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* RELIGIOUS FREEDOM INSTITUTE IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*

The Religious Freedom Institute (RFI) is a Washington, D.C.-based non-profit dedicated to ensuring religious freedom for everyone, everywhere. RFI advocates for a world in which religious freedom is protected as a fundamental human right, promoting the advancement of religious liberty and the reduction of religious persecution. As part of its mission, RFI works to safeguard the ability of religious individuals and institutions to practice their faith free from unwarranted government interference.

RFI has a particular interest in ensuring that religious exercise receives the full protection afforded by the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). That protection extends to religious worship and observance through the construction and use of physical structures that embody and facilitate religious exercise. RFI therefore has a significant interest in the Court's resolution of the question presented, including the proper application of RLUIPA's substantial-burden standard to government restrictions on religious land use.[1]

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[1] Pursuant to Rule 37.6, RFI affirms that no counsel for a party authored this brief in whole or in part and that no person or entity other than RFI and its counsel made a monetary contribution to its preparation or submission.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Religious Land Use and Institutionalized Persons Act (RLUIPA) affords broad protection to religious land use, expressly extending such protection to the "building … of real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5(7)(B). Despite this clear directive, the Kentucky Supreme Court held that prohibiting Petitioner Missionaries of Saint John the Baptist, Inc., from constructing its desired grotto was a "mere inconvenience" because it could instead build a "smaller shrine or grotto" elsewhere. *Missionaries of St. John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400, 414 (Ky. 2025). That holding cannot be reconciled with RLUIPA's text or this Court's decision in *Holt v. Hobbs*, 574 U.S. 352 (2015), which requires courts to assess the burden on the religious exercise chosen by the claimant, rather than on alternative forms of religious exercise devised by the court. *See* Section I.

The Kentucky Supreme Court's analysis not only misapplies RLUIPA, it reflects a fundamental misunderstanding of the religious exercise at issue. RLUIPA was drafted against the background of a wide variety of religious approaches to sacred spaces, and its definition of "religious exercise" inclusively reaches many different activities beyond the mere "use" of real property. In the Catholic tradition, many believe that the design, locating, and construction of

sacred structures are discrete acts that can themselves constitute worship, prior to and independent of the religious activities the completed structures would facilitate. These same unique design features are also charged with religious significance. And, even within the Catholic tradition, there is disagreement about the religious significance of such physical structures. *See* Section II.

The Kentucky Supreme Court effectively decided that these traditions in sacred architecture are distinct from worship and religious exercise—a judgment that itself could be seen as theological. By hypothesizing that a smaller grotto in an alternative location could somehow substitute for Petitioner's chosen location and design, the court failed to accept the religious significance of Petitioner's initial religious exercise in designing, locating, and building a particular grotto. The court implicitly treated the design and building itself as merely an outer "skin" within which worship would occur; only the eventual use of the building could be religiously significant. But this itself reflects a religious viewpoint. By deciding which acts were or were not religiously significant for Petitioner, the court ventured into matters of religious judgment that the Establishment Clause places beyond the authority of civil courts. *See* Section III.

This Court should reverse.

ARGUMENT

I. The Kentucky Supreme Court Misapplied the RLUIPA Substantial Burden Test

The Kentucky Supreme Court's decision must be reversed because it was premised on an incorrect application of RLUIPA's "substantial burden" test. *See* 42 U.S.C. § 2000cc(a). The court's analysis initially defined Petitioner's desired conduct (*i.e.*, "building a grotto that honors the Virgin Mary's appearance at a grotto in Lourdes, France") as religious exercise for purposes of RLUIPA. *Missionaries of St. John the Baptist, Inc.*, 727 S.W.3d at 413. So far, so good. But then, the court took a wrong turn. For the remainder of its analysis, it implicitly abandoned its seeming recognition that the act of "building a grotto" is itself a form of worship. Instead, it appeared to view the structure as a mere facilitator for religious worship that parishioners would later undertake there—a mere skin or husk that is insignificant itself. This move was subtle, but it explains why the court decided to speculate about whether alternative structures were suitable replacements for whatever religious exercise the court imagined might take place around the completed grotto.

