NO. 25-1131

IN THE

Supreme Court of the United States

MISSIONARIES OF SAINT JOHN THE BAPTIST, INC.,

Petitioner,

v.

JOEL FREDERIC, ET UX.,

Respondents.

On Writ of Certiorari to the Supreme Court of Kentucky

AMICUS CURIAE BRIEF OF NC VALUES INSTITUTE IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

NC Values Institute ("NCVI"), as *amicus curiae*, respectfully urges this Court to reverse the decision of the Kentucky Supreme Court.

NC Values Institute, formerly known as the Institute for Faith and Family, is a North Carolina nonprofit corporation that works in various arenas of public policy to protect faith, family, and religious freedom. See https://ncvi.org.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Having a place of worship, "a physical space adequate to their needs and consistent with their theological requirements," is "at the very core" of religious liberty for churches and other religious organizations. *Int'l Church of Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1069 (9th Cir. 2011). "The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes." *Id.* That core right is at the heart of this case, as Petitioner Missionaries of St. John the Baptist ("MSJB" or "the Church") seeks to build an outdoor grotto on its own real property for prayerful meditation and religious ceremonies.

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[1] *Amicus curiae* certifies that no counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus curiae*, its members, or its counsel, has made a monetary contribution to its preparation or submission.

This court should reverse the Kentucky Supreme Court and hold that the land-use regulation at issue, preventing MSJB from building a religious structure (the grotto) on its own real property, constitutes a "substantial burden" as defined under the Substantial Burden Provision of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc(a).

RLUIPA defines "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," and expressly provides that the "use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise." *See* 42 U.S.C.S. § 2000cc-5(7)(A)-(B); *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 347 (2d Cir. 2007) ("using, building, or converting real property for religious exercise purposes"). "Congress recognized" not only "that places of assembly are needed to facilitate religious practice," but also "the possibility that local governments may use zoning regulations to prevent religious groups from using land for such purposes." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1226 (11th Cir. 2004). The Church's proposed grotto indisputably falls well within the statutory definition as intended by Congress.

RLUIPA was enacted in the wake of *City of Boerne v. Flores*, 521 U.S. 507 (1997), another land-use case involving a church. In *City of Boerne*, this Court found that Congress had exceeded its authority under Section 5 of the Fourteenth Amendment when it enacted the Religious Freedom Restoration Act, 42

U.S.C.S.S. § 2000bb et seq. In response to *City of Boerne*, Congress enacted RLUIPA, applicable to the States, to address land use regulation and the religious exercise of institutionalized persons. *See Holt v. Hobbs*, 574 U.S. 352, 357 (2015).

ARGUMENT

I. THE OUTRIGHT BAN OF A RELIGIOUS EXERCISE IMPOSES A SUBSTANTIAL BURDEN.

The Kentucky Supreme Court ruling, *Missionaries of Saint John the Baptist, Inc. v. Frederic,* 727 S.W.3d 400 (Ky. 2025), if upheld, effectively bars the Church's plans to construct the grotto proposed for its religious exercise. If significant delay, uncertainty, or expense can create a substantial burden, then surely an absolute ban or effective bar easily qualifies. This Court recently found that "Texas's categorical ban on religious touch" was not the least restrictive means of achieving the state's admittedly compelling interests in prison security and preventing unnecessary suffering or emotional trauma. *Ramirez v. Collier*, 595 U.S. 411, 431 (2022). Here, there is no apparent "compelling interest" that warrants forcing the Church to abandon its construction plans.

On this important point, *Livingston Christian Schs. v. Genoa Charter Township*—the Kentucky Supreme Court's "polestar"—is out of step with logic, this Court's ruling in *Ramirez*, and other circuit court rulings. 858 F.3d 996 (6th Cir. 2017), *cert. denied*, 584

U.S. 961 (2018). *Livingston* declined to follow the "effective bar" language in the unpublished *Living Waters Church of God v. Charter Twp. of Meridian*, citing a caution in Judge Moore's concurrence that the effective-bar prong was "so broad as to swallow the substantial-burden inquiry." 258 F. App'x 729, 742 (6th Cir. 2007) (Moore, J., concurring). The court reasoned that "a substantial burden would automatically exist" if the effective-bar prong were adopted. *Livingston*, 858 F.3d at 1003, citing *Andon, LLC v. City of Newport News*, 813 F.3d 510, 516 (4th Cir. 2016) (contending it would essentially create an "automatic exemption" from land-use regulations for religious plaintiffs, contrary to RLUIPA's intent).

