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 OF AMICUS CURIAE LIBERTY COUNSEL IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

Liberty Counsel is a national civil liberties organization that provides education and legal defense on issues relating to religious liberty, the sanctity of life, and the family. Liberty Counsel has argued and continues to represent clients that directly address the substantial burden analysis under the Religious Freedom Restoration Act (RFRA) and Religious Land Use and Institutionalized Persons Act (RLUIPA). See, *e.g.*, *Colonel Fin. Mgmt. Officer* v. *Austin*, 622 F. Supp. 3d 1187 (M.D. Fla. 2022). Amicus has an interest in ensuring the exercise of religion is given the expansive protection promised by Congress through these statutes.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Congress enacted the Religious Freedom Restoration Act ("RFRA") and the Religious Land Use and Institutionalized Persons Act ("RLUIPA") for a singular purpose: "to provide very broad protection for religious liberty." *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014). Specifically, RLUIPA provides "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).

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[1] No counsel for any party authored this brief in whole or in part, and no person other than Amicus or its counsel made a monetary contribution intended to fund this brief's preparation or submission. Pursuant to Rule 37.2, Amicus provided and counsel for the parties received timely notice of Amicus's intent to file this brief.

Yet, even with clear congressional history, courts (including the Supreme Court of Kentucky) have looked beyond the plain text of RLUIPA and applied tests that have no grounding within the statute. See, *e.g.*, Pet. App. 22a–27a (applying three factors—one of which this Court explicitly excluded from consideration in *Holt* v. *Hobbs*—that do not focus on the religious exercise of the person); *New Harvest Christian Fellowship* v. *City of Salinas*, 29 F.4th 596, 602 (9th Cir. 2022) (applying a totality of the circumstances approach); *Chabad Lubavitch of Litchfield Cnty., Inc.* v. *Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 195 (2d Cir. 2014) (applying a minimal arbitrary and capricious standard); *Canaan Christian Church* v. *Montgomery Cnty., Md.*, 29 F.4th 182, 192–193 (4th Cir. 2022) (requiring a showing of an absolute impediment to use one's land for religious purposes). As the Petitioner noted, there are no fewer than *sixteen* different factors lower courts have applied. See Pet. 23–24. Almost without exception, these factors lack any textual grounding in RLUIPA and pay mere lip-service to the standards Congress sought to impose on governments burdening religious land use.

What these tests ignore, and what the Court rightly decided in *Hobby Lobby* and *Holt*, is both RFRA and RLUIPA demand a substantial burden test that looks only to the "imposition of the burden *on that person, assembly, or institution*[.]" RLUIPA, 42 U.S.C. §2000cc(a)(1) (emphasis added); see also RFRA, 42 U.S.C. §2000bb-1(a) (requiring the inquiry be focused on the "application of the burden *to the person*[.]" (emphasis added)). The Court has made

clear that RFRA demands "a more focused inquiry" that "requires the Government to demonstrate the compelling interest test is satisfied through application of the challenged law *to the person*—the particular claimant whose sincere exercise of religion is being substantially burdened," *Hobby Lobby*, 573 U.S. at 726 (emphasis added), and RLUIPA requires the same carefully focused inquiry. See *Holt* v. *Hobbs*, 574 U.S. 352, 360–361 (2015) ("RLUIPA, like RFRA, contemplates a more focused inquiry," requiring satisfaction of strict scrutiny "to the person[.]"). Under this framework, the only relevant consideration is the religious exercise of the religious claimant and the imposition of the government's imposition of a burden *on that person or assembly*.

First, the Supreme Court of Kentucky's decision ignored this critical focus to find that the Missionaries of St. John the Baptist, Inc. ("Missionaries of St. John") would suffer no burden, much less a substantial one, by the prohibition on building a grotto on its own property. Pet. App. 27a. The court faltered out of the gate with a flawed premise, curiously omitting in its entirety the fact that the application of the burden must be analyzed "on that person, assembly, or institution." See Pet. App. 19a. The omission of that critical statutory language rendered the entire analysis statutorily infirm.

Second, the Supreme Court of Kentucky then compounded its error by holding that the statute must be read in a manner that "avoid[s] an interpretation of RLUIPA that would exempt religious institutions from all land-use regulations." Pet. App. 24a. But that is a very different question than the one RLUIPA

asks, and it runs directly contrary to the statute's plain terms. For one, the question is not whether granting an exemption in a particular case has broader concerns for other land use regulations not at issue. This mirrors a claim the Chief Justice has noted as wholly inapposite to the proper focus: "it rests not so much on the particular statutory program at issue as on slippery-slope concerns that could be invoked in response to any RFRA claim." *Gonzales* v. *O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418, 436 (2006). Indeed, the Supreme Court of Kentucky's concern about the impact on other land use regulations (or an exemption therefrom) "echoes the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make an exception for everybody, so no exceptions." *Id.* But that is not the test. In fact, that consideration runs directly contrary to the statute's plain text. "RLUIPA, like RFRA, makes clear that it is the *obligation* of the courts to consider whether exceptions are required under the test set forth by Congress." *Holt*, 574 U.S. at 364 (emphasis added).