This error was fundamental as a matter of textual interpretation under RLUIPA, and it affected the substantial burden analysis in two ways. First, the

court errantly assessed whether the burden was substantial by considering whether a redesigned alternative structure, built elsewhere, could still accommodate Petitioner's desired religious worship. *Missionaries of St. John the Baptist, Inc.*, 727 S.W.3d at 414–415. Second, the court improperly concluded that the grotto could be completely prohibited without substantially burdening Petitioner's religious practice. *Id*. at 415–416. On both fronts, the Kentucky Supreme Court misapplied RLUIPA's substantial burden analysis and must be reversed.

A. RLUIPA asks whether the government substantially burdened the specific religious exercise in question—not an alternative one.

Relying on the Sixth Circuit's multi-factor test in *Livingston Christian Schools v. Genoa Charter Township*, 858 F.3d 996 (6th Cir. 2017), the Kentucky Supreme Court followed the principle that "not just any imposition on religious exercise will constitute a violation of RLUIPA…the burden must have some degree of severity to be considered 'substantial.'" *Missionaries of St. John the Baptist, Inc.*, 727 S.W.3d at 414 (cleaned up). Applying the *Livingston* framework, the court then considered whether Petitioner had a "feasible alternative location from which it can carry on its mission." *Id*. It concluded that there was no RLUIPA violation in part because

"St. John's ability to build a smaller shrine or grotto than what it desires falls more into the category of a mere inconvenience than a burden with some degree of severity." *Id.* at 414–415 (cleaned up). The court's analysis conflicts with both the text of RLUIPA and the holding of *Holt v. Hobbs*, 574 U.S. 352 (2015).

RLUIPA defines 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. § 2000cc-5(7)(A). "Religious exercise" includes the "use, building or conversion of real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5(7)(B).

By covering *any* exercise of religion without requiring a showing of compulsion or centrality, the text of RLUIPA forecloses inquiry into whether an alternative religious exercise could suffice. In other words, by excluding a showing of necessity or centrality, the statute prohibits any requirement that a claimant prove that his or her religion *demands* the practice in question, or that worship would become *impossible* without it.

Consistent with the text of RLUIPA, in *Holt v. Hobbs*, the Court directly held that whether the claimant can engage in another form of religious exercise is not the relevant inquiry:

> RLUIPA's "substantial burden" inquiry asks whether the government has

> substantially burdened religious exercise (here, the growing of a ½–inch beard), not whether the RLUIPA claimant is able to engage in other forms of religious exercise.

574 U.S. at 361–62. The Court explained in *Holt* that while the availability of alternative means of practicing one's religion may be relevant in the context of a prisoner's First Amendment rights, it is not relevant under RLUIPA because "RLUIPA provides greater protection." *Id*. at 361.

Following *Holt*, the Third Circuit properly held in the land-use regulation context that, "in all but the most dire circumstances, 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," and that, accordingly, a claimant "did not need to disprove the feasibility of alternative locations" to show that its religious exercise was substantially burdened. *Anash, Inc. v. Borough of Kingston*, 184 F.4th 214, 244–245 (3d Cir. 2026).

Just as the availability of "other forms of religious exercise" was irrelevant to the substantial-burden inquiry in *Holt*, the Kentucky Supreme Court erred by requiring Petitioner to demonstrate that it could not construct its desired grotto elsewhere or on a smaller scale. The availability of "feasible

alternatives" has no place in RLUIPA's substantial-burden analysis.

B. Completely prohibiting a religious exercise is necessarily a substantial burden.

Despite acknowledging that the building and design of the grotto is a religious exercise, the Kentucky Supreme Court nevertheless held that prohibiting it altogether does not impose a substantial burden on Petitioner. *See Missionaries of St. John the Baptist, Inc.*, 727 S.W.3d at 415–16 ("We accordingly hold that prohibiting St. John's request to build the grotto does not impose a substantial burden on St. John and accordingly does not run afoul of 42 U.S.C.A. §2000cc(a) of RLUIPA."). The court further determined that it was a "mere inconvenience" for Petitioner to build a smaller shrine or grotto than it desires. *Id*. at 414.

