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 FOUNDATION FOR MORAL LAW IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

Amicus curiae Foundation for Moral Law ("the Foundation") (www.morallaw.org) is a 501(c)(3) non-profit, national public interest organization based in Alabama, dedicated to the strict interpretation of the Constitution as written and intended by its Framers and to the right to acknowledge God in the public arena.

The Foundation believes America was founded as a constitutional republic based upon legal and moral principles set forth in the Bible. Considering Biblical principles, the First Amendment protects the freedom to exercise religion of both person and property without undue restraint. When the government seeks to impose a burden upon the people's right to exercise religion, it must prove it has a compelling interest that can be furthered by the least restrictive means.

SUMMARY OF THE ARGUMENT

RLUIPA forbids any land-use regulation that "imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution," unless the government satisfies strict scrutiny. 42 U.S.C. § 2000cc(a)(1). Building a religious structure on one's own land is itself "religious exercise" under the statute. *Id.* § 2000cc-5(7)(B). A

[1] No party or party's counsel authored this brief in whole or in part or contributed money that was intended to fund its preparation or submission; and no person other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

regulation that flatly forbids that exercise substantially burdens it, and, as this Court held in *Holt v. Hobbs*, 574 U.S. 352, 361-62 (2015), it is no answer that the claimant could practice its faith in some other way. Judicial precedent, history, and tradition favor religious exercise over government even if the interference is seemingly incidental. RLUIPA's original intent and purpose is not to create a method of measuring the severity of burdens. Rather its intent is to provide a wide protection of religious exercise using strict scrutiny. Asking courts to grade the severity of a sincere religious burden runs the risk of making the courts arbiters of religious interpretation and empowering the government to control religion. The government's compelling interest in society's peace and prosperity mandates that any burden on religion is substantial. Full scrutiny of a First Amendment violation should include an analysis of the precepts of the Creator who endowed such freedoms.

ARGUMENT

I. Case precedent favors religious exercise over government interest.

When a First Amendment burden arises, case precedent first looks to whether there is a sincere religious belief. The truth or falsity of the belief is not a proper issue under the First Amendment. "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). "Men may believe what they cannot prove. They may not be put to the proof of their religious

doctrines or beliefs." *United States v. Ballard*, 322 U.S. 78, 86 (1944). Sincerity of belief is generally presumed.

Once sincerity is established, the next step is to determine whether an infringement on religious exercise has occurred. Historically, the Court has placed high priority on protecting religious exercise with very limited exception. When it comes to man's relationship with and obligations to his Creator, "no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with." *Ballard*, 322 U.S. at 87 (internal quotation marks and citation omitted). In his dissent in *Prince v. Massachusetts*, 321 U.S. 158, 172 (1944) (Murphy, J., dissenting), Justice Murphy reminded the Court that religious activity is protected by the Fourteenth Amendment against interference by state action, "except insofar as they violate reasonable regulations adopted for the protection of the public health, morals and welfare." The point of these limitations on religious exercise is to ensure that a religious exercise does not contradict the believer's civil duty to the general welfare of the country. These limitations have unfortunately been misconstrued to give the government permission to interfere with a religious exercise so long as the burden is not substantial.

This Court's precedent places the burden on the plaintiff "to demonstrate an infringement of his rights under the Free Exercise and Free Speech Clauses." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022). Notably, the framework *Kennedy* describes asks only whether the government has burdened a

sincere religious practice through a policy that is not neutral or generally applicable; it contains no separate requirement that the burden be "substantial." *See id.* at 525.[2]

The burden of proof then shifts to the government to show that it has a compelling interest to impose the burden and cannot do so by less restrictive means. Distinctly, both *Lukumi* and *Sherbert* recognize that while religious exercise is not totally free from legislative restrictions, the religious conduct or action regulated cannot be infringed upon unless it poses some substantial threat to public safety, peace, or order. See *Sherbert v. Verner*, 374 U.S. 398, 403 (1963); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546-47 (1993) (acknowledging the compelling interest of government to restrict conduct causing substantial harm, but stating the justification is not warranted where government restricts conduct protected by the First Amendment but fails to enact feasible measures to restrict other conduct causing substantial harm or alleged harm of the same sort).

