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 ALLIANCE DEFENDING FREEDOM IN SUPPORT OF THE PETITIONER

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INTEREST OF AMICI CURIAE[1]

Alliance Defending Freedom is a non-profit, public-interest legal organization providing strategic planning, training, funding, and litigation representation to protect Americans' constitutional and statutory rights. Since 1994, ADF has played a role, either directly or indirectly, in dozens of religious-liberty cases before this Court.

Alliance Defending Freedom regularly represents plaintiffs in religious-liberty cases. *E.g.*, *Grand* v. *City of University Heights*, No. 25-965; *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449 (2017); *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). The outcome of this case and what constitutes a "substantial burden" under RLUIPA will affect many of ADF's current and future clients.

Notably, ADF attorneys represent the petitioner in *Grand* v. *City of University Heights*, No. 25-965, which concerns judicial review of religious-liberty claims arising in a land-use setting. This brief addresses a different question: what constitutes a substantial burden once a covered land-use regulation is applied. ADF offers a text-based rule that separates proof of a government-imposed burden from judicial judgments about the adequacy of substitute religious practices.

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[1] No party or party's counsel authored any part of this brief or made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus or its counsel made such a monetary contribution.

INTRODUCTION AND SUMMARY OF ARGUMENT

RLUIPA prohibits the government from "impos[ing] or implement[ing] a land use regulation in a manner that imposes a *substantial burden* on the religious exercise of a person, including a religious assembly or institution, unless" the government can show that the regulation survives strict scrutiny. 42 U.S.C. § 2000cc(a)(1) (emphasis added).

This Court has yet to squarely explain when a land-use regulation imposes a "substantial burden" on a "religious exercise." But the text of RLUIPA, the statute's history, and this Court's precedents all point the same direction: The government imposes a substantial burden when it places real and material pressure on a religious claimant to forgo or modify religious exercise—whether by prohibiting it, penalizing it, or conditioning it on significant cost, delay, or uncertainty. This requires something more than a trivial imposition. But a burden can be substantial without being insuperable or extreme. The question is how the government action applies to a particular religious exercise, regardless what else a claimant may do to practice their faith.

The Kentucky Supreme Court's decision departs from RLUIPA's text and history. Petitioner seeks to build a religious shrine on its own property. Pet. App. 4a, 22a, 57a. A zoning ordinance prohibited this construction, and the lower court held that prohibition did not constitute a "substantial burden" under RLUIPA. *Id.* at 27a. The court applied a multifactor test and concluded that there was no substantial burden.

In the lower court's view, Missionaries of Saint John the Baptist "could . . . construct a smaller grotto or shrine" on a different piece of property, so the ban on the construction of their preferred shrine amounted to a "mere inconvenience." *Id.* at 25a. The court disregarded the delay suffered by the Missionaries of Saint John—that is, the time that Missionaries of Saint John has gone without its shrine because of the administrative process—because, in the court's view, Petitioner knew that the ordinance did not permit the shrine and thus Missionaries of Saint John "imposed a burden upon itself" by asking. *Id.* at 27a.

But RLUIPA's burden analysis measures the government's pressure on the religious adherent's contemplated religious exercise. While RLUIPA does not render religious institutions immune from zoning requirements, it does evaluate whether those requirements impose a material burden, and (if so) whether the government can justify its chosen restrictions under strict scrutiny. That is the question the court below should have asked.

Because the decision below prevents Missionaries of Saint John's intended religious use of its property, the Court should reverse the court's holding that this was not a substantial burden and remand for the proper statutory analysis.

ARGUMENT

I. A burden is substantial when the government pressures the claimant to forgo or modify religious use of its property.

A restriction is a substantial burden under RLUIPA when government action places real and material pressure on a claimant to forgo or modify a protected religious exercise, whether by prohibiting it, penalizing it, or imposing significant cost, delay, or uncertainty. This follows from RLUIPA's text and history, which establish that "substantial" excludes trivial burdens but does not require that the burden be insuperable or extreme, or that the restriction eliminate the claimant's religious practice altogether.