Third, the Supreme Court of Kentucky continued its erroneous end-run around RLUIPA's plain text by contending there is no concrete definition of a substantial burden in RLUIPA's context. Pet. App. 22a. This, too, was error. The Court has, under both RFRA and RLUIPA, articulated when a government regulation imposes a substantial burden. If the regulation at issue "puts petitioner to the choice" between compliance with the regulation or compliance with its religious beliefs, "it substantially burdens his religious exercise." *Holt*, 574 U.S. at 361;

Hobby Lobby, 573 U.S. at 723 (holding that government regulations that "put [a claimant] to the choice of violating their sincerely held religious beliefs" or complying with the statute constitutes a substantial burden).

Fourth, the Supreme Court of Kentucky erred in holding that Petitioner's inability to build the grotto that its beliefs compelled was "mere inconvenience" and thus not a substantial burden because it can build a smaller grotto. Pet. App. 25a. As this Court made clear, "RLUIPA's substantial burden inquiry asks whether the government has burdened religious exercise * * * not whether the RLUIPA claimant is able to engage in *other* forms of religious exercise." *Holt*, 574 U.S. at 361–362 (emphasis added). Thus, the fact that Petitioner could build a smaller grotto is of no moment to whether the prohibition on its desired religious exercise is substantially burdened. Instead, the Court's "narrow function in this context is to determine whether the line drawn reflects an honest conviction," *Hobby Lobby*, 573 U.S. at 725, and "it is not for us to say that their religious beliefs are mistaken or insubstantial." *Id.* That the government found it mere administrative inconvenience asks a "very different question that the [courts] have no business addressing," *id.* at 724, and ignored the plain and substantial burden that Petitioner articulated concerning the construction of the grotto in accordance with its beliefs. In other words, the court ignored the burden its restrictions imposed *on that claimant*.

Fifth, the Supreme Court of Kentucky erred by contending that Petitioner suffered no substantial

burden because it imposed any burden on itself. Pet. App. 27a. That's nonsense. But for the government's land use restrictions and generalized interests in aesthetics, Petitioner could build the grotto in the size its convictions compel. Again, the properly focused inquiry *on the Petitioner* demonstrates a substantial burden, and it matters not that it knew of the restriction beforehand. Petitioners in *Hobby Lobby* likewise knew that they could merely cease providing insurance coverage and eliminate the burdens it would incur by offering allegedly noncompliant insurance coverage. See *Hobby Lobby*, 573 U.S. at 720. But the knowledge of a way out of the burden imposed by the government regulation does not diminish the burden *on the Petitioner*.

Sixth, the Supreme Court of Kentucky erred by contending that Petitioner suffered no substantial burden because it knew that its applications would be denied. Pet. App. 27a. As Justice Gorsuch has noted, "[a]s a matter of ordinary meaning, after all, 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 denial of certiorari) (emphasis added). Here, the prohibition on building the exact grotto that Petitioner's religious beliefs compelled is a complete burden on that belief. The purpose of RLUIPA was to require government to accommodate religious beliefs under existing and future statutes and land use regulations. See *Haight* v. *Thompson*, 763 F.3d 554, 562 (6th Cir. 2014) ("Keep in mind that the idea behind offering statutory protection for faith-based practices is to make

accommodations—exceptions—for individuals who believe they must do certain things because their faith requires it."). That Petitioner knew existing land use regulations might prohibit what its religious beliefs compelled bears little on whether RLUIPA requires a finding that the very prohibition from which Petitioner sought accommodation imposes a substantial burden on its religious exercise.

ARGUMENT

I. The proper test under RLUIPA is whether the law poses a substantial burden "on that person," *i.e.*, the particular religious claimant.

A. The plain text of RLUIPA focuses on the religious exercise of the claimant.

As this Court has said time and again, "we start where we always do: with the text of the statute." *Van Buren* v. *United States*, 593 U.S. 374, 381 (2021). The plain text of RLUIPA requires an analysis of the burden *on the Petitioner*. RLUIPA's substantial burden provision provides,

> 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) (emphasis added). The question is singularly focused *on the claimant*. *Id.*

Both the institutionalized person provision and the land use regulation provision require the narrow focus *on the claimant*. *Compare* RLUIPA's Institutionalized Persons Provision, 42 U.S.C. §2000cc-1(a) ("No government shall impose a substantial burden on the religious exercise of a person *** unless the government demonstrates that imposition of the burden *on that person* *** [.]"), *with* RLUIPA's Land Use Provision, 42 U.S.C. §2000cc(a)(1) ("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 *** unless the government demonstrates that imposition of the burden *on that person, assembly, or institution*."); see also *Anash, Inc.* v. *Borough of Kingston*, 184 F.4th 214, 237 (3d Cir. 2026) (noting both RLUIPA provisions use the same "substantial-burden standard"); *Westchester Day Sch.* v. *Vill. of Mamaroneck*, 504 F.3d 338, 355 (2d Cir. 2007) (applying the same analysis for both provisions).