The judicial principle is clear. The government may not enact laws that suppress religious belief or practice unless it has a compelling interest that can be furthered by least restrictive means. Religious

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[2] The Foundation recognizes that while the word "substantial" is found nowhere in the language of the Free Exercise Clause of the First Amendment, it does appear in RLUIPA. However, the purpose of RLUIPA is to provide a vehicle for applying First Amendment protection, so RLUIPA should be interpreted at least as protectively as the First Amendment. *See* 42 U.S.C. § 2000cc-3(g); *Holt*, 574 U.S. at 361 ("RLUIPA provides greater protection.").

expression rarely creates a substantial threat to public safety, peace, or order that would warrant government interference. This Court gives preference to religious exercise more often than it does not.

II. History and tradition provide broad protection of religious exercise.

The fathers of the Constitution "fashioned a charter of government which envisaged the widest possible toleration of conflicting views." *United States v. Ballard*, 322 U.S. 78, 87 (1944). "Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views." *Id.*

This nation's history is directly derived from the desire of the people to be free from burdens upon religion. The First Amendment, ratified with the Bill of Rights in 1791, is a direct testament of that fact. The Northwest Ordinance of 1787, which chartered a government for the Northwest Territory, also found it necessary to ensure religious freedom. Article 1 of the ordinance states, "No person, demeaning himself in a peaceable and orderly manner, *shall ever be* molested on account of his mode of worship or religious sentiments, in the said territory."[3] (emphasis added). "Molested" in the context of the era meant "[d]isturbed; troubled; annoyed."[4] Such verbiage

[3] Northwest Ordinance art. 1 (1787), https://www.archives.gov/milestone-documents/northwest-ordinance (last visited Nov. 11, 2026).

[4] Noah Webster, *An American Dictionary of the English Language* (1828) (defining "molested"),

denotes a low threshold for burden. The founding fathers meant to protect a person's exercise of belief from the slightest disturbance or annoyance, especially when the person was peaceable and orderly. In the Act for Establishing Religious Freedom, which he drafted in 1777 and Virginia enacted in 1786, Thomas Jefferson declared that

> no man shall be compelled to frequent or support any religious worship . . . nor *shall be enforced, restrained, molested, or burthened in his body or goods*, nor shall otherwise suffer on account of his religious opinions or belief . . . and that the same shall in no wise diminish, enlarge or affect their civil capacities.[5] (emphasis added).

Jefferson concluded the Act by stating that future legislative assemblies could revoke the act, but he asserted that religious rights "are of the natural rights of mankind" and any act repealing his act or narrowing its operation would be "an infringement of natural right."[6]

If religious freedom means only the freedom to believe, then there is complete religious freedom in Iran, in North Korea, and throughout the world. So

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https://webstersdictionary1828.com/Dictionary/molested (last visited Nov. 11, 2026).

[5] An Act for Establishing Religious Freedom (Va. Jan. 16, 1786), Records of the General Assembly, Enrolled Bills, Record Group 78, Library of Virginia, https://encyclopediavirginia.org/primary-documents/an-act-for-establishing-religious-freedom-1786/ (last visited Nov. 11, 2026).

[6] *Id.*

long as a person does not say anything or do anything about one's belief, a person may believe what he or she wants. It is only when religious belief is manifested in words or actions that it becomes a threat to tyrants. Jefferson had the foresight to know that eventually future government entities would attempt to create restraint and justify government burden upon religion.