This reasoning is flawed. Far from creating an "automatic exemption" or religious veto power, an effective bar or complete ban on a religious practice merely shifts the burden and triggers the compelling interest analysis demanded by RLUIPA. 42 U.S.C.S. §2000cc(a)(1). RLUIPA places an "exceptionally demanding" burden on the government to articulate a compelling interest it cannot achieve by any less restrictive means. *Holt v. Hobbs*, 574 U.S. at 364-365; *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014).

A. RLUIPA radically altered the judicial landscape for examining land-use burdens imposed on religious organizations.

RLUIPA "protects individuals and religious institutions from discrimination in zoning and

landmarking laws," offering "broad protection for religious liberty." *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 452 (6th Cir. 2023) (Clay, J., concurring), citing *Holt v. Hobbs*, 574 U.S. at 356 (quoting *Hobby Lobby*, 573 U.S. at 693). Indeed, RFRA[2] did not "merely restore[] . . . pre-*Smith* decisions in ossified form" but rather "provide[s] very broad protection for religious liberty" "far beyond what th[e] Court has held" previously. *Id.* at 682, 693, 706, 715. RLUIPA places an "exceptionally demanding" burden on the government to articulate a compelling interest it cannot achieve by any less restrictive means. *Holt v. Hobbs*, 574 U.S. at 364-365; *Hobby Lobby,* 573 U.S. at 728.

Prior to RLUIPA, zoning decisions were generally not found to impose a substantial burden on religious exercise. *Midrash*, 366 F.3d at 1225-1226. *See, e.g., Grosz v. City of Miami Beach*, 721 F.2d 729, 739 (11th Cir. 1983) ("solicitation of neighborhood residents to attend and the participation of congregations larger than ten, the conduct on which the City based its notice of violation, are not integral to Appellees' faith"); *Christian Gospel Church, Inc. v. City and County of San Francisco*, 896 F.2d 1221, 1224 (9th Cir. 1990) ("It is difficult for us to find a significant burden on religious practice if the Church had not previously been practicing home worship . . . the Church has made no showing of why it is important for the Church to worship in this particular home");

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[2] RFRA and RLUIPA have virtually identical "substantial burden" language. *Cf.* 42 U.S.C.S. §2000bb-1(a), §2000cc-1(a). In *Holt v. Hobbs*, the Supreme Court described the two as "sister statute[s]" imposing "the same standard." 574 U.S. at 358.

Messiah Baptist Church v. County of Jefferson, 859 F.2d 820, 824-25 (10th Cir. 1988) ("no evidence that building a church on the particular site is intimately related to the religious tenets of the church"); *Lakewood, Ohio Congregation of Jehovah's Witnesses, Inc. v. City of Lakewood*, 699 F.2d 303, 307 (6th Cir. 1983) (no evidence that construction of Kingdom Hall was a ritual, a "fundamental tenet," or a "cardinal principle" of its faith).

These pre-RLUIPA cases all examined "whether the religious exercise implicated by zoning decisions was integral to a believer's faith"—but now, "RLUIPA obviates the need for such analysis by providing a statutory definition of religious exercise." *Midrash*, 366 F.3d at 1225-1226 (internal quotation marks omitted). This Court has also declined to find free exercise violations where the government managed its own internal affairs in a manner that did not coerce individuals to violate their religious beliefs. *See, e.g.*, *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988) (government-owned land); *Bowen v. Roy*, 476 U.S. 693, 707-08 (1986) (internal government action assigning Social Security numbers). But the analysis of "substantial burden" for religious land-use purposes differs from the burdens commonly present in other cases.

"RLUIPA's 'substantial burden' inquiry asks whether the government has substantially burdened religious exercise . . . not whether the RLUIPA claimant is able to engage in other forms of religious exercise." *Holt v. Hobbs*, 574 U.S. at 361-362;

Livingston, 858 F.3d at 1002; *Johnson v. Baker*, 23 F.4th 1209, 1216 (9th Cir. 2022) ("availability of alternative means of practicing religion" had no bearing on the "substantial burden" inquiry respecting prisoner's request for prayer oil); *Schlemm v. Wall*, 784 F.3d 362, 364 (7th Cir. 2015) (lack of game meat constituted substantial burden even though dance and prayer were still possible); *Jones v. Carter*, 915 F.3d 1147, 1150 (7th Cir. 2019) (finding substantial burden where vegetarian diet was the only halal option and inmate's religious practice required some consumption of halal meat, citing Seventh Circuit's explanation of *Holt v. Hobbs* as "specifically disapprov[ing] of the practice of offsetting against the burden imposed by the rule any other religious accommodations offered or the strength of the religious command").

