No. 25-1131

In the Supreme Court of the United States

MISSIONARIES OF SAINT JOHN THE BAPTIST, INC.,
Petitioner,

v.

JOEL FREDERIC, ET UX.,
Respondents.

On Writ of Certiorari to
the Supreme Court of Kentucky

BRIEF OF KENTUCKY, ALABAMA, ARKANSAS, FLORIDA, GEORGIA, IDAHO, IOWA, KANSAS, LOUISIANA, MISSISSIPPI, MISSOURI, NEBRASKA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, AND WEST VIRGINIA AS AMICI CURIAE SUPPORTING PETITIONER

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INTRODUCTION AND INTERESTS OF AMICI CURIAE

States enjoy "broad" authority to regulate land use "in the interest of the public health, convenience, or welfare." *Buchanan v. Warley*, 245 U.S. 60, 74 (1917). That long-settled power, however, does not include the power to engage in exclusionary zoning related to religious exercise. Congress took such exclusionary zoning off the table when it unanimously passed the Religious Land Use and Institutionalized Persons Act. RLUIPA provides "expansive protection for religious liberty," *Holt v. Hobbs*, 574 U.S. 352, 358 (2015), by dictating that when governments make land-use decisions, they may not "impose[] a substantial burden" on the religious exercise of religious organizations without very good reason, 42 U.S.C. § 2000cc(a)(1).

This law is a bulwark protecting the rights of religious Americans to worship freely. Indeed, RLUIPA's land-use protections advance the Founding-era "promise" that religious groups could "sit in safety under their own vine and figtree, with none to make them afraid." *Tree of Life Christian Schs. v. City of Upper Arlington*, 905 F.3d 357, 376 (6th Cir. 2018) (Thapar, J., dissenting) (quoting Letter from George Washington to the Hebrew Congregation in Newport, R.I. (Aug. 18, 1790) (cleaned up)).

But RLUIPA means little to religious groups if state courts fail to fully enforce its plain terms. That's unfortunately what the Kentucky Supreme Court did here. Faced with the clearest kind of burden on a religious organization—an effective prohibition on Petitioner Missionaries of Saint John the Baptist, Inc.'s

ability to build an outdoor shrine—the Kentucky Supreme Court waved away the church's concerns as "a mere inconvenience" that Saint John "imposed . . . upon itself." Pet. App. 25a, 27a. RLUIPA demands the opposite conclusion.

Reversing the Kentucky Supreme Court is essential to restoring RLUIPA's rightful role in the land-use context. States (and the localities that comprise them) no doubt play the central role in zoning decisions. As they should. Most often, land-use decisions are local decisions with local consequences. But that local decisionmaking must give way where "[t]he federal Constitution and laws passed within its authority" control. *Buchanan*, 245 U.S. at 74. Amici States' interest here is in respecting the balance that Congress established between religious freedom and local zoning.

SUMMARY OF THE ARGUMENT

I. The opinion below lays bare how lower courts have gone wrong in protecting religious-liberty rights in the land-use context. As written, RLUIPA ends exclusionary zoning practices that substantially burden religious exercise without a compelling reason. But the Kentucky Supreme Court allowed such exclusionary zoning here when it rejected Saint John's RLUIPA defense to a neighbor's heckler's veto. The opinion below got RLUIPA wrong, for several reasons, so this Court should reverse.

For starters, the array of multifactor tests lower courts use to apply RLUIPA's substantial-burden provision have overcomplicated a straightforward statute. The text of RLUIPA is the proper starting point. It leads to two main questions that should guide a

court's substantial-burden analysis. How has the religious organization chosen to use its property to exercise its religion? And how does the government's land-use action affect the religious organization's decision? When as here a government's zoning choice prevents a religious organization's intended religious exercise, the government must offer a compelling reason to justify its decision.