In *Holt* v. *Hobbs*, the Court applied an "on that person" substantial burden test under RLUIPA's institutionalized persons provision, focusing solely on

the religious exercise of the claimant to determine whether the government's requirement to shave his beard constituted a substantial burden. *Holt* v. *Hobbs*, 574 U.S. 352, 360–62 (2015). The Court made clear that, like RFRA, RLUIPA "contemplates a more focused inquiry," looking specifically at the imposition of the burden "to the person—the particular claimant whose sincere exercise of religion is being substantially burdened." *Id.* at 363 (cleaned up). Importantly, RLUIPA's plain text demonstrates that it does *not* "authorize *any* government to burden *any* religious belief," 42 U.S.C. §2000cc-3(a) (emphasis added), including the religious beliefs of religious institutions, such as Petitioner. 42 U.S.C. §2000cc-3(b).

Though the Court has never specifically stated that the land use restriction section of RLUIPA requires the same "*on that person*" analysis, the statute's plain text clearly requires it. Rules of construction likewise compel that same result. "Undoubtedly, there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning." *Atlantic Cleaners & Dyers* v. *United States*, 286 U.S. 427, 433 (1932). Thus, any analysis of whether a land-use regulation that prohibits a religious institution from building a religious structure on its own property constitutes a substantial burden under RLUIPA necessarily requires application of that question *on Petitioner*, taking into account the sincere religious beliefs Petitioner articulated and whether application of the land use restriction *on Petitioner* would put

them to a Hobson's choice of compliance with a regulation or compliance with its religious beliefs.

B. RLUIPA and RFRA must be evaluated using the same tests.

Numerous courts across the country, including this Court, have said RFRA and RLUIPA are nearly identical. See, *e.g.*, *Holt*, 574 U.S. at 357 ("[RLUIPA's substantial burden rule] mirrors RFRA[.]"); *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006) (noting that RLUIPA "allows [religious claimants] to seek religious accommodations pursuant to the same standard as set forth in RFRA"); *Longoria* v. *Dretke*, 507 F.3d 898, 902 (5th Cir. 2007) ("Congress responded by enacting RLUIPA, which is fundamentally the same as RFRA."); *Jihad* v. *Fabian*, 680 F. Supp. 2d 1021, 1032 (D. Minn. 2010) ("RLUIPA contains language similar to RFRA.").

Given their identical language and interrelated subject matters, courts should read RFRA and RLUIPA *in pari materia*. *E.g.*, *Wachovia Bank* v. *Schmidt*, 546 U.S. 303, 315 (2006) ("under the *in pari materia* canon of statutory construction, statutes addressing the same subject matter generally should be read as if they were one law."). Under that construction, the substantial burden provision of RFRA requiring a focused inquiry "to the person" and the institutionalized persons provision of RLUIPA requiring the same must be incorporated into the analysis of the substantial burden inquiry in the land use regulation provision of RLUIPA.

1. The operative language in both statutes clearly details an "on that person" substantial burden analysis.

The plain text of RLUIPA and RFRA are virtually indistinguishable. Both explicitly state that the analysis of a substantial burden looks singularly "to the person," 42 U.S.C. §2000bb-1(b), or "on that person, assembly, or institution." 42 U.S.C. §2000cc(a)(1). The Court has likewise made clear that RLUIPA's substantial burden provision "mirrors RFRA[.] *** RLUIPA thus allows [claimants] 'to seek religious accommodations *pursuant to the same standard as set forth in RFRA*.'" *Holt*, 574 U.S. at 357–358 (quoting *Gonzales*, 546 U.S. at 436) (emphasis added). Both statutes "impose[] the same general [on that person] test" to determine whether the burden imposed by the government is substantial. *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 695 (2014).

2. RLUIPA was passed in response to this Court's decision in *City of Boerne* v. *Flores*, reflecting Congress's intent that RLUIPA be interpreted consistently with RFRA.

Congress explicitly enacted both RFRA and RLUIPA "to provide very broad protection for religious liberty." *Hobby Lobby*, 573 U.S. at 693; see also *Chabad Lubavitch of Litchfield Cnty. Inc.* v. *Litchfield Historic District Commission*, 768 F.3d 183, 193 (2d Cir. 2014) ("The broad reach of this predicate

is no accident."); *City Walk – Urban Mission Inc.* v. *Wakulla Cnty. Fla.*, 471 F. Supp. 3d 1268, 1280 (N.D. Fla. 2020) ("Like RFRA, RLUIPA provides greater protection for religious exercise than is available under the First Amendment." (citing *Smith* v. *Allen*, 502 F.3d 1255, 1277 n.5 (11th Cir. 2007))). In the RLUIPA context, Congress explicitly stated that its desire was to provide "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).

