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 Petition for Writ of Certiorari to the Supreme Court of Kentucky

BRIEF OF U.S. SENATORS TED CRUZ, CHARLES GRASSLEY, KEVIN CRAMER AND MIKE LEE AS AMICI CURIAE IN SUPPORT OF PETITIONER

Abhishek Kambli
Counsel of Record
HOLTZMAN VOGEL
BARAN TORCHINSKY
& JOSEFIAK PLLC
1325 Avenue of the Americas,
Suite 2843
New York, NY 10019
(202) 737-8808
akambli@holtzmanvogel.com

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QUESTION PRESENTED

1. 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)

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IDENTITY AND INTEREST OF AMICI CURIAE

Pursuant to Supreme Court Rule 37, United States Senators Ted Cruz, Charles Grassley, Kevin Cramer, and Mike Lee respectfully submit this brief as amici curiae in support of Petitioner Missionaries of Saint John the Baptist, Inc.[1] Senator Cruz is the Chairman of the Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights. Senator Grassley is the current President pro tempore of the United States Senate and the Chair of the Senate Judiciary Committee. Senator Cramer is a United States Senator representing the State of North Dakota. Senator Lee is a United States Senator representing the State of Utah.

As a United States Senators representing the States of Texas, Iowa, North Dakota, and Utah, Amici have a longstanding interest in protecting religious liberty and ensuring that federal law is interpreted in accordance with its text and the protections Congress enacted.

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[1] Pursuant to Rule 37.6, Amici Curiae affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae, their members, or their counsel made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

Religious liberty, as enshrined in the First Amendment, is not merely the right to practice one's faith in the abstract, but the freedom to worship in the places one chooses. Congress further protected this principle through the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), expressly providing that "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise." 42 U.S.C. § 2000cc-5(7)(B). The substantial-burden inquiry therefore must focus on the regulated property and the proposed religious use, not merely on whether the claimant can pursue its broader religious mission at another location or in another form.

An alternative-location inquiry disregards RLUIPA's property-specific structure. The statute addresses a claimant's interest in particular land, the government's regulation of that land, and the claimant's intended religious use or development of that land. A government does not eliminate the burden imposed on that exercise merely by identifying another parcel, a smaller project, or a different means of worship. *See Anash, Inc. v. Borough of Kingston*, 184 F.4th 224 (3d Cir. 2026).

Treating alternatives as dispositive at the threshold stage also collapses RLUIPA's two-step framework. The claimant must first establish a substantial burden; the government must then prove that imposing that burden is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc(a)(1). The government

should not be permitted to avoid strict scrutiny by requiring the claimant to modify, relocate, or abandon the proposed religious exercise.

A land-use regulation substantially burdens religious exercise when it directly or effectively prohibits a religious institution from using or developing its own property for a religious purpose. Alternative properties or other forms of religious exercise do not automatically eliminate that burden. This standard preserves the force of "substantial" by distinguishing material prohibitions from incidental inconveniences, and leaves governments free to justify substantial burdens under strict scrutiny.

ARGUMENT

I

RLUIPA PROTECTS THE RIGHT TO USE AND DEVELOP PARTICULAR PROPERTY FOR RELIGIOUS EXERCISE.

A. Congress deliberately expanded "religious exercise" in RLUIPA by expressly including the use, building, and conversion of real property.

Courts have recognized that Congress intended to "expand the concept of religious exercise" in RLUIPA. *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 760 (7th Cir. 2003). The plain text of RLUIPA confirms that approach. 42 U.S.C. 2000cc-5(7)(A) defines religious exercise to include: "Any exercise of religion, whether or not compelled by or central to, a system of religious belief." Section 2000cc-5(7)(B) separately provides:

"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."

While the court in *Civil Liberties for Urban Believers* recognized Congress' intent to expand the concept of religious exercise, it nonetheless failed to give full effect to that expansion. Congress specifically identified the *use, building, and conversion of real property* as religious exercise. That language does not map neatly onto pre-RLUIPA free exercise doctrine.

When a court defines the relevant religious exercise at too high a level of generality, as is the case here, the substantial-burden inquiry becomes unmoored from what Congress actually protected, even if the court nonetheless finds that exercise of religion is properly at issue under U.S.C. 2000cc-5(7)(A). The substantial burden inquiry should be simple: If a regulation actually or effectively prevents the particular religious exercise presented, *e.g.*, *building* a religious grotto on church property, then a substantial burden exists. Instead, in considering substantial burden, courts, as is the case here, inquire into the feasibility of alternatives. *Missionaries of Saint John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400, 414 (2025). That approach relies on the presupposition that some other form of religious exercise is at play, or "whether the religious institution has a feasible alternative location from which it can *carry on its mission*." *Livingston Christian Schools v. Genoa Charter Twp.*, 858 F.3d 996 (6th Cir. 2017) (emphasis added). Such inquiry risks continually leading to paradoxical outcomes

where particular forms of religious exercise protected under RLUIPA by definition, such as *using* real property and *building* a grotto or shrine, are prevented by regulation, but that the prevention of that intended exercise does not rise to the level of "substantial burden" because, a "smaller grotto or shrine" could be built, or a completely separate property could be used. *Frederic*, 727 S.W.3d at 414.

