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 THE MUSLIM PUBLIC AFFAIRS COUNCIL AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Muslim Public Affairs Council is a nonprofit public affairs organization that has worked since its founding in 1988 to enhance American pluralism, improve understanding, and speak out on policies that affect American Muslims. Through engaging the government, media, and communities, MPAC leads the way in bolstering more nuanced portrayals of Muslims in American society and partnering with diverse communities to encourage civic responsibility.

MPAC submits this brief to highlight RLUIPA's vital role in protecting vulnerable religious groups from discrimination in zoning and land use decisions. Although RLUIPA was intended to safeguard against discrimination in land use laws and local zoning boards' application of those laws, many courts have watered down its core protections. Too often, these diluted standards permit state and local governments, without meaningful scrutiny, to thwart religious communities' attempts to use property for religious practice. Amid heightened anti-Muslim prejudice, the erosion of RLUIPA's protections leaves American Muslims vulnerable to discrimination in local land use administration. That misapplication undermines RLUIPA's core purpose and should be corrected.

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[1] No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparing or submitting this brief, and no person other than amicus curiae or its counsel contributed money intended to fund preparing or submitting this brief.

INTRODUCTION AND SUMMARY

This case asks whether a land use rule that bars a religious institution from building a religious structure on its own property substantially burdens religious exercise under RLUIPA. It does. The Kentucky Supreme Court held otherwise by applying a multifactor balancing test that asked whether the congregation had alternative sites and whether it knew of the restriction when it applied. That test has no basis in the statute, forces courts to decide what a faith requires, and penalizes the claimants that Congress meant to protect. This Court should ensure that lower courts follow RLUIPA's plain meaning, which asks whether a burden is more than trivial and never invites courts to resolve religious questions.

Religious minorities—and especially Muslim groups—will suffer disproportionately if the Kentucky Supreme Court's watered-down reading of RLUIPA stands. All too often, Muslim Americans in land use proceedings face brazen discrimination. Local zoning regimes confer broad discretion on officials, and that discretion is routinely wielded against Muslims. Organized community opposition, explicit Islamophobia, and pretextual appeals to traffic or noise concerns have repeatedly blocked Muslim congregations from building mosques, Islamic schools, and cemeteries. Because Muslim communities tend to be smaller or newer to a locality, they often lack the political power to fight back in ways that more established faiths take for granted and, thus, must rely on the courts to vindicate their fundamental freedoms.

RLUIPA was Congress's answer to precisely this problem. After extensive hearings documenting the discriminatory use of zoning authority against

religious minorities, Congress enacted RLUIPA to provide a federal check on local officials' discretion. That purpose has grown more urgent since RLUIPA was passed, as anti-Muslim sentiment has only intensified across the country. When courts strip RLUIPA of its force, they abandon the communities Congress most sought to protect.

The Court should reverse.

ARGUMENT

I. Muslim groups face rampant discrimination and mistreatment in the land use context.

How courts read "substantial burden" matters acutely to Muslim Americans. Local zoning regimes are a well-documented source of discrimination against religious minorities. Such regimes typically rely on vague, open-ended standards that confer broad discretion on local officials. Von G. Keetch & Matthew K. Richards, *The Need for Legislation to Enshrine the Free Exercise Clause in the Land Use Context*, 32 U.C. Davis L. Rev. 725, 727–28 (1999). Those standards enable officials to identify "seemingly plausible grounds"—traffic, sewage, noise, property values, and the like—for delaying or denying religious-use applications. *Id.* at 728. And courts are reluctant to strike down local zoning decisions, citing federalism concerns and confidence in local land use processes. Douglas Laycock & Luke W. Goodrich, *RLUIPA: Necessary, Modest, and Under-Enforced*, 39 Fordham Urb. L.J. 1021, 1048 (2012). The result is a framework that makes it "easy" for officials to "disguise" discriminatory decision-making. *Id.* at 1022.