Congress enacted RFRA, and subsequently RLUIPA, in response to the Court's decision in *Employment Division* v. *Smith*, which some felt had "virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion," even though "laws 'neutral' toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise[.]" 42 U.S.C. §2000bb(a)(2) and (4). Indeed, in one subcommittee hearing on RFRA, Senator Edward Kennedy found *Employment Division* v. *Smith* to be "a serious and unwarranted setback for the first amendment's guarantee of freedom of religion." *The Religious Freedom Restoration Act: Hearing on S. 2969 Before the S. Comm. on the Judiciary*, 102d Cong. 1 (1992) (statement of Senator Edward Kennedy).[2] Senator Orrin Hatch appropriately noted that the "Freedom of religious practice is the first freedom mentioned in the Bill of Rights [and] deserves stronger protection

[2] https://www.justice.gov/sites/default/files/jmd/legacy/2014/02/13/hear-j-102-82-1992.pdf.

than the Supreme Court has given it in *Smith*," which "happens to be the lowest level of protection the Court could have afforded religious conduct." *Id.* at 7 (statement of Senator Orrin Hatch). Reverend Oliver S. Thomas testified at the same hearing and labeled *Smith* "the Dred Scott of first amendment law." *Id.* at 42 (testimony of Oliver S. Thomas, General Counsel, Baptist Joint Committee). And Professor Douglas Laycock warned that "formally neutral laws sometimes lead to religious persecution[] because once Government demands that religious minorities conform their behavior to secular standards, there is no logical stopping point." *Id.* at 64 (statement of Douglas Laycock, Professor of Law, The University of Texas).

To remedy these concerns, Congress sought "to restore the compelling interest test as set forth in [*Sherbert* v. *Verner*] and [*Wisconsin* v. *Yoder*] and to guarantee its application in all cases where free exercise of religion is substantially burdened[.]" 42 U.S.C. §2000bb(b)(1). RFRA united Congress in a way seemingly unimaginable in the current environment. The House Judiciary Committee approved RFRA 35-0, *Religious Freedom Bill Wins Quick Passage*, CQ Almanac (1993), http://library.cqpress.com/cqalmanac/cqal93-1105787, and once RFRA passed in the House, the Senate voted 97-3 in favor of the legislation. H.R. 1308 (Religious Freedom Restoration Act), 103d Cong. (1993).[3]

[3] https://www.senate.gov/legislative/LIS/roll_call_votes/vote1031/vote_103_1_00331.htm.

Almost immediately, RFRA faced a facial attack challenging Congress's authority to enact it, and the Court held that certain provisions of RFRA surpassed Congress's enumerated powers. See *City of Boerne* v. *Flores*, 521 U.S. 507 (1997). Specifically, the Court held that Congress exceeded the "remedial and preventive nature of [its] enforcement power" in the Fourteenth Amendment, *id.* at 524, 536, before ultimately holding that Congress did not have the power to enforce RFRA against the States, *id.* at 536 ("RFRA contradicts vital principles necessary to maintain separation of powers and the federal balance.").

Just as *Smith* begat RFRA, *City of Boerne* begat RLUIPA. In passing RLUIPA, Congress corrected the constitutional infirmities the Court found in RFRA by "invoking federal authority under the Spending and Commerce Clauses[.]" *Cutter* v. *Wilkinson*, 544 U.S. 709, 715 (2005). Just as Congress sought to do through RFRA, it successfully provided "expansive protection for religious liberty" in RLUIPA. *Holt*, 574 U.S. at 358. In *Holt*, the Court noted several specific ways RLUIPA provided this "expansive protection":

> Congress defined "religious exercise" capaciously to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." § 2000cc–5(7)(A). Congress mandated that this concept "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." § 2000cc–3(g).

> And Congress stated that RLUIPA "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." § 2000cc–3(c).

Ibid.

This history, which developed over the course of the decade following *Smith*, shows Congress intended both RFRA and RLUIPA to restore the *Sherbert*-era interpretation of the First Amendment. Against that backdrop, Congress again adopted the "to the person" inquiry necessary to provide the broad protection it intended in RLUIPA and borrowed the identical language from RFRA. The upshot? Religious claimants are empowered to "seek religious accommodations pursuant to the same standard as set forth in RFRA," *Gonzales*, 546 U.S. at 436, and to receive the same focused "to the person" inquiry Congress intended in both statutes.

3. This Court applied the "to the person" standard for evaluating a substantial burden under RFRA in *Hobby Lobby*.

The Court's first articulation of the "to the person" inquiry arose in *Gonzales*, where it held that RFRA requires a "more focused" inquiry that looked at the "application of the challenged law *to the person*." 546 U.S. at 431 (emphasis added). And, in *Hobby Lobby*, the Court made clear that RFRA requires the substantial burden analysis to look "to the person—the particular claimant whose sincere exercise is

being substantially burdened." 573 U.S. at 726. To answer that question, the Court held, requires inquiry into "whether the [government action] imposes a substantial burden on the ability of the objecting parties to conduct business in accordance with their religious beliefs[.]" *Hobby Lobby*, 573 U.S. at 724. The "to the person" focus, in turn, requires the Court to analyze whether the regulation at issue "puts petitioner to the choice" between compliance with the regulation or compliance with its religious beliefs, "it substantially burdens his religious exercise." *Holt*, 574 U.S. at 361; *Hobby Lobby*, 573 U.S. at 723 (holding that government regulations that "put [a claimant] to the choice of violating their sincerely held religious beliefs" or complying with the statute constitutes a substantial burden).

