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 AMICUS CURIAE SIKH COALITION IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Sikh Coalition is a nonprofit and nonpartisan organization dedicated to ensuring that members of the Sikh community in America are able to practice their faith. It defends the civil rights and civil liberties of Sikhs by providing direct legal services and advocating for legislative change, educating the public about Sikhs and diversity, promoting local community empowerment, and fostering civic engagement amongst Sikh Americans. The organization also educates community members about their legally recognized free-exercise rights and works with public agencies and officials to implement policies that accommodate their deeply held beliefs. The Sikh Coalition owes its existence in large part to the effort to combat uninformed discrimination against Sikh Americans after September 11, 2001.

The Sikh Coalition's interest in this case stems from its advocacy for Sikh American communities that seek to construct places of worship in their communities and encounter the same kinds of pretextual zoning objections and community opposition at issue here. RLUIPA is one of the most important protections available to the Sikh community and other minority faiths seeking to establish a physical presence for worship, education, and community life. The Sikh Coalition and its members therefore have a strong interest in ensuring that RLUIPA is interpreted in

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[1] *Amicus* certifies that no counsel for any party authored this brief in whole or in part, no party or party's counsel made a monetary contribution to fund its preparation or submission, and no person other than *Amicus* or its counsel made such a monetary contribution. SUP. CT. R. 37.6.

accordance with its text, purpose, and legislative history.

SUMMARY OF ARGUMENT

Congress enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA), Pub. L. 106-274, 42 U.S.C. §§ 2000cc, *et seq*. against the backdrop of a documented and persistent pattern of discrimination against minority religions in land use regulation. The legislative record, federal enforcement data, and contemporary empirical research confirm that facially neutral zoning rationales have repeatedly been used to exclude minority faiths from communities that do not want them. Congress responded by enacting the protections in RLUIPA. The Kentucky Supreme Court's decision adopts two doctrines that, if allowed to stand, would strip RLUIPA's substantial-burden protection of much of its force, especially for the minority religious communities Congress sought to protect.

First, the "alternative means" rule—under which a land use regulation does not substantially burden religious exercise so long as the claimant can practice its religion in some other form, at some other site, or in some other structure—cannot be reconciled with RLUIPA's text or this Court's decisions. An alternative-means rule would be particularly dangerous for minority religions, which are frequently subjected to pretextual and shifting objections that a municipality could always rationalize by pointing to a smaller building, a different lot, or a different design, and whose practices courts are least equipped to second-guess.

Second, the "foreknowledge" rule—under which a religious claimant cannot establish a substantial

burden if it knew of the challenged restriction before it acquired its property or applied for relief—finds no support in RLUIPA's text, which focuses on the government's conduct and must be "construed in favor of a broad protection of religious exercise." 42 U.S.C. § 2000cc-3(g). The rule would be especially damaging in the land-use context, where religious organizations necessarily acquire property and seek permits with full knowledge of applicable ordinances.

Finally, robust enforcement of RLUIPA is essential to prevent the heckler's veto in the land-use context. This Court has repeatedly rejected the principle that protected religious exercise must yield to community hostility, yet local zoning processes are uniquely susceptible to such pressure. The Court should reverse the judgment below, hold that the prohibition on Petitioner's grotto substantially burdens its religious exercise, and remand for application of strict scrutiny.

ARGUMENT

I. Congress enacted RLUIPA to combat a documented pattern of discrimination targeting religious minorities, including land use restrictions.

A. The legislative record establishes a pervasive pattern of discriminatory land use practices.

RLUIPA's sponsors identified a pervasive pattern in which facially neutral zoning rationales were deployed to exclude religious groups, especially minority faiths. Congress found that "Churches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning

codes and also in the highly individualized and discretionary processes of land use regulation." 146 Cong. Rec. S7774 (July 27, 2000) (joint statement of Sens. Hatch and Kennedy); *see also, e.g.*, *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1236 (11th Cir. 2004) (recognizing that RLUIPA "targets zoning codes which use individualized and discretionary processes to exclude churches, especially 'new, small or unfamiliar churches . . . [like] black churches and Jewish shuls and synagogues.'") (quoting 146 Cong. Rec. at S7774).