Muslim Americans face frequent, egregious, and often overt discrimination when navigating land use

regimes. Time and again, local communities have reacted to a Muslim group's proposed projects with intense hostility, gross ignorance, and blatant Islamophobia. The following examples are illustrative—but not at all exhaustive.

In New York, officials were flooded with messages opposing the construction of a new mosque in Long Island, such as "the takeover has started" and "Does anybody remember that there were two towers in Manhattan or did people forget[?]" Amended Complaint ¶ 133, *Muslims on Long Island, Inc.* v. *Town of Oyster Bay*, No. 2:25-cv-00428, 2025 WL 2796577 (E.D.N.Y. Sept. 12, 2025). In Tennessee, a mosque project resulted in bomb threats and a protest of several hundred opponents carrying signs like "Mosque Leaders Support Killing Converts." Verified Complaint ¶¶ 28, 33, *Islamic Ctr. of Murfreesboro* v. *Rutherford Cnty.*, No. 12-cv-00738, 2012 WL 3011012 (M.D. Tenn. 2012).

In Oklahoma, more than 200 people gathered to organize an opposition to a planned mosque, and a local nonprofit circulated flyers that detailed "criticisms of Islam" and linked Islam to terrorism. Samson Tamijani, *"Strategy" meeting organizes opposition to planned Broken Arrow mosque,* KJRH (Jan. 15, 2026), https://perma.cc/SFS9-VP4A. And in New Jersey, Muslims trying to build a mosque were told in a zoning hearing to "go back where you're from." Sergio Bichao, *Bayonne Muslims Get $400k Settlement, Proceed with Mosque Plans*, N.J. 101.5 (Jan. 31, 2018), https://perma.cc/E3P3-58BB. Their temporary place of worship was also vandalized with graffiti profaning the name of Allah, and pamphlets and newspaper outlets encouraged boycotts of businesses that supported the Muslim group. *Id.*

In response to such local hostility, local governments fall into a familiar pattern: Zoning boards depart from settled practice to deny or delay Muslim congregations' proposals. For instance, in *Islamic Society of Basking Ridge* v. *Township of Bernards*, 226 F. Supp. 3d 320, 329, 331 (D.N.J. 2016), a Muslim congregation's proposal to build a mosque was subjected to unusual delay and scrutiny, with the township deviating from its ordinary practices to apply parking requirements it had never before enforced. During the review process, the congregation's mailbox was stomped on and marked with an "ISIS" sticker. *Id.* at 327. The court held that the township discriminatorily enforced its parking ordinance by showing more favorable treatment to Christian churches. *Id.* at 348–49.

Another example is *United States* v. *County of Culpeper*, 245 F. Supp. 3d 758 (W.D. Va. 2017). There, an Islamic center sought a special sewage permit to build a mosque—a permit the county had historically granted "as a matter of course." *Id.* at 760. While it reviewed the application, the county received emails and calls from residents with "disparaging anti-Muslim comments," including references to terrorism and the September 11 attacks. *Id.* at 763. Despite never having denied such a permit for a religious use, the county rejected the application. *Id.* at 763–64. As the district court recognized, the facts suggested that "the denial was not based on an insufficient application or other good-faith reasons, but rather on anti–Muslim prejudice." *Id.* at 765.

Such recurring discrimination inflicts concrete and substantial harms on Muslim communities. When local authorities delay permits or require repeated resubmissions, they force Muslim congregations to

expend already limited resources. *E.g.*, Amended Complaint ¶ 4, *Muslims on Long Island*, 2025 WL 2796577. When officials deny permits for the construction of mosques, Islamic schools, or cemeteries, they impede core religious practices—including the ability of community members to assemble for religious services, receive religious education, conduct prayers, hold funerals, and gather for communal life. See Complaint ¶¶ 10–14, *Omar Islamic Center Inc.* v. *City of Meriden*, No. 3:19-cv-00488, 2019 WL 9667797 (D. Conn. Apr. 2, 2019); *Culpeper*, 245 F. Supp. 3d at 762 (observing that a Muslim congregation needed a larger mosque to provide "separate worship facilities for women," a "dedicated space for studying religious texts," and a washing facility for ablution). The exclusion of such institutions can leave Muslim groups without a place to worship or practice their faith in their own communities.