That holding cannot be reconciled with the broad protection of RLUIPA. The statute specifies that religious exercise is far more than the "use" of real property for religious exercise; it also specifies that the very act of "*building*" a sacred structure is itself a religious exercise. 42 U.S.C. § 2000cc-5(7)(B). And, given the court's express acknowledgement that the building of the grotto was a religious exercise, *Missionaries of St. John the Baptist, Inc.*, 727 S.W.3d at 413, the court's conclusion is even more puzzling.

How can it be that Petitioner's desired religious exercise was merely inconvenienced and not substantially burdened when it was completely barred? The court's conclusion simply does not follow from its premise.

Indeed, many courts have held that a regulation that wholly forbids the religious exercise a claimant seeks is a paradigmatic substantial burden. *See, e.g.*, *Greene v. Solano Cnty. Jail*, 513 F.3d 982, 988 (9th Cir. 2008) ("We have little difficulty in concluding that an outright ban on a particular religious exercise is a substantial burden on that religious exercise."); *Johnson v. Baker*, 23 F.4th 1209, 1215 (9th Cir. 2022) ("Of course, when a regulation outright bans religious exercise, it amounts to a substantial burden." (cleaned up)); *Meyer v. Teslik*, 411 F. Supp. 2d 983, 989 (W.D. Wis. 2006) ("It is difficult to imagine a burden more substantial than banning an individual from engaging in a specific religious practice."); *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1226 (C.D. Cal. 2002) ("Preventing a church from building a worship site fundamentally inhibits its ability to practice its religion."); *see also Apache Stronghold v. United States*, 145 S. Ct. 1480, 1488 (2025) (Gorsuch, J., dissenting from the denial of certiorari) ("[P]reventing a religious exercise is, necessarily, a 'substantial burden' on that religious exercise.").

The Park Hills zoning ordinance, as enforced, did not "merely inconvenience" Petitioner's chosen religious exercise by making it more difficult or costly; it forbade that exercise outright. If the complete prohibition of a claimant's chosen religious exercise can be a "mere inconvenience," it is difficult to imagine what would constitute a substantial burden under RLUIPA.

II. The Kentucky Supreme Court Failed to Give Effect to Its Recognition that Constructing the Grotto Is Itself a Religious Exercise

The Kentucky Supreme Court implicitly failed to give effect to its apparent recognition—made early in its analysis—that Petitioner's "building" this particular grotto was itself a form of religious exercise. By treating the grotto's physical design, location, and construction as *prior* to Petitioner's religious exercise rather than as *integral* to it, the court fundamentally misunderstood the many ways that designing, locating, and building physical structures constitute their own forms of religious exercise in some religious traditions, including in the Catholic faith.

A. In the Catholic Church, the very acts of siting, designing, and erecting a space can themselves constitute a form of religious worship.

In the Catholic tradition, the very acts of designing, locating, and erecting sacred spaces can constitute worship; they are not merely preparatory steps for facilitating worship within the space. The Church places a special emphasis on the building of structures, calling its faithful to be builders for God and to "construct buildings for divine worship." CATECHISM OF THE CATHOLIC CHURCH ¶ 1180 (Washington, DC: United States Catholic Conference, 2d ed. 2000).[2] Following this call, the National Conference of Catholic Bishops (NCCB) has declared that the design and building of church art and structures—like Petitioner's grotto—are themselves forms of worship:

> Churches, therefore, must be places suited to sacred celebrations, dignified, and beautiful. Their suitability for worship is determined by their ability through the architectural design of space and the application of artistic gifts to embody God's initiative and the community's faithful response. *Church*

[2] Available at https://perma.cc/98DN-3BMC.

