No. 25-1131

IN THE

# Supreme Court of the United States

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

*v.*

JOEL FREDERIC AND ELIZABETH FREDERIC,
*Respondents.*

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF KENTUCKY

## BRIEF FOR ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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## INTEREST OF AMICUS CURIAE

The Association of Christian Schools International (ACSI) is a nonprofit, non-denominational religious association that provides support services to 25,000 Christian schools in 108 countries. ACSI and its members seek to advance the common good by providing quality education and spiritual formation to students all over the world. For over forty years, ACSI has lived out its mission "[t]o strengthen Christian schools and equip Christian educators worldwide as they prepare students academically and inspire them to become devoted followers of Jesus Christ." ACSI, *About ACSI* (visited Nov. 23, 2026), https://www.acsi.org/about. ACSI's religious calling aims to cultivate—in every student—a vibrant Christian faith that embraces every aspect of life. Accordingly, ACSI has an interest in protecting the right of religious institutions to freely exercise their religion, including by using real property to build or maintain schools, shrines, or houses of worship. Indeed, because religious schools must seek zoning approval to build, expand, or relocate facilities, ACSI's members are among the institutions that will be most affected by this case.[1]

## INTRODUCTION AND SUMMARY OF ARGUMENT

The decision below shows just how far many lower courts have strayed from the plain text and purpose of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), to the detriment of the very religious communities Congress enacted the statute to

[1] No counsel for a party authored this brief in whole or in part, and no entity or person, other than amicus curiae, its members, and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

protect. Before RLUIPA, municipalities enforced land-use regulations that discriminated against religious assemblies and institutions and favored their nonreligious counterparts. Congress passed RLUIPA to end that discrimination and to reach the substantial burdens that neutral-sounding zoning rules impose on religious land use.

At its core, this case is straightforward. Under RLUIPA, when land-use regulations prevent a religious institution from building a structure designed for a religious purpose, the government has imposed a substantial burden that must be justified under strict scrutiny. This case presents precisely such a substantial burden. After the zoning board approved petitioner's proposed grotto, the Kentucky courts held that the zoning ordinance nevertheless barred petitioner from building that sacred space. Yet no court ever required the government to justify that prohibition under strict scrutiny. The Kentucky Supreme Court instead held that petitioner was not substantially burdened at the threshold because petitioner (1) had a "feasible alternative," such as building a smaller grotto on its church lot, and (2) knew that the zoning ordinance did not permit the grotto. Pet. App. 24a-27a.

RLUIPA's text forecloses both inquiries. RLUIPA's substantial-burden inquiry asks how the government burdened the claimant's religious exercise, not whether the claimant could do something else. An outright prohibition is the paradigmatic substantial burden. Neither alternatives nor foreknowledge can negate that burden. A materially smaller structure in a different location is not a lighter burden on the religious use—it is a different religious exercise. Indeed, RLUIPA makes alternatives a hurdle not for the claimant but for

the government, which must prove that it has used the least restrictive means to advance its interest. Nor does a claimant's knowledge of a zoning rule make the resulting burden "self-imposed." Pet. App. 24a. RLUIPA's provisions contemplate claimants that will often know the governing rules before they seek permission. And individualized-assessment regimes like the one petitioner invoked work by inviting applicants to ask the government to relax rules they already know.

These atextual requirements would invite the very pretext and discriminatory zoning that Congress enacted RLUIPA to curtail. Municipalities (or courts) can almost always articulate "ready alternatives" to a claimant's proposed use, Pet. App. 23a, so long as they discount the religious tenets underlying the claimant's choice. And if only worshipers without foreknowledge of restrictive land-use regulations can trigger strict scrutiny, municipalities will have every incentive to put restrictive rules on the books before religious users arrive. Indeed, under the decision below, almost no religious school—including ACSI's members—could establish that an adverse zoning decision is a substantial burden, as some smaller or different option is nearly always available and religious schools will generally know the rules that govern their proposed building projects.