As precedent confirms, RLUIPA's text also establishes that courts are to measure the burden by the pressure the government applies to the *specific* "exercise at issue," not by that exercise's importance, its necessity under the claimant's faith, or the claimant's ability to practice its religion in other ways. *Holt* v. *Hobbs*, 574 U.S. 352, 361 (2015). The legislative history and court decisions issued post-enactment confirm this reading of the text.

A. RLUIPA's text uses "substantial burden" because pre-RLUIPA cases used that term.

RLUIPA prohibits the government from "impos[ing] or implement[ing] a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless" the government can show that the regulation survives strict scrutiny. 42 U.S.C. § 2000cc(a)(1). "Congress defined 'religious exercise' capaciously to include 'any exercise of religion, whether or not compelled by, or central to, a system of

religious belief.'" *Holt*, 574 U.S. at 358 (quoting 42 U.S.C. § 2000cc–5(7)(A)). Congress did not define religious exercise solely as the worship a religious building facilitates. Instead, it made the "use, building, or conversion of real property" for religious purposes itself a form of protected religious exercise. 42 U.S.C. § 2000cc-5(7)(B). "Congress mandated that this concept '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.'" *Holt*, 574 U.S. at 358 (quoting 42 U.S.C. § 2000cc–3(g)).

The burden on a religious building does not depend on detriment to the worship occurring within its walls. That is because RLUIPA "asks whether the government has substantially burdened [the] religious exercise" sought to be practiced, "not whether the RLUIPA claimant is able to engage in other forms of religious exercise." *Id.* at 361–62. With respect to land use, it is not enough that a religious institution could build *something else* or worship on the property in *other ways*. The question is whether the contemplated religious use, building, or conversion of real property has itself been substantially burdened.

This Court's prior decisions demonstrate what the term "substantial burden" means. See 42 U.S.C. § 2000cc(a)(1), (2)(A), (B), (C). Specifically, Congress looked to *Sherbert* v. *Verner*, 374 U.S. 398 (1963), and *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), to define a substantial burden.

RFRA and RLUIPA directly responded to *Employment Division* v. *Smith*, 494 U.S. 872 (1990). In *Smith*, the Court "largely repudiated" the "method of analysis" for claims of violations of the First Amendment that was "used in . . . cases like *Wisconsin* v.

Yoder, and *Sherbert* v. *Verner*." *Holt*, 574 U.S. at 357 (internal citations omitted). "Congress responded to *Smith* by enacting RFRA," the Religious Freedom Restoration Act. See *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 694 (2014). The enacted text of RFRA states that its purpose was "to restore the compelling interest test as set forth in *Sherbert* v. *Verner*, 374 U.S. 398 (1963) and *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), and to guarantee that test's application in all cases where free exercise of religion is substantially burdened." 42 U.S.C. § 2000bb(b)(1). Congress thus incorporated *Sherbert* and *Yoder*'s understanding of "substantial burden" into RFRA.

In *Sherbert*, this Court addressed a claim brought by a Seventh Day Adventist who was denied unemployment benefits because, in adherence to her religious beliefs, she was unwilling to work on Saturdays. See 374 U.S. at 399–400. The state did not force her to work on a Saturday or threaten her with criminal consequences; it simply withheld otherwise available benefits. This Court concluded that the "indirect result of [this] welfare legislation" was a substantial burden because "the pressure upon her to forego [her religious] practice is unmistakable." *Id.* at 403–04. This Court similarly held in *Yoder* that a law that "substantially interfere[d]" with religious exercise was subject to strict scrutiny. 406 U.S. at 218.

RFRA was not the end of Congress's action to protect religious land use. A few years after Congress passed RFRA, this Court struck it down as applied to the States in *City of Boerne* v. *Flores*, 521 U.S. 507 (1997). There, a Catholic parish sought permission from its city to enlarge a church that had become too small for its growing congregation, but the city denied the request. *Id.* at 512. So the parish sued under RFRA,

seeking to vindicate its religious use of the land. The Court held that RFRA exceeded Congress's Fourteenth Amendment enforcement authority as applied to the States. *Id.* at 532–36. This left the parish stuck in a church building too small for its needs.