II. RLUIPA was designed to protect religious minorities from zoning discrimination, and Muslim Americans often rely on its protections.

RLUIPA was crafted as a bulwark against the type of discrimination too often faced by Muslim groups in the land use context. The Congress that enacted RLUIPA knew well that anti-religion prejudice, and hostility toward religious minorities in particular, infect discretionary land use decisions. And RLUIPA was designed to rectify local governments' use of zoning and landmarking powers to burden religious exercise or to discriminate against religious land uses. Eric Treene, *RLUIPA and Mosques: Enforcing a Fundamental Right in Challenging Times*, 10 First Amend. L. Rev. 330, 331 (2012).

Such widespread zoning discrimination against religious uses was documented in RLUIPA's congressional hearings. RLUIPA's sponsors condemned zoning codes that "frequently exclude[d] churches" but permitted secular buildings. 146 Cong. Rec. S7774–75 (daily ed. July 27, 2000) (joint statement of Sen. Orrin Hatch and Sen. Edward Kennedy). Such hearings also documented how zoning-board discrimination, and the community hostility prompting it, tended to "lurk[] behind such vague and universally applicable reasons as traffic, aesthetics," or inconsistency with local land use schemes. *Id.*

But Congress also knew that the burden of discrimination did not fall on all faith groups equally. The sponsors' joint statement offering RLUIPA to the Senate emphasized how "[s]mall religious groups" were overburdened by facial anti-religion discrimination and "in the highly individualized and discretionary processes of land use regulation." *E.g.*, *id.* at S7774, S7777. The sponsors cited research by Professor Douglas Laycock, *id.* at S7775, which details how "small faiths" fare worse in land use disputes at the state level despite the strength of their claims. See Douglas Laycock, *State RFRAs and Land Use Regulation*, 32 U.C. Davis L. Rev. 755, 770–71 (1999).

Congressional witnesses discussed multiple, specific instances of anti-Muslim discrimination by local boards that cooperated with other faith groups. One witness testified that his hometown rejected a mosque, citing parking constraints, but "somehow [found] enough parking" for a Methodist church. Religious Liberty Protection Act of 1998: Hearing on H.R. 4019 Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 105th Cong. 68 (1998)

(statement of Marc D. Stern, Dir. of Legal Dep't, Am. Jewish Cong.). The same witness informed Congress that another municipality gave parking variances to every church that sought one—that is, "until a mosque came along." Protecting Religious Freedom After Boerne v. Flores: Hearing Before the H. Subcomm. on the Constitution of the H. Comm. on the Judiciary, 105th Cong. 35 (July 14, 1997) (statement of Marc Stern, Dir. of Legal Dep't, Am. Jewish Cong.).

Concerns about pervasive discrimination led to broad, cross-coalition support, including among Muslim groups who saw RLUIPA as a bedrock protection against zoning-related discrimination. As one Representative noted, the support from a broad range of religious communities was "enormous." 145 Cong. Rec. H5581 (daily ed. July 15, 1999) (statement of Rep. Tony P. Hall). More than seventy religious and civil liberties groups rallied around RLUIPA, including Protestant, Catholic, Jewish, and Muslim groups. *Id.*

RLUIPA's importance to the Muslim community has only grown since its passage. Soon after the statute's enactment, the September 11, 2001 attacks intensified "[v]ocal expressions of concern about mosques in American cities." *Not in This Neighborhood! Zoning Battles*, Harv. Univ. Pluralism Project 3 (2020). That community pressure, as predicted by RLUIPA's witnesses and sponsors, often came cloaked in nonspecific appeals to traffic or parking issues. See Kimberly Winston, *Zoning Islam Out*, ARC (Dec. 9, 2025), https://perma.cc/NT8B-RN7J (describing how a "majority-Christian town" allowed a mosque to expand only after a seven-year dispute that, "depending on whom you ask[,] was either about traffic or Islamophobia").

