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 THE ASSEMBLY OF CANONICAL ORTHODOX BISHOPS OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES..... iii

INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF THE ARGUMENT.....2

ARGUMENT 4

I. RLUIPA Protects Religious Construction by Applying a Substantial Burden Test as Understood by This Court's Precedents. 4

A. RLUIPA's Text and Statutory Development Carry Forward the Substantial Burden Standard Reflected in This Court's Precedents. ...4

B. RLUIPA Expressly Protects Religious Construction, Whether or Not Compulsory or Central to Faith. 9

C. Ordinary Procedural Requirements Are Not Normally Considered Substantial Interference with an Identified Exercise. 14

II. Prohibiting Missionaries' Proposed Grotto Substantially Burdens Its Religious Exercise.....17

A. The Protected Exercise is Missionaries' Proposed Religious Use of The Property. 17

TABLE OF CONTENTS—Continued

Page

B. The "Feasible Alternative Location" Factor Requires a Substitute Religious Project, Impermissibly Allowing the Government to Define Religious Importance. 20

C. Advance Knowledge of a Restriction Does Not, by Itself, Transform a Government Prohibition into a Self-Imposed Burden. 23

CONCLUSION 25

TABLE OF AUTHORITIES

CASES Page(s)

Anash, Inc. v. Borough of Kingston,
184 F.4th 214 (3d Cir. 2026) 17, 18
Acker v. Vill. of Head of the Harbor,
No. 609399/2024, 2025 WL 1007189
(N.Y. Sup. Ct. Apr. 2, 2025)..... 13
Andon, LLC v. City of Newport News,
813 F.3d 510 (4th Cir. 2016) 24
Bowen v. Roy,
476 U.S. 693 (1986)..... 15, 16
Buckhannon Bd. & Care Home, Inc. v.
W. Va. Dep't of Health & Hum. Res.,
532 U.S. 598 (2001)..... 4, 5
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323 U.S. 18 (1944) 6
City of Boerne v. Flores,
521 U.S. 507 (1997)..... 10
Emp. Div. v. Smith,
494 U.S. 872 (1990)..... 8, 23
FDA v. Brown & Williamson
Tobacco Corp.,
529 U.S. 120 (2000)..... 5
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Internal Revenue,
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858 F.3d 996 (6th Cir. 2017) 17, 18, 23
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366 F.3d 1214 (11th Cir. 2004) 18
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727 S.W.3d 400 (Ky. 2025) 17, 22, 23, 24
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342 U.S. 246 (1952)..... 4, 5
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413 U.S. 405 (1973)..... 7
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578 U.S. 632 (2016)..... 4
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360 F.3d 1024 (9th Cir. 2004) 16
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374 U.S. 398 (1963).....7, 8, 9, 15
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29 F.4th 32 (1st Cir. 2022) 16
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221 U.S. 1 (1911) 4

TABLE OF AUTHORITIES—Continued

Page(s)

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Tony & Susan Alamo Found. v. Sec'y of Labor, 471 U.S. 290 (1985)..... 16
Westchester Day Sch. v. Vill. of Mamaroneck, 504 F.3d 338 (2d Cir. 2007) 18
Wisconsin v. Yoder, 406 U.S. 205 (1972) 7

STATUTES

42 U.S.C. § 2000bb(b)(1) 7
42 U.S.C. § 2000bb-1 6
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42 U.S.C. § 2000cc(a)..... 6
42 U.S.C. § 2000cc(a)(1) 4, 10, 23
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42 U.S.C. § 2000cc-3(g) 10
42 U.S.C. § 2000cc-5..... 5
42 U.S.C. § 2000cc-5(5) 24
42 U.S.C. § 2000cc-5(7) 6, 10, 11, 24
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42 U.S.C. § 2000cc-5(7)(B) 17

TABLE OF AUTHORITIES—Continued

Page(s)

Religious Land Use and Institutionalized Persons Act of 2000, Pub. L. No. 106-274, 114 Stat. 803 (2000) 6

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INTEREST OF *AMICUS CURIAE*[1]

The Assembly of Canonical Orthodox Bishops of the United States of America ("Assembly") consists of active, canonical Orthodox Christian bishops in the United States. Orthodox Christians in this country share a common faith and a common liturgical and sacramental life, and they are organized into distinct ecclesiastical jurisdictions, each governed by its own hierarchy, and each separately organized under civil law with its own governing documents for its clergy, parishes, institutions, and property. Jurisdictional differences typically concern church administration, language, and cultural heritage, not faith or worship. The Assembly is the one body in which the bishops of all these jurisdictions gather and speak together. The Assembly preserves and contributes to the Orthodox Church's unity in the United States by furthering her spiritual, theological, ecclesiological, canonical, educational, missionary, and philanthropic aims.