Restraining and burdening body and goods for the exercise of religion is exactly what the First Amendment intended to provide protections against. Congress shall make no law prohibiting the free exercise of religion. U.S. Const. amend. I. The Fourteenth Amendment applies that restriction equally to the States. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). The First Amendment protects "not only the right to harbor religious beliefs inwardly and secretly. It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through 'the performance of (or abstention from) physical acts.'" *Kennedy*, 597 U.S. at 524 (quoting *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 877 (1990)). Just as First Amendment rights are not shed at the schoolhouse gate (*Mahmoud v. Taylor*, 606 U.S. 522, 545 (2025)), so they are not shed under government land use regulations. *Mahmoud* stated that "[g]overnment schools, like *all government institutions*, may not place *unconstitutional* burdens on religious exercise." *Mahmoud*, 606 U.S. at 545 (emphasis added).

As already observed, this Court's precedent simply asks the plaintiff to demonstrate an infringement on his rights under the Free Exercise

and Free Speech Clauses. *Kennedy*, 597 U.S. at 524. "Substantial burden" comes into play under the statutory verbiage of the Religious Freedom Restoration Act of 1993 (RFRA) as applied to federal government and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) as applied to states. *See* 42 U.S.C. §§ 2000bb-1(a), 2000cc(a)(1). Under RLUIPA, "the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion." 42 U.S.C. § 2000cc-2(b). But the Court in *Kennedy* has explained that once the plaintiff has made a showing of a free exercise violation in various ways, "this Court will find a First Amendment violation unless the government can satisfy 'strict scrutiny' by demonstrating its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Kennedy*, 597 U.S. at 525. RLUIPA incorporates strict scrutiny in its own judicial provision by stating in the General rule that the government shall not impose or implement a land use regulation in a manner that imposes a substantial burden unless the government demonstrates the imposition is in furtherance of a compelling interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000cc(a)(1). RLUIPA further solidifies strict scrutiny when it states that if a plaintiff produces prima facie evidence of a violation of the Free Exercise Clause or a violation of RLUIPA section 2, the government shall bear the burden of persuasion on any element of the claim. 42 U.S.C. § 2000cc-2(b).

III. Courts should be very hesitant to rule that a burden on a sincere religious belief is not substantial.

The founding fathers understood that the government should not interfere with anyone's religious choices. In his Memorial and Remonstrance Against Religious Assessments, James Madison presented a 15-point objection to a bill that would have taxed Virginians to support teachers of the Christian religion, with each taxpayer designating the Christian society to receive his payment. Madison thoroughly explained that if citizens allowed the government to prescribe this tax, they would be empowering the government to choose or remove their religious practices at will. Madison's declaration is forever memorialized as a testament to this nation:

> Because we hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate.[7]

Madison continues to explain that the right is unalienable because the opinions of men that depend

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[7] James Madison, *Memorial and Remonstrance Against Religious Assessments* ¶ 1 (ca. June 20, 1785), https://founders.archives.gov/documents/Madison/01-08-02-0163 (last visited Nov. 15, 2026).

on evidence contemplated in their own mind cannot follow the dictates of others. The right is also unalienable because it is a right toward men and a duty towards the Creator.

The Court cannot create its own opinions of what constitutes a substantial burden without the risk of impeding man's conscience or empowering the government to choose or remove at will the exercise of religion. The extent of the burden cannot simply rest on what the government or the court thinks is substantial. Likewise, asking the religious person or entity to prove substantial burden is not enough because the court could just as easily dismiss the burden of proof, as the Kentucky Supreme Court did in this instance.

Courts may not dissect a party's religious beliefs to determine whether they are true or even reasonable. "Courts are not arbiters of scriptural interpretation." *Thomas*, 450 U.S. at 716. The Court in *Thomas* stated that it is not for the Court to determine the reasonableness of a line a person draws in response to a conviction. Courts should not undertake to dissect religious beliefs because the believer is struggling either with the belief itself or with articulating the belief. Neither can the Court give weight to the significance of a belief simply because another who professes the same religion has no scruples about the same issue. *Id.* at 715. In the same manner, telling a party that an infringement upon his or her religious beliefs is inconsequential, or a mere inconvenience is akin to telling the party what his or her religious beliefs are.