Congress responded with RLUIPA. See *Holt*, 574 U.S. at 357–58. Through RLUIPA, Congress sought to restore religious protections as articulated in cases like *Sherbert* and *Yoder*. *Id.* at 357. Those cases establish that an indirect pressure to conform and substantial interference with religious practice are the kinds of burdens that trigger protection—the same burden the *City of Boerne* plaintiff alleged.

Thomas v. *Review Board*, which followed *Sherbert* and *Yoder*, underscores the point. 450 U.S. 707 (1981). *Thomas* held that a burden is "substantial" when government action "put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Id.* at 718; see also *Hobby Lobby*, 573 U.S. at 720 (holding that the claimant faced a substantial burden when forced to choose between their "sincere religious belief" and "substantial economic consequences"). But because RLUIPA protects exercise "whether or not compelled," *Holt*, 574 U.S. at 360, the second half of *Thomas*'s test (a requirement to violate beliefs) drops out. See *Bethel World Outreach Ministries* v. *Montgomery Cnty. Council*, 706 F.3d 548, 555 (4th Cir. 2013) ("[R]equiring a religious organization to prove that a land use regulation pressured it to violate its beliefs would be tantamount to eliminating RLUIPA's substantial burden protection in the land use context.").

B. RLUIPA's legislative history confirms this reading of the text.

Congress understood that protecting religious assembly requires protecting the space in which it occurs, and the legislative history bears this out.

A joint statement of cosponsors Senators Hatch and Kennedy makes clear that Congress intended to restore the test employed by this Court in *Sherbert* and *Yoder*:

> The Act does not include a definition of the term "substantial burden" because it is not the intent of this Act to create a new standard for the definition of "substantial burden" on religious exercise. Instead, that term as used in the Act should be interpreted by reference to Supreme Court jurisprudence. Nothing in this Act, including the requirement in Section 5(g) that its terms be broadly construed, is intended to change that principle. The term "substantial burden" as used in this Act is not intended to be given any broader interpretation than the Supreme Court's articulation of the concept of substantial burden or religious exercise.

146 Cong. Rec. S7774, S7776 (daily ed. July 27, 2000). This statement confirms that when Congress used the term "substantial burden" in RLUIPA, it meant what the Supreme Court said in *Sherbert* and *Yoder*.

The joint statement also confirms the kind of burden that is cognizable under RLUIPA, explaining that houses of worship need physical space "adequate to their needs and consistent with their theological requirements." 146 Cong. Rec. S7774 (daily ed. July 27,

2000). So when governments substantially burden religious institutions' attempts to make their space fit their theological requirements, RLUIPA requires governments to justify their actions. One such burden—indeed the most common type—comes from the prevention of a religious institution's construction project. *Id.* at S7775. The right to build, buy, or rent space is an "indispensable adjunct" of religious assembly. *Id.* at S7774. Religious institutions need not reach the point at which worship is impossible before an obstruction of their religious use becomes substantial.

C. This court's subsequent cases confirm this reading.

Subsequent caselaw confirms the contours of a "substantial burden." For a burden to meet this substantiality standard of real and material pressure, it must be "more than an inconvenience." *Midrash Sephardi, Inc.* v. *Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004). Trivial burdens do not count. Yet the burden need not be "insuperable to be held substantial." *Westchester Day Sch.* v. *Vill. of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007); see *Sts. Constantine & Helen Greek Orthodox Church, Inc.* v. *City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005).

This Court's recent decisions confirm that a substantial burden requires real and material pressure but not insuperable compulsion. In *Hobby Lobby*, this Court held that religious claimants faced a substantial burden when forced to choose between "providing health insurance that covers methods of birth control that . . . may result in the destruction of an embryo"—a practice that would "violate[ ] their religious beliefs"—and taking a course of action which could "entail substantial economic consequences." 573 U.S. at 720. This

Court did not require the claimants to show there was *no* way to maintain their religious beliefs and comply with the regulation—it was enough that the regulation placed substantial pressure on them to depart from their religious beliefs.