In *Hobby Lobby*, the business owners held sincere religious beliefs that abortion is a sin and that it was immoral to "participate in, pay for, facilitate, or otherwise support [abortion] drugs." *Hobby Lobby*, 573 U.S. at 701–704. Certain HHS regulations under the Affordable Care Act, however, mandated insurance coverage for certain FDA-approved methods of contraception. *Id.* at 697. The businesses believed that life begins at conception, and that any drugs that terminate a pregnancy after conception cause abortions. *Id.* at 698 n.7. The business claimed that forced provision of insurance coverage violative of their sincere religious convictions was a substantial burden on their religious beliefs. *Id.* at 701–702, 704. After reviewing the imposition of the burden to the person of Hobby Lobby, the Court had "little trouble

concluding" that the regulation constituted a substantial burden. *Id.* at 719.

The Court's analysis began with noting that "the Hahns and Greens have a sincere religious belief that life begins at conception. *** By requiring the Hahns and Greens and their companies to arrange for such coverage, the HHS mandate demands that they engage in conduct that seriously violates their religious beliefs." *Id.* at 720. The focus was on the burden imposed *on the claimant*. There, the mandatory insurance coverage provision at issue "put [a claimant] to the choice of violating their sincerely held religious beliefs" or complying with the statute. *Id.* at 723. In other words, because the businesses believed that the provision of the mandated coverage was "on the forbidden side of the line" for their own religious beliefs. *Id.* at 725. The to-the-person inquiry produced "little trouble" in viewing the challenged restriction as a substantial burden because it put the businesses to a Hobson's choice.

C. This Court has adopted the "to the person" inquiry into RLUIPA's institutionalized persons test for determining a substantial burden.

One year later in *Holt*, the Court adopted that very same "to the person" inquiry into the RLUIPA institutionalized person analysis. *Holt*, 574 U.S. at 360–361 ("RLUIPA, like RFRA, contemplates a more focused inquiry," requiring satisfaction of strict scrutiny "to the person[.]"). Under this framework, the only relevant consideration is the religious exercise of the religious claimant and the

government's imposition of a burden *on that person or assembly*.

The religious claimant in *Holt* was a devout Muslim imprisoned in Arkansas who wanted to grow a ½-inch beard in accordance with his religious beliefs. 574 U.S. at 355–356. Arkansas had a grooming policy that prohibited inmates from growing a beard except for dermatological reasons. *Id.* at 356. Predictably, the religious adherent rightly noted that the prison's prohibition on his religious grooming requirements was a substantial burden. *Id.* at 358–359.

Adopting the "to the person" inquiry required by RLUIPA, the Court noted that only two questions are relevant to the substantial burden inquiry: (1) whether the challenged policy "implicates [*the claimant's*] religious exercise," and (2) whether the challenged policy "requires [*the claimant*] * * * to engage in conduct that seriously violates *his* religious beliefs." *Id.* at 360–361 (emphasis added). In other words, the "to the person" substantial burden inquiry asks whether the regulation at issue "puts petitioner to this choice" between compliance with the regulation or compliance with his religious beliefs. *Id.* at 361. As the Court noted, when a religious claimant is put to this Hobson's choice, he "easily satisfies th[e] obligation" to show that the regulation at issue imposes a substantial burden. *Id.*

As the Court made clear in *Holt*, the substantial burden inquiry is limited to and focused upon the burden *to the claimant*. Considerations concerning whether application of the law to other situations

would render the land use regulation problematic or whether alternatives are available to the claimant to relieve him of the burden imposed by it belong nowhere in the analysis. See *Holt*, 574 U.S. at 362. The inquiry is simple: does the land use regulation at issue—when looked at in relation *to the religious claimant*—impose a substantial burden? The lower courts' conflicting adoption of over *sixteen* different factors, see Pet. 18, to answer the simple question this Court asked in *Gonzales*, *Hobby Lobby*, and *Holt* bears no resemblance to the statute's plain text. Simply put: if a religious adherent is put to the choice between compliance with his faith or compliance with the government, it is a substantial burden. Period. The Court has no need of sixteen factors to make that choice. It need only look to the person and whether he is put to the choice.

II. Under the proper "on that person" inquiry demanded by RLUIPA, Petitioner's sincerely held religious beliefs are substantially burdened by the land-use restrictions prohibition on the construction of the grotto that conforms to its beliefs.

The Supreme Court of Kentucky's analysis of the substantial burden was flawed for a host of reasons.

First, the Supreme Court of Kentucky's decision ignored this critical focus to find that Petitioner would suffer no burden, much less a substantial one, by the prohibition on building a grotto on its own property. Pet. App. 27a. The court failed to mention, let alone apply, the appropriate "on that person, assembly, or institution" test required by RLUIPA. See Pet. App.

19a. The omission of that critical statutory language rendered the entire analysis statutorily infirm.

