" under this Court's First Amendment prisoner cases, "RLUIPA provides greater protection." *Ibid.* "RLUIPA's 'substantial burden' inquiry," the Court held, "asks whether the government has substantially burdened religious exercise, * * * not whether the RLUIPA claimant is able to engage in other forms of religious exercise." *Id.* at 361-62. And the Court never suggested that if the prison had let the prisoner have a slightly shorter beard (say, ¼ inch), his

religious exercise would not have been substantially burdened.

Likewise, in *Dunn*, the Court denied a State's application to vacate an injunction barring the State from excluding a capital inmate's pastor from the execution chamber. 592 U.S. at 1255. It did not matter that the pastor could stand nearby in the "viewing room." *Id.* at 1258 (Kavanaugh, J., dissenting). The inmate believed that the pastor's "presence" in the chamber itself was "integral to [his] faith." *Id.* at 1255-56 (Kagan, J., concurring). The State's complete failure to accommodate that particular belief thus "substantially burden[ed] [his] exercise of religion." *Ibid.*; *see Ramirez*, 595 U.S. at 426.

To be sure, the government's ability to permit a modified version of the religious exercise may be relevant to whether a prohibition is the least restrictive means of furthering a compelling interest. But it does not dispel the substantial burden inherent in a total prohibition on a particular religious exercise.

c. Even if the alternative of building a smaller shrine on the original church property were somehow deemed to be the same religious exercise as the planned grotto—and so the denial of a permit here would not qualify as a total prohibition on that exercise—forcing petitioner to make that change would still amount to a substantial burden. In no other context would it be said that forcing such a significant change on the development of property is a "mere inconvenience." Pet. App. 25a.

For example, if a homeowner purchased a lot behind her home to install a pool—perhaps the same size as the plaza here—no one would say that it was a

"mere inconvenience" if she were forced instead to put the pool in her driveway or to install a much smaller pool on the side of her house. Religious structures are no different. Given RLUIPA's command to interpret its provisions broadly to protect religious exercise, 42 U.S.C. § 2000cc-3(g), there can be no serious question that forcing a church to build a much smaller version of a devotional shrine in a different location is a substantial burden.

2. The Kentucky Supreme Court also held that petitioner "imposed [the] burden upon itself" because it "had every reason to know" that it could not build the grotto at the time that it submitted the application for the permit and variances in 2021. Pet. App. 26a-27a. That analysis rested on the view of the Sixth Circuit and other courts that "when an institutional plaintiff has obtained an interest in land without a reasonable expectation of being able to use that land for religious purposes," the government has not imposed a substantial burden. *Id.* at 24a (quoting *Livingston*, 858 F.3d at 1004). This Court should reject that reasoning.

a. To the extent that the "reasonable expectation" standard is meant to indicate that burdens are self-imposed—and thus not substantial—whenever the challenged ordinance preexisted the claimant's acquisition of the property interest, that is clearly wrong. As explained above, Congress did not intend RLUIPA to be merely a grandfathering statute. *See* p. 24, *supra*.

Moreover, in no legal or linguistic context would anyone say that a governmental imposition is "self-imposed" merely because the relevant law was enacted before the regulated party's action. For

example, the government "imposes" a property tax, even though a person can avoid the tax by declining to purchase real property. And the government "imposes" a civil fine regardless of whether the party knew about the fine before engaging in the relevant conduct. By the same token, no one would say that the range of governmental prohibitions and exactions—regulations, permitting requirements, sanctions, fines, taxes—imposes no burden because parties could choose not to engage in the activities that trigger them.

b. To the extent the Kentucky Supreme Court intended to suggest only that a claimant's actual subjective knowledge of a land-use regulation before acquiring property or submitting a permit application dispels a substantial burden, *see* BIO 23-24, that makes even less sense. Nothing in the text of RLUIPA suggests that courts should "scrutiniz[e] the actions or expectations of persons seeking to exercise religion." *Anash*, 184 F.4th at 239 n.21. The inquiry is entirely focused on the *government's* actions. Congress readily could have written a kind of reverse *mens rea* requirement into the statute—the claimant's knowledge defeats liability—but not so much as a hint of such an unusual requirement appears in the text.