RLUIPA's sponsors noted that "discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics, or 'not consistent with the city's land use plan.'" 146 Cong. Rec. at S7774. Discriminatory intent is rarely stated plainly. As Judge Thapar observed in his *Tree of Life* dissent, the same practices once deployed against racial minorities were later turned against religious groups. For instance, "[i]nstead of saying 'no Muslims allowed,' city planners complained of the traffic on Fridays when Muslims gathered to pray." *Tree of Life Christian Schs. v. City of Upper Arlington*, 905 F.3d 357, 377 (6th Cir. 2018) (Thapar, J., dissenting) (citing Emma Green, *The Quiet Religious-Freedom Fight that Is Remaking America,* The Atlantic, Nov. 5, 2017).

Empirical research confirms that Congress's concerns remain well-founded. A 2020 study of 116 zoning conflicts involving religious buildings in the New York City metropolitan region found that Muslim groups "encountered opposition at over three times their proportion in the region's population" and "Jewish groups experienced opposition . . . at a rate over four times higher than their presence in the region." Brian J. Miller, *Religious Freedom and Local Conflict:*

Religious Buildings and Zoning Issues in the New York City Region, 1992–2017, 81 Socio. of Religion 462, 472, 475 (2020). Stated reasons consistently masked deeper attitudes. One news account of a proposed mosque, titled "Is the Issue Parking or Prejudice?", found that "[a]t least a dozen who asked not to be identified admitted to anti-Muslim feelings and said they were strongly opposed to the mosque because it's a mosque." *Id.* at 473 (quoting Donna Kutt Nahas, *Is the Issue Parking or Prejudice?*, N.Y. Times, Dec. 15, 2002). Another, titled "Is It the Traffic or the Black Hats?", documented neighbors who spoke "the language of water pollution, waste disposal and traffic congestion" while the Hasidic community observed that "what the naysayers don't want in their backyards is an ultra-Orthodox Jewish community." *Id.* (quoting Elissa Gootman, *Is It the Traffic or the Black Hats?*, N.Y. Times, June 17, 2001).

Similarly, a 2024 conjoint survey experiment confirmed that the religion of the proposed house of worship was "the most important predictor of support" for a zoning relief application. Eliska Schnabel, *Public Resistance to New Houses of Worship*, 9 J. Race Ethnicity & Pol. 642, 644 (2024). Respondents supported a proposed Christian church 68.2% of the time but a proposed mosque only 51.6% of the time. *Id.* The disparity was so pronounced that "even large churches resisted by other residents have a lower chance of resistance than small mosques accepted by neighbors." *Id.* at 663.

Federal enforcement data confirm the national scope of this problem. Since RLUIPA's enactment through 2020, DOJ opened 485 land-use matters, filed 25 lawsuits, and submitted 29 amicus briefs concerning the land-use provisions of RLUIPA. U.S. Dep't of

Justice, *Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act* at 12 (Sept. 22, 2020). Muslim and Jewish groups together account for approximately 3% of the U.S. population but 49% of all DOJ RLUIPA land-use investigations from September 2010 through July 2016. U.S. Dep't of Justice, *Update on the Justice Department's Enforcement of the Religious Land Use and Institutionalized Persons Act: 2010–2016*, at 5-6 (July 2016) [hereinafter DOJ 2016 RLUIPA Report].

B. To address this pattern of discrimination, Congress adopted language requiring strict scrutiny

Congress addressed these concerns in RLUIPA by requiring strict scrutiny where, as here, the Government imposes a substantial burden on religious exercise.

Both the Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. No. 103-141, 107 Stat. 1488, 42 U.S.C. §§ 2000bb, *et seq*. and RLUIPA define "religious exercise" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," 42 U.S.C. §§ 2000bb-2(4), 2000cc-5(7)(A); *see also Holt v. Hobbs*, 574 U.S. 352, 358 (2015) ("Congress defined 'religious exercise' capaciously" in RLUIPA). That includes "[t]he use, building, or conversion of real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5(7)(B). The relevant religious exercise in a land-use case is therefore the claimant's intended religious use of the particular property at issue—here, the construction of a grotto honoring the Virgin Mary on the lot adjacent to

Petitioner's church, which the court below acknowledged is religious exercise. Pet. App. 22a.

The substantial-burden question asks whether the government's land-use decision substantially burdens that exercise. When a regulation flatly prohibits the intended religious use of the property, the answer is yes. As this Court explained in *Holt*, a claimant "easily satisfie[s]" the substantial-burden requirement when the government forces a choice between abandoning the religious practice or facing the government's sanction. 574 U.S. at 361.