This case involves an outright *ban* on MSJB's use of its own real property for a religious practice mandated by the Church's religious doctrine. Such a complete prohibition exceeds the burden that additional expense or delay would impose. A substantial burden exists where the government erects an absolute bar to a religious practice that a church has determined is required by its religious doctrine—regardless of alternatives the government considers reasonable. "[I]f a complete prohibition is not a substantial burden, nothing is." *Apache Stronghold v. United States*, 145 S. Ct. 1480, 1488 (2025) (Gorsuch, J., dissenting from the denial of certiorari) ("preventing a religious exercise is, necessarily, a 'substantial burden' on that religious exercise.")

B. Other Sixth Circuit cases affirm that an absolute ban or effective bar qualifies as a substantial burden under RLUIPA.

Contrary to the Kentucky Supreme Court, the Sixth Circuit acknowledges that an absolute ban is substantial. In a remarkably similar recent case, the Sixth Circuit granted an injunction after a township treated Catholic Healthcare's "prayer trail" as "the zoning equivalent of a church building" and required—then *twice* denied—a special use permit. *Catholic Healthcare*, 82 F.4th at 444-445. The township "actually forced them to remove the religious displays from their property." *Id*. at 448. As the appellate court explained, "the ban on its face substantially impairs Catholic Healthcare's ability to use the property to further its religious mission." *Id*. at 450.

Catholic Healthcare is consistent with earlier Sixth Circuit precedent acknowledging that "[t]he greater restriction (barring access to a religious practice) includes the lesser one (substantially burdening the practice)," which is all RLUIPA requires for a substantial burden. *Haight v. Thompson*, 763 F.3d 554, 565 (6th Cir. 2014) (cleaned up). *Haight* involved a prisoner's RLUIPA claim where the prison "barred access . . . altogether" to foods required for a religious ceremony, which "effectively barred the inmates from this religious practice and force[d] them to modify their behavior." *Ibid*. *Haight* also cites *DiLaura v. Township of Ann Arbor*, 112 F. App'x 445, 446 (6th Cir. 2004) (per curiam). In *DiLaura*, the township refused to grant a

zoning variance to a church wanting to operate a facility for "contemplative prayer." The refusal restricted the church's ability to provide communion wine and thereby "effectively barred [the church] from using the property in the exercise of [its] religion"—a substantial burden under RLUIPA. *Ibid.* *See also Cavin v. Michigan Dep't of Corr.*, 927 F.3d 455, 458–59 (6th Cir. 2019) (substantial burden where prison policy prevented inmate from celebrating religious festivals with a group and from accessing religious items needed for those festivals).

C. The Seventh, Fourth, and First Circuits have defined "substantial burden" in stringent terms that *require* an absolute bar.

Two Seventh Circuit cases defined "substantial burden" as one that "necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable." *Civil Liberties for Urban Believers v. City of Chicago ("CLUB")*, 342 F.3d 752, 761 (7th Cir. 2003); *see also Eagle Cove Camp & Conf. Ctr., Inc. v. Town of Woodboro*, 734 F.3d 673, 680-681 (7th Cir. 2014). "In other words, in order for there to be a substantial burden, religious exercise must be *operatively impossible*." Andrew Denning, *RLUIPA: Calming the Interpretive Seas*, 62 U. Louisville L. Rev. 227, 233 (2023) (emphasis added). This sounds like an effective bar is *required* to meet the "substantial burden" standard. The Seventh Circuit apparently softened its harsh standard after this Court explained that RLUIPA covers "any exercise of religion, whether

or not compelled by, or central to, a system of religious belief." *Holt v. Hobbs*, 574 U.S. at 360, citing 42 U.S.C.S. §2000cc-5(7)(A). "If that [*CLUB*] were the standard, then Schlemm would lose, for he still could dance and pray during the Ghost Feast." *Schlemm*, 784 F.3d at 364 (lack of game meat for a religious exercise was a substantial burden). In *Holt v. Hobbs* and *Hobby Lobby*, this Court articulated a standard much easier to satisfy.