In the decades since RLUIPA's passage, conflicts over mosques and Muslim schools have proliferated. Although Muslims comprise just 1 to 2% of the population, in RLUIPA's first ten years the proportion of Justice Department RLUIPA investigations involving discrimination against mosques or Muslim schools was 14%. Treene, *supra*, 10 First Amend. L. Rev. at 345. That proportion only increased over time: From 2010 to 2016, the percentage of Justice Department RLUIPA investigations involving Muslim groups rose to 40%. Asma T. Uddin, *A Religious Double Standard: Post-9/11 Challenges to Muslims' Religious Land Usage*, 27 Mich. J. Race & L. 223, 228 (2021). And the Department of Justice has acknowledged that Muslim mosques and schools remain increasingly and particularly vulnerable to zoning discrimination, "often under community pressure." U.S. Dep't of Just., Report on the Tenth Anniversary of the Religious Land Use and Institutionalized Persons Act 13 (2010).

Although Muslim litigants must often pursue relief under RLUIPA for land use discrimination, they remain disproportionately burdened by RLUIPA issues. See Gadeir Ibrahim Abbas, Shuruq Daas & Zeynab Warraich, *Muslim Litigants Are Using the Courts to Protect Human Rights and Ensure Social Justice*, 50 Hum. Rts. 10, 11 (2024). Robust RLUIPA protections are all the more crucial amid increasing anti-Muslim hostility. And yet, courts across the country have watered down RLUIPA's protections, denying faith communities and religious minorities the protection that RLUIPA promised.

III. The Court should reject the multifactor balancing approach to "substantial burden" adopted by some lower courts.

This case will be the first opportunity for this Court to construe the "substantial burden" standard from RLUIPA's land use provisions. The Court should reject the misguided approach of the Kentucky Supreme Court and other lower courts.

Rather than providing a concrete definition of what constitutes a "substantial burden," several lower courts have cobbled together malleable (and inconsistent) multifactor tests. The Eleventh Circuit, for instance, has a non-exhaustive six-factor balancing test. *Thai Meditation Ass'n of Ala., Inc.* v. *City of Mobile*, 980 F.3d 821, 831–32 (11th Cir. 2020). The First Circuit uses a nonexhaustive three-factor balancing test. *Roman Cath. Bishop of Springfield* v. *City of Springfield*, 724 F.3d 78, 96–97 (1st Cir. 2013). And the Ninth Circuit does not even list any factors—it just "look[s] to the totality of the circumstances." *New Harvest Christian Fellowship* v. *City of Salinas*, 29 F.4th 596, 602 (9th Cir. 2022).

Here, the Kentucky Supreme Court adopted a four-factor standard that it attributes to the Sixth Circuit. *Missionaries of Saint John the Baptist, Inc.* v. *Frederic*, 727 S.W.3d 400, 414 (Ky. 2025); Pet. App. 24a–25a; see also *Livingston Christian Schs.* v. *Genoa Charter Township*, 858 F.3d 996, 1004–05 (6th Cir. 2017) (setting out the Sixth Circuit's substantial burden test but describing Kentucky's fourth factor as more properly considered as part of the narrow tailoring analysis).

The Kentucky Supreme Court's multifactor balancing test for "substantial burden" suffers from several defects.

To begin with, nothing in RLUIPA's text suggests that "substantial burden" is meant to rely on a multifactor balancing test—and such tests tend to wrongly enlarge the power of government officials. As this Court has recognized, "open-ended balancing tests" and "[v]ague standards" can be manipulated by judges, who, "like other government officers, [cannot] always be trusted to safeguard the rights of the people." *Crawford* v. *Washington*, 541 U.S. 36, 63, 67–68 (2004) (rejecting a "nine-factor balancing test" employed by lower courts). "[E]ven the Third Branch of Government" may be prone to letting its priors affect a case's outcome when asked to apply an indeterminate balancing test. See *N.Y. State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1, 23 (2022). And since RLUIPA's goal was to cabin the wide discretion wielded by local government officials, it makes little sense to interpret RLUIPA to grant similar discretion to judges.