> *buildings and the religious artworks that beautify them are forms of worship themselves and both inspire and reflect the prayer of the community as well as the inner life of grace.*

Nat'l Conf. of Catholic Bishops, BUILT OF LIVING STONES: ART, ARCHITECTURE, AND WORSHIP § 18 (2000) (emphasis added) (internal quotations and citation omitted).[3]

In his Letter to Artists, Pope Saint John Paul II implored, "the Church needs architects," and linked artists' work to the inspiration of the Holy Spirit:

> The Spirit is the mysterious Artist of the universe. … Every genuine inspiration… contains some tremor of that "breath" with which the Creator Spirit suffused the work of creation from the very beginning. Overseeing the mysterious laws governing the universe, the divine breath of the Creator Spirit reaches out to human genius and stirs its creative power. He touches it with a kind of inner illumination which brings together the sense of the good and the beautiful, and he awakens energies of mind and heart

[3] Available at https://perma.cc/RN3L-FUY2.

> which enable it to conceive an idea and give it form in a work of art.

Pope Saint John Paul II, LETTER TO ARTISTS ¶ 12, 15 (1999).[4]

The entreaty received by Saint Bernadette—which also inspired Petitioner's grotto in this case—is a concrete example of what Pope Saint John Paul II described as a movement of the Spirit. Many Catholics believe that the Virgin Mary repeatedly appeared to Saint Bernadette at the grotto at Massabielle in Lourdes, France. Lives of Saints, *Saint Bernadette Soubirous, Virgin, Patroness of Lourdes*, EWTN, https://perma.cc/F8TS-MQHQ (last visited November 12, 2026). During one of these apparitions, the Virgin Mary instructed her, "Go and tell the priests to build a chapel here and that people should come in procession." *The 3 Basilicas of Lourdes*, LOURDES SANCTUAIRE, https://perma.cc/A4NW-RSQG (last visited November 11, 2026).

In response, the faithful built what would later become the Basilica of the Immaculate Conception on the hill above the grotto. *Id*. The selection of the location was significant—itself an act of worship, the faithful believed—in fulfilling the will of God as expressed by the Virgin Mary.

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[4] Available at https://perma.cc/9SQQ-A8PH.

Similarly, many Catholics believe that the Virgin Mary appeared to Saint Juan Diego several times, during which he was instructed to ask the bishop to build a shrine for her at the precise site of the encounter. Pope Francis, *Juan Diego and God's Surprise*, EWTN, https://perma.cc/C83L-ZQSU (last visited November 12, 2026). Saint Juan Diego persisted in his requests to the bishop to build such a shrine until, it is said, an image of the Virgin Mary miraculously appeared on his mantle before the bishop. *Id.* Convinced by this sign, the bishop agreed, and a shrine was erected at the designated site. *Id*. At Saint Juan Diego's canonization, Pope Saint John Paul II described the saint's acts as "facilitat[ing] the fruitful meeting of two worlds." Pope Saint John Paul II, *Homily at the Canonization of Juan Diego Cuauhtlatoatzin*, (July 31, 2002).[5]

The Petitioner's proposed grotto follows in the tradition of Lourdes, Our Lady of Guadalupe, and a broader Catholic tradition. In each case, the design, siting, and building of the site itself is a form of worship. Significantly, Petitioner's parish is named in honor of Our Lady of Lourdes. Mirroring the grotto of the parish's namesake in Lourdes, France, Petitioner's grotto was carefully selected to rest on a property adjoining Our Lady of Lourdes Church and at the foot of its hill.[6] Following Catholic tradition in

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[5] Available at https://perma.cc/76FW-5YS9.

[6] Other grottos modeled after the grotto in Lourdes have recognized the significance of the location of the grotto in

which the artist's work can itself rise to the level of worship, Petitioner's process of design and siting was worship—religious exercise—in its own right.

B. The elements of a completed religious shrine or church, including a grotto honoring Our Lady of Lourdes, are also charged with religious significance.