Acknowledging that the substantial-burden inquiry is straightforward does not make relief a foregone conclusion in every case. Assessing whether a burden qualifies as "substantial" under RLUIPA is of course dependent on the facts of each case. But when the zoning decision operates as an effective ban on a proposed religious exercise, it must impose a substantial burden. The Kentucky Supreme Court could hold otherwise only by searching for reasons to fault Saint John for its choice to build an outdoor shrine that required a variance. Those reasons missed a basic point: RLUIPA protects Saint John's chosen use of its land to exercise its religion. That choice here is to build an outdoor shrine at a specific location that Saint John's parishioners can use for meditation and worship before and after Mass. So demanding that Saint John offer and accept alternative ways to exercise its religion—especially unreasonable ones—effectively removes the burden from the government to justify its zoning choices.

II. Reversing the Kentucky Supreme Court will give lower courts the right framework for considering substantial-burden claims. It will also help States respect the balance that Congress struck between the local choices essential in zoning and the national pol-

icy protecting religious rights. On top of being mandatory, that balance is the right one. States, local governments, and lower courts will benefit from clear rules enforcing RLUIPA's plain text.

ARGUMENT

I. Prohibiting Saint John's proposed shrine is a substantial burden under RLUIPA.

When a zoning ordinance acts as a complete prohibition on a religious organization's decision to build a religious shrine near its house of worship, the ordinance necessarily "imposes a substantial burden" on that organization under RLUIPA. 42 U.S.C. § 2000cc(a)(1). The Kentucky Supreme Court's gloss on RLUIPA's substantial-burden provision strained to reach the opposite conclusion. In so doing, the court deprived RLUIPA of its force and deprived Kentucky religious organizations of their rights under federal law. This Court should reverse and remind state courts that RLUIPA means exactly what it says: in the main, zoning choices cannot override religious exercise unless they survive strict scrutiny.

A. Congress passed RLUIPA to put an end to religious exclusionary zoning.

It's worth beginning with a brief review of RLUIPA's origins. "Our story starts with" *Employment Division v. Smith*, 494 U.S. 872 (1990), which "held that the Constitution's Free Exercise Clause does not exempt religious persons from the dictates of neutral laws of general applicability." *Yellowbear v. Lampert*, 741 F.3d 48, 52 (10th Cir. 2014) (Gorsuch, J.). Congress responded to *Smith* with the Religious

Freedom Restoration Act (RFRA). *Id.* That law "instructed that *all* forms of governmental action—state or federal—had to satisfy" the strict-scrutiny test that controlled free-exercise claims before *Smith*. *Id.*

But this Court soon after ruled that RFRA went beyond the limits of Congress's authority under Section 5 of the Fourteenth Amendment, rendering its efforts to regulate state-level actions unconstitutional. *City of Boerne v. Flores*, 521 U.S. 507, 532–36 (1997). So Congress set to work again "to ensure 'greater protection for religious exercise than is available under the First Amendment'" for persons subject to state authority. *Ramirez v. Collier*, 595 U.S. 411, 424 (2022); *see Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005) (describing the "long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens").

This time, Congress took a narrower approach to the scope of state action it would regulate. It focused on regulatory contexts in which it "found the record of religious discrimination particularly clear and compelling." *Yellowbear*, 741 F.3d at 52. Relevant here, one was land use, in particular "discriminatory zoning practices . . . aimed at religious groups." *Tree of Life*, 905 F.3d at 377 (Thapar, J., dissenting). Unfortunate examples of religious Americans receiving second-class treatment by land-use decisionmakers abounded. Some religious organizations faced "overt" discrimination from regulators hostile to their faith. *Id.* Others faced "more subtle bias," *id.*, in which they were "sometimes disfavored by local zoning boards because (among other things) church members are said to generate 'too much' traffic or congestion or noise

when they gather for communal expressions of faith," *Yellowbear*, 741 F.3d at 52.

Armed with "a legislative record of free-exercise violations" in that land-use context and in the prison context, Congress unanimously adopted RLUIPA in 2000. *River of Life Kingdom Ministries v. Village of Hazel Crest, Ill.*, 611 F.3d 367, 380 (7th Cir. 2010) (en banc) (Sykes, J., dissenting). Under RLUIPA's plain terms, localities can no longer use zoning laws to "exclude[e] religious assemblies or institutions—either overtly or covertly." *Tree of Life*, 905 F.3d at 378 (Thapar, J., dissenting).