For example, suppose that a child drowns while being baptized by immersion in a local river. To protect children, Kentucky outlaws baptism by immersion. A Baptist and a Church of Christ member sue, claiming this law is a substantial burden on their religious beliefs. Baptists generally believe baptism is a symbol and is not essential for salvation. Many in the Church of Christ believe baptism by immersion is essential or virtually essential for salvation. A court might conceivably rule that the prohibition on baptism by immersion is not a substantial burden for the Baptist but is a substantial burden for the Church of Christ member. But this requires extensive examination of the religious doctrines, not only of the church denominations but of the individual members. Courts have neither the jurisdiction nor the competence to examine religious beliefs in this way.

Likewise, in order to reach a valid determination that prohibiting the church from building a grotto, or a grotto of a certain size, is not a substantial burden, the Kentucky court would have to engage in a detailed examination of the role of grottos in Christendom generally, in the Roman Catholic Church and in this particular church, why this church wants to build a grotto, what role that grotto would play in the church, why the church wants the grotto to be of a certain size, why a smaller grotto would not enable the church to carry out God's will, and much more.

This Court has already rejected the Kentucky court's central premise. In *Holt v. Hobbs*, 574 U.S. 352 (2015), the district court found no substantial burden on a Muslim prisoner's religious exercise because he could practice his faith in other ways. This Court

unanimously reversed. "RLUIPA's 'substantial burden' inquiry asks whether the government has substantially burdened religious exercise . . . , not whether the RLUIPA claimant is able to engage in other forms of religious exercise." *Id.* at 361-62. The Court also explained that "the protection of RLUIPA, no less than the guarantee of the Free Exercise Clause, is 'not limited to beliefs which are shared by all of the members of a religious sect.'" *Id.* at 362 (quoting *Thomas*, 450 U.S. at 715-16). So too here: the question is whether Park Hills has burdened the grotto Petitioner sought to build, not whether Petitioner could build some smaller shrine somewhere else. And because 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), courts should not water down the substantial-burden inquiry with atextual factors.

Not only did the Kentucky Supreme Court not engage in such an inquiry, but the Court also lacks the jurisdiction and the competence to do so. Such subjective examination is precisely what the First Amendment was intended to prohibit. For this reason and for many others, courts should be very hesitant to define substantial burden and should give great deference to plaintiffs' claims that a burden is substantial.

IV. RLUIPA's original intent is not to create a ranking order of burdens so that state governments can overcome their duty to protect religious exercise.

RLUIPA's original intent and purpose is to safeguard religious exercise from arbitrary government restriction. RLUIPA was passed by unanimous consent in both the House of Representatives and the Senate and then signed into law by Democratic President Bill Clinton on September 22, 2000. Pub. L. No. 106-274, 114 Stat. 803 (2000). The Act was a means to correct the problems of RFRA. RFRA recognized that laws neutral toward religion had the capacity to burden religion as much as laws intending to interfere with religious exercise. RFRA also recognized that governments should not substantially burden without a compelling interest and it sought to correct the result of *Employment Division v. Smith*, 494 U.S. 872 (1990), which lowered the government's burden to mere rational basis. RFRA sought to restore the compelling interest test set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), guaranteeing its application where free exercise of religion is substantially burdened. RFRA found that the compelling interest test struck a sensible balance between religious liberty and governmental interests. 42 U.S.C. § 2000bb(a)(5). However, this Court found RFRA unconstitutional as applied to the states in *City of Boerne v. Flores*, 521 U.S. 507 (1997), but has continued to apply it to the federal government. *See Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418 (2006). Congress responded to *City of Boerne* by enacting

RLUIPA, which applies to state and local governments in two areas: land-use regulation and institutionalized persons. *Holt*, 574 U.S. at 357.