The Orthodox Church's jurisdictions reflect the history of Orthodox immigration to this country; each is connected to a particular Mother Church abroad, or, in the case of the Orthodox Church in America, is self-governing. Assembly members serve various Orthodox jurisdictions in the United States, including the Greek Orthodox Archdiocese of America; American Carpatho-Russian Orthodox Diocese of the USA; Ukrainian Orthodox Church of the USA;

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[1] No part of this brief was written by counsel for any party. No party, or any other person or entity other than amicus or its counsel, monetarily contributed to the preparation or submission of this brief. Rule 37.6. The George Washington University takes no position on this case.

Albanian Orthodox Diocese; Antiochian Orthodox Christian Archdiocese of North America; the Moscow Patriarchal Parishes in the USA; Russian Orthodox Church Outside of Russia; Serbian Diocese of New Gracanica-Midwestern America; Serbian Diocese of Western America; Serbian Diocese of Eastern America; Romanian Orthodox Metropolia of the Americas; Bulgarian Eastern Orthodox Diocese of the USA, Canada, and Australia; Georgian Apostolic Orthodox Church in North America; and Orthodox Church in America. The Assembly has a particular interest in safeguarding religious liberty and protecting the sacred spaces that facilitate the practice of the Orthodox Christian faith. Its members serve communities whose religious life includes the construction, dedication, and use of those places. Just as many Americans rely upon religious institutions to shepherd their faith, so too do Americans rely upon such institutions to protect the sacred places which facilitate the practice of their faith. As a collaborative body uniting many such institutions, the Assembly has a great interest in protecting religious land use as a means of preserving the spiritual lives of the faithful.

SUMMARY OF THE ARGUMENT

The Religious Land Use and Institutionalized Persons Act ("RLUIPA") is a vital safeguard that protects Americans' religious exercise across belief systems, as well as their ability to worship in the manner and location that best aligns with their religious practices. RLUIPA offers protections for religious land use even if such use is not central to a faith. This protection is particularly important for the Orthodox Church. Orthodox structures and lands are

vital areas for worship and community building. Local zoning boards may recognize and even protect the construction of churches because of their overt affiliation with religiosity and organized worship. However, many important physical manifestations of the Orthodox faith—such as shrines and bell towers—may be unfamiliar to non-practitioners and perceived as optional or ornamental by zoning boards. These uses require RLUIPA's affirmative protection.

The Court should recognize that substantial pressure imposed by government on a religious group's land use constitutes a substantial burden. Such a standard best reflects RLUIPA's text and statutory development, which sought to incorporate "substantial burden" as a term of art from the Court's existing free-exercise jurisprudence.

The Kentucky Supreme Court's interpretation of "substantial burden" should be rejected because it leaves minority religious groups vulnerable to government coercion. Orthodox communities choose sites and building plans intentionally, whether those considerations be of a special religious meaning, conducive to quiet reflection, or accessible to congregants. To permit government to regulate religious land use because it might deem there to be a "feasible alternative location" would pressure the religious group's decision-making and burden religious exercise. Similarly, tolerating the notion of a "self-imposed burden" that relies on advance knowledge of land-use restrictions is too broad and inconsistent with precedent.

ARGUMENT

I. RLUIPA Protects Religious Construction by Applying a Substantial Burden Test as Understood by This Court's Precedents.

RLUIPA prohibits a covered government from imposing or implementing a land-use regulation that substantially burdens religious exercise unless the government demonstrates that the burden is the least restrictive means to further a compelling governmental interest. 42 U.S.C. § 2000cc(a)(1)–(2). RLUIPA's text and development, coupled with the Supreme Court jurisprudence informing its meaning, establish that government restrictions that place substantial pressure on religious groups to alter their behavior impose a substantial burden.

A. RLUIPA's Text and Statutory Development Carry Forward the Substantial Burden Standard Reflected in This Court's Precedents.

"Statutory interpretation . . . begins with the text." *Ross v. Blake*, 578 U.S. 632, 638 (2016). "[W]here Congress borrows terms of art in which are accumulated the legal tradition . . . it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken . . . ." *Morissette v. United States*, 342 U.S. 246, 263 (1952); *accord Standard Oil Co. v. United States*, 221 U.S. 1, 59 (1911). In such situations, courts should avoid "reject[ing] a relevant definition of a word tailored to judicial settings in favor of a more general definition from another dictionary." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res.*, 532

U.S. 598, 616 (2001) (Scalia, J., concurring). Put differently, "[w]ords that have acquired a specialized meaning in the legal context must be accorded their *legal* meaning." *Id.* at 615.