That understanding tracks the substantial-burden standard this Court applied before *Employment Division v. Smith*, 494 U.S. 872, 887 (1990), which Congress enacted RFRA and RLUIPA to restore. Under that standard, religious exercise is burdened when the government "forces" an adherent "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 . . . on the other hand," *Sherbert v. Verner*, 374 U.S. 398, 404 (1963), or puts "substantial pressure on an adherent to modify his behavior and to violate his beliefs," *Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 718 (1981). A denial of permission to build a religious structure on one's own land does more than pressure the claimant. It forbids the religious use outright, which is the paradigm of a substantial burden.

II. The Kentucky Supreme Court's "alternative means" holding would strip RLUIPA of its protective force for minority religions

A. The availability of alternative means is irrelevant to the substantial burden inquiry.

Notably, RLUIPA's land-use provisions utilize the same "compelling governmental interest" and "least restrictive means" standard it had already adopted in RFRA and in RLUIPA's institutionalized-persons provision. *See* 42 U.S.C. §§ 2000bb-1, 2000cc(a)(1), 2000cc-1(a); *Cutter v. Wilkinson*, 544 U.S. 709, 714–15 (2005) (describing RLUIPA as Congress's narrower successor to RFRA, employing the same strict-scrutiny test). Because the land-use and prisoner provisions share identical operative language, this Court's decisions interpreting RLUIPA's prisoner provisions inform the application of its land-use provisions. *See Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1138 n.13 (10th Cir. 2013) (en banc) ("Congress intended the substantial burden tests in RFRA and RLUIPA to be interpreted uniformly."); *Jones v. Carter*, 915 F.3d 1147, 1149-50 (7th Cir. 2019) (looking to precedent applying RFRA in determining what constitutes substantial burden in RLUIPA case). Indeed, it would be anomalous if a statute deploying the same language in land-use and prisoner settings required more permissive interpretation in the land-use setting, particularly since the land-use provision was designed to address a broader documented pattern of discrimination.

This Court's prisoner-provision holdings are therefore instructive. In *Holt*, this Court unanimously held that a grooming policy preventing a Muslim prisoner

from growing a one-half-inch beard substantially burdened his religious exercise. The district court had found no substantial burden because the petitioner "had been provided a prayer rug and a list of distributors of Islamic material, he was allowed to correspond with a religious advisor, and was allowed to maintain the required diet and observe religious holidays." *Id.* at 361 (quoting district court opinion). This Court rejected that reasoning. "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 availability of alternative forms of religious practice was beside the point.

And in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), this Court rejected the argument that "the connection between what the objecting parties must do . . . and the end that they find to be morally wrong . . . is simply too attenuated." *Id.* at 723-24. In so doing, it recognized that the substantial burden question had to be answered with respect to the particular petitioners' religious beliefs, and that the reasonableness of those asserted beliefs was a "question that the federal courts have no business addressing." *Id.* at 724. In other words, the inquiry is not whether the claimant can practice religion in some other way, but whether the government has burdened the specific exercise at issue.

Similarly, in a case challenging a prison's refusal of permission to allow an inmate to marry, the Third Circuit held that "there can hardly be a more substantial burden on a religious practice or exercise than its outright prohibition." *Davis v. Wigen*, 82 F.4th 204, 212 (3d Cir. 2023). In particular, the court held that

an individual may suffer a substantial burden on religious exercise even if the exercise is not mandatory. *Id.* Likewise, in a case involving prisoners' rights to meals that they believed were required under their sincere religious beliefs, the Sixth Circuit held that a court cannot "reframe the nature of what the prisoners seek to do" to conclude that a lesser version of religious exercise is sufficient. *Ackerman v. Washington*, 16 F.4th 170, 187 (6th Cir. 2021) (cleaned up). Accordingly, the inmates' religious exercise was substantially burdened where it called for eating meat and dairy but they were provided only a vegan diet and the availability to purchase snacks.