The Catholic tradition also recognizes that the physical elements of a shrine or church can be charged with religious meaning. Site selection and design are not merely aesthetic or functional choices but are essential to religious exercise. *See, e.g.*, GENERAL INSTRUCTION OF THE ROMAN MISSAL ¶ 289 (3d typical ed. 2011) ("[I]n appointing artists and choosing works of art to be admitted into a church, what should be looked for is that true excellence in art which nourishes faith and devotion and accords authentically with both the meaning and the purpose for which it is intended.").[7]

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relation to the church and mirrored its location. At the University of Notre Dame, for example, a much visited and beloved grotto sits at the foot of a hill directly behind the Basilica of the Sacred Heart. *The Grotto: A Place of Hope,* UNIVERSITY OF NOTRE DAME, https://perma.cc/WU4K-LNLK (last visited November 18, 2026).

[7] Available at https://perma.cc/Y5A2-9AFM.

That is because, in Catholic teaching, "[t]hese visible churches are not simply gathering places but signify and make visible the Church living in this place, the dwelling of God with men reconciled and united in Christ." CCC ¶ 1180 (Washington, DC: United States Catholic Conference, 2d ed. 2000).[8] *See also* Pope Saint John Paul II, LETTER TO ARTISTS at ¶ 12 ("Art must make perceptible, and as far as possible attractive, the world of the spirit, of the invisible, of God. … Art has a unique capacity to take one or other facet of the message and translate it into colours, shapes and sounds which nourish the intuition of those who look or listen.").[9]

This tradition is reflected, for example, in the elaborate rose windows, gargoyles, and soaring arches of Gothic cathedrals. *See*, *e.g.*, Otto Georg von Simson, THE GOTHIC CATHEDRAL 25 (Princeton University Press 3d ed. 1988). These structures were meant not only to be observed by the faithful, but in some cases, to be physically used. For example, the labyrinth set into the floor of the nave at Chartres invited pilgrims to follow along a path symbolizing their journey in faith, and therefore to aid in prayer. Penelope Reed Doob, THE IDEA OF THE LABYRINTH FROM CLASSICAL ANTIQUITY THROUGH THE MIDDLE AGES 128–133 (Cornell University Press 1992)[10]; *The*

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[8] Available at https://perma.cc/98DN-3BMC.
[9] Available at https://perma.cc/9SQQ-A8PH.
[10] Available at https://perma.cc/88CV-XK48.

Labyrinth of Chartres Cathédrale, CATHEDRALE NOTRE-DAME DE CHARTRES, https://perma.cc/AAF8-RZJU (last visited November 18, 2026). And grottos like Petitioner's planned structure, with their stone enclosures, invite worshipers to bring and place candles, rosaries, and other sacramentals into the nooks in the rock. *See supra* note 6. These are buildings that invite worshipers to physically interact with the architectural elements, deepening the experience of prayer.

Finally, given all of these elements—the worshipful design and building of a structure, and the religious significance of the completed structure itself—it is only natural that in the Catholic tradition, the physical space may be consecrated or blessed upon its completion. If the newly constructed building is to be used as a church, it is consecrated as a holy place by a diocesan bishop. 1983 Code c. 1207.[11] After consecration, the space is sacred, taking on significance that is independent of whether worship also occurs there. 1983 Code c. 1210–1212.[12] And if the newly constructed site will not be used as a church, as with a grotto, it may be blessed as a sacramental. CCC ¶ 1667–1672.[13] A sacramental's power is derived from "the divine grace which flows from the Paschal mystery of the Passion, Death, and Resurrection of Christ" and is directed toward the

[11] Available at https://perma.cc/LW5J-FRHJ.
[12] Available at https://perma.cc/LW5J-FRHJ.
[13] Available at https://perma.cc/99E8-8KUL.

sanctification of men and the praise of God. CCC ¶ 1670 (quotation omitted).