The alternative-location analysis effectively substitutes the broader religious activity or 'mission' of the religious organization for the particular religious exercise or 'building.' The latter is what Congress expressly defined and provided protection for in RLUIPA. Treating the statute as protecting the ability to worship generally, rather than the ability to build and use property for worship specifically, is at odds with the plain text of the law. The distinction is important because Congress used the words *building* and *real property* independently of the provision concerning whether an exercise is compelled or central to religious belief. The separate and distinct provisions of RLUIPA are impermissibly collapsed under the so-called "first factor" of the *Livingston* test. *Id.* at 414.

In considering alternative locations, especially on separate properties, courts presume that the religious exercise being protected is only the broader *mission* of the religious institution, and their substantial burden analysis suffers for it. If the church is well established and owns multiple properties, then it can endure many regulations, but the inverse is not true. To prevent disparate outcomes that privilege certain religious institutions over

others, this Court should avoid a substantial burden analysis that broadly considers "feasible alternative" locations, as the statutory definition makes the physical development of property an independently protected form of religious exercise. 42 U.S.C. 2000cc-5(7)(B).

B. The unit of analysis should be the regulated property and the proposed religious use.

The statutory definition of "land-use regulation" is equally revealing. Under 42 U.S.C. § 2000cc5(5), a land-use regulation includes a zoning or landmark law, or its application, that limits or restricts a claimant's use or development of land, including a structure affixed to land, provided the claimant has a specified property interest.

Therefore, Congress constructed a statutory framework that utilizes three interlocking concepts: (1) The claimant has a property interest in particular land; (2) The government regulates the use or development of that land; and (3) the claimant intends to use or develop that land for religious exercise. The substantial-burden provision then protects against government action that substantially burdens that exercise, but allows for regulations that produce minor setback requirements, ordinary building regulations, or incidental inconveniences. The statutory language is property-specific from beginning to end. Therefore, the court should reject an approach that evaluates the burden by asking whether the religious institution can engage in substantially similar activities somewhere else.

The court below considered whether there was alternative location that would be more suitable for the specific grotto that Plaintiff attempted to construct. The question the statute requires is whether the government substantially burdened Plaintiff's use and development of real property that it had an interest in. The availability of an alternative location should not automatically defeat the threshold substantial-burden inquiry. The proper placement of any alternative means test is in the strict-scrutiny analysis. A religious institution's ability to practice religion elsewhere does not establish that the government has not burdened its exercise of religion on the property at issue.

Petitioner has been prohibited from building a grotto on the land that they have a property interest in because of its location. But the court below suggests that it could instead reduce the scope of its religious works or build on another, more suitable property. While the institution has not lost its ability to practice its religion or "carry out its mission" in a complete sense, it has lost the ability to use its property for the religious exercise that it intended. The government's restriction is not transformed into a non-substantial burden simply because the institution can utilize another parcel, nor build another work.

Interpreting the statute in this way means that RLUIPA protects only against geographic exclusion from entire jurisdictions, rather than also protecting their use and development of particular properties. But Congress addressed geographic exclusion separately in § 2000cc(b)(3). The substantial burden provision must do alternative work.

C. The alternative-means inquiry improperly collapses two statutory stages.

RLUIPA establishes a burden-shifting framework. The claimant must establish a substantial burden and then the government must demonstrate that imposing the burden furthers a compelling interest via the least restrictive means. 42 U.S.C. § 2000cc(a)(1). The alternative-means inquiry risks collapsing both stages into one.

Structurally, the inquiry allows the government to sidestep strict scrutiny by simply pointing to a different way of accomplishing the claimant's religious objective. In effect, the Plaintiff is forced to make a showing that they have narrowly tailored their religious exercise to the regulations. That is not their burden. The government should not be permitted to defeat the threshold showing of substantial burden by simply identifying a different way that the claimant can accommodate the regulation.

But not every alternative is irrelevant to every question. The availability of a genuinely equivalent proposal, reasonable modifications, and less restrictive regulatory conditions may be relevant to the ultimate analysis. However, those considerations should not automatically erase the burden imposed on the particular property.

A better framework is to distinguish the existence of a burden from the government's justification for imposing it. This argument doesn't assert that every denial of a building permit

automatically triggers strict scrutiny. The claimant must still establish a substantial effect on a genuine religious exercise involving property in which it has a qualifying interest. Instead, the argument is that a direct prohibition on proposed religious development cannot be dismissed merely because the claimant can practice religion elsewhere.

D. Recent court decisions favor this approach.

In *Anash, Inc. v. Borough of Kingston*, 184 F.4th 224 (3d Cir. 2026)—a case involving an Orthodox Jewish Congregation whose properties were condemned and rendered unavailable for religious activities following municipal zoning regulations—the Third Circuit rejected the notion that the alternative location argument necessarily defeats the substantial-burden claim. Its reasoning is particularly useful:

> 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, 184 F.4th at 244.