The Court should therefore repudiate the atextual factors the Kentucky Supreme Court applied. Left unchecked, they would hand municipalities yet another means of evading RLUIPA and continue lower courts' troubling tendency to abandon the statute's text and purpose. RLUIPA's plain text requires strict scrutiny whenever a religious assembly or institution is substantially burdened in its use of land. It does not allow governments to make essentially religious determinations

about what counts as a "feasible alternative" land use. Nor does it allow courts to rescue a land-use regulation because worshipers knew in advance that their faith-led use was restricted. Unless this Court vacates the decision below and restores a proper textual analysis of RLUIPA's substantial-burden provision, discriminatory treatment of religious land uses will persist and Congress's purpose in enacting RLUIPA will continue to be frustrated.

## ARGUMENT

### I. RLUIPA'S SUBSTANTIAL BURDEN INQUIRY FOCUSES ON WHAT THE GOVERNMENT DID, NOT WHAT THE CLAIMANT KNEW OR COULD HAVE DONE INSTEAD

RLUIPA's substantial-burden provision poses a single threshold question: Has the government substantially burdened the claimant's religious exercise? If so, then the government must satisfy strict scrutiny, where it—not the claimant—bears the burden of persuasion. That question looks to what the government did, not to what the claimant knew or could have done instead. The Kentucky Supreme Court nonetheless asked whether petitioner had alternative means of exercising its religion and whether petitioner's foreknowledge of the zoning ordinance meant that it "imposed a burden upon itself." *See* Pet. App. 24a-27a. Neither inquiry has a basis in RLUIPA's text.

#### A. Under RLUIPA's Plain Text, An Outright Prohibition Is A Paradigmatic Substantial Burden

Congress intended RLUIPA's substantial-burden provision to be interpreted expansively. That provision states that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person,

including a religious assembly or institution, unless the government" satisfies strict scrutiny. 42 U.S.C. § 2000cc(a)(1). Congress defined the protected religious exercise "capaciously." *Holt* v. *Hobbs*, 574 U.S. 352, 358 (2015). "The term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief," and "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." 42 U.S.C. § 2000cc-5(7).

The breadth of RLUIPA does not stop at the definition of "religious exercise"—the statute's *protection* of religious exercise is similarly broad. Congress made clear that RLUIPA "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the statute] and the Constitution." 42 U.S.C. § 2000cc-3(g). Indeed, as this Court has held, "[s]everal provisions of RLUIPA underscore its expansive protection for religious liberty." *Holt*, 574 U.S. at 358.

Under RLUIPA and its sister statute, the Religious Freedom Restoration Act (RFRA), the substantial-burden inquiry "focuses only on the coercive impact of the government's actions." *Yellowbear* v. *Lampert*, 741 F.3d 48, 55 (10th Cir. 2014) (Gorsuch, J.). Courts must take "religious claimants as we find them, assessing the coercive impact [of] the government's actions on the individual claimant's ability to engage in a religious exercise, as he understands that exercise and the terms of his faith." *Id.* Thus, for instance, in *Burwell*, a regulation that required the plaintiffs to act against their beliefs or "pay a very heavy price" was a substantial burden. *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 691 (2014). In

*Holt*, a prison policy forbidding a ½-inch beard was a substantial burden because it put the prisoner to the choice between violating his beliefs and facing "serious disciplinary action." 574 U.S. at 361.