The Fourth Circuit described a comprehensive ban in which "the County . . . *completely prevented* Bethel from building *any* church on its property, rather than simply imposing limitations on a new building." *Bethel World Outreach Ministries v. Montgomery Cnty. Council*,706 F.3d 548, 558 (4th Cir. 2013) (emphasis added). A decade later, the court explained that a burden is substantial if "the property would serve an unmet religious need, the restriction on religious use is absolute rather than conditional, and the organization must acquire a different property as a result." *Alive Church of the Nazarene, Inc. v. Prince William County*, 59 F.4th 92, 106 (4th Cir. 2023), citing *Jesus Christ Is the Answer Ministries v. Balt. Cty.*, 915 F.3d 256, 261 (4th Cir. 2019). But—citing *Bethel*, 706 F.3d at 557-558—the court explained that "[a]n impediment is *absolute* where land use restrictions wholly prevent a religious organization from building *any house of worship* on its property, rather than simply imposing limitations on the building . . . if a land-use restriction would limit the building's size, that restriction is not an absolute impediment, as it would still allow a religious

institution to construct a building." *Alive Church*, 59 F.4th at 106 (emphasis added).

The First Circuit adopted an impossibly stringent standard in rejecting claims against a city ordinance that created a historic district consisting solely of Bishop's church. The church could not alter the exterior or demolish the building without the historic commission's approval, even though the ordinance effectively barred the use of the property for religious purposes. *Roman Catholic Bishop v. City of Springfield*, 724 F.3d 78, 95 (1st Cir. 2013).

D. The Eighth, Eleventh, and Third Circuits recognize that an absolute ban qualifies as a substantial burden.

The Eleventh Circuit observed that "an individual's exercise of religion is 'substantially burdened' if a regulation *completely prevents* the individual from engaging in religiously mandated activity. . . ." *Midrash*, 366 F.3d at 1227. Eschewing the Seventh Circuit standard, *Midrash* found a substantial burden where there is "significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly" or "tends to force adherents to forego religious precepts." *Ibid.* Thus "the Eleventh Circuit provides a more sympathetic standard to religious organizations, which better comports with the statute than does the Seventh Circuit's articulation." Denning, *Calming the Interpretive Seas*, 62 U. Louisville L. Rev. at 233.

The Eleventh Circuit followed *Midrash* in *Thai Meditation Association of Alabama, Inc. v. City of*

Mobile, Alabama. A RLUIPA claimant need not prove that the government has required a complete surrender of religious beliefs—"modified behavior, if the result of government coercion or pressure, can be enough." 980 F.3d 821, 831 (11th Cir. 2020).

The Eighth Circuit is consistent with the Eleventh. In a RFRA case, a bankruptcy trustee was unable to recover debtors' contributions from their church, even absent a penalty or the denial of a government benefit, because it would have *effectively prevented* their religious exercise of tithing, thus imposing a substantial burden. *In re Young*, 82 F.3d 1407, 1418 (8th Cir. 1996). Similarly, in *Murphy v. Mo. Dep't of Corrs.*, a complete ban on "communal worship" substantially burdened an inmate's religious exercise. 372 F.3d 979, 988 (8th Cir. 2004).

Citing the Sixth Circuit *Haight* case, the Third Circuit recently joined the chorus of voices affirming that "[t]here 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) (former federal inmate's right to marry fiancé).

E. The Ninth and Tenth Circuits readily acknowledge that a total ban constitutes a substantial burden.

The Ninth Circuit had "little difficulty . . . concluding that an outright ban on a particular religious exercise is a substantial burden on that religious exercise." *Greene v. Solano Cnty. Jail*, 513 F.3d 982, 988 (9th Cir. 2008), citing *Meyer v. Teslik*,

411 F. Supp. 2d 983, 989 (W.D. Wis. 2006) (ban on group worship substantially burdened inmate's religious exercise—"[i]t is difficult to imagine a burden more substantial than banning an individual from engaging in a specific religious practice"). "Of course, when a regulation outright bans religious exercise, it amounts to a substantial burden." *Johnson v. Baker*, 23 F.4th at 1215 (prisoner's access to prayer oil barred); *see also Jones v. Slade*, 23 F.4th 1124, 1144 (9th Cir. 2022) (excluding religious texts from prison during Ramadan was substantial burden even without a penalty or denial of benefits).