Apart from their malleable nature, the specific factors applied here have serious problems.

First, one of the Sixth Circuit's "substantial burden" factors considers whether a "feasible alternative location" exists for the religious group to "carry on its mission." *Livingston*, 858 F.3d at 1004. That inquiry requires courts to make judgments about the group's "core function[s]." *Id.* at 1006. But there are "grave problems" when a "civil factfinder sit[s] in ultimate judgment" of "how important" a belief or practice is "to the church's overall mission." *Hosanna-Tabor Evangelical Lutheran Church & School* v. *EEOC*, 565 U.S. 171, 205 (2012).

To ask whether another site would serve a congregation just as well is to ask what the congregation's religious exercise needs—a question courts may not answer. Judges are not "arbiters of scriptural interpretation." *Thomas* v. *Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981). It is not for them to "question the centrality of particular beliefs or practices to a faith." *Hernandez* v. *Comm'r*, 490 U.S. 680, 699 (1989). And religious questions are the kind of issues that federal courts "have no business addressing." See *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014).

This case demonstrates the dangers of such an inquiry. When the Kentucky Supreme Court applied its four-factor test, it concluded that St. John's inability to construct its proposed grotto in honor of the Virgin Mary was a "mere inconvenience." Pet. App. 25a. It thought so because—in the court's eyes—St. John had a "feasible alternative" of constructing a smaller shrine elsewhere. *Ibid.* But Congress did not entrust civil courts to assess whether one shrine to the Virgin Mary is a "feasible alternative" to another. *Ibid.* That is precisely the sort of "ecclesiastical question[]" courts have no power to resolve. See *Presbyterian Church in the U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969).

This Court has also already made clear that RLUIPA does not task courts with judging the religious feasibility of alternative religious practices. Applying RLUIPA's prisoner protections, this Court held that a prisoner's claim could proceed whether or not the prisoner had available "alternative means of practicing religion." *Holt* v. *Hobbs*, 574 U.S. 352, 361–62 (2015). As this Court explained, "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." *Ibid.*

Consistent with *Holt*'s instruction, the Third Circuit recently held that "a land use regulation that prevents access to or use of real property for religious exercise will contravene RLUIPA—regardless of the presence of feasible alternative locations for the religious exercise." *Anash, Inc.* v. *Borough of Kingston*, 184 F.4th 214, 244–45 (3d Cir. 2026).

Second, the Kentucky Supreme Court's reasoning that St. John's RLUIPA claim fails because any burden here was self-imposed is equally problematic. That was the case, in the court's view, because St. John knew of the zoning restriction before it applied. See Pet. App. 27a. Yet this "knowledge" test finds no home in RLUIPA's text and would gut the statute's protections essentially anytime there is a preexisting land use regulation.

Nothing in RLUIPA supports that rule. The statute asks whether the government has imposed a substantial burden, 42 U.S.C. § 2000cc(a)(1), not whether it imposed a surprise burden. A law can burden religious exercise just as severely if a congregation reads it ahead of time. As the Third Circuit put it, RLUIPA "has no provisions for scrutinizing the actions or expectations of persons seeking to exercise religion." *Anash*, 184 F.4th at 239 n.21. And this Court has never suggested otherwise.

The rule also contradicts Congress's reason for passing RLUIPA. Congress was responding to entrenched zoning rules and the discretion to apply them selectively. Congress heard that codes "frequently exclude[d] churches" while allowing secular assemblies, and that officials gave religious groups unequal

treatment on parking and the like. 146 Cong. Rec. S7774–75 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy); see *supra* Part II. The burden Congress sought to address lay in codes that were already on the books. Under Kentucky's rule, the older and more familiar an unlawful restriction is, the safer it becomes from challenge. That inverts RLUIPA's purpose.