More recently, in *Groff* v. *DeJoy*, this Court again confirmed that a substantial burden does not require insuperable compulsion. 600 U.S. 447, 469 (2023). While examining the term "undue hardship" in the context of a Title VII claim, rather than "substantial burden" under RLUIPA, the Court noted that "under any definition, a hardship is more severe than a mere burden." *Id.* So if something could rise to the level of a hardship, then it must also count as a burden. If Congress wanted to impose a higher bar for RLUIPA claims, it could have used the same language as Title VII,[2] and limited claims to hardships. Instead, it sought to address something less severe: burdens. *Groff* similarly confirms that a "substantial" burden is something more than trivial. See *id.* at 464 (establishing that substantial costs are something beyond "those that are 'de minimis,' which is to say, so 'very small or trifling' that they are not even worth noticing" (quoting Black's Law Dictionary 388 (5th ed. 1979))).

Some courts of appeal have required far more onerous tests, but these decisions are not faithful to the statutory text. The Ninth Circuit has held that a "'substantial burden' on 'religious exercise' must impose a *significantly great restriction or onus* upon such exercise." *San Jose Christian Coll.* v. *City of Morgan Hill*,

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[2] *Compare Groff*, 600 U.S. at 458 (noting that the "undue hardship" language was introduced into "Title VII in 1972"), *with Hobby Lobby*, 573 U.S. at 695 (noting that RLUIPA was enacted in 2000).

360 F.3d 1024, 1034 (9th Cir. 2004) (emphasis added). The Seventh Circuit had once held that a "substantial burden" is a "land-use regulation" that "bears direct, primary, and fundamental responsibility for *rendering religious exercise . . . effectively impracticable*." *Civil Liberties for Urb. Believers* v. *City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003) (emphasis added).[3] And the Fourth Circuit has required that a claimant show the land-use regulation "is *absolute*" and the restriction "*wholly prevent[s]* a religious organization from building any house of worship on its property, rather than simply imposing limitations on the building." *Alive Church of the Nazarene, Inc.* v. *Prince William Cnty.*, 59 F.4th 92, 106 (4th Cir. 2023) (emphasis added).

These tests are inconsistent with RLUIPA's language and Congress's instruction that RLUIPA "be construed in favor of a broad protection of religious exercise." 42 U.S.C. § 2000cc-3(g). Moreover, they cannot be reconciled with *Sherbert*, which held that "pressure" on a claimant to "forego" a religious practice is a sufficient burden. 374 U.S. at 404. Nor can these tests be reconciled with *Groff*, which clearly distinguished "hardship" from "burden" and confirmed that burden is the lesser standard. 600 U.S. at 469. Like Title VII, RLUIPA "means what it says." *Id.* at 471. But lower courts' tests for "substantial burden" often require more than *Groff*'s test for "undue hardship."

In sum, a substantial burden requires real and material pressure that forces a religious adherent to forgo

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[3] The Seventh Circuit has since backed away from this onerous requirement, recognizing that this Court's caselaw "articulate[s] a standard much easier to satisfy" than the "effectively impracticable" standard. *Jones* v. *Carter*, 915 F.3d 1147, 1149 (7th Cir. 2019) (citation omitted).

or modify its intended use of property. This definition reflects the text of RLUIPA, its legislative history, and this Court's precedent.

II. The decision below improperly analyzed petitioner's burden.

The decision below departed from the text and history of RLUIPA to hold that Missionaries of Saint John did not suffer a substantial burden because it could engage in *different* religious exercise by constructing a shrine elsewhere on a different property, and that any delay it suffered was its own fault. Neither of these pronouncements can be reconciled with RLUIPA's text and history or the test that this Court should apply to land-use regulations under RLUIPA.

A. Whether a burden is substantial turns on the restriction imposed, not on other options for religious use.

The Supreme Court of Kentucky identified no substantial burden because Missionaries of Saint John could have "construct[ed] a smaller grotto or shrine on" different property than the property on which it sought to build. Pet. App. 25a. But substantial burdens must be defined based on the burden on the exercise, "not whether the RLUIPA claimant is able to engage in other forms of religious exercise." *Holt*, 574 U.S. at 361–62.