The Kentucky Supreme Court's holding directly contradicts these authorities. The court concluded that Missionaries of St. John the Baptist was not substantially burdened because it could construct a smaller grotto or shrine on a different lot. Pet. App. 25a. That is the same type of alternative-means analysis that this Court rejected, with good reason, in *Holt* and other institutionalized-persons cases. It also finds no justification in the statute's text. RLUIPA asks whether the government "impose[s] or implement[s]" a "substantial burden" on religious exercise, 42 U.S.C. § 2000cc(a)(1), not whether the claimant can achieve its religious purposes through a smaller or different structure. The sincere determination of what form and setting a religious practice requires belongs to the religious believer, not the court.

That principle is especially important for minority faiths. A court asked to decide whether a smaller or different structure is an adequate substitute must necessarily assess what a religion requires—an inquiry that is "not within the judicial ken." *Smith*, 494 U.S. at 887 (quoting *Hernandez v. Commissioner*, 490

U.S. 680, 699 (1989)). The risk of error is greatest when the faith is unfamiliar to the decisionmaker. RLUIPA's protections, however, are "not limited to beliefs which are shared by all of the members of a religious sect," *Holt*, 574 U.S. at 362 (quoting *Thomas*, 450 U.S. at 715–16), much less to practices that are familiar to the majority.

At the same time, the substantial burden rule does not give religious institutions a free pass from zoning. Even where a burden is substantial, the government may still prevail by demonstrating that imposing it is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc(a)(1). What the government may not do is avoid that showing altogether by recharacterizing an outright prohibition as an insubstantial burden.

B. The alternative means rule would especially harm minority religions, who are particularly vulnerable to pretextual restraints.

The alternative means test is dangerous because minority religious communities are disproportionately vulnerable to the kind of pretextual, shifting rationales that the rule would immunize from RLUIPA challenges. When a municipality can always point to a smaller site, a different lot, or a modified structure as an "alternative," it gains a powerful tool to exclude any religious use from any desired location while appearing to comply with RLUIPA.

The pattern is well-documented in the case law. For instance, in *Jesus Christ Is the Answer Ministries, Inc. v. Baltimore County*, 915 F.3d 256 (4th Cir. 2019), neighbors made overtly biased comments about the

church's congregation during zoning hearings, and the board subsequently dismissed the church's second petition contrary to the position of its own legal expert. *Id.* at 264-65. An alternative-means rule would allow boards in similar circumstances to deflect RLUIPA claims by pointing to smaller or different properties, shielding discriminatory denials behind a veneer of statutory compliance.

The Sikh community's own experience illustrates how pretextual objections shift to neutralize every response.

For example, in Oyster Bay, Long Island, the local Sikh congregation was forced to sue the municipality, which had issued a stop work order preventing it from completing a new temple. *See* Chris Fuchs, *Sikh Congregation, Town Settle Lawsuit over Stopped Temple Construction*, nbcnews.com (Nov. 17, 2016); *see also* Complaint, *Guru Gobind Singh Sikh Center, Inc. v. Town of Oyster Bay, N.Y.*, No. 2:16-cv-03600 (E.D.N.Y. June 29, 2016). The case, which ended in a consent decree, was brought even though the congregation had agreed to mitigation measures to address community concerns.

Likewise, in San Jose, California, opponents of a proposed gurdwara asserted five categories of objection, each of which the city's own experts dismissed as "baseless, because of the numerous special precautions that the Sikh community had taken to accommodate their neighbors." Jaideep Singh, *"No Sikh Jose": Sikh American Community Mobilization and Interracial Coalition Building in the Construction of a Sacred Site*, 8 Asian Pac. Am. L.J. 173, 181-82 (2002). No other house of worship in San Jose faced the attendance limits or operating-hour restrictions imposed on the gurdwara. *Id*. As one gurdwara official observed,

opponents "constantly shift[ed]" their objections, first attacking the noise the temple would generate, then claiming it would be an ugly building, then warning that it would attract too many visitors. *Id*. at 183. The alternative-means rule would give legal cover to this kind of pretextual opposition, allowing municipalities to respond to minority faiths by pointing to smaller sites or different parcels.

Similarly, in *Guru Nanak Sikh Society v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006), the county denied a Sikh temple's conditional use permit twice, invoking broad and shifting rationales, first citing noise and traffic, then objecting to "leapfrog development," even though the temple agreed to every mitigation measure and another Sikh temple already existed on similarly zoned land nearby. The Ninth Circuit rejected the county's attempt to leverage these shifting rationales as tools for site selection. "RLUIPA does not contemplate that local governments can use broad and discretionary land use rationales as leverage to select the precise parcel of land where a religious group can worship." *Id*. at 992 n.20. Under the Kentucky court's rule, the county could have simply pointed to the nearby temple as an alternative and escaped RLUIPA scrutiny.