B. RLUIPA's substantial-burden provision gives broad protection to religious exercise.

Turn to those plain terms next. Here's the relevant provision:

> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—
>
> **(A)** is in furtherance of a compelling governmental interest; and
>
> **(B)** is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1). The statute further defines "religious exercise" to include "any exercise of religion," including "[t]he use, building, or conversion of real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5(7)(A)–(B). Taken together, these provisions dictate that when it comes to zoning, local governments must make individualized exceptions to avoid substantially burdening religious exercise, unless they have a very good reason not to do so.

The question, then, is what degree of burden qualifies as "substantial" under RLUIPA. In the prison context, this Court has held that a policy that requires an inmate "to engage in conduct that seriously violates his religious beliefs" is a substantial burden. *Holt*, 574 U.S. at 361 (citation omitted) (cleaned up). So a prison policy requiring an inmate to shave a beard that he "believes is a dictate of his religious faith" forces a choice that "substantially burdens his religious exercise." *Id.*

To be sure, identifying a substantial burden in the land-use context can look different than doing so in the prison context. That is just because regulating a prison is different than regulating land use. Prison policies might target specific conduct, with the goal of maintaining a safe and efficient prison. Zoning choices, on the other hand, often turn on whether a particular land use is safe or appropriate in a particular location. But those differences do not cut in favor of limiting RLUIPA's broad language.

Instead, as the Third Circuit recently recognized, "there is a strong textual basis for reading RLUIPA's substantial-burden protections for religious land use

more expansively than its substantial-burden protections for institutionalized persons." *Anash, Inc. v. Borough of Kingston*, 184 F.4th 214, 239 (3d Cir. 2026). For one, the land-use provisions apply beyond the specific category of institutionalized persons to a broad array of "persons," defined to include churches and religious institutions like Saint John. *Id.* at 238. What's more, RLUIPA in general protects "more than just religious beliefs; it protects 'religious exercise,'" broadly defined to include a church's use of its property to further its religious beliefs. *Id.*

With that breadth in mind, the relevant questions become how a religious organization has chosen to exercise its religion on its land and how the government is constraining the organization's chosen land use. *See id.* at 239 ("[T]he 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."). So a reviewing court should simply ask whether a land-use regulation pressures a church to change its chosen religious exercise and, if so, how forcefully that pressure is applied. For example, a "conditional denial" that leaves "reasonable opportunity for the institution to submit a modified application" may not be sufficient. *Westchester Day Sch. v. Village of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007). Yet that burden could become substantial "if the condition itself is a burden on free exercise, the required modifications are economically unfeasible, or where a zoning board's stated willingness to consider a modified plan is disingenuous." *Id.*

Put differently, a complaint about the zoning process might not meet the mark by itself, if the religious

organization can comply without much trouble. But regulatory burdens become more substantial as the pressure to alter an organization's chosen religious exercise increases and the options to comply decrease. That's why "one end of the spectrum"—outright prohibition of a chosen use—is the easy case. *Holy Trinity Ukrainian Cath. Church v. Township of Collier*, 193 F.4th 664, 668 (3d Cir. 2026). There is no doubt that a "burden would be substantial if" a religious organization was "barred from ever building its shrine." *Id.*

C. The Kentucky Supreme Court badly misapplied RLUIPA's substantial-burden provision.

By reading RLUIPA to permit an effective bar on Saint John's chosen religious exercise, the Kentucky Supreme Court got a straightforward substantial-burden case very wrong. This Court has every reason to reverse.