According to a 2024 letter from the Assistant Attorney General addressed to state, county and municipal officials, the Department of Justice's aim in enforcing RLUIPA is to ensure "that no individual in this country suffers discrimination or unlawful treatment because of their faith."[8] The letter took great lengths to explain the protections of each RLUIPA provision. RLUIPA provides that no government shall impose a land use regulation that imposes a substantial burden on religious exercise unless the government demonstrates that the imposition is in furtherance of a compelling interest and is the least restrictive means. Neither shall a government impose a land use regulation that treats a religious assembly or institution on less than equal terms with a nonreligious assembly. 42 U.S.C. § 2000cc(a)(1), (b)(1). The Assistant Attorney General further stated that RLUIPA is written broadly to cover a wide range of religious uses and types of exercise and that the "substantial burden" provision applies to burdens on "a person, including a religious assembly or institution."[9] RLUIPA also extends widely to include religious schools, camps, homeless shelters, soup kitchens, as well as families exercising religion through the use of property, such as home

[8] Letter from Kristen Clarke, Assistant Att'y Gen., Civil Rights Div., U.S. Dep't of Justice, to State, County, and Municipal Officials 2 (Mar. 19, 2024), https://www.justice.gov/d9/2024-03/2024_doj_letter_-_rluipa-final.pdf.

[9] *Id.* at 2.

prayer and Bible studies.[10] While the letter pointed out that RLUIPA does not provide blanket exemption from local zoning and landmarking laws, it contains "safeguards to prevent discriminatory, *unreasonable*, or *unjustifiably burdensome* regulations from *hindering* religious exercise."[11] (emphasis added). The letter further explains that zoning is "primarily a local matter", and those seeking approval for religious land uses will have to apply for permits and zoning relief according to local procedures and ordinances unless federal law takes precedence.[12] RLUIPA does not define what a substantial burden is and the Court should not presume to know what Congress meant by that one word, especially in light of its intent to provide a wide and broad protection against *unreasonable* and *unjustifiable hindrances* of religious exercise.

Petitioner sought to exercise its religious beliefs in a peaceable, orderly manner. Recognizing their civil capacity, they appropriately applied for a permit, candidly acknowledged the potential nonconformity to the zoning ordinance, and presented their case for exercising their religious faith. After a public hearing, the Park Hills Board of Adjustment voted 4-1 to grant the conditional-use permit and setback variances, finding that the grotto would "contribute to the general well being of the neighborhood or the community" and would not "be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity." Pet. App. 8a-9a. In doing so, the Board honored RLUIPA's safeguards and

[10] *Id*. at 2.
[11] *Id*. at 3.
[12] *Id*. at 3.

prevented an unreasonable and unjustifiably burdensome hindrance on religious exercise.

V. Interpreting substantial burden empowers the government to choose or remove religious freedoms.

In his dissent to the Kentucky Supreme Court ruling, Justice Thompson observed that the proposed grotto was akin to a modest patio or garden feature rather than an expansion of the building or core operations. He explained that there would be no excavation for a building, no expansion of interior space, or significant change to the nature of the church. He opined that a small grotto fell within the Board's discretionary authority and did not unlawfully enlarge the church's nonconforming use. *Missionaries of Saint John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400 (Ky. 2025) (Pet. App. 31a-39a) (Thompson, J., dissenting). Justice Thompson nonetheless agreed with the majority that no RLUIPA violation occurred; he dissented from the majority's treatment of the state-law question. Pet. App. 31a. The majority, for its part, left standing the Court of Appeals' holding that the Board lacked authority to grant the permit, Pet. App. 17a, treated the burden on Petitioner as a self-imposed "mere inconvenience," *id.* at 25a, 27a, and so never required the government to show a compelling interest pursued by the least restrictive means. By vacating the permit, the Kentucky Supreme Court substantially burdened Petitioner's land use (goods) in carrying out its religious beliefs and practices.