In some instances, this use of established legal definitions in statutory interpretation coincides with the prior-construction canon. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 322 (2012) ("If a statute uses words or phrases that have already received authoritative construction by the jurisdiction's court of last resort . . . they are to be understood according to that construction."). Although Congress is capable of supplying a different meaning for a recognized term of art in a statute, the absence of "contrary direction" is evidence that Congress was satisfied "with [the] widely accepted [specialized] definition[]" and did not wish to depart from it. *Morissette*, 342 U.S. at 263.

In RLUIPA, Congress chose to define "religious exercise" but declined to provide a definition for "substantial burden" because that term of art already carried a known meaning. *See* 42 U.S.C. § 2000cc-5. Related statutory provisions' use of "substantial burden," in this regard, informs the term's meaning in RLUIPA. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132–33 (2000) ("[T]he meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand.").

RLUIPA's significant textual similarities to the Religious Freedom Restoration Act ("RFRA"), its sister statute, suggest that Congress intended the substantial-burden standard to be the same in both laws. Although narrower in scope, the structure and language of RLUIPA's land-use provision, for

example, parallel those of RFRA's broad protection of religious exercise against the federal government. *Compare* 42 U.S.C. § 2000bb-1 (prohibiting substantial burdens on religious exercise absent a compelling interest pursued by the least restrictive means), *with id.* § 2000cc(a) (effectively the same, but limited to the land-use context). And RFRA—like RLUIPA—does not define the phrase "substantial burden." *See id.* § 2000bb-2.

Congress expressly linked these statutes when enacting RLUIPA. Section 7(a)(3) amended RFRA's definition of "exercise of religion," replacing its reference to exercise under the First Amendment with a cross-reference to RLUIPA's definition. Religious Land Use and Institutionalized Persons Act of 2000, Pub. L. No. 106-274, § 7(a)(3), 114 Stat. 803, 806. This incorporated definition expressly includes religious exercise regardless of whether it is compelled by or is central to a religious belief system. 42 U.S.C. § 2000cc-5(7). Consequently, at the least, the statutes' shared "substantial burden" language cannot tolerate a centrality limitation. *See infra* Part I.B.

More importantly, RFRA's statutory development suggests that "substantial burden," as a legal term of art, was to be understood in light of existing Supreme Court jurisprudence. *Cf. Carolene Prods. Co. v. United States*, 323 U.S. 18, 26 (1944) (noting that phrases can carry "previous judicial interpretations"). Early versions of RFRA did not include "substantial." *See* H.R. 5377, 101st Cong. (1990); H.R. 2797, 102d Cong. (1991); H.R. 4040, 102d Cong. (1991); H.R. 1308, 103d Cong. (1993). Neither did the bill the House passed. *See* H.R. 1308, 103d Cong. (1993). Only at the end of the legislative process did Congress incorporate "substantially" into the bill. Frederick Mark Gedicks, *"Substantial" Burdens: How Courts May (and Why*

They Must) Judge Burdens on Religion Under RFRA, 85 Geo. Wash. L. Rev. 94, 118 (2017). And although the successful Hatch-Kennedy amendment incorporated the "substantially burden" language without providing a definition, H.R. 1308, 103d Cong., § 3 (1993) (Hatch-Kennedy amendment), the cosponsors explained their proposal in the greater context of Supreme Court case law that used this term of art. Gedicks, *supra*, at 121.

RFRA's final form communicates Congress's desire to import the Supreme Court's understanding of "substantial burden" from *Sherbert v. Verner*. RFRA expressly states its purpose is "to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972)." 42 U.S.C. § 2000bb(b)(1) (emphasis added). The word "restore" is significant: One restores only what already existed. Congress was not creating a new standard but returning to one that it understood to be settled. RFRA's purpose section is probative of its meaning inasmuch as it corroborates Congress's intentional choice to rely on a legal term of art. *See N.Y. State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419–20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

Sherbert is the foundation for the substantial-burden standard that Congress imported into RFRA and RLUIPA. In *Sherbert*, the Court reasoned that a law that forced a woman to "choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand," was a "burden upon [her] free exercise of religion." 374 U.S. at 399–404. Although *Sherbert* did not use the phrase "substantial burden," the case served as the reasoning basis for the substantial-

burden test that the Court developed in subsequent cases. Following *Sherbert*'s logic, *Thomas v. Review Board of the Indiana Employment Security Division* identified a substantial burden arising from "substantial pressure on an adherent to modify his behavior and to violate his beliefs," even if "indirect." 450 U.S. 707, 718 (1981); *see Emp. Div. v. Smith*, 494 U.S. 872, 883 (1990) (identifying *Thomas* and *Hobbie v. Unemployment Appeals Commission of Florida*, 480 U.S. 136 (1987), as successful applications of the *Sherbert* test). The Court's precedents thus recognize a substantial burden whenever the government places substantial pressure on an adherent to alter religious conduct. The common thread is coercive choice: In each case, the government confronted the believer with a choice between fidelity to religious practice or a significant penalty or loss.