In short, Petitioner's grotto is not merely a place to worship—a place that can be moved, re-sized, or squeezed into any area that can hold the desired number of worshipers. Instead, in the Catholic tradition, it is charged with religious significance from its design and siting to its hoped-for completion.

C. These very principles are themselves subject to theological debate.

Of course, all of this is just one view—a Catholic view. It is an understatement to observe that Christian and other religious believers have not always viewed churches, synagogues, and mosques in the same way. Even within the Catholic Church, there has been substantial debate.

In 1978, the Bishops' Committee on the Liturgy of the NCCB published a statement instructing that the "building or cover enclosing the architectural space is a shelter or 'skin' for a liturgical action. It does not have to 'look like' anything else, past or present." Bishops' Committee on the Liturgy of the National Conference of Catholic Bishops, ENVIRONMENT AND ART IN CATHOLIC WORSHIP ¶ 42

(1978).[14] This document received significant critiques over the decades after its promulgation, with some referring to the architectural and design changes it promoted as "wreckovation." *See*, *e.g.*, Fr. Dwight Longenecker, *Wrecking Churches: Iconoclasm or Continuity?*, CRISIS MAGAZINE, January 30, 2015, https://perma.cc/U4ER-UMJ7 (last visited November 16, 2026); Duncan G. Stroik, *Environment and Art in Catholic Worship—A Critique*, 2 SACRED ARCHITECTURE JOURNAL (1999), https://perma.cc/U4D4-G39J (last visited November 16, 2026). Reversing course, in 2000, the NCCB approved new guidelines for the building and renovation of churches that recognized Catholic art and architecture as liturgical in nature, describing the Catholic Church as "the house of God on earth." Nat'l Conf. of Catholic Bishops, BUILT OF LIVING STONES: ART, ARCHITECTURE, AND WORSHIP § 11 (2000).[15]

This intra-Catholic debate over sacred architecture may be far narrower than the theological gaps that separate religious traditions. Fortunately, no court properly applying RLUIPA will be tasked with measuring these differences or deciding among them. But when courts faced with RLUIPA claims or defenses do decide to consider worshipers' "alternatives" regarding the structures of shrines and

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[14] Available at https://perma.cc/HS88-7GWT.
[15] Available at https://perma.cc/RN3L-FUY2.

churches, those courts are not just comparing brick and mortar; they may well be—as with Petitioner's grotto—comparing different forms of religious exercise and different religious norms. Petitioner is right to insist that courts applying RLUIPA should do no such thing.

D. RLUIPA expressly recognizes and protects the religious exercise of designing and constructing religious sites.

RLUIPA was passed against the backdrop of longstanding religious doctrinal debate on the design, form, and function of worship spaces. As noted, it expressly recognizes the construction of religious structures as a form of religious exercise. 42 U.S.C. § 2000cc-5(7)(B). And as the Catholic traditions discussed above illustrate, the construction and design of sacred structures are not merely preparatory to worship; they can themselves constitute acts of worship. Thus, the religious exercise at issue is not necessarily the worship that a completed structure facilitates, but the very act of constructing that structure in accordance with the adherent's faith.

The Kentucky Supreme Court failed to appreciate this distinction. Although it expressly recognized that constructing Petitioner's proposed grotto constituted religious exercise, *Missionaries of*

St. John the Baptist, Inc., 727 S.W.3d at 413, its substantial-burden analysis implicitly treated the grotto as one of several alternative—possibly interchangeable—places for future worship rather than as an expression of worship in itself. By concluding that Petitioner's inability to construct its desired grotto was a "mere inconvenience" because it could construct a smaller grotto or build elsewhere, the court overlooked the religious significance of the design, location, and construction itself. *Id.* at 414–15.

That misunderstanding was fundamental to the court's erroneous substantial-burden analysis. If constructing a particular sacred structure is itself a religious exercise, prohibiting that construction cannot be dismissed as a mere inconvenience simply because other structures or locations might accommodate similar devotional activities. The availability of those alternatives does not eliminate the burden on the religious exercise Petitioner actually sought to undertake. By focusing on what a different grotto might facilitate, rather than the religious significance of constructing the proposed grotto itself, the Kentucky Supreme Court failed to give effect to its own recognition that the construction was religious exercise protected by RLUIPA.