There is a familiar property-law term for the concept that the Kentucky Supreme Court imported into RLUIPA: not "burden," but "investment-backed expectations." *E.g.*, *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1006-07 (1984). Indeed, at the certiorari stage, respondents attempted to defend the court's rationale as an application of that concept from "regulatory-takings doctrine." BIO 23-24. Yet Congress did not link RLUIPA rights to investment-backed

expectations or suggest that the regulatory-takings framework narrows RLUIPA's scope.

The Kentucky Supreme Court's approach would also perversely penalize religious organizations that research local laws or seek legal advice before acquiring property or submitting regulatory applications, while giving those who fail to perform due diligence greater RLUIPA rights. It is hard to imagine why Congress would have enacted such a distinction.

c. At any rate, even if actual foreknowledge of a restriction were sometimes relevant to the substantial-burden element, that consideration would be irrelevant here. The Kentucky Supreme Court relied on the fact that petitioner was aware of the arterial-street requirement when it submitted its application to the Board in 2021. Pet. App. 27a. But petitioner acquired the church lot (which necessarily must be adjacent to the grotto to mirror Lourdes) back in 2015, and it entered into the perpetual lease for the hill lot in 2016. J.A. 62, 125. The Kentucky Supreme Court cited no evidence that petitioner was aware of the arterial-street restriction before 2021. *See* Pet. App. 26a-27a.

Even putting those problems aside, the Kentucky Supreme Court's premise—that petitioner was "[]certain of the likelihood that its applications would be denied," Pet. App. 27a—is not reflected in the letter that it cited. That letter requested a waiver from the arterial-street requirement on the view that the grotto should receive the benefit of the church's grandfathered nonconforming use and that Amsterdam Road is functionally similar to an arterial street. Pet. App. 126a-29a. And the Board in fact ultimately *approved* the application, as did the Circuit Court, which agreed

that Amsterdam Road meets the definition of an arterial street. *Id.* at 8a-10a, 59a, 61a. Petitioner's interpretation of the Ordinance was not rejected until the appellate stage. If a RLUIPA claimant's "knowledge" of a prohibition could be inferred merely because it took a legal position that ultimately proved unsuccessful, and that inferred knowledge could then be cited as a basis to find no substantial burden, it would thwart much of what Congress was trying to achieve with the statute.

* * *

Congress enacted RLUIPA to stop state and local governments from deploying land-use laws to suppress religious activities unless they have an exceedingly strong reason to do so. Lower courts have left that purpose unfulfilled by piling arbitrary hurdles onto the substantial-burden threshold element, to the point that a religious organization challenging a complete ban on building a Marian shrine on the land it bought for that purpose cannot even get a court to review the justification for the prohibition. This Court should restore the statute that Congress wrote.

CONCLUSION

The Court should vacate the judgment of the Supreme Court of Kentucky and remand for further proceedings.

Respectfully submitted,

KELLY J. SHACKELFORD
JEFFREY C. MATEER
HIRAM S. SASSER, III
DAVID J. HACKER
RYAN N. GARDNER
TIFFANY D. DUNKIN
CAROLINE M. HOCH
FIRST LIBERTY INSTITUTE
2001 W. Plano Parkway
Suite 1600
Plano, TX 75075
(972) 941-4444

SARAH ELIZABETH BENEDICT
DINSMORE & SHOHL LLP
255 East Fifth Street
Suite 1900
Cincinnati, OH 45202
(513) 832-5340

THOMAS W. BREIDENSTEIN
BREIDENSTEIN LEGAL
SERVICES, LLC
855 Greenville Ave.
Suite 300
Cincinnati, OH 45246
(513) 607-3452

JOHN F. BASH
Counsel of Record
ALEX VAN DYKE
OLIVIA G. HORTON
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
300 W. 6th St., Suite 2010
Austin, Texas 78701
(737) 667-6100
johnbash@quinnemanuel.com

KADE A. ALLRED
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
2755 E. Cottonwood Parkway,
Suite 520
Salt Lake City, UT 84121
(801) 515-7300