The Tenth Circuit specifically observed that "[t]he term 'substantial,' . . . doesn't mean complete or total, so a 'substantial burden' need not be a complete or total one." If the lesser burden qualifies as substantial, then surely a *complete ban* or *effective bar* easily qualifies. *Yellowbear v. Lampert*, 741 F.3d 48, 55 (10th Cir. 2014) (access to sweat lodge barred). A substantial burden exists when (at the very least) the government (1) "requires the plaintiff to participate in an activity prohibited by a sincerely held religious belief," (2) "prevents the plaintiff from participating in an activity motivated by a sincerely held religious belief," *or* (3) "places considerable pressure on the plaintiff to violate a sincerely held religious belief", e.g., "by presenting an illusory or Hobson's choice where the only realistically possible course of action available to the plaintiff trenches on sincere religious exercise." *Ibid*. These alternatives show that a burden may be "substantial" "even if it does not compel or order the claimant to betray a sincerely held religious belief" (*ibid.*)—but a total ban most certainly qualifies. As then-Judge Gorsuch explained, the

government can substantially burden religious exercise by putting a plaintiff to the "choice" of forgoing religious exercise or else losing a "benefit" or suffering a "penalty." *Id.* at 56. But in *Yellowbear*, the prison gave the plaintiff no "degree of choice in the matter"; it simply "prevent[ed] the plaintiff from participating in [a religious] activity"—which "easily" qualified as a substantial burden. *Id.* at 55-56.

II. THE KENTUCKY SUPREME COURT TRANSGRESSES CHURCH AUTONOMY IN ITS ANALYSIS OF FEASIBILITY, PROPOSING AN ALTERNATIVE THAT CONFLICTS WITH THE CHURCH'S RELIGIOUS DOCTRINE.

The Kentucky Supreme Court's key precedent to determine the existence of a "substantial burden" under RLUIPA was derived from *Livingston*. *MSJB,* 727 S.W.3d at 413. Key factors in *Livingston* include "whether the religious institution has a feasible alternative location from which it can carry on its mission." *Livingston*, 858 F.3d at 1004 (citing *Westchester*, 504 F.3d at 352). *MSJB,* 727 S.W.3d 400 at 414. The court suggested the Church could "construct a smaller grotto or shrine on property it already own[s]." *Ibid*. But this alternative is not truly "feasible." It would impose a substantial burden on the Church because it conflicts with the Church's religious doctrine—an area historically protected by church autonomy. "The law knows no heresy, and is committed to the support of no dogma." *Watson v. Jones*, 80 U.S. 679, 728 (1871).

Also known as the "religious question doctrine," church autonomy bars government officials "from attempting to resolve disputes over the orthodoxy of what a religious person or organization professes, and from taking up any question as to the validity, meaning, or importance of a religious belief or practice." Carl H. Esbeck, *An Extended Essay on Church Autonomy*, 22 Federalist Soc'y Rev. 244, 255 (2021). As Petitioner explains, "the shrine must be erected adjacent to the church because when the Virgin reportedly appeared in a grotto in Lourdes, France, in 1858, she requested that Saint Bernadette 'tell the Priests that a chapel must be built' next to the grotto." Pet. 5-6.

This is not the only RLUIPA case involving a conflict between land-use or zoning regulations and a church's religious doctrine. Although not specifically citing "church autonomy" as the rationale, the Ninth Circuit ruled in favor of a church's assertion that there was no other suitable property available—i.e., no *feasible* alternative—due to the church's "unique core beliefs" that "require[d] it to hold Sunday school and other ministries . . . at the same time as the traditional Sunday service." *Int'l Church of the Foursquare Gospel*, 673 F.3d at 1069. Like the Kentucky Supreme Court, the district court in *Foursquare Gospel* suggested the church could hold three services or acquire several smaller properties, options that conflicted with church doctrine. *Ibid.* Rejecting the lower court's position, the circuit court observed that "courts should not inquire into the truth or falsity of stated religious beliefs." *Ibid.*,

quoting *United States v. Ballard*, 322 U.S. 78, 86-87 (1944).