Start by considering what happened below. Saint John is a Catholic nonprofit organization that owns a church in Park Hills, Kentucky, named Our Lady of Lourdes. Pet. App. 56a. The church was built in 1930, and Saint John bought it in 2015. Pet. App. 59a. Its name honors a believed Marian apparition—Catholics believe that Mary appeared to Saint Bernadette in a grotto (or cave) in Lourdes, France. So Saint John hopes to honor the church's name by building a relatively small outdoor shrine next to the church. Pet. App. 127a. Built to resemble a grotto, the proposed shrine includes a patio, walking path, retaining wall, and statues of Mary and Saint Bernadette. Pet. App. 140a. Its location adjacent to Our Lady of Lourdes

means it will provide parishioners a "quiet place for meditation and worship" when they attend Mass at the church. Pet. App. 95a.

Park Hills approved Saint John's conditional-use permit and zoning variance so that it could build the shrine. Pet. App. 146a–47a. But not everyone agreed with the city's decision. The Frederics, neighbors of the church, objected to Saint John's proposed shrine and appealed the zoning decisions to Kentucky's general-jurisdiction trial court. Both Saint John and Park Hills argued that denying the variance would impose a substantial burden on Saint John's religious exercise without good reason. Pet. App. 92a. The court rejected the zoning appeal without addressing RLUIPA. Pet. App. 61a.

The Frederics' next appeal to Kentucky's intermediate Court of Appeals was successful. That court reversed because it believed that Park Hills lacked the power to approve Saint John's shrine. Pet. App. 49a. It also rejected Saint John's RLUIPA argument. In that court's terribly mistaken view, enforcing the zoning ordinance might make Saint John's religious exercise "somewhat more difficult," but using the shrine is insufficiently important to Saint John's beliefs, so the ordinance "is not inherently inconsistent with" them. Pet. App. 55a. Saint John sought review of that decision in the Kentucky Supreme Court.

Once the Kentucky Supreme Court agreed to answer the RLUIPA questions at the heart of this case, it let the Frederics' heckler's veto win the day. But the Kentucky Supreme Court's substantial-burden analysis is wrong from start to finish. This Court should not let it stand.

The Kentucky Supreme Court's first mistake was viewing the bar on Saint John's proposed shrine as "a mere inconvenience." Pet. App. 25a. It faulted Saint John for a perceived failure to explain "that it could not construct a smaller grotto or shrine on the property it already owned" and assumed that it could do so. *Id.*

But RLUIPA's text does not provide that possible feasible alternatives move the needle in a substantial-burden analysis. The religious exercise at issue is the choice to build a particular shrine in a particular place. That's why RLUIPA applies to land-use regulations that call for "individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(a)(2)(C). Focusing on other choices a religious landowner might have made in other places overlooks the burden imposed on the original chosen religious exercise. *See Holt*, 574 U.S. at 361–62 ("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.").

The Kentucky Supreme Court's interpretation thus cuts against RLUIPA's "basic principle: 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. This Court should make clear that this basic principle controls.

Even if alternative options are relevant to assessing the burden on Saint John, the Kentucky Supreme Court was wrong to conclude that Saint John had feasible options. One key purpose of Saint John's proposed shrine is use by parishioners "before and after mass." Pet. App. 127a. Proximity is critical to that purpose. If parishioners can't take a short walk between the church and the shrine, Saint John cannot engage in its chosen religious exercise. Nor is a shrine somehow placed closer to the church—which would force "Saint John to dig up its parking lot or shrink its grotto," Pet. Supp. App. 15a—a feasible alternative. The Kentucky Supreme Court was simply wrong to suggest that "a smaller grotto or shrine on the property it already owned" is a realistic choice. Pet. App. 25a.

The Kentucky Supreme Court was also wrong to hold that Saint John "imposed a burden upon itself." Pet. App. 27a. As with the court's first mistaken conclusion, this Court should reject the weight given to Saint John's actions in conducting this inquiry. Taken to its logical end, the Kentucky Supreme Court's rule would mean that mere awareness of a preexisting burden would doom an RLUIPA claim. But RLUIPA's focus is on how the *government* imposes its land-use regulations on religious persons, so it's wrong to conclude "that the substantial-burden analysis may 'consider[] the plaintiff's own actions.'" *Anash*, 184 F.4th at 239 n.21 (citation omitted). RLUIPA "protects the exercise of religion" without requiring courts to "scrutiniz[e] the actions or expectations of persons seeking to exercise religion." *Id.* The Kentucky Supreme Court was wrong to focus on Saint John instead of the regulatory burden it faced.