Furthermore, the Kentucky Supreme Court failed to understand the extent of the burden because

it does not understand the duty the Church owes her Creator or the manner of discharging that duty. Many religions seek to expand. Adherents to the Christian religion are commanded by the Creator to expand ("Go ye therefore, and teach all nations . . . ." *Matthew* 28:19 (KJV)). God also commands His people to remember what He has done for them, often by setting up physical memorials ("Take you hence out of the midst of Jordan . . . twelve stones . . . ." *Joshua* 4:3 (KJV); "these stones shall be for a memorial unto the children of Israel for ever." *Joshua* 4:7 (KJV)). Petitioner explained that the grotto would be "a religious shrine to honor the Mother of God," J.A. 17, at 29:24, modeled on the grotto at Lourdes where, according to Catholic tradition, the Virgin Mary asked Saint Bernadette "to tell the priests to build a chapel," J.A. 102. Petitioner's priests "believe it is God's will to build this shrine." *Id.* By prohibiting the church from building this grotto, the Kentucky Supreme Court has upheld a prohibition that prevents them from discharging their duty to God as they understand it. Petitioner believes this burden is substantial.

To determine whether a substantial burden had been imposed, the Kentucky Supreme Court chose to use the Sixth Circuit's jurisprudence in *Livingston Christian Schools v. Genoa Charter Township*, 858 F.3d 996, 1004-05 (6th Cir. 2017). That case adopted factors including in establishing substantial burden: whether the religious institution has a feasible alternative location to carry out its mission; whether the institution will suffer substantial delay, uncertainty or expense; and whether a plaintiff has imposed a substantial burden upon themselves. Pet. App. 22a-25a. The court reasoned that Petitioner could build "a smaller grotto

or shrine on the property it already owned" and called that difference a "mere inconvenience." *Id.* at 25a. But the neighbors' stated concern was traffic, *id.* at 8a, the Board found that the grotto would not be detrimental to those living nearby, *id.* at 9a, but there is no indication that a smaller grotto would satisfy the neighbors' objections. The court also faulted the church for presenting no evidence of expense, noting that it had "voluntarily" scaled back its original design, and held that the church had imposed the burden on itself because its application acknowledged that the ordinance did not directly permit the grotto. *Id.* at 27a. Feasible alternatives, financial and time considerations, self-imposition of a burden and moving forward with alternatives may all be factors in any given decision, but they do not excuse a burden to religious exercise. Instead, these factors impose a burden on religious conviction and duty based on subjective reasoning. By telling Petitioner that this burden on religious convictions is not substantial, the Kentucky Supreme Court has come dangerously close to telling the Church what her religious convictions are. By stopping expansion or enlargement of the already existing church, the zoning ordinance substantially hindered Petitioner's duty to the Creator. The burden became even more substantial when the Church had to defend her religious exercise not once, but three times in the courts of law.

VI. Any sincere religious burden that a land-use regulation imposes should be presumed substantial.

While sometimes flawed, the opinions of this Court consistently and fiercely protect religious freedoms from unjustifiable and unreasonable

burden. This Court understands that the government has an interest in society's peace and prosperity and that protecting religious freedom is imperative to both. John Adams understood this when he addressed the officers of the Massachusetts militia, explaining to them that this country will be the most miserable habitation in the world if the People of America assume "the Language of Justice and moderation while it is practicing Iniquity and Extravagance" and display "the charming Pictures of Candour frankness & sincerity while it is rioting in rapine and Insolence."[13] Adams concluded by stating, "Our Constitution was made only for a moral and religious People. It is wholly inadequate to the government of any other."[14]

Wisconsin v. Yoder, 406 U.S. 205, 220 (1972), held that "a regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." The Court understood that determining what constitutes a religious belief or practice entitled to constitutional protection presents a "most delicate question" and "the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests." *Id.* at 215-16. Nevertheless, the Court concluded that the interference on Amish parents' religious exercise was not merely subjective, rather it

[13] Letter from John Adams to the Officers of the First Brigade of the Third Division of the Militia of Massachusetts (Oct. 11, 1798), https://founders.archives.gov/documents/Adams/99-02-02-3102 (last visited Nov. 16, 2026).