The court below was right that *alternatives* are relevant to a RLUIPA claim, but not at the substantial-burden phase of the analysis. Alternatives are relevant to the least-restrictive-means analysis. They serve no purpose in determining whether a claimant has sustained a substantial burden, which is focused

on the "exercise at issue," *id.* at 361, not an alternative exercise.

Holt makes this clear. The claimant's access to a prayer rug, religious correspondence, dietary observance, and holidays did not diminish the burden of prohibiting his half-inch beard (a religious grooming standard). *Id.* at 361–62. Those opportunities were not credits to be balanced against the prohibited exercise.

The same reasoning from the institutionalized person side of RLUIPA applies equally to the religious-land-use side. It makes no difference that the government would allow Missionaries of Saint John to build a smaller grotto or the same grotto in a different location. These alternatives do not erase the burden imposed on the specific religious exercise of building this grotto in this space.

Instead, alternatives belong in the least-restrictive-means prong of strict scrutiny—*after* the substantial burden has been established. *Groff* made the same point under Title VII. 600 U.S. at 473. After the religious adherent established the undue hardship, the government had to consider "other options" for accommodating the claimant. *Id.* The Kentucky Supreme Court got this backward here by requiring Petitioner to show that it could not build a smaller grotto. At the strict-scrutiny phase, the government bears the burden to show that requiring a smaller grotto was the least restrictive means of accomplishing its compelling interest. 42 U.S.C. §§ 2000cc(a)(1)(B), 2000cc-2(b).

Respondents would distinguish alternative *forms* of exercise from alternative *means* of the same exercise. Br. in Opp. 25–26. But RLUIPA does not protect only generic categories such as worship, education, or shrine construction. It protects the religious use of

property that the claimant seeks. 42 U.S.C. § 2000cc-5(7)(B). Describing a smaller shrine elsewhere as the "same" exercise assumes away the particular use Congress expressly brought within the statute's protection.

The consideration of alternatives also invites courts to decide how much religious exercise is the right amount. But courts should not referee theological choices. *Thomas* refused to decide whether a claimant drew a reasonable religious distinction between producing steel for weapons and producing weapons themselves. 450 U.S. at 715–16. And this Court made this exact point just last year in *Catholic Charities Bureau, Inc.* v. *Wisconsin Labor and Industry Review Commission*, forbidding line-drawing based on "inherently religious choices" and "fundamentally theological choices." 605 U.S. 238, 250, 252 (2025).

Hobby Lobby likewise rejected judicial reassessment of the claimants' understanding of religious responsibility for offering abortifacient contraceptives in its health plan. 573 U.S. at 724–25.

Respondents' reading of *Holt* invites judges to engage in impermissible theological assessments. Respondents argue that courts should assess "whether the claimant could engage in the same exercise without 'running afoul' of the regulation." Br. in Opp. at 25. Respondents would thus invite courts to judge whether a religious exercise is essentially the same as an alternative exercise. *Id.* at 25–26.

But courts are ill-equipped to judge the relative merits of religious alternatives. Take an example apt for this case. As Petitioner explained in its petition, "the shrine must be erected adjacent to the church because when the Virgin [Mary] reportedly appeared in a

grotto in Lourdes, France, in 1858, she requested that Saint Bernadette 'tell the Priests that a chapel must be built' next to the grotto." Pet. at 5.

Under Respondents' theory, government officials could have told St. Bernadette that the priests were not permitted to build the "chapel" near the grotto where she saw the Marian apparition because building it elsewhere in Lourdes would be only a "mere inconvenience." Pet. App. 25a. But for St. Bernadette, her commanded religious exercise had a close connection to the place of the religious exercise. Courts should not judge whether the command the Virgin Mary gave would have been satisfied if the chapel were built elsewhere. The interpretation of Mary's instruction is for the faithful, not the Senate-confirmed.