III. The Kentucky Supreme Court's Inquiry into Whether the Frustration of Petitioner's Desired Religious Building was a "Mere Inconvenience" Necessitates Doctrinal Inquiry, and Therefore Invites an Establishment Clause Violation

Congress expressly mandated that RLUIPA "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3; *see also* 42 U.S.C. § 2000cc-4 (providing that "[n]othing in this chapter shall be construed to affect, interpret, or in any way address" the Establishment Clause). And this Court has rejected a direct challenge to the constitutionality of RLUIPA. *See Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (holding that RLUIPA's institutionalized-persons provision did not violate the Establishment Clause).

Nevertheless, the Establishment Clause's shadow has led some courts to interpret RLUIPA's "substantial burden" provision narrowly. *See, e.g.*, *Westchester Day Sch. v. Vill. of Mamaroneck*, 386 F.3d 183, 190 (2d Cir. 2004); *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 900 (7th Cir. 2005); *Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App'x 729, 741 n.6 (6th Cir. 2007), *cert. denied*, 553 U.S. 1093 (2008). Ironically, however, cramped

readings of RLUIPA's "substantial burden" test pose the greater Establishment Clause threat by drawing courts into doctrinal disputes.

The Kentucky Supreme Court's inquiry into whether "alternative" grottos might satisfy Petitioner's religious exercise illustrates the problem: such inquiries invite—even require—courts to substitute their own judgments for those of religious claimants on matters of private religious belief and practice. And as the differing views on the significance of religious architecture demonstrate, such questions often lack universally accepted answers, even within a single religious tradition. *That*—and not RLUIPA's broad accommodation of religious land use—is what the Establishment Clause cautions against.

A. The Establishment Clause prohibits courts from second-guessing the necessity or significance of a particular religious practice.

This Court has long recognized that civil courts have no business opining on the validity, centrality, or religious necessity of a sincere religious practice. In *Thomas v. Review Board of Indiana Employment Security Division*, for example, the Court explained that "[r]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." 450 U.S. 707, 714

(1981). Thus, when a religious adherent sincerely understands a particular practice to be required by his or her faith, courts may not reject that understanding based on their own "judicial perception of the particular belief or practice in question." *Id.*

This Court has reaffirmed this principle over and over. In *Hernandez v. Commissioner of Internal Revenue*, for example, the Court explained that "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." 490 U.S. 680, 699 (1989). Construing the "substantial burden" language of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *Burwell v. Hobby Lobby Stores, Inc.* rejected an attempt to second-guess the religious claimants' understanding of their beliefs. 573 U.S. 682, 725 (2014) ("[T]he [Claimants] and their companies sincerely believe that providing the insurance coverage demanded by the HHS regulations lies on the forbidden side of the line, and it is not for us to say that their religious beliefs are mistaken or insubstantial.").

Importantly, this judicial restraint is more than a reluctance to resolve theological disputes; it reflects a deliberate limitation imposed by the Constitution, which places judgments about religious belief and practice beyond the authority of civil courts. As this Court recognized in *New York v.*

Cathedral Academy, "[t]he prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment." 434 U.S. 125, 133 (1977).

The Tenth Circuit's recent application of this principle in *Does 1–11 v. Board of Regents of the University of Colorado*, 100 F.4th 1251 (10th Cir. 2024), is notable. There, the court addressed a university policy that permitted religious exemptions from a vaccination requirement but distinguished between religious objections the university considered valid and those it did not. The court explained that "a government policy that requires an intrusive inquiry into the validity of religious beliefs violates the Establishment Clause regardless of any purported government interest." *Id.* at 1268. The university's inquiry into applicants' religious beliefs was a form of "excessive entanglement" that was "flatly forbidden" by the Establishment Clause. *Id.* at 1272 (citation omitted).