RLUIPA's legislative history further confirms that Congress used "substantial burden" to incorporate the phrase's longstanding historical use in Supreme Court free-exercise precedent. RLUIPA's Senate cosponsors stated contemporaneously with its passage that RLUIPA "does not include a definition of the term 'substantial burden' because it is not the intent of [RLUIPA] to create a new standard for the definition of 'substantial burden' on religious exercise." 146 Cong. Rec. 16700 (2000) (joint statement of Sens. Orrin Hatch and Ted Kennedy). "Instead, that term . . . should be interpreted by reference to Supreme Court jurisprudence." *Id.* The same day, Senator Harry Reid stated he supported "the [l]and use provisions contained within RFRA, . . . which constitute the first of the two major sections contained within [RLUIPA]." *Id.* at 16702 (statement of Sen. Harry Reid). The cosponsoring Senators, Hatch and Kennedy, chose to incorporate

the same legal standard in RLUIPA that they wrote for RFRA. *Id.* at 16698 (statement of Sen. Orrin Hatch). Although statements by individual senators—even cosponsors—are not dispositive, they nonetheless confirm other indications suggesting Congress intended to codify a legal term of art grounded in Supreme Court precedent.

B. RLUIPA Expressly Protects Religious Construction, Whether or Not Compulsory or Central to Faith.

RLUIPA forecloses any requirement that protected religious exercise, including religious construction, be compulsory or central to a faith. To wit: Religious exercise "includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A).

To be sure, earlier Supreme Court cases referenced religious centrality even while disclaiming judicial evaluation of it. In *Sherbert*, the Court described a state's conditioning of unemployment benefits as requiring the claimant to "violate a *cardinal principle* of her religious faith." 374 U.S. at 406 (emphasis added). And in *Hernandez v. Commissioner of Internal Revenue*, the Court framed its inquiry by reference to a burden on a "central religious belief or practice," while simultaneously instructing courts not to question centrality. 490 U.S. 680, 699 (1989).

But RLUIPA's express definition of "religious exercise" precludes importing any centrality limitation notwithstanding the centrality language in those earlier formulations. A claimant must establish a substantial burden on religious exercise, but they need not show that such exercise is compulsory or central to the claimant's faith. 42 U.S.C.

§§ 2000cc(a)(1), 2000cc-5(7). Religious exercise is protected so long as it is undertaken pursuant to a sincerely held religious belief. *Holt v. Hobbs*, 574 U.S. 352, 361 (2015).

Notably, Congress directed that RLUIPA "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3(g). Congress's instruction for broad interpretation further supports applying RLUIPA to religious exercises perceived by government authorities (or reviewing courts) as less important. The instruction also guides the resolution of uncertainty about the scope of statutorily protected religious exercise.

Importantly, RLUIPA expressly includes religious construction within the religious exercise that it defines and protects. Before RLUIPA's enactment, *City of Boerne v. Flores* arose from the denial of permission to enlarge a church. 521 U.S. 507, 512 (1997). The Court held that RFRA exceeded Congress's enforcement authority under section 5 of the Fourteenth Amendment as applied to state and local governments. *Id.* at 532–36. Congress responded to *City of Boerne*, in large part, by creating RLUIPA and specifically defining "religious exercise" to include "[t]he use, building, or conversion of real property for the purpose of religious exercise," 42 U.S.C. § 2000cc-5(7), regardless of whether that use or construction pertains to worship as such.

In sum, the substantial-burden inquiry examines the government's interference with an identified religious exercise regardless of the exercise's perceived importance to the claimant's faith. The construction of a religious structure, at a chosen site,

on land the religious group owns, fits under these broad definitions. Because RLUIPA "include[s] any exercise of religion, whether or not compelled by, or central to, a system of religious belief," it promises a broad construction of religious exercise that protects the very kinds of land use by religious entities that outsiders may discriminate against. *Id.* Structures unfamiliar to a local zoning authority—such as an Orthodox shrine, a bell tower, a domed sanctuary, or a monastery chapel—are the ones most likely to be dismissed as optional or ornamental by those outside the faith. RLUIPA protects them precisely because their religious meaning may not be readily apparent to secular authorities.

Orthodox bell towers, for example, call the faithful to services and mark significant moments in worship. Bell towers are "[u]sually a separate structure," though they may take the form of a "belfry . . . erected over the entrance to the church building." *The Bells*, St. Herman of Alaska Orthodox Church, https://www.sthermansoca.org/orthodox-christianity/the-bells (last visited Nov. 21, 2026). Orthodox bells are blessed for sacred use, and their distinct ringing patterns convey important moments in Church life: joyful ringing for feasts and Pascha; slow, mournful tolling for funerals and on Holy Friday. Because bells exist to summon congregants to their church and to announce what is taking place at the church's altar, the tower's religious function is tied to the community that it serves.