The courts of appeals that have gone the other way have reached problematic results. In *Living Water Church of God* v. *Charter Township of Meridian*, the Sixth Circuit held that a zoning restriction that limited a church to a building that was approximately 11,000 square feet smaller than its planned building was a "mere inconvenience." 258 F. App'x 729, 738–39 (6th Cir. 2007). This despite testimony from the pastor that a building subjected to the "square-foot limitation of the zoning ordinance is simply not enough space to accommodate a gymnasium and classrooms, let alone showering facilities, changing rooms, and offices." *Id.* at 738.

The Second Circuit similarly looked to alternatives that, in the *court's view*, should satisfy the religious claimant. *Westchester Day Sch.*, 504 F.3d at 352. The court considered one substantial-burden factor to be "whether there are quick, reliable, and financially feasible alternatives [the religious adherent] may utilize

to meet its religious needs absent" a land-use accommodation. *Id.*

Too many circuits have announced similar rules. See*, e.g.*, *Edgewood High Sch. of the Sacred Heart, Inc.* v. *City of Madison*, 95 F.4th 1080, 1088–89 (7th Cir. 2024) (hosting athletic competitions during the day was an available alternative exercise); *Marianist Province of United States* v. *City of Kirkwood*, 944 F.3d 996, 1001 (8th Cir. 2019) (similar); *Midrash Sephardi, Inc.*, 366 F.3d at 1228 (no substantial burden where congregants were required to walk several extra blocks to an alternative synagogue site).

By contrast, the Third Circuit has rejected the alternative-locations rationale. See *Anash, Inc.* v. *Borough of Kingston*, 184 F.4th 214, 243 (3d Cir. 2026). It recognized that "the feasible-alternative-locations rationale cannot stand in light of RLUIPA." *Id.*

In sum, there is no basis in RLUIPA's text or history for rejecting a substantial burden simply because the religious claimant could have practiced their religion in a different way. RLUIPA asks whether the government has imposed a substantial burden on "the religious exercise at issue." *Holt*, 574 U.S. at 361. That is the test this Court should apply.

B. A government-imposed delay can constitute a burden.

The decision below also rejected Petitioner's argument that it would "suffer substantial delay, uncertainty, and expense" because Petitioner "imposed [that] burden upon itself." Pet. App. 25a–27a. Other courts have similarly held that a burden is self-imposed when a religious adherent could have avoided the restriction through other means. See, *e.g.*, *Eagle Cove Camp & Conf. Ctr., Inc.* v. *Town of Woodboro*, 734

F.3d 673, 681 (7th Cir. 2013) ("It is not the land use regulations that create a substantial burden, but rather Eagle Cove's insistence that the expansive, year-round Bible camp be placed on the subject property."). This approach also departs from RLUIPA's text, which asks whether the *government* "impose[s] or implement[s]" a regulation that amounts to "a substantial burden." 42 U.S.C. §§ 2000cc(a)(1).

Because the substantial-burden question turns on government action, the religious adherent does "not need to disprove the feasibility of alternative locations for the exercise of their religion in order to show that their exercise of religion was substantially burdened." *Anash, Inc.*, 184 F.4th at 245. This approach keeps the focus on the text—and the burden analysis on the government—and prevents courts from making theological judgments.

It also prevents courts from blaming RLUIPA claimants for seeking religious accommodations to avoid zoning-based prohibitions on particular land uses. *E.g.*, *Vision Church* v. *Vill. of Long Grove*, 468 F.3d 975, 998 (7th Cir. 2006). In *Vision Church*, the Seventh Circuit held that the church caused its own denial of a construction application because it refused "to abide by the size restrictions imposed by the Assembly Ordinance." *Id.* This was the same move made by the Kentucky Supreme Court below. This formulation of self-imposed burdens subverts Congress's intent. Congress expected religious institutions to keep "applying for variances." 146 Cong. Rec. S7776. In fact, Congress expressly allowed the government to eliminate a burden through exemptions, policy changes, or other means. 42 U.S.C. § 2000cc-3(e).