If government pressure to abandon a religious practice is a substantial burden, an outright prohibition of the practice necessarily is one. As then-Judge Gorsuch explained, a policy that "flatly prohibit[s the claimant] from participating in an activity motivated by a sincerely held religious belief" qualifies as a substantial burden without any need to "inquire into the degree of the government's coercive influence." *Yellowbear*, 741 F.3d at 56. Here, as construed by the Kentucky courts, the Park Hills ordinance forbids petitioner from building its grotto on the lot it selected for that religious purpose. *See* Pet. App. 14a-15a, 22a, 27a. The burden is not a fee, a delay, or a condition; it is a prohibition on the very "building … of real property for the purpose of religious exercise" that Congress declared to be protected. 42 U.S.C. § 2000cc-5(7)(B). Whether such a prohibition is imposed through a permit denial or, as here, through a judicial ruling that the permit could not lawfully be issued, the government has prevented the claimant's chosen religious exercise. That is the paradigmatic substantial burden.

Recognizing as much does not mean that RLUIPA created an "automatic exemption" from land-use regulations whenever a regulation bars a religious use, as some courts have feared. *See Livingston Christian Schs.* v. *Genoa Charter Twp.*, 858 F.3d 996, 1003-1004 (6th Cir. 2017) (quoting *Andon, LLC* v. *City of Newport News*, 813 F.3d 510, 516 (4th Cir. 2016)). Finding a substantial burden is not a verdict—the government may still prevail under strict scrutiny. *See* 42 U.S.C. § 2000cc(a)(1).

Strict scrutiny, not the substantial-burden threshold, is where courts weigh the government's reasons and the availability of other options.

### B. Neither Alternatives Nor Foreknowledge Can Negate A Substantial Burden

Congress enacted RLUIPA to close the trapdoors that previously allowed municipalities to discriminate against religious exercise by using their highly discretionary land-use authority. *See* Part II, *infra*. The decision below resolved this case based on two factors that would spring those trapdoors back open. Specifically, the Kentucky Supreme Court deemed the burden of not being able to build the proposed grotto "a mere inconvenience" because petitioner could build a smaller shrine on its existing church lot, Pet. App. 25a, and it deemed the burden self-imposed because petitioner knew that the ordinance did not permit the grotto. Pet. App. 27a. Both factors shift the focus from the government's action to the claimant's choices and knowledge. The first asks whether a different, smaller exercise would do; the second asks what the claimant knew before it sought permission. RLUIPA's substantial burden inquiry asks neither question.

#### 1. "Alternatives" Are The Government's Hurdle Under Strict Scrutiny

RLUIPA does not make the government the arbiter of how faith could or should be alternatively exercised. Instead, it provides that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person" unless the "imposition of the burden … is the least restrictive means of furthering [a] compelling governmental interest." 42 U.S.C. § 2000cc(a)(1)(B). That structure would be fatally undermined by a requirement

that, at the threshold, claimants show that they cannot avail themselves of (government-approved) "ready" or "'feasible alternative[s]'" to a specific religious exercise. Pet. App. 23a-24a. Indeed, that gets things backward: Once a plaintiff has made out its initial case under RLUIPA, it is the *government's* burden to identify alternatives. *Ramirez* v. *Collier*, 595 U.S. 411, 432 (2022).

Courts that apply an "alternatives" factor typically ask one of two questions: whether the claimant could use an alternative site, *see Livingston*, 858 F.3d at 1008-1009, or whether the claimant could make do with a scaled-down version nearby (e.g., a smaller grotto on the existing church lot, Pet. App. 25a). RLUIPA does not invite either consideration when determining whether a claimant's religious exercise has been substantially burdened.

Start with alternative sites. Congress did make the availability of alternative sites relevant, but in a different provision of RLUIPA. Subsection (b)(3) bars land-use regulations that "totally exclude[] religious assemblies from a jurisdiction" or "unreasonably limit[] religious assemblies, institutions, or structures within a jurisdiction." 42 U.S.C. § 2000cc(b)(3). That provision asks whether religious users have adequate sites across the jurisdiction as a whole. Subsection (a) asks a different question: whether the government has substantially burdened this claimant's "proposed use[]" of "the property involved." *Id.* §§ 2000cc(a)(2)(C), 2000cc-5(7)(B); *see* Pet. Br. 23-24. Requiring a substantial-burden claimant to show that it has nowhere else to go would turn subsection (a) into a second version of the jurisdiction-wide inquiry Congress assigned to subsection (b)(3).