Finally, Kentucky's fourth factor asks whether the municipality's decision-making was "arbitrary, capricious, or discriminatory." Pet. App. 25a. The Sixth Circuit, from which Kentucky drew its test, has itself said that such concerns are better considered in narrow tailoring. *Livingston*, 858 F.3d at 1004–05. The burden question asks what the regulation does to religious exercise; whether the government had a good reason is for the next step, where it carries the burden of proof.

* * *

This Court should disapprove of the multifactor balancing test approach to "substantial burden" that many lower courts have adopted. And it should especially reject the illegitimate factors applied by the Kentucky Supreme Court here.

IV. The Court should apply the plain meaning of "substantial burden."

Rather than adopt an unworkable multifactor balancing test, the Court should interpret RLUIPA's "substantial burden" term according to its plain text. If the phrase's ordinary meaning is applied, this is an easy case. Totally prohibiting a religious exercise—here, the construction of a particular place of worship—is plainly a substantial burden on that religious exercise. Nothing in this Court's precedents requires

some other specialized meaning. The word "substantial" just requires a meaningful degree of burden.

A. RLUIPA's plain text offers a clear and predictable legal standard.

The text here isn't hard to discern. "Substantial" means "[r]eal and not imaginary." *Substantial*, Black's Law Dictionary (12th ed. 2024). A "burden" is "[s]omething that hinders or oppresses." *Burden*, Black's Law Dictionary (12th ed. 2024). Taken together, the phrase merely requires that there be a real hindrance on an exercise of religion. There is no need for complicated multifactor analyses; the Court can just apply the words Congress wrote.

The phrase does not encompass just any burden of religion. The burden must be "substantial." But "substantial" "doesn't mean complete or total." *Yellowbear* v. *Lampert*, 741 F.3d 48, 55 (10th Cir. 2014) (Gorsuch, J.). Rather, as RLUIPA's legislative history confirms, the "substantial" qualifier works to prevent the statute's rigorous standards from being triggered by "trivial, technical, or *de minimus* [sic] burdens on religious exercise." H.R. Rep. No. 106–219, at 13 (1999).

So RLUIPA would not be triggered by a truly minimal burden. In most cases, filling out a form or paying a small nondiscriminatory fee is unlikely to be a qualifying burden. E.g., *Childs* v. *Webster*, 168 F.4th 1020, 1027–28 (7th Cir. 2026) (burden not substantial where plaintiff had to pay fee that he himself described as "de minimis"); *Resnick* v. *Adams*, 348 F.3d 763, 770 (9th Cir. 2003) (requiring inmates to fill out "standard application form" for a religious diet).

The land use denial here, however, is a clear "substantial burden." The denial means a total prohibition on the grotto that petitioner feels compelled to

construct for religious worship. If anything qualifies as a "substantial burden" on religious exercise, it is an outright prevention of that exercise. See *Yellowbear,* 741 F.3d at 55 ("a burden on a religious exercise rises to the level of being 'substantial' when (at the very least) the government … prevents the plaintiff from participating in an activity motivated by a sincerely held religious belief").

Perhaps there are cases on the margin where it's a closer call, but this case is not one. The Court should apply RLUIPA's plain text and reverse the judgment below.

B. The Court should reject a narrow construction of "substantial burden" based on less-protective constitutional caselaw.

In adopting a test based on the plain meaning of "substantial burden," the Court should choose ordinary meaning over some narrow construction based on earlier less protective caselaw.

As an example of what not to do, some lower courts have construed the phrase narrowly in an attempt to tie RLUIPA and its sister statute RFRA to this Court's twentieth century First Amendment cases.

The Ninth Circuit, for example, has held that the government does not "substantially burden" religious practice when dealing with government land. *Apache Stronghold* v. *United States*, 101 F.4th 1036, 1055 (9th Cir. 2024) (en banc). That construction comes from an attempt to comport the "substantial burden" standard with this Court's decision in *Lyng* v. *Northwest Indian Cemetery Protective Association*—a pre-*Smith* case that doesn't use the phrase "substantial burden." See 485 U.S. 439 (1988). The stunning result of this interpretation is that Native American religious plaintiffs

are deemed to suffer no substantial burden from federal action that will result in the *total destruction* of a sacred site where they've worshiped for centuries.