The court further explained that land-use regulations preventing access to or use of real property for religious exercise ordinarily contravene RLUIPA regardless of the availability of feasible alternatives. While *Anash* involved the government's

prohibition of access to existing religious properties and the present case involves a prohibition on constructing religious structures, the statutory principle underlying *Anash* applies in both situations. *Anash*, 184 F.4th at 239–241. RLUIPA protects the *use* and *development* of particular property for religious exercise.

II.

THE SUBSTANTIAL BURDEN INQUIRY

Congress expanded the scope of religious exercise in RLUIPA's text and structure. and it signaled, through the statute's remedial mechanism, that a 'substantial burden' is not something courts should neutralize by pointing to alternatives, but something governments must cure by exemption or policy change, providing that:

> A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

42 U.S.C. § 2000cc-3(e).

While the statute does not independently define substantial burden, some courts have determined

that the only viable readings of the statute are those that give "substantial" force. Often, this plays out in courts distinguishing between "mere inconvenience" and something more. *See Frederic*, 727 S.W.3d at 414. But the statute provides contextual evidence that points another way. The statutory provision above provides three avenues for governments who wish to avoid the preemptive force of RLUIPA: (1) Change policy to remove the burden; (2) Exempt; or (3) Remove burden. The only type of cures that Congress saw fitting for policies or practices that substantially burden religious exercise are exemption or complete change in policy. That understanding squares neatly with a reading of the statute that considers any regulation that prevents the use or building on property to be substantially burdensome, especially when the use or building on the specific property is forbidden by regulation. Congress foresaw the need to advise governments that exemptions and policy changes would be necessary for religious land use under the new law. Thus, a reading of the statute that takes "substantially burden" to mean "effectively preclude" the building of a grotto, for example, is a coherent reading of the statute.

Nonetheless, courts have found this formulation inadvisable "because the effective-bar prong was 'so broad as to swallow the substantial-burden inquiry.'" *Livingston*, 858 F.3d at 1003. But that line of reasoning is flawed. Regulations that effectively preclude religious institutions from building on their properties, in accordance with their beliefs, are paradigmatic examples of "substantial" burden. Recognizing that the direct or effective prohibition of the religious exercise defined by statute is a

"substantial burden" and that the alternative-means analysis is properly affixed to the strict-scrutiny analysis is not a radical move. If anything, it is the starting point. A regulation that effectively prevents the very use protected by the text of the statute, and includes no relevant exemptions, is a "substantial burden." However, other regulations could work in such a way that the use or building on the land is not directly or effectively precluded, but be so costly as to represent a "substantial burden" of its own. That distinction is what provides the 'meat' to the meaning of 'substantial' burden. Strict scrutiny will still apply, and there are certainly compelling interests and narrowly tailored means capable of addressing any perceived abuses that may come with Congress' expansion of protections for religious exercise.

Therefore, there is still the need for a doctrinal test to allow lower courts to distinguish between substantial burdens that outright or effectively prevent religious exercise, and those that burden it insubstantially.

In order to give effect to the provisions in RLUIPA, the courts must change their approach. Triggering the protections of RLUIPA requires actual property interest, land-use regulation, and a use, building, or conversion with an underlying religious purpose. Then, it requires that the government has substantially burdened that use, building, or conversion. Minor setback requirements, ordinary building regulations, or incidental inconveniences do not necessarily qualify. However, land-use regulation substantially burdens religious exercise when it directly or effectively prohibits a religious institution

from using, developing, or converting property in which it has a qualifying property interest. The availability of other forms of religious exercise or alternative properties does not, alone, eliminate the burden. The government remains free to establish that imposing the burden satisfies RLUIPA's compelling-interest and least restrictive means requirements.

The above formulation preserves local government's legitimate authority: Governments can still enforce safety requirements, traffic restrictions, and other regulations, provided they can satisfy the statutory requirements. It provides an administrable distinction: A meaningful difference exists between regulating the manner in which a religious structure is constructed and prohibiting a religious institution from constructing a structure at all. There are still plenty of considerations for courts to weigh in determining what constitutes a substantial burden, but the bright line rule is that regulation that completely or effectively prevents the codified religious exercise is a substantial burden forbidden by statute. Most importantly, it removes the improper alternative-means factor from the analysis completely. That standard belongs in the least-restrictive means analysis alone.

CONCLUSION

For the reasons stated above, the Court should hold that RLUIPA's substantial-burden inquiry focuses on the claimant's proposed religious use or development of the regulated property. A direct prohibition materially preventing that exercise

cannot be dismissed merely because the claimant could practice religion elsewhere, undertake a smaller project, or pursue its mission through other means. The Court should reject the alternative location approach and apply RLUIPA's burden-shifting framework as Congress enacted it.

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Respectfully submitted,

Abhishek Kambli
Counsel of Record
HOLTZMAN VOGEL
BARAN TORCHINSKY
& JOSEFIAK PLLC
1325 Avenue of the Americas,
Suite 2843
New York, NY 10019
(202) 737-8808
akambli@holtzmanvogel.com

Counsel for Amici Curiae