As for scaled-down alternatives, Congress protected religious exercise "whether or not compelled by, or

central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). A court that asks whether a smaller grotto would serve petitioner's religious purpose must also decide how much of the proposed structure is religiously necessary. That is exactly the centrality judgment the statute forbids. Petitioner's exercise is building the grotto it designed, on the parcel it acquired for that purpose. A materially smaller grotto, moved from the hillside to a roadside lawn, is a different exercise, not a lighter burden on the same one.

To be sure, alternatives are still relevant. But RLUIPA considers them at a different stage and assigns them to a different party. Alternatives are the *government's* responsibility, not the claimant's. Once a substantial burden is shown, the government must prove that its chosen course "is the least restrictive means of furthering [its] compelling governmental interest." 42 U.S.C. § 2000cc(a)(1)(B). The statute also gives the government ways to avoid RLUIPA liability altogether. Specifically, a government may avoid RLUIPA's preemptive force "by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden." *Id.* § 2000cc-3(e). Congress thus focused on what the government could do differently, not what the claimant could do without.

The decision below inverted that structure. The Kentucky Supreme Court faulted petitioner for never asserting that it "could not construct a smaller grotto or shrine" on its existing church lot and deemed the

prohibition "a mere inconvenience." Pet. App. 25a. Respondents defend that holding on the theory that *Holt* rejected consideration only of "'*other forms* of religious exercise,'" not "alternative means of observing the same form," and that petitioner's claimed burden "concerns only its preferred scale." Cert. Opp. 25-26 (quoting 574 U.S. at 362). But the line between a different "form" of exercise and a different "means" of the same exercise cannot be drawn without deciding what the claimant's faith requires—and "[c]ourts are not arbiters of scriptural interpretation." *Thomas* v. *Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981); *see* Pet. Br. 38-40.

RLUIPA avoids that problem by defining the exercise as the claimant's proposed use of the property. A government that could defeat a claim at the threshold by pointing to a smaller or relocated version of the claimant's project could defeat nearly any claim—and could do so without ever justifying its decision. If governments had the power to decide whether there existed a hypothetical alternative to the desired land use that would be "feasible" under the claimant's religious tenets, Pet. App. 24a, then municipalities and courts would have the same power to discreetly—yet effectively—discriminate against worshipers as they had before RLUIPA. *See United States* v. *Tohono O'odham Nation*, 563 U.S. 307, 315 (2011) ("Courts should not render statutes nugatory through construction.").

**2. Knowing The Rules Does Not Make A Burden "Self-Imposed"**

The lower court also held there was no substantial burden because petitioner "had every reason to know, and in fact explicitly acknowledged, that building the grotto was not permitted by the ordinance." Pet. App.

27a. In the court's view, petitioner had therefore "imposed a burden upon itself." *Id.* Petitioner disputes that premise on this record. Pet. Br. 44-45. But even accepting the premise, the lower court's analysis fails because RLUIPA's text contemplates that many claimants will know the rules burdening them. Indeed, if the government could escape strict scrutiny simply by passing (or publishing) a zoning ordinance, RLUIPA would be completely toothless.