Likewise, the Seventh Circuit invoked *Braunfeld* v. *Brown*—a 65-year-old plurality opinion about the constitutionality of Sunday closing laws—as a basis for concluding that plaintiffs' having "expended considerable time and money" on the zoning approval process did not satisfy "RLUIPA's substantial burden provision." *C.L. for Urb. Believers* v. *City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003) (citing 366 U.S. 599, 605 (1961) (plurality opinion), among other cases). But *Braunfeld* construed a constitutional provision with different text ("prohibit" rather than "substantially burden"). And an English speaker would ordinarily consider the expenditure of significant time and money to plainly be a "substantial burden." The attempt to construe that statutory phrase in light of decades-old First Amendment caselaw thus leads to a tortured reading of the statute.

Such attempts to narrowly interpret "substantial burden" to conform to this Court's pre-RFRA cases are misguided for multiple reasons.

First, this method of narrow construction violates the Court's RFRA and RLUIPA precedents.

This Court has made clear that those sister statutes are *more protective* of religious exercise than this Court's pre-RFRA cases had been. E.g., *Holt*, 574 U.S. at 361 (rejecting legal standard from this Court's prior First Amendment cases because "RLUIPA provides greater protection"); see also *id.* at 357 ("Congress enacted RFRA in order to provide greater protection for religious exercise than is available under the First Amendment.").

This Court has consistently interpreted RLUIPA and RFRA based on their plain text. See *id.* at 361–62 (using RLUIPA's text alone to interpret "substantial burden"); see also *Tanzin* v. *Tanvir*, 592 U.S. 43, 46–47 (2020) (interpreting RFRA by "start[ing] with the statutory text" and concluding that "RFRA's text provides a clear answer"). And "nothing in the text" of either statute suggests that they were meant to "be tied to this Court's pre-*Smith* interpretation" of the First Amendment. See *Hobby Lobby*, 573 U.S. at 714. Any narrow construction of "substantial burden" based on past constitutional caselaw flouts this clear instruction.

Second, "substantial burden" is not a term of art meant to incorporate some prior set of rules by reference.

A term is assumed to be a term of art "only when the language was used in that way at the time of the statute's adoption." *Yellen* v. *Confederated Tribes of Chehalis Rsrv.*, 594 U.S. 338, 354 (2021). And "substantial burden" did not have any specialized meaning as a phrase when RFRA and RLUIPA were adopted. Neither *Sherbert* nor *Yoder* used the phrase "substantial burden." See *Sherbert* v. *Verner*, 374 U.S. 398, 403–06 (1963) (using the terms "incidental burden," "burden," and "substantial infringement" interchangeably); *Wisconsin* v. *Yoder*, 406 U.S. 205, 214, 218 (1972) ("impinges," "impact[s]," "substantially interfer[es]"); Michael C. Dorf, *Incidental Burdens on Fundamental Rights*, 109 Harv. L. Rev. 1175, 1213–14 (1996) (noting that *Sherbert* "provides little guidance for the substantiality inquiry" and that *Yoder* is "equally unilluminating"). Even in its free exercise cases today, the Court looks only for a "burden[]." See

Kennedy v. *Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022).

In fact, only two of this Court's pre-RFRA cases used the phrase "substantial burden"—one of which was quoting the other. See *Hernandez*, 490 U.S. at 699; *Jimmy Swaggart Ministries* v. *Bd. of Equalization*, 493 U.S. 378, 384–85 (1990) (quoting *Hernandez*); see also Michael A. Helfand, *Substantial Burdens as Civil Penalties*, 108 Iowa L. Rev. 2189, 2192 (2023) ("[T]he phrase 'substantial burden' rarely appeared in pre-*Smith* Supreme Court decisions—and when it did, it appeared with very little elaboration.").