Failure to respect the expressed breadth of religious exercise protected by RLUIPA could put bell towers and other common Orthodox land-use practices at risk. Outdoor shrines, side chapels, chapels built in fulfillment of a vow, monastery cemeteries, and chapels built over springs venerated

as holy are not "required" for the celebration of the Divine Liturgy—the Eucharistic service *par excellence* that "exists for no other reason than to be the official all-inclusive act of prayer, worship, teaching, and communion of the entire Church in heaven and on earth," *The Divine Liturgy*, Orthodox Church in Am., https://www.oca.org/orthodoxy/the-orthodox-faith/worship/the-divine-liturgy/the-divine-liturgy (last visited Nov. 21, 2026)—but each of these land uses is nonetheless an established and integral form of Orthodox devotion. That such structures are not strictly "required" is exactly why Congress specified that protected exercise need not be "compelled by" a faith. *See* 42 U.S.C. § 2000cc-5(7)(A).

Orthodox Christian institutions are frequently called by their faith to construct these religiously significant structures. Orthodox church architecture is itself a theological expression. A church is oriented toward the East, the direction of liturgical prayer. Its dome represents heaven and often bears the icon of Christ Pantocrator looking down upon the gathered faithful. And at its consecration, the bishop seals relics of the saints within the altar table, setting that place apart permanently for worship. These aesthetic features hold particular importance for the Orthodox faithful. "[T]he Orthodox Church makes no sharp distinction in its worship between the spiritual and the aesthetic," because "[o]ne becomes aware of God's presence through the senses, in the experience of 'splendor' and 'beauty.'" John Yiannias, *Orthodox Art and Architecture*, Greek Orthodox Archdiocese of Am., https://www.goarch.org/-/orthodox-art-and-architecture (last visited Nov. 21, 2026). An Orthodox church's features are not mere stylistic preferences that a zoning authority may treat as interchangeable with other designs.

Icons—visual representations of sacred persons, biblical scenes, and important events in the life of the Church that are treated as veritable windows into heaven—and the shrines which house them are the closest Orthodox counterpart to the Marian grotto at issue in this case. Icons play a significant role in Orthodox worship and they are positioned where adherents will see them daily. "[B]uildings, cars, buses, taxis, trains, restaurants, markets, shops, squares, the roadsides, gardens, and fields—all of these things and places, and many more, too, are adorned by icons." Hieromonk Auxentios, *The Iconic and Symbolic in Orthodox Iconography*, Orthodox Christian Info. Ctr., https://orthodoxinfo.com/general/orth_icon (last visited Nov. 21, 2026). Among Orthodox Christians, this practice takes a distinctive outdoor form: the *proskynitari* (or *eikonostasi*), a small shrine holding an icon and an oil lamp, which the faithful keep lit and before which they stop to pray. Such shrines stand at church entrances, at monastery gates, and along roadsides, frequently at a spot tied to a vow, an answered prayer, or a death, so their meaning depends on where they stand.

Chapels are yet another external religious structure of importance to Orthodox Christians. Chapels serve as auxiliary locations in which the faithful may engage in corporate worship or offer private prayer, among other things. Chapels have not been immune to construction challenges, even when such chapels are incorporated into an existing monastery. *Acker v. Village of Head of the Harbor*, No. 609399/2024, 2025 WL 1007189, at *2–5 (N.Y. Sup. Ct. Apr. 2, 2025) (experiencing challenges from neighboring residents about a chapel's construction).

RLUIPA's legislative history corroborates a broad conception of religious exercise that includes all

Orthodox construction and use of bell towers, shrines, icons, and side chapels. RLUIPA cosponsors, Senators Hatch and Kennedy, stated that a religious group's "right to build, buy, or rent" a physical space "adequate to their needs and consistent with their theological requirements" is "an indispensable adjunct of the core First Amendment right to assemble for religious purposes." 146 Cong. Rec. 16698 (2000) (joint statement of Sens. Orrin Hatch and Ted Kennedy).

The Hatch-Kennedy statement reinforces that religious location decision-making is not random; a location is influenced by theological requirements and congregational needs. To treat location as fungible and have courts entertain alternative locations as identified by non-practitioners ignores this fundamental reality. Congress created an intentionally broad scope for protected religious activity in the land-use context, with the focus of analysis turning on the meaning of "substantial burden" and whether government has interfered with an identified religious exercise, rather than the exercise's perceived importance within the claimant's faith.

C. Ordinary Procedural Requirements Are Not Normally Considered Substantial Interference with an Identified Exercise.

Congress expressly protected religious land use in RLUIPA and, by borrowing the Supreme Court's interpretation of "substantial burden," Congress made this protection meaningful without making it limitless. RLUIPA will not doom every land-use regulation. Only those that "substantially burden" religious exercise receive RLUIPA's scrutiny.