RLUIPA's breadth means that the statute covers many scenarios like petitioner's. Section 2000cc(a)(1) requires strict scrutiny if a government "impose[s] or implement[s] a land use regulation in a manner that imposes a substantial burden on" a person's religious exercise. The term "implement" describes the application of a regulation already on the books. *See, e.g.*, *New Oxford American Dictionary* 848 (2d ed. 2005) ("put (a decision, plan, agreement, etc.) into effect"); *American Heritage College Dictionary* 696 (4th ed. 2004) ("To put into practical effect; carry out"); *Merriam-Webster's Collegiate Dictionary* 624 (11th ed. 2006) ("carry out, accomplish; esp: to give practical effect to and ensure of actual fulfillment by concrete measures"); *see also City & Cnty. of S.F.* v. *EPA*, 604 U.S. 334, 347 (2025) (quoting Merriam-Webster's definition). Moreover, the statute defines "land use regulation" to include "the application of" a zoning law to a claimant that holds a property interest (or merely "a contract or option to acquire such an interest") in the regulated land—an application that necessarily requires a pre-existing regulation. 42 U.S.C. § 2000cc-5(5). And "religious exercise" includes the use of property by "the person or entity that uses or *intends to use* the property for that purpose." *Id.* § 2000cc-5(7)(B) (emphasis added). RLUIPA thus covers claimants that hold only an option to buy land, or that intend

to use land for a project they have not yet begun. Those claimants are, by definition, at the planning stage, which is precisely when a careful religious organization would often consult the rules that govern its project. If that due diligence made the resulting burden "self-imposed," Pet. App. 24a, it is difficult to identify anyone these provisions would protect.

RLUIPA's treatment of individualized assessments makes the same point. The statute applies whenever a burden is imposed through a system that permits "individualized assessments of the proposed uses for the property involved" (e.g., conditional-use permits, variances, and the like). 42 U.S.C. § 2000cc(a)(2)(C). Those regimes work by inviting applications for permission that the baseline rules would otherwise withhold, so every applicant knows the rule it is asking the government to relax. Indeed, applying for permission to build a structure otherwise prohibited by baseline rules is exactly what petitioner did, and exactly what the system contemplates. Pet. App. 4a, 8a-10a. Congress could not have extended strict scrutiny to individualized-assessment regimes while denying protection to every claimant that invokes them with knowledge of the applicable rule.

This Court's precedent confirms what the text requires. In *Hobbie*, the State argued that an employee who became a Sabbatarian after she was hired was the "'agent of change' and [was] therefore responsible for the consequences of the conflict between her job and her religious beliefs." 480 U.S. at 143. This Court disagreed, holding that "[t]he timing of Hobbie's conversion is immaterial to our determination that her free exercise rights have been burdened; the salient inquiry under the Free Exercise Clause is the burden involved." *Id.* at 144.

RLUIPA's sponsors explained that "substantial burden" should be "interpreted by reference to Supreme Court jurisprudence," 146 Cong. Rec. 16,698, 16,700 (2000) (joint statement of Sens. Orrin Hatch and Ted Kennedy), and that jurisprudence weighs the burden, not the claimant's role in bringing about the conflict.

The decision below disregarded all of this. Respondents recast the factor as one about acquisition: The question, they say, is "whether the organization had reason to know about the regulation when it acquired the land." Cert. Opp. 24. Neither the Kentucky Supreme Court's approach nor respondents' approach can be squared with a statute that protects claimants holding only an option to acquire land, and property they merely "intend[] to use" for religious purposes. 42 U.S.C. § 2000cc-5(5), (7)(B). A religious organization that acquires land for a planned religious use, applies for the permission the zoning code requires, and is refused has not burdened itself; the government that refuses permission has.

An atextual foreknowledge requirement would also invite the very evasion Congress sought to foreclose. Any municipality could put a highly discretionary regulation on the books and then blame the religious land user for imposing the burden on itself when it applies for the permission the regulation requires—or, as RLUIPA expressly contemplates, when it asks for an exception. *See* 42 U.S.C. § 2000cc-3(e). And such a rule would reward willful ignorance, favoring claimants that never read the zoning code over those that seek permission in good faith. *See* Pet. Br. 44.

In sum, neither factor imposed by the Kentucky Supreme Court comports with the text of RLUIPA. RLUIPA defines the protected exercise as the claimant's chosen use of the property, assigns the search for

alternatives to the government, and contemplates that many claimants will know the land-use rules they ask the government to relax. And because basically every religious land user has *some* alternative and is *aware* of the rules that govern its property, factors that turn on those considerations would write the substantial-burden provision out of the statute.