[14] *Id.*

carried "precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent." *Id.* at 218.

One of the ways this Court has protected religion is by allowing a plaintiff to show that a government policy is not neutral or generally applicable. If the policy provides a mechanism for individualized exemptions, then the policy will fail general applicability and trigger strict scrutiny. *Kennedy*, 597 U.S. at 526. See also *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021); *Lukumi*, 508 U.S. at 531-32. *Fulton* explained that "A law is not generally applicable if it 'invite[s]' the government to consider the particular reasons for a person's conduct by providing 'a mechanism for individualized exemptions.'" *Fulton*, 593 U.S. at 533. Where a state has in place a system of individual exemptions, it may not refuse to extend that system to cases of religious hardship without compelling reason. *Id.* at 534 (quoting *Smith*, 494 U.S. at 884). Justice Barrett, joined on this point by Justices Kavanaugh and Breyer, explained: "A longstanding tenet of our free exercise jurisprudence—one that both pre-dates and survives *Smith*—is that a law burdening religious exercise must satisfy strict scrutiny if it gives government officials discretion to grant individualized exemptions." *Id.* at 544 (Barrett, J., concurring).

Kentucky's land-use scheme illustrates why RLUIPA applies with full force here. RLUIPA's substantial-burden provision reaches burdens imposed through a system of "individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(a)(2)(C); *see Fulton*, 593 U.S. at 533-34; *Smith*, 494 U.S. at 884. Kentucky's

nonconforming-use statute, Ky. Rev. Stat. § 100.253, governs how lawful but nonconforming uses may continue, change, or be expanded. The statute lets a board of adjustment approve the enlargement of a nonconforming use that presents "a major public attraction or attractions, such as a sports event or events," that has "attained international prestige" and "the status of a public tradition." Ky. Rev. Stat. § 100.253(2). That is a discretionary, case-by-case system of exceptions, the kind this Court's free-exercise cases treat with suspicion and that RLUIPA subjects to strict scrutiny once a substantial burden is shown. An exemption for a public attraction which has gained prestige and public tradition and needs to maintain that status and growing demand could just as easily apply to the Catholic church which has prestige, public tradition, and a growing demand.

This Court is keenly aware that any attempt to create a standard to protect religious freedoms has the potential to be misconstrued. In his opinion concurring in the judgment in *Fulton*, joined by Justices Thomas and Gorsuch, Justice Alito warned that the City of Philadelphia could get around the Court's decision by simply eliminating the never-used exemption power, creating a circular challenge to the infringement upon free exercise. *Fulton*, 593 U.S. at 551-52 (Alito, J., concurring in the judgment). The various substantial burden tests created by circuit courts have the same circular challenge. Justice Alito further stated that the Court in *Smith* pushed aside "nearly 30 years of precedent" and held that the Free Exercise Clause "tolerates any rule that categorically prohibits or commands specified conduct so long as it does not target religious practice." *Id.* at 545. Asking the Court to define "substantial burden" has the

potential of creating a tolerance for restraint against religious exercise so long as the restraint is not substantial as interpreted by the Court.

RLUIPA was not created to provide a loophole for the government to evade its responsibility to protect religious freedoms. Neither was it created to allow the government an excuse for setting its interests above freedom of religious exercise. The intent of the law is to provide broader, wider protections against the hindrance of religious exercise. RLUIPA does not provide an analysis of what makes a burden substantial because the intent of the law implies that hindering religious exercise *is* a substantial burden. Therefore, the government must have a compelling interest in imposing such a burden and *if* a compelling interest exists, the government is limited to the least restrictive means of implementation.

VII. An analysis of the burden on religion should encompass the precepts of the Author of this nation's freedom.

The United States government was founded on the laws of Nature and Nature's God who is the God of the Bible. Those principles steered the U.S. Constitution, western expansion ordinances, state constitutions, and every arena of public life in the early stages of this nation. Religious principles advanced the country into the Revolution, triggered the Emancipation Proclamation, and over the last two centuries shaped civil rights and foreign policies.