Supreme Court precedents that analyze religious burdens provide a meaningful line in the sand between scrutinized substantial burdens and permitted procedural requirements.

A government regulation substantially burdens religious exercise when it places substantial pressure on a claimant to abandon or change an identified religious practice. *See supra* Part I.A; *see also Sherbert*, 374 U.S. at 404; *Thomas*, 450 U.S. at 717–18 (finding "substantial pressure" on the claimant to "modify his behavior" when he had to choose "between fidelity to religious belief" or "cessation of work" without unemployment benefits). The same pressure exists when the government forbids a religious group from building on land it owns. It also includes when the government engages in "playing a delaying game," with permitting construction such that the "delay, uncertainty, and expense" substantially burdens the religious group's ability to build. *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 899–901 (7th Cir. 2005). In such circumstances, the government requires the group to choose between building somewhere else—which could cost more, may be further removed from the congregation, or be less suited for the group's purposes—or not building at all. *See infra* Part II.B.

But RLUIPA's scrutiny is not limitless. The Court has held that applying ordinary procedural requirements to religious groups is permissible. For example, in *Bowen v. Roy*, the Court rejected a religious claimant's objection to the government's use of a Social Security number for his daughter when the government administered public benefits programs. 476 U.S. 693, 695, 712 (1986). The government's recordkeeping process—an ordinary administrative procedure—did not violate the Free Exercise Clause

because the government is not required "to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens." *Id*. at 699. The Court also rejected an Establishment Clause challenge to the Fair Labor Standards Act's recordkeeping requirements for religious foundations' commercial activities. *Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 305–06 (1985) (concluding the Act's requirement of administrative paperwork to make "routine and factual inquiries" was permissible because it was minimally intrusive).

Interpreting RLUIPA to distinguish substantial interference with religious exercise from ordinary procedural requirements allows governments to implement reasonable procedural requirements for land use, such as permit application requirements or site surveys. *See, e.g.*, *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1027–28 (9th Cir. 2004) (upholding a city's rezoning application requirement when the religious college's application was incomplete, and the application requirement would only require it to submit a complete application rather than prohibit it from building); *see also St. Paul's Found. v. Ives*, 29 F.4th 32, 34–35, 43–44 (1st Cir. 2022) (holding RLUIPA did not prohibit a town from requiring an Orthodox monastery complex to submit plans accurately reflecting the use of its spaces, and the town could prevent beer service until the monks received an occupancy certificate). Using an adherent's pressure to choose as the polestar for interpreting RLUIPA's substantial burden provision thus balances robust protection of religious exercise and the government's ability to regulate land use.

II. Prohibiting Missionaries' Proposed Grotto Substantially Burdens Its Religious Exercise.

The Kentucky Supreme Court relied on alternative construction and foreknowledge of the restriction to find no substantial burden. *Missionaries of St. John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400, 414–16 (Ky. 2025) (citing *Livingston Christian Schs. v. Genoa Charter Twp.*, 858 F.3d 996, 1004–05 (6th Cir. 2017)). But those considerations do not eliminate the prohibition on the proposed religious exercise.

A. The Protected Exercise is Missionaries' Proposed Religious Use of The Property.

RLUIPA's text and precedent underscore that the specific location of a religious building is important to religious exercise, and the importance of location and technical parameters to religious exercise should be considered in the substantial-burden inquiry. RLUIPA defines "religious exercise" in the land-use context to include "[t]he use, building, or conversion of real property for the purpose of religious exercise . . . of the person or entity that uses or intends to use the property *for that purpose*." 42 U.S.C. § 2000cc-5(7)(B) (emphasis added). It is not solely the religious institution's general ability to expand and build in the abstract that is the religious exercise at issue; the Court should consider the proposed construction on *specific* real property.

Several courts have recognized the religious significance of particular lands and locations to proposed religious construction, but none have explicitly named it as a factor or given it substantial weight. The Third Circuit in *Anash, Inc. v. Borough of*

Kingston, for example, acknowledged that "the greater the nexus between a land use regulation and religious exercise, the greater the likelihood that the land use regulation will substantially burden religious exercise." 184 F.4th 214, 239 (3d Cir. 2026); *accord Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007). Based on that principle, it stated that a land-use regulation imposes a substantial burden when it limits the use of real property otherwise available for the proposed religious exercise so as to prevent that exercise on that property. *Anash*, 184 F.4th at 239–40. Other courts, however, have inadequately considered or effectively dismissed the religious significance of location—as articulated and held by the religious claimant—in their analyses. *See, e.g.*, *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227–28 (11th Cir. 2004) (finding no substantial burden when relocating a synagogue to an alternative property would require congregants to walk a few blocks farther and there was no claimed specific religious significance to the synagogue's current location). *Livingston* itself falls into this camp. 858 F.3d at 1011–12 ("Nor does the record demonstrate that [plaintiff's] religious beliefs required it to locate within Genoa Township specifically.").