Still, if the Kentucky Supreme Court was right to weigh Saint John's awareness of existing ordinances, it drew the wrong conclusion from the record. There is no evidence that Saint John purchased the church building with a prohibited use in mind. What's more, the Kentucky Supreme Court had no reason to conclude that Saint John knew it couldn't prevail on the merits of its zoning request. Park Hills *granted* the request, and a Kentucky court affirmed that decision on the merits. The Kentucky appellate courts reversed that decision, but the fact that reasonable judicial minds could disagree on the merits of Saint John's request reflects Saint John's good-faith belief in the prospects of success in getting the proposed shrine approved. In holding otherwise, the Kentucky Supreme Court painted an incomplete picture of Saint John's initially successful attempt at compliance with Park Hills's land-use regulations.

***

Congress admonished interpreting courts to construe RLUIPA "in favor of a broad protection of religious exercise, to the maximum extent permitted by [its text] and the Constitution." 42 U.S.C. § 2000cc-3(g). The Kentucky Supreme Court did the opposite. This Court should reverse the Kentucky Supreme Court and give RLUIPA's substantial-burden provision its proper force.

II. States need certainty on applying RLUIPA.

If this Court reverses the Kentucky Supreme Court, it should leave no doubt about how RLUIPA's substantial-burden provision applies in future cases. As the decision below shows, States and lower courts

very much need this Court's guidance to enforce RLUIPA in full.

The issues at stake in getting RLUIPA's proper balance right are immense. "[R]egulation of land use is perhaps the quintessential state activity," *FERC v. Mississippi*, 456 U.S. 742, 767 n.30 (1982), and it's "a function traditionally performed by local governments," *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 44 (1994). Those local choices are often difficult: decisionmakers are mindful of traffic, parking, noise, and potential tax revenue, to name just a few considerations. At bottom, zoning decisions turn on the best interests of the community.

But when federal law controls, local interests are no longer the be-all-end-all. *Buchanan*, 245 U.S. at 74. And RLUIPA steps in here with good reason, to protect religious liberty. By the time the First Amendment was adopted, "the right to religious liberty already had a long, rich, and complex history in this country." *Fulton v. City of Philadelphia*, 593 U.S. 522, 572 (2021) (Alito, J., concurring). So RLUIPA is one way that Congress chose to advance "our society's deep-rooted commitment to religious liberty." *Id.* at 554 (Alito, J., concurring). It does so by offering a simple solution to a serious problem. Exclusionary zoning, often conducted via neutral regulations, had for too long kept religious groups from exercising their religion in their chosen communities. *Tree of Life*, 905 F.3d at 378 (Thapar, J., dissenting). RLUIPA sought to end those practices by holding local governments to a higher standard.

Congress did its part to end religious discrimination in zoning, but enforcement efforts have not lived

up to RLUIPA's goals. The "fault lies not with Congress, but with the courts, which have added requirements into RLUIPA that prevent many religious groups from seeking the shelter that Congress sought to provide." *Id.* That problem, in turn, has left States and local governments without clear guidance for respecting both community interests and religious liberty when making tough zoning decisions.

***

Amici States ultimately take an optimistic view of this case and of RLUIPA more generally. Two deeply held interests with potential tension—local power to make zoning decisions and societal respect for religious liberty—can coexist in the United States. But the current state of RLUIPA enforcement threatens that arrangement. The local government here made the correct call to allow Saint John to move forward with its proposed shrine, yet two Kentucky appellate courts misunderstood RLUIPA to allow a heckler's veto to outweigh Saint John's right to worship as it chooses. This Court should apply RLUIPA according to its plain text.

CONCLUSION

The Court should reverse the judgment of the Kentucky Supreme Court.

Respectfully submitted,

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