Church autonomy does not automatically grant churches absolute immunity from all zoning regulations. *Westchester*, 504 F.3d at 349-350. A "substantial" burden as contemplated by RLUIPA demands "more than an inconvenience." *Catholic Healthcare*, 82 F.4th at 449; *Livingston*, 858 F.3d at 1003 ("some degree of severity"); *Guru Nanak Sikh Soc'y v. County of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006) ("significantly great restriction or onus"); *New Harvest Christian Fellowship v. City of Salinas*, 29 F.4th 596, 602 (9th Cir. 2022) ("totality of the circumstances"); *Midrash*, 366 F.3d at 1227 ("significant pressure"). This Court's jurisprudence "signals caution in using effect *alone*" to determine whether a burden is substantial. *Westchester*, 504 F.3d at 349 (emphasis added). Sometimes a church must comply with a neutral, generally applicable regulation. But religious autonomy does protect a church's right to determine its religious doctrine. Here, the Church's faith and doctrine is intertwined with whether the court's proposed alternative—a smaller grotto at a different location, in conflict with the Church's faith and doctrine—is truly "feasible." The court gives short shrift to the Church's religious doctrine, interfering with the Church's ability to manage its own property in compliance with its religious doctrine. Coercion to act against that doctrine is more than a mere "inconvenience."

Church autonomy is not merely the "aggregate rights" of individual church members. Esbeck,

Extended Essay, 22 Federalist Soc'y Rev. at 252. There is a unique line of precedent for church autonomy, providing "a zone of protection for an entity's internal governance that is derived from the organization's religious character . . . a categorical immunity—something like a government-free zone." *Id.* at 245. "[T]he text of the First Amendment itself, . . . gives special solicitude to the rights of religious *organizations*." *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 188-189 (2012) (emphasis added). MSJB's case, like *Hosanna-Tabor*, "concerns government interference with an internal church decision that affects the faith and mission of the church itself." *Id.* at 190. Protection of the Church's rights as an independent ontological entity also has broad implications for preserving religious liberty more generally. "The free exercise rights of individuals . . . cannot be adequately protected unless the autonomy of religious institutions is also protected." *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Review Comm'n*, 605 U.S. 238, 257 (2025) (Thomas, J., concurring).

Church autonomy "radiates . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation." *Hosanna-Tabor,* 565 U.S. at 185-186, citing *Watson v. Jones*, 80 U.S. 679, 728-729 (1872); *see Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) ("in short, power to decide for themselves, free from state interference, matters of . . . faith and doctrine"); *Our Lady of Guadalupe School v. Morrissey-Berru,* 591 U.S. 732, 747 (2020) ("independence in matters of faith and doctrine").

Church autonomy is a "structural limit on the government's constitutional authority" that properly recognizes church and state as separate spheres with separate powers. Carl H. Esbeck, *Church Autonomy, Textualism, and Originalism: SCOTUS's use of History to Give Definition to Church Autonomy Doctrine*, 108 Marq. 108 Marq. L. Rev. 705, 716 (Spring 2025). In short, "institutional religion is vested with a discrete zone of reserved operations." *Ibid*. Church autonomy has been applied in widely varied contexts where it would be inappropriate for the court to examine theological questions. *See, e.g., Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Church*, 393 U.S. 440, 445-446, 447 (1969) ("The American concept of the relationship between church and state . . . leaves the civil court *no* role in determining ecclesiastical questions in the process of resolving property disputes"); *Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 710 (1976) (civil courts may not resolve underlying theological disputes in order to adjudicate church property disputes); *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979) (churches are not subject to mandatory collective bargaining under the National Labor Relations Act, because government-supervised collective bargaining would call for administrative resolution of religious disputes). In *Nally v. Grace Community Church of the Valley*, the California Supreme Court declined to impose a "duty to refer" on church pastoral counselors, explaining that "the secular state is not equipped to ascertain the competence of counseling when performed by those affiliated with religious organizations." 763 P.2d 948, 960 (Cal. 1988), quoting Ericsson, *Clergyman*

Malpractice: Ramifications of a New Theory, 16 Val.U.L.Rev. 163, 176 (1981).

Even when a church is not one of the parties to a case, "[c]ourts are not arbiters of scriptural interpretation." *Thomas v. Review Bd.*, 450 U.S. 707, 716 (1981) (the court could not "inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith"). *See also Hobby Lobby*, 573 U.S. at 723-724 (rejecting government's argument that Hobby Lobby's complicity in evil-doing was too attenuated to constitute a substantial religious burden).

CONCLUSION

This Court should reverse the Kentucky Supreme Court ruling.

Respectfully submitted,

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