The location and technical building parameters of discrete pieces of property are important to faith. Saint George Georgian Orthodox Church in Feasterville, Pennsylvania, has faced zoning and land-use barriers to the construction of a bell tower—part of plans to erect a new cathedral on the Church's property—because it would exceed the town's building-height limit. Jo Ciavaglia, *Feasterville Church to Rework Its Proposed Steeple Plan*, Bucks Cnty. Courier Times (Aug. 31, 2026, at 05:04 ET)

https://www.phillyburbs.com/story/news/local/2026/08/31/zoning-hearing-st-george-orthodox-church-feast erville-steeple-bucks-county-lower-southampton/91495282007 (referring to the bell tower as a steeple). Because a bell tower's height holds religious significance to the Church—"Georgian Orthodox tradition calls for [bell towers] to be a specific height"—the issue provides an example of Orthodox Christians' religious exercise being burdened by zoning restrictions which run afoul of RLUIPA. The zoning restriction forces adherents to choose between following the law, which would amount to abandoning or significantly modifying the project or relocating it, and engaging in the religious construction that would best serve their faith on the land they deem spiritually appropriate. *See id.* The Court should consider location in its substantial-burden analysis and, more importantly, give religious institutions deference in defining the importance of the location and design of proposed constructions to their religious practice.

Location is also important because of a sacred space's liturgical purpose. Specifically, a traditional church's altar faces East. As Saint John the Evangelist Orthodox Church—a parish of the Antiochian Orthodox Christian Archdiocese of North America—explains, "Facing East is an ancient [t]radition within Orthodoxy for several reasons." *Why Orthodox Churches Face East*, Saint John the Evangelist Orthodox Church (Apr. 18, 2023), https://www.saintjohnchurch.org/why-orthodox-churches-face-east. First, the Church believes that the "Lord will return triumphantly from the East." *Id.* Second, because Christ is "the Sun of Righteousness," facing East, where the sun rises, is where Christ will also rise. *Id.* Third, humanity's "ancient home, the paradise of Eden, is in the East." *Id.* This tradition

illustrates how religious considerations inform the design of a proposed building. The possibility of worship in adapted spaces is protected under RLUIPA because the statute expressly extends beyond practices that are compelled by faith.

B. The "Feasible Alternative Location" Factor Requires a Substitute Religious Project, Impermissibly Allowing the Government to Define Religious Importance.

A religious group's decision to build a structure for religious practice on its selected site on its own land is part of its religious practice. Rejecting that location is a substantial burden on religious exercise, regardless of whether there is a "feasible alternative location." Religious groups do not select construction sites at random. They select locations because they are the best place for their practice. Perhaps it is a good location for congregant access, or a quiet location prime for reflection, or the location has a special religious meaning. As it relates to Orthodox worship, the location of religious construction is particularly important in many circumstances; the locations chosen for a monastery, cemetery, church, or shrine all hold religious meaning.

Orthodox monasteries are often established in secluded rural settings because silence, solitude, and separation from ordinary activity are essential to the monastic vocation. For a monastery community, distance from town is not an inconvenience to be traded away; it is a part of religious life itself. Saint Peter's Monastery in Montana, for example, emphasizes the seclusion of its location. It "offer[s] a sequestered life for monastics," *About*, St. Peter's Monastery, https://www.stpetersmonastery.com/

about (last visited Nov. 21, 2026), with its location "roughly three miles east of . . . Harrison, Montana, pop[ulation] 187 souls." *The Story of the Monastery of Saint Peter*, St. Peter's Monastery, https://www.stpetersmonastery.com/updates/storyof monasteryofsaintpeter (last visited Nov. 21, 2026). For a monastery, a site closer to town is not a "feasible alternative." It would undermine the very silence that some adherents to monastic life require.

Monasteries tie their communities to particular ground in death. Monks are traditionally buried on monastery grounds, where the brethren pray for them daily. When a monastery holds the grave of a revered spiritual father, the place takes on a special importance; the grave may draw pilgrims for generations. Orthodox Christians offer memorial services at the departed's graves on fixed days. A community separated from its dead loses a part of its liturgical life. A monastery cannot carry these graves, or the prayer offered at them, to an alternative site.