Second, the Supreme Court of Kentucky then compounded its error by holding that the statute must be read in a manner that "avoid[s] an interpretation of RLUIPA that would exempt religious institutions from all land-use regulations." Pet. App. 24a. But that is a very different question than the one RLUIPA asks, and it runs directly contrary to the statute's plain terms. For one, the question is not whether granting an exemption in a particular case has broader concerns for other land use regulations not at issue. This mirrors a claim the Chief Justice has noted as wholly inapposite to the proper focus: "it rests not so much on the particular statutory program at issue as on slippery-slope concerns that could be invoked in response to any RFRA claim." *Gonzales*, 546 U.S. at 436. Indeed, the Supreme Court of Kentucky's concern about the impact on other land use regulations (or an exemption therefrom) "echoes the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make an exception for everybody, so no exceptions." *Id.* But that is not the test. In fact, that consideration runs directly contrary to the statute's plain text. "RLUIPA, like RFRA, makes clear that it is the *obligation* of the courts to consider whether exceptions are required under the test set forth by Congress." *Holt*, 574 U.S. at 364 (emphasis added).

Third, the Supreme Court of Kentucky continued its erroneous end-run around RLUIPA's plain text by contending there is no concrete definition of a substantial burden in RLUIPA's context. Pet. App.

22a. This, too, was error. The Court has, under both RFRA and RLUIPA, articulated when a government regulation imposes a substantial burden. If the regulation at issue "puts petitioner to the choice" between compliance with the regulation or compliance with his religious beliefs, "it substantially burdens his religious exercise." *Holt*, 574 U.S. at 361; *Hobby Lobby*, 573 U.S. at 723 (holding that government regulations that "put [a claimant] to the choice of violating their sincerely held religious beliefs" or complying with the statute constitutes a substantial burden).

Fourth, the Supreme Court of Kentucky erred in holding that Petitioner's inability to build the grotto that its beliefs compelled was "mere inconvenience" and thus not a substantial burden because it can build a smaller grotto. Pet. App. 25a. As this Court made clear, "RLUIPA's substantial burden inquiry as whether the government has burdened religious exercise * * * not whether the RLUIPA claimant is able to engage in other forms of religious exercise" *Holt*, 574 U.S. at 361–362. Thus, the fact that Petitioner could build a smaller grotto is of no moment to whether the prohibition on its desired religious exercise is substantially burdened. Instead, the Court's "narrow function in this context is to determine whether the line drawn reflects an honest conviction," *Hobby Lobby*, 573 U.S. at 725, and "it is not for us to say that their religious beliefs are mistaken or insubstantial." *Id.* at 725. That the government found it mere administrative inconvenience asks a "very different question that the [courts] have no business addressing," *id.* at 724, and

ignored the plain and substantial burden that Petitioner articulated concerning the construction of the grotto in accordance with its beliefs. In other words, the court ignored the burden its restrictions imposed *on that claimant*. The Supreme Court of Kentucky did not apply the proper "on that person test" in this case. Instead, it applied standards that have no basis under the statute to find the City did not substantially burden the Missionaries of St. John's religious exercise. Using the proper standard, the Court should reverse the decision of the Supreme Court of Kentucky and find there to be a substantial burden upon the Missionaries of St. John's religious exercise.

Fifth, the Supreme Court of Kentucky erred by contending that Petitioner suffered no substantial burden because it imposed any burden on itself. Pet. App. 27a. That's nonsense. But for the government's land use restrictions and generalized interests in aesthetics, Petitioner could build the grotto in the size its convictions compel. Again, the properly focused inquiry *on the Petitioner* demonstrates a substantial burden, and it matters not that it knew of the restriction beforehand. Petitioners in *Hobby Lobby* likewise knew that they could merely cease providing insurance coverage and eliminate the burdens it would incur by offering allegedly noncompliant insurance coverage. See *Hobby Lobby*, 573 U.S. at 720. But the knowledge of a way out of the burden imposed by the government regulation does not diminish the burden *on the Petitioner*.

Sixth, the Supreme Court of Kentucky erred by contending that Petitioner suffered no substantial

burden because it knew that its applications would be denied. Pet. App. 27a. As Justice Gorsuch has noted, "[a]s a matter of ordinary meaning, after all, 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 denial of certiorari) (emphasis added). Here, the prohibition on building the exact grotto that Petitioner's religious beliefs compelled is a complete burden on that belief. The purpose of RLUIPA was to require government to accommodate religious beliefs under existing and future statutes and land use regulations. See *Haight* v. *Thompson*, 763 F.3d 554, 562 (6th Cir. 2014) ("Keep in mind that the idea behind offering statutory protection for faith-based practices is to make accommodations—exceptions—for individuals who believe they must do certain things because their faith requires it."). That Petitioner knew existing land use regulations might prohibit what its religious beliefs compelled bears little on whether RLUIPA requires a finding that the very prohibition from which Petitioner sought accommodation imposes a substantial burden on its religious exercise.

III. The proper "on that person" test would eliminate tests that are contrary to the plain text of the statute and provide clarity to permissible government interests under RLUIPA.

Petitioner ably detailed the litany of ways lower courts have strayed from RLUIPA's text and the simple inquiry it requires. See Pet. 18–27. Indeed, Petitioner notes there have been no fewer than *sixteen*

factors used in one form or another in the many lower courts that have evaluated the substantial burden standard. Pet. 24. Additionally, the application of these atextual tests and seemingly endless factors have resulted in governments being permitted to articulate hopelessly broad assertions of compelling interests that would otherwise be severely cabined by the proper "on that person" test. Restricting the analysis to the appropriate test, the Court will resolve significant issues that have presented themselves in the lower courts.