Nor did Congress indicate that it attached specialized meaning to the phrase "substantial burden" when it passed RFRA and RLUIPA. The RFRA drafting process is relevant to interpreting RLUIPA because Congress intended "substantial burden" in RLUIPA to have the same meaning as RFRA. See *Holt*, 574 U.S. at 357 (noting that RLUIPA's substantial burden provision "mirrors RFRA"); *Gonzales* v. *O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 436 (2006) (RFRA and RLUIPA use "the same standard").

The qualifier "substantial" was added very late in RFRA's drafting process. See Frederick Mark Gedicks, *"Substantial" Burdens: How Courts May (and Why They Must) Judge Burdens on Religion Under RFRA*, 85 Geo. Wash. L. Rev. 94, 118 (2017). That suggests that Congress meant only to qualify the sorts of "burden[s]" that would be impermissible under RFRA and RLUIPA—not to replace them with another standard altogether.

In any case, to abandon a statute's plain meaning for some specialized meaning, Congress must have "invoked" that specialized meaning. *Food Mktg. Inst.* v.

Argus Leader Media, 588 U.S. 427, 428 (2019). Yet nothing in the legislative record suggests such an invocation. If anything, by defining seven other terms while leaving "substantial" and "burden" undefined, see 42 U.S.C. § 2000cc–5, the statute itself indicates that Congress did not intend "substantial burden" to mean anything other than its ordinary meaning.

C. The word "substantial" does not invite judicial inquiry into religious questions.

In deciding whether the burden on petitioner's religious exercise here was "substantial," the Kentucky Supreme Court felt empowered to resolve the ecclesiastical question of whether a smaller shrine elsewhere was suitable for petitioner's religious mission. It was, in the court's view, a "mere inconvenience" to petitioner's religious exercise to have a smaller shrine elsewhere on the property. Pet. App. 25a. The Court should take the opportunity to clarify that this is not the type of inquiry that RLUIPA calls for.

The proper analysis was detailed by then-Judge Gorsuch: the substantial burden "inquiry focuses only on the coercive impact of the government's actions." *Yellowbear,* 741 F.3d at 55. The inquiry "isn't into the merit of the plaintiff's religious beliefs or the relative importance of the religious exercise." *Ibid.* Put another way, it is the government's coercion that must be "substantial"—that is, meaningful rather than trivial. It is not, by contrast, the "religious exercise" that must be substantial. There is no need to show that the religious exercise is especially important to a faith tradition or the only way to fulfill one's religious obligations. RLUIPA in fact expressly protects "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc–5(7)(A).

The correct approach is further confirmed by this Court's caselaw about church property disputes. In that context, the Court has explained that the Constitution "severely circumscribes the role that civil courts may play" in resolving such disputes. *Presbyterian Church in U.S.*, 393 U.S. at 449. Courts may not weigh "the importance of [particular church] doctrines to the religion," *id.* at 450, because doing so risks "inhibiting the free development of religious doctrine and … implicating secular interests in matters of purely ecclesiastical concern," *id.* at 449. The Free Exercise Clause instead protects religious groups' "power to decide for themselves, free from state interference, matters of … faith and doctrine." *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). Judicial inquiry into questions of religious doctrine would threaten that protection. The word "substantial" in RLUIPA creates no exception to these principles—nor could it.

With the proper inquiry in view, the Kentucky Supreme Court's analysis seriously errs. Looking to the coercive effect of the government's conduct, the burden here is "substantial" because the government is flatout prohibiting the desired religious exercise. *Yellowbear,* 741 F.3d at 56 (RLUIPA is "easily" triggered by a policy "flatly prohibiting [a plaintiff] from participating in an activity motivated by a sincerely held religious belief"). To conclude, as the Kentucky Supreme Court did, that some other shrine would sufficiently satisfy petitioner's religious mission wrongly addresses a religious question and renders meaningless RLUIPA's protection of "any exercise of religion, whether or not compelled by … a system of religious belief." 42 U.S.C. § 2000cc–5(7)(A).

CONCLUSION

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

Respectfully submitted,

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