A church's specific location may also be required for restoring consecrated ground. The Serbian Orthodox Cathedral of Saint Sava in Manhattan was devastated by fire on Pascha in 2016. David W. Dunlap, *New York Serbian Church Gutted by Fire Won't Be Demolished, for Now*, N.Y. Times (June 14, 2016), https://www.nytimes.com/2016/06/15/nyregion/serbian-church-gutted-by-fire-wont-be-demolished-for-now.html. Rather than relocate, the community committed to rebuilding at the same site, where its faithful had worshipped for decades. Sabrina Santos, *Burned Cathedral of St. Sava Begins Reconstruction Process in New York*, ArchDaily (Sep. 8, 2016), https://www.archdaily.com/794210/burned-cathedral-of-st-sava-begins-reconstruction-process-in-new-york.

Church location may also be dictated by the religious significance of a place of historical memory. The Saint Photios Greek Orthodox National Shrine in Saint Augustine, Florida, occupies a historic building associated with the Greek colonists who settled in Florida in the eighteenth century, among the earliest Orthodox Christians in what is now the United States. *Our History*, St. Photios Greek Orthodox Nat'l Shrine, https://stphotios.org/about/our-history (last visited Nov. 21, 2026). The shrine's religious purpose—commemorating the presence and faith of those settlers—depends on the place itself.

The Orthodox practice of erecting shrines is likely to suffer if the Court permits the consideration of the "feasible alternative location" factor. A shrine's location may be chosen for the particular spiritual significance that the location holds; the "feasible alternative location" factor would thus invite an analysis that fails to consider the significance of a specific location to the religious land use at issue regardless of whether the same structure, if built elsewhere, would fail to achieve the same religious purpose. The Kentucky Supreme Court below did not include in its analysis whether the Marian grotto's location beside the church had any significance. *See Missionaries of St. John the Baptist*, 727 S.W.3d at 411–17. If the Court fails to acknowledge the potential religious significance of a location, it risks failing to properly consider the substantiality of burden created by prohibiting construction at that location within the substantial burden analysis.

It bears emphasizing that case law affirms that the *adherent* defines the religious exercise that is allegedly burdened. A court's attempt to dissect what is proper religious exercise should be heavily scrutinized. "It is not within the judicial ken to

question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Hernandez*, 490 U.S. at 699. "[C]ourts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim." *Smith*, 494 U.S. at 887. Courts are unsuited to make theological decisions because there is no judicially manageable standard for reviewing religious beliefs; those determinations can only be made within the religious group.

The Kentucky Supreme Court's "feasible alternative location" factor engages in this prohibited theological dissection. *Missionaries of St. John the Baptist*, 727 S.W.3d at 414 (quoting *Livingston*, 858 F.3d at 1004). RLUIPA does not permit courts to decide where a religious group can best carry out its mission; that theological decision belongs to the religious group alone. If courts can suggest a "feasible alternative location," there is no limiting principle. In the extreme, a court could decide that a feasible alternative location is hours away. Courts deciding "feasible" alternatives risk displacing a religious group's role in selecting its spiritual home. The availability of other ways or places to practice one's faith does not answer whether the government has burdened the exercise the claimant actually identified.

C. Advance Knowledge of a Restriction Does Not, by Itself, Transform a Government Prohibition into a Self-Imposed Burden.

The government's imposition or implementation of a land-use restriction is bounded by RLUIPA. 42 U.S.C. § 2000cc(a)(1). A claimant's advance

knowledge of a zoning restriction changes neither who imposes it nor what its enforcement prevents from taking place. The prohibition remains governmental action regardless of whether the claimant learns of it before or after acquiring an interest in property. Some lower courts have inappropriately tied RLUIPA's protection to a claimant's reasonable expectation of approval for a land-use project. In *Andon, LLC v. City of Newport News*, the Fourth Circuit construed the claimant's knowledge of a restriction when entering a contingent lease as a self-imposed hardship. 813 F.3d 510, 515–16 (4th Cir. 2016). This reasoning should not control whether enforcement of a restriction substantially burdens the religious construction at issue here because Congress did not condition protection on an expectation that an existing zoning law would permit the proposed exercise. Rather, Congress protected both the religious use and *intended* religious use of property. 42 U.S.C. §§ 2000cc-5(5), (7).

The Kentucky Supreme Court relied upon Missionaries' acknowledgment of the restriction in its permit application. *Missionaries of St. John the Baptist*, 727 S.W.3d at 415. The Court should not condone any transfer of responsibility for an enforcement of a restriction to an applicant because that applicant acknowledged the restriction. Nor should the Park Hills Board of Adjustment's ("Board") initial approval resolve the federal RLUIPA question of whether the prohibition that was ultimately enforced indeed substantially burdens Missionaries' proposed religious construction.

The Board initially approved the project, but the judgment below leaves the proposed religious construction prohibited. The burden of this prohibition is not eliminated by the absence of some

kind of unusual expense or obstruction in the initial permitting process. The Court should apply RLUIPA to the restriction that was ultimately enforced, rather than focus on the ease with which Missionaries first obtained an approval that the courts set aside.

CONCLUSION

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

Respectfully submitted,

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