III. The Kentucky Supreme Court's "foreknowledge" rule would also undermine RLUIPA's protections for minority religions.

A. Advance knowledge of a prohibition does not diminish its substantial burden.

RLUIPA's text and this Court's precedents also foreclose the foreknowledge rule applied by the Kentucky Supreme Court.

Nothing in RLUIPA's text supports a foreknowledge exception. The statute considers whether the government "impose[s] a substantial burden on the religious exercise of a person," 42 U.S.C. § 2000cc(a)(1), focusing on the government's conduct, not the claimant's knowledge. The statute further provides that it "shall be construed in favor of a broad protection of religious exercise." *Id.* § 2000cc-3(g). A claimant who applies for a land-use permit knowing a restriction exists is doing exactly what RLUIPA invites, namely asserting statutory rights against a government that is imposing a burden on religious exercise.

Imposing a foreknowledge exception in the land use context also imposes a burden that would be impracticable in the institutionalized persons context, even though, as described above, the statutory language for both provisions is substantively identical. In particular, the Kentucky Supreme Court's decision was motivated by a determination that "it cannot be said that St. John has not imposed a burden upon itself[.]" Pet. App. 27a. However, that rationale makes little sense in the institutionalized persons context, where a prisoner usually has little choice about whether to subject himself or herself to a burdensome

regulation. *See, e.g., Holt*, 574 U.S. at 352; *Ramirez v. Collier*, 595 U.S. 411 (2022). For the reasons described above, it would be incongruous for RLUIPA's test to be more demanding in the land use context than in the institutionalized persons context.

In finding that St. John had imposed a burden on itself, the Kentucky Supreme Court attempted to distinguish the Sixth Circuit's holding in *Catholic Healthcare International, Inc. v. Genoa Charter Township, Michigan*, 82 F.4th 442 (6th Cir. 2023). There, the Sixth Circuit reversed the dismissal of a religious group's RLUIPA claims. The Sixth Circuit reasoned that under the applicable zoning code, the group was not actually required to obtain a special use permit. The Kentucky Supreme Court held that because the Petitioner required a special use permit under the ordinance, it had imposed a burden upon itself unlike the claimant in *Catholic Healthcare*. *See* Pet. App. at 27a. But that reasoning strips RLUIPA of much of its protection in the land use context. It is precisely when a variance or special use permit is required under an ordinance that the risk of religious discrimination is greatest, and where the protections of RLUIPA are most critical.

Under the Kentucky court's logic, a government could immunize virtually any restriction from RLUIPA challenge simply by codifying the restriction in advance. That reading cannot be reconciled with a statute whose text, purpose, and legislative history all require strict scrutiny of government burdens on religious exercise.

B. The foreknowledge rule will have a particular impact on land use by religious organizations.

The foreknowledge rule's impact on land use is especially severe. Religious institutions must affirmatively seek permits, acquire property, and navigate zoning processes. If foreknowledge defeats an RLUIPA claim, RLUIPA's land-use provisions lose their value to religious organizations that act deliberately and transparently.

The rule falls hardest on minority religious communities. These communities are more likely to encounter community opposition that influences the permit process and that often motivates zoning officials to exercise their discretion to reject applications. They are the groups Congress had in mind when it enacted RLUIPA's land-use provisions. If they must assert RLUIPA rights before they are aware of a restriction, they will typically not know they need RLUIPA until it is too late.

The DOJ's enforcement record illustrates this dynamic. For instance, the Department of Justice filed a complaint against Hendricks County, Indiana, alleging that the county, "facing significant community animus and opposition, denied Al Hussnain's rezoning applications to develop a mixed-use community containing a residential neighborhood, community center, K-12 religious school, Islamic seminary and dormitories . . . citing concerns that lacked a legitimate basis," and repeatedly departed from "its own zoning ordinances as well as the county's processes and procedures for reviewing zoning applications." Press Release, U.S. Dep't of Justice, Justice Department Secures Agreement with Indiana County Following

Allegations the County Illegally Denied Zoning Approval for Islamic Seminary and Residential Housing (Sept. 18, 2024). It would make no sense to bar relief under RLUIPA merely on the basis that the organization knew that rezoning would be required and filed an application seeking that relief.