## II. CONGRESS DESIGNED RLUIPA TO PUT DISCRETIONARY LAND-USE DECISIONS TO STRICT SCRUTINY

The threshold factors applied below are not only foreign to RLUIPA's text—they also disable the statute in the setting Congress most wanted it to reach. Congress enacted RLUIPA's land-use provisions after building a record showing that discretionary, individualized zoning decisions are uniquely susceptible to pretext. Its response was to set a modest threshold—a substantial burden on religious exercise—and to require the government, once that threshold is met, to justify its decision under strict scrutiny. Factors that let courts dismiss claims at the threshold based on the claimant's possible alternatives or prior knowledge insulate from review the same discretionary land-use decisions that Congress enacted RLUIPA to end.

### A. Congress Found That Discretionary Zoning Invites Pretext

After this Court held in *City of Boerne* v. *Flores*, 521 U.S. 507, 536 (1997), that RFRA did not apply to state and local governments, Congress built a careful record of the problems RLUIPA was ultimately designed to remedy. Congress held numerous hearings[2] on religious

[2] *See, e.g., Issues Relating to Religious Liberty Protection, and Focusing on the Constitutionality of a Religious Protection Measure: Hearing Before the S. Comm. on the Judiciary*, 106th Cong.

discrimination prior to drafting RLUIPA, which revealed that "land use regulations, either by design or neutral application, often prevent religious assemblies and institutions from obtaining access to a place of worship." 146 Cong. Rec. 14,273, 14,283 (2000) (statement of Sen. Orrin Hatch). Examples from the legislative record include:

- "[Z]oning authorities have used their power to restrict churches' times of operation and the number of persons who may attend worship services, and zoning policies have effectively excluded minority faiths from certain jurisdictions and shut down the community ministries of houses of worship." H.R. Rep. No. 106-1048, at 272 (2001).
- There was "massive evidence that" religious institutions and assemblies were "frequently discriminated against on the face of zoning codes and also in the highly

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(1999); *Religious Liberty Protection Act of 1999: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 106th Cong., 1st Sess., H.R. Rep. No. 106-219 (1999); *Religious Liberty Protection Act of 1998: Hearing Before the S. Comm. on the Judiciary*, 105th Cong., 2d Sess. (1998); *Religious Liberty Protection Act of 1998: Hearings Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong., 2d Sess. (1998); *Protecting Religious Freedom After Boerne* v. *Flores (Part III): Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong., 2d Sess. (1998); *Protecting Religious Freedom After Boerne* v. *Flores (Part II): Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong., 2d Sess. (1998); *Protecting Religious Freedom After Boerne* v. *Flores: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong., 1st Sess. (1997).

> individualized and discretionary processes of land use regulation. Zoning codes frequently exclude churches in places where they permit theaters, meeting halls, and other places where large groups of people assemble for secular purposes. Or the codes permit churches only with individualized permission from the zoning board, and zoning boards use that authority in discriminatory ways." 146 Cong. Rec. at 16,698.
>
> - "Sometimes, zoning board members or neighborhood residents explicitly offer race or religion as the reason to exclude a proposed church, especially in cases of black churches and Jewish shuls and synagogues." *Id.*
> - "Churches have been excluded from residential zones because they generate too much traffic, and from commercial zones because they don't generate enough traffic. Churches have been denied the right to meet in rented storefronts, in abandoned schools, in converted funeral homes, theaters, and skating rinks—in all sorts of buildings that were permitted when they generated traffic for secular purposes." *Id.*

Congress also recognized that such discrimination is rarely candid. Municipalities concealed their objections to religious organizations "behind such vague and universally applicable reasons as traffic, aesthetics, or [in]consisten[cy] with the city's land use plan." 146 Cong. Rec. at 16,698. In one instance, a town "insisted

that a synagogue construct the required number of parking spaces despite their being virtually unused," and once the synagogue agreed, "the city denied the permit anyway, citing the traffic problems that would ensue from cars for that much parking." H.R. Rep. No. 106-219, at 23 (1999).