The RLUIPA co-sponsors' joint statement addresses a claimant's responsibility to show that a specific written accommodation is unreasonable or ineffective. 146 Cong. Rec. S7776. That inquiry asks whether the restriction still materially interferes with the claimed exercise; it does not authorize courts to declare different exercises to be good enough. The view that requests for variances result in self-imposed burdens cannot be squared with RLUIPA's text or history.

The alternatives inquiry belongs in the second part of the RLUIPA analysis. Once a substantial burden is established, the government must demonstrate that imposing it furthers a compelling interest through the least restrictive means. 42 U.S.C. § 2000cc(a)(1); see *Anash, Inc.*, 184 F.4th at 244–45. Considerations like whether different conditions, an exemption, or another regulatory approach would accomplish the government's objectives are relevant to that strict-scrutiny inquiry. RLUIPA does not categorically prohibit the government from imposing restrictions that burden religious exercise—it requires that any such substantial burdens be appropriately justified.

III. RLUIPA does not eliminate zoning—it requires appropriately justified zoning of religious institutions.

Enforcing RLUIPA's text and history does not mean total immunity from zoning restrictions. RLUIPA contains other limiting features, including separate limits on coverage, an express burden of proof, and a demanding but available safe-harbor defense. Congress also gave regulators several ways to eliminate a burden without abandoning land-use systems. Those provisions answer the concern that a faithful reading of "substantial burden" will leave local governments powerless. Courts should enforce each limitation

where Congress placed it, rather than shoehorn all concerns into the substantial-burden inquiry.

RLUIPA contains four other limitations on land use that keep a textual understanding of substantial-burden from getting out of hand. *First*, Congress did not subject every restriction on religious activity to RLUIPA's land-use substantial-burden rule. Section 2000cc(a)(2), entitled "Scope of application," makes that rule applicable only when one of three predicates is satisfied: the burden is imposed in a program or activity receiving federal financial assistance; the burden, or its removal, affects specified areas of commerce; or the burden arises under a land-use regulatory system permitting individualized assessments of proposed property uses. 42 U.S.C. § 2000cc(a)(2)(A)–(C). A claimant must demonstrate that at least one predicate applies. *Chabad Lubavitch of Litchfield Cnty., Inc.* v. *Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 192 (2d Cir. 2014). Identifying a substantial burden does not, by itself, bring a dispute within the provision's reach.

The first two predicates require the specified connection to federal assistance or commerce, even when the challenged rule is generally applicable. 42 U.S.C. § 2000cc(a)(2)(A)–(B). Congress separately addressed the commerce predicate by permitting the government to defeat coverage where it demonstrates that similar burdens, or their removal, would not have a substantial aggregate effect on the specified commerce throughout the Nation. *Id.* § 2000cc-2(g). These are express limits on the statute's application.

The third predicate addresses a different concern: governmental discretion over particular uses. It reflects this Court's rule that, "where the State has in

place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason." *Emp. Div.* v. *Smith*, 494 U.S. 872, 884 (1990); *Fulton* v. *City of Philadelphia*, 593 U.S. 522, 533, 537 (2021).

Fulton explains that the availability of discretionary exceptions matters even if officials have never granted one. *Id.* at 537. A government that reserves authority to make exceptions cannot insulate its refusal to accommodate religion simply by declining to exercise that authority. This predicate reaches a government that makes individualized assessments or has "formal or informal procedures or practices that permit" them. 42 U.S.C. § 2000cc(a)(2)(C). Thus, the statutory inquiry includes the discretion a regulatory system makes available, not only the assessments officials have already made. That language identifies the regulatory setting in which Congress required heightened justification. It does not eliminate the separate requirement to establish a substantial burden. Nor does a substantial burden eliminate the need to establish coverage. Both requirements must be met to bring a successful RLUIPA claim.

Second, Congress limited RLUIPA claims by assigning the claimant the "burden of persuasion" on whether the challenged law or governmental practice substantially burdens religious exercise. *Id.* § 2000cc-2(b). A religious institution's description of its intended use will never conclusively determine that the government has substantially burdened it. The claimant must establish how the challenged action affects the desired use. Evidence must connect the restriction to real and material pressure to forgo or modify the religious exercise. This burden gives courts an evidentiary determination to make, not a theological one.