The founding fathers had a deep understanding of the tension between religious freedom and civil

duty. Virginia's proposed tax for ministers is a perfect example of that tension. Patrick Henry's good intention to spread the Gospel had to be weighed with the danger of giving the government power over religious choices. James Madison weighed the issue against the precepts of the Creator. He stated:

> Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the General Authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no mans right is abridged by the institution of Civil Society and that Religion is wholly exempt from its cognizance.[15]

The government has a compelling interest to uphold and to protect the Constitution and to ensure unalienable rights in the pursuit of life, liberty and happiness. In order to accomplish this awesome task, it must consider the laws of God. God's precepts give man agency to act upon his own free-will. However, God has put boundaries in place to set man on a life-giving, righteous course. The laws of Nature and Nature's God may provide freedom to exercise religion, but it does not give credence for anyone to

[15] Madison, *supra* note 7, ¶ 1.

create laws and promote practices contrary to the laws of the Universal Sovereign.

Thomas Jefferson acknowledged the Author of this nation and encouraged the nation to follow Almighty God's example:

> Whereas, Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being Lord, both of body and mind yet chose not to propagate it by coercions on either, as was in his Almighty power to do, that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time;[16]

Jefferson went on to list the various coercions men have used and will use for selfish gain: from compelling financial contribution, to forcing support of a teacher or leader, to proscribing a citizen as unworthy of public confidence unless he profess or

[16] An Act for Establishing Religious Freedom, *supra* note 5.

renounce this or that religion, and finally to bribing with "worldly honours and emoluments." Jefferson continued his declaration by stating:

> that it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that Truth is great, and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.[17]

Jefferson then went on to declare that no man shall be compelled to support any religious worship or be enforced, restrained, molested or burdened in his body or goods in matters of Religion. He understood that men could change the law, but doing so would be an infringement on a natural right.

Many religions seek to coerce and demand a following, establishing laws that enforce religious practices and punish those who do not practice said religion or refuse to denounce other religions. This great nation has diligently endeavored to prevent coercion, to follow the example of Almighty God by allowing people to work out their own religious beliefs. The government and this Court have an interest in continuing to protect the natural, unalienable rights

[17] *Id.*

endowed by Almighty God from the various coercive acts Jefferson saw in his day and knew would perpetually continue. The government should consider whether certain acts are a "departure from the plan of the holy author of our religion," who is forever memorialized in this nation's Declaration of Independence as Creator and Nature's God. This Court would do well to leave room for Truth's "natural weapons free argument and debate" so that errors may be realized and corrected.

Rather than defining the subjective term "substantial burden", this Court should instead clarify that the God-given unalienable right of religious freedom is so fundamental and substantial that it requires a full and free analysis of the government's compelling interest and the least restrictive means to obtain that interest, especially in light of the government's primary compelling interest to protect the free exercise of religion. This is the foundation of a truly free nation.

CONCLUSION

The Kentucky Supreme Court's decision vacating the Board's permit substantially burdened the exercise of religion and undermined the autonomy of the local government. The Park Hills Board of Adjustment rightly granted Petitioner's permit and variances, which not only prevented substantial burden upon religious exercise, but encouraged religious exercise. In considering the ever-conflicting substantial burden analysis, this Court would do well to clarify that an infringement on religious freedom, regardless of perceived severity or lack thereof, is a substantial burden which requires an analysis of the

government's compelling interest, along with the least restrictive means needed to ensure religious exercise is not unreasonably and unjustifiably burdened. At a minimum, the Court should hold that a land-use regulation that prohibits a religious institution from building a religious structure on its own property substantially burdens that religious exercise, and that the possibility of a smaller or different structure does not make the burden insubstantial. The judgment of the Supreme Court of Kentucky should be reversed.

Respectfully submitted,

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