Congress thus understood that the problem lay not only in what zoning codes say on their face, but in how discretionary land-use processes are administered. It found that "[l]and use regulation is commonly administered through individualized processes [and the] standards in individualized land use decisions are often vague, discretionary, and subjective." H.R. Rep. No. 106-219, at 24. It recognized that local governments "deny many religious groups their right to free exercise, often using mere pretexts (such as traffic, safety, or behavioral concerns) to mask the actual goal of prohibiting constitutionally protected religious activity." *Id.* at 20. And RLUIPA's sponsors explained that "[t]hese individualized assessments readily lend themselves to discrimination, and they also make it difficult to prove discrimination in any individual case." 146 Cong. Rec. at 16,699.

### B. Congress Responded With A Modest Threshold Inquiry, Followed By Strict Scrutiny

Congress did not respond to that record by requiring religious claimants to prove discrimination. Nor did Congress leave courts free to excuse burdens that local officials could describe in neutral terms. Instead, it made a substantial burden the trigger and placed the onus of justification on the government:

> The General Rule does not exempt religious uses from land use regulation; rather, it requires regulators to more fully justify substantial burdens on religious exercise. This duty of

> justification under a heightened standard of review is proportionate to the widespread discrimination and to the even more widespread individualized assessments, and it is directly responsive to the difficulty of proof in individual cases.

146 Cong. Rec. at 16,699. The statute's burden-of-persuasion provision implements that design. Once a claimant produces prima facie evidence of a violation, "the government shall bear the burden of persuasion on any element of the claim," save only that the plaintiff bears the burden to prove the law or practice "substantially burdens the plaintiff's exercise of religion." 42 U.S.C. § 2000cc-2(b).

The concerns animating Congress's desire to pass RLUIPA did not end with RLUIPA's enactment. Municipalities continue to refuse to accommodate religious organizations for a host of reasons: traffic and noise (*Spirit of Aloha Temple* v. *County of Maui*, 132 F.4th 1148, 1157 (9th Cir. 2025)), parking (*River of Life Kingdom Ministries* v. *Village of Hazel Crest*, 611 F.3d 367, 373 (7th Cir. 2010) (en banc); *Fortress Bible Church* v. *Feiner*, 694 F.3d 208, 215 (2d Cir. 2012)), and even the protection of water supplies (*Hunt Valley Baptist Church, Inc.* v. *Baltimore Cnty.*, 2017 WL 4801542, at *28 (D. Md. Oct. 24, 2017)). Other criteria are even more vague and subjective: "'complement[ing] the historic nature and traditional functions of the … area as the heart of community life'" (*Opulent Life Church* v. *City of Holly Springs*, 697 F.3d 279, 285 (5th Cir. 2012)), "ensur[ing] quiet seclusion for families living in the area" (*Eagle Cove Camp & Conference Ctr., Inc.* v. *Town of Woodboro*, 734 F.3d 673, 683 (7th Cir. 2013)), or the "main street" criterion—creating a "vibrant" and "vital"

downtown residential community with "extended-hours traffic and synergetic spending" (*Lighthouse Inst. for Evangelism* v. *City of Long Branch*, 510 F.3d 253, 270 (3d Cir. 2007)).

Concerns about traffic, noise, and parking are not illegitimate in themselves, and RLUIPA permits a government to act on them when it can satisfy strict scrutiny. But they are also the justifications most easily invoked to mask other motives, and they often rest on neighbors' "generalized, sometimes speculative" complaints. *See, e.g.*, *Thai Meditation Ass'n of Ala., Inc.* v. *City of Mobile*, 83 F.4th 922, 932 (11th Cir. 2023) ("inappropriate" use of "generalized, sometimes