A. Any test that considers factors outside the particular claimant's religious exercise is atextual and defies the plain meaning of the statute.

Courts have applied a dizzying number of tests to determine if the government action constitutes a substantial burden. None of these tests are grounded in the statute, and none of them appropriately account for the "on that claimant" test required by RLUIPA.

One such test is a totality of the circumstances approach. See, *e.g.*, *New Harvest Christian Fellowship* v. *City of Salinas*, 29 F.4th 596, 602 (9th Cir. 2022). The Ninth Circuit has applied factors that include, but are not limited to, whether the government's actions "were arbitrary and could apply to Plaintiffs' future applications; whether Plaintiffs have ready alternatives or whether those alternatives would require 'substantial uncertainty delay, or expense'; whether Plaintiffs were precluded from other locations in the county; and whether Plaintiffs

imposed the burden upon themselves." *Spirit of Aloha*, 132 F.4th at 1156. Not only has this Court explicitly rejected several of these considerations already, see *Holt*, 574 U.S. at 361 ("[T]he availability of alternative means of practicing religion is [not] a relevant consideration [under RLUIPA.]"), but such considerations improperly focus on the government's conduct—not *on that claimant's* religious exercise. The Court should not entertain a totality of the circumstances approach to this question. In fact, such a test wholly ignores the plain text of RLUIPA. Congress made clear that "[n]othing [in RLUIPA] shall be construed to authorize *any* government to burden *any* religious beliefs," 42 U.S.C. §2000cc-3(a), and the provision was intended to be "construed in favor of 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). There is nothing in these express provisions that counsels in favor of some roving and undefined "totality of the circumstances" test that Congress did not enact, and "unexpressed legislative intentions are not the law." *Apache Stronghold* v. *United States*, 145 S. Ct. 1480, 1487 (2025) (Gorsuch, J., dissenting from denial of certiorari). The inquiry is narrow and focused on the claimant bringing the challenge, *Holt*, 574 U.S. at 362, not some amorphous totality of the circumstances test that is easily manipulated to infringe religious exercise otherwise plainly protected by the statute.

Another test that courts have deployed is the arbitrary and capricious test. See, *e.g.*, *Chabad Lubavitch of Litchfield Cnty., Inc.*, 768 F.3d at 195

(citing *Westchester Day Sch.*, 504 F.3d at 352). For the government to evade RLUIPA's protections by simply proving it did not act arbitrarily is far too low a bar. RLUIPA offers "*expansive protection* for religious liberty." *Holt*, 574 U.S. at 358 (emphasis added). Courts across the country are in consensus that "arbitrariness sets a fairly low bar." *State* v. *Williams*, 373 P.3d 353, 356 (Wash. Ct. App. 2016); see also, *e.g.*, *Mann Media, Inc.* v. *Randolph Cnty. Plan. Bd.*, 356 S.E.2d 9, 16 (N.C. 2002) ("The 'arbitrary or capricious' standard is a difficult one to meet."); *M J Courtyard* v. *State Farm Fire & Cas. Co.*, 2026 WL 1365107, at *3 (W.D. La. May 15, 2026) ("This 'arbitrary or capricious' standard presents a high bar for a plaintiff."). It defies logic to suggest that a statute that was intended to provide "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), can be so easily cast aside with a nearly impossible standard for religious claimants.

In fact, deployment of an arbitrary and capricious standard is the exact opposite of the test Congress enacted in RLUIPA. In RLUIPA, Congress required that substantial burdens on religious exercise satisfy strict scrutiny. *E.g.*, *Ramirez* v. *Collier*, 595 U.S. 411, 441 (2022) (Kavanaugh, J., concurring). And strict scrutiny is "the most demanding test known to constitutional law." *City of Boerne* v. *Flores*, 521 US. 507, 534 (1997). Indeed, "[t]hat standard is not watered down; it really means what it says," *Tandon* v. *Newsom*, 593 U.S. 61, 65 (2021), which is rarely passed. *Burson v. Freeman*, 504 U.S. 191, 200 (1992). Simply put, there is no world in which the most

demanding test known to the law can be satisfied by a government showing that its actions are neither arbitrary nor capricious. RLUIPA requires more, and the courts deploying the arbitrary and capricious standard impermissibly require less.

Some courts have also demanded proof that the land use regulation caused an absolute impediment to religious exercise. See, *e.g.*, *Canaan Christian Church* v. *Montgomery Cnty., Md.*, 29 F.4th 182, 192–193 (4th Cir. 2022) ("In the land use context, the impediment 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.'" (quoting *Jesus Christ Is the Answer Ministries, Inc.* v. *Baltimore Cnty.*, 915 F.3d 256, 261 (4th Cir. 2019))). The standard applied reads: "An 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." *Summit Church-Homestead Heights Baptist Church, Inc.* v. *Chatham Cnty., N.C. Bd. of Comm'rs*, No. 1:25-cv-113, 2025 WL 1725680, at *10 (M.D.N.C. June 20, 2025) (quoting *Alive Church of the Nazarene, Inc.* v. *Prince William Cnty., Va.*, 59 F.4th 92, 106 (4th Cir. 2023)). If an absolute impediment were required to constitute a substantial burden, it would, in essence, "swallow the substantial-burden inquiry." *Livingston*, 858 F.3d at 1002.