Likewise, in Kingston, Pennsylvania, a 2023 zoning ordinance made places of worship non-permitted uses in all residential districts while allowing libraries, entertainment facilities, and public recreational facilities as of right, and imposed a minimum one-acre lot requirement on places of worship in commercial districts but not on comparable secular uses. Consent Decree, *United States v. Borough of Kingston*, No. 3:26-cv-00269 ¶¶ 16-22 (M.D. Pa. Feb. 6, 2026). Under the statute, "only a small fraction of parcels even meet the zoning district and acreage requirements necessary to develop a place of worship." *Id.* ¶ 26. As a result, the Government found that Kingston's Chabad community "has struggled to find sufficient suitable places for prayer, religious study, religious schools, and mikvahs." *Id.* ¶ 35. Under the foreknowledge rule, the Chabad community's awareness that it faced a restrictive ordinance would have barred it from bringing an RLUIPA challenge before any individual permit was ever denied.

IV. Robust application of RLUIPA's protections is necessary to protect minority religions against the heckler's veto.

This Court has consistently rejected the "heckler's veto," the principle that protected rights may be suppressed in response to the hostile reaction of onlookers. In *Kennedy v. Bremerton School District*, 597 U.S.

507, 543 n.8 (2022), this Court explained that "protected speech or religious exercise [does not] readily give way to a 'heckler's veto.'" *See also, e.g., Good News Club v. Milford Central School*, 533 U.S. 98, 119 (2001) (rejecting a "modified heckler's veto" in Free Speech Clause and Establishment Clause case).

Land-use decisions driven by community hostility to a religious group may amount to a heckler's veto, and the case law confirms that community opposition repeatedly does the work of exclusion. In *Guru Nanak Sikh Society*, the county initially denied the Sikh temple's first application based on "neighbors' complaints regarding increased noise and traffic," despite the temple's agreement to "mitigation measures" that "would have minimized conflicts with surrounding land." 456 F.3d at 989. Likewise, in *Jesus Christ Is the Answer Ministries*, neighbors' overtly discriminatory remarks preceded the board's decision to act contrary to its own advisor's recommendation, in a sequence of events the court found probative of discriminatory intent. 915 F.3d at 263–64.

DOJ has documented this pattern at a systemic level. "Animus-based discrimination remains a priority" because "Jewish synagogues and schools, African-American churches, and, increasingly, Muslim mosques and schools are particularly vulnerable to discriminatory zoning actions taken by local officials, often under community pressure." DOJ 2016 RLUIPA Report, *supra*, at 4 (citation and quotation marks omitted).

Restrictive RLUIPA standards amplify the heckler's veto by reducing the legal cost to municipalities of denying applications under community pressure. When the "alternative means" and "foreknowledge" rules are available, a municipality can deflect

RLUIPA scrutiny at low cost by pointing to smaller sites or noting that the applicant "knew" of the restriction. Data show that zoning officials are heavily influenced by their constituents' objections to land use applications, which only heightens the potential for discriminatory outcomes. *See* Schnabel, *supra*, at 644–45.

This Court held in *Holt* that RLUIPA "does not permit such unquestioning deference" to officials' policy judgments. 574 U.S. at 364. In that case, the Court was referring to prison officials, but the principle applies with at least equal force in the land-use context. In particular, local zoning boards are likely to make discriminatory decisions when they are acting under community pressure to exclude minority faiths.

CONCLUSION

Congress enacted RLUIPA to ensure that religious communities, particularly minority faiths long subjected to pretextual zoning objections and community hostility, could build the houses of worship and religious structures essential to their religious exercise. The Kentucky Supreme Court's decision would hollow out those protections by allowing governments to defeat substantial-burden claims through hypothetical "alternative" sites or structures, thereby relieving them of their statutory burden to satisfy strict scrutiny, and by penalizing religious organizations for the unavoidable reality that they must navigate land-use rules with full knowledge of them. Left undisturbed, that approach would invite the very heckler's veto this Court has repeatedly rejected and would deprive the Sikh community and other minority religions of the protection Congress promised.

The judgment of the Supreme Court of Kentucky should be reversed.

Respectfully submitted,

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