The same constitutional prohibition against such intrusive inquiries applies when courts assess the substantial burden imposed by a land-use regulation. Indeed, the risk of excessive entanglement is particularly acute in the religious land-use context, where the physical characteristics of a sacred structure may carry profound religious significance. As discussed above, a sacred structure's dimensions, design, and precise location may embody religious

beliefs independent of the structure's practical utility or the worship it facilitates. *See* supra, Section II. Requiring a religious claimant to establish why a different design or location would not suffice thus invites courts to evaluate the relative religious importance of those features. Such inquiries risk transforming RLUIPA's substantial-burden analysis into precisely the sort of judicial assessment of religious meaning that the Establishment Clause forbids.

Although RLUIPA allows courts to determine whether an asserted belief is sincerely held and whether the government has substantially burdened the claimant's religious exercise, courts may not resolve those questions by determining whether the claimant's chosen practice is religiously necessary or whether another practice would be equally acceptable. That determination belongs to the religious adherent, not the government.

B. The Kentucky Supreme Court's assessment of alternative grottos impermissibly second-guessed Petitioner's religious exercise and weighed in on a matter of religious disagreement.

The Kentucky Supreme Court crossed this constitutional boundary when it concluded that Petitioner's inability to construct its desired grotto was a "mere inconvenience" because it could instead

construct a "smaller shrine or grotto" or build the grotto in another location. *Missionaries of St. John the Baptist, Inc.*, 727 S.W.3d at 414–15. By treating these alternatives as sufficient substitutes, the court necessarily discounted the religious significance Petitioner attaches to the size, design, and location of its proposed grotto. In doing so, the court substituted its own judgment for that of Petitioner as to what Petitioner's religious exercise required.

Worse still, the religious significance of sacred architecture is itself a matter of theological debate, even within the Catholic tradition. *See* supra, Section II. Some authority has sought to break from traditional understandings of sacred architecture, emphasizing the building's function as a "skin" for worship rather than its independent religious significance. *Id.* The existence of these differing perspectives underscores the constitutional problem with the Kentucky Supreme Court's approach. By discounting the religious significance of a structure's design, size, and location, the court could be seen as endorsing the "functional" side of this debate, entangling itself in a question of religious significance that the Establishment Clause places beyond the judiciary's authority.

In short, the Kentucky Supreme Court engaged in precisely the kind of "intrusive religious inquiry" the Establishment Clause forbids. *Does 1–11*, 100 F.4th at 1270 (citation omitted). Whether a smaller grotto or one constructed elsewhere would adequately

fulfill Petitioner's religious objectives is a matter of religious judgment, not judicial determination.

C. RLUIPA's substantial-burden standard should be applied without judicial inquiries into religious necessity.

To be sure, RLUIPA requires courts to assess whether a challenged land-use restriction imposes a substantial burden, and not every restriction on religious property use will satisfy that standard. But that inquiry must focus on the government's interference with the religious exercise the claimant actually seeks to undertake. It cannot turn on a judicial determination that the claimant's faith would be adequately served by some different religious practice.

The Kentucky Supreme Court's approach demonstrates the danger of disregarding that distinction. Rather than fairly assessing the severity of the restriction on Petitioner's chosen religious exercise, the court concluded that the availability of a smaller grotto rendered the prohibition a mere inconvenience. *Missionaries of St. John the Baptist, Inc.*, 727 S.W.3d at 414. In doing so, it invited the very inquiry into religious meaning and necessity that the First Amendment places beyond the competence of civil courts.

CONCLUSION

This Court should reject the Kentucky Supreme Court's approach and clarify that RLUIPA's substantial-burden inquiry concerns the religious exercise the claimant actually seeks to undertake—not whether a court believes some alternative would be sufficient. Such a rule gives effect to RLUIPA's text, is consistent with *Holt*, and respects the constitutional boundary between civil authority and religious judgment.

Respectfully submitted,

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