Third, even after a substantial burden is shown, the government can still prevail by satisfying strict scrutiny. 42 U.S.C. § 2000cc(a)(1)(A)–(B). A claimant's substantial burden establishes only the need for governmental justification, it does not defeat that justification on its own. Strict scrutiny preserves real governmental interests like traffic and safety, but it forces the government to justify its interests as it relates to the specific substantial burden placed on the religious exercise at issue. *See Holt*, 574 U.S. at 362–63.

If courts instead move aspects of the least-restrictive-means analysis into the substantial-burden inquiry, they relieve the government of its statutory obligation to justify the prohibition. That approach replaces a defense the government must prove with a restriction on protection that Congress did not enact.

Fourth, Congress also provided a practical alternative to defending a burdensome restriction. A government may avoid the statute's preemptive force by changing the offending policy or practice, retaining it while exempting the substantially burdened exercise, or using "any other means that eliminates the substantial burden." 42 U.S.C. § 2000cc-3(e). Regulators therefore retain flexibility over how to comply. RLUIPA does not invariably require rewriting an ordinance or exempting every religious institution from it. A tailored accommodation that eliminates the burden may suffice.

The joint statement of Senators Hatch and Kennedy describes precisely this design. The rule "does not exempt religious uses from land use regulation; rather, it requires regulators to more fully justify substantial burdens on religious exercise." 146 Cong. Rec. S7775.

Raising the substantial-burden threshold to avoid requiring justification would defeat, rather than implement, that legislative choice.

Congress did not create zoning immunity for religious institutions. But it also meant what it said when it used the words "substantial burden." This Court should not expand that phrase out of fear that too many accommodations will be made for religious adherents; after all, an accommodation from a substantial burden on religious exercise is exactly the outcome that Congress desired. Cf. *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015) (an employer may maintain "a no-headwear policy as an ordinary matter," but "Title VII requires otherwise-neutral policies to give way to the need for an accommodation").

IV. Preventing the proposed grotto substantially burdens Petitioner's religious land use.

Applying the correct definition of "substantial burden," this becomes a straightforward case.

Missionaries of Saint John seeks to engage in religious exercise by building a religious grotto on the adjoining parcel it acquired for that purpose. The court below held that prohibiting the project did not substantially burden religious exercise because Missionaries of Saint John had not disproved that a smaller grotto on its existing church parcel could satisfy the need and any delay and cost was self-imposed. Pet. App. 25a, 27a. Those considerations obscure the decisive fact: the challenged regulation placed real and material pressure on Petitioners to forgo or modify its intended religious exercise. This amounts to a substantial burden.

The pressure placed on Petitioners is real and material because the ordinance does not require only a minor application requirement or an inconsequential design change—the regulation foreclosed the intended exercise entirely. The court vacated the conditional use permit and variances authorizing the project, so Missionaries of Saint John has no path forward for engaging in its intended exercise. Pet. App. 30a.

The Kentucky Supreme Court's proposed alternatives do not change this conclusion because they contemplate a different religious exercise than the one Petitioner desired. And courts should not weigh in on the materiality of the proposed modifications that would result in a smaller grotto in a different location.

Nor does Missionaries of Saint John's application for relief through the prescribed process affect the substantial-burden analysis. Awareness of a restriction cannot turn enforcement into a self-imposed burden. Otherwise, no religious institution could receive *any* relief from zoning restrictions under RLUIPA except through the risky process of violating the ordinance. The result below leaves the protected exercise forbidden while treating the institution's ability to surrender it as the answer to its claim.

The Court should hold that preventing Petitioner's intended religious construction constitutes a substantial burden because it amounts to real and material pressure to forgo or modify intended religious exercise. Accordingly, the Court should remand for strict scrutiny, and any remaining preserved issues, after making clear that a court cannot deny a substantial burden by prescribing a different religious project.

CONCLUSION

The Court should reverse and remand for the lower court to apply strict scrutiny and further proceedings on any remaining issues properly preserved below.

Respectfully submitted,

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