To be sure, an absolute prohibition on religious exercise constitutes a substantial burden. See *Apache Stronghold*, 145 S. Ct. at 1486 (2025) (Gorsuch, J.,

dissenting from denial of certiorari) ("As a matter of ordinary meaning, after all, an action that prevents a religious exercise does not just burden that exercise substantially, *it burdens it completely*." (emphasis added)). But RLUIPA does not require claimants to show that the burden on their religious exercise is absolute, only that it is substantial. 42 U.S.C. §2000cc(a)(1) ("No government shall impose or implement a land use regulation in a manner that imposes a *substantial* burden[.]" (emphasis added)). While a total prohibition is sufficient to demonstrate a substantial burden, it is not a necessary prerequisite. See *Haight*, 763 F.3d at 565 ("The greater restriction (barring access to the practice) includes the lesser one (substantially burdening the practice)."). RLUIPA requires only a substantial burden, not outright prohibition.

B. Governments have often relied upon broadly formulated assertions of a compelling interest to restrict religious land use.

The critical focus of the "on that person" test is to eliminate the government's ability to draw its purported interests too broadly and instead "requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzales*, 546 U.S. at 430–431. In *Hobby Lobby*, the Court noted that many of the asserted interests were "couched in very broad terms, such as promoting 'public health' and 'gender equality.'" 573 U.S. at 726. But instead, using the

"'more focused' [to the person] inquiry," the Court "look[s] beyond broadly formulated interests" and "scrutinize[s] the asserted harm of granting specific exemptions to particular religious claimants[.]" *Id.* at 726–727 (citation modified).

In the lower courts, governments have put forth broadly formulated interests under both RFRA and RLUIPA—even post-dating *Hobby Lobby* and *Holt*. For example, in *Colonel Financial Management Officer* v. *Austin*, 622 F. Supp. 3d 1187 (M.D. Fla. 2022), the Marine Corps put forth "dismissive, encompassing, and inflexible generalizations" to require every person within its command to obtain the COVID-19 vaccine. *Id.* at 1211. More specifically, the Marine Corps said its broadly formulated interests were "military readiness and in securing the health of the force." *Id.* at 1212. "But military officials cannot simply utter the magic words 'military readiness and health of the force' and as a result receive unlimited deference from those of us charged with resolving the dispute." *Id.* Instead, under the appropriate "to the person" test, or under RLUIPA's "on that person" test, the government must address with a "meaningful degree of specificity the factual circumstances" that allow the government to infringe upon the religious exercise of that person. *Id.*

Without the proper "on that person" test, attempts by governments across the country "to move this interest from 'broadly formulated' and 'speculative' to compelling" have been commonplace. *Nunez* v. *Wolf*, 117 F.4th 137, 152 (3d Cir. 2024). See also *id.* at 152–153 (prohibiting congregate prayer in prisons and asserting contraband prevention and resource

constraints as compelling interests); *St. Timothy's Episcopal Church, by & through the Diocese of Or.* v. *City of Brookings*, 726 F. Supp. 3d 1231, 1245 (D. Or. 2024) (limiting the number of days benevolent meals could be provided by the Church in order to "(1) 'protect[] the public welfare, maintain[] peace and order, and prevent[] crime'; and (2) facilitat[e] the provision of 'benevolent meal services' in residential areas[.]"); *United States* v. *City of Troy*, 592 F. Supp. 3d 591, 611 (E.D. Mich. 2022) (only asserting an apparent government interest that the City did not discriminate against the religious institution based on its faith).

Indeed, a failure to adopt the "on that person" analysis under RLUIPA allows the government to discuss its purported interest "at a cloud-level of abstraction, far too high to establish as a matter of law that a compelling interest undergirds the decision." *Haight*, 763 F.3d at 563. Applying the proper "on that person" test will only permit governmental interests that are actually supported by "the factual circumstances[.]" *Colonel Fin. Mgmt. Officer*, 622 F. Supp. 3d at 1212. In other words, whether the government's asserted interest is a "problem *as to 'that' particular [religious claimant]—the claimants who made the request and who filed this lawsuit*." *Haight*, 763 F.3d at 563 (emphasis added). RLUIPA requires nothing less.

CONCLUSION

RLUIPA was enacted to give the broadest possible protection to religious exercise. Because the Court "is 'obliged to give effect * * * to every word

Congress used,'" *Nat'l Ass'n of Mfrs.* v. *Dep't of Def.*, 583 U.S. 109, 128–129 (2018) (quoting *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979)), it must adopt the analysis of a substantial burden that includes the narrowly focused "on the claimant" test. RLUIPA's land use provision forbids governments from "impos[ing] a substantial burden on the religious exercise *of a person*," 42 U.S.C. 2000cc(a)(1) (emphasis added), and requires looking at the burden "on that person, assembly, or institution." *Id.* Under the proper formulation of RLUIPA's substantial burden inquiry, the Supreme Court of Kentucky's decision is manifestly erroneous and should be reversed.

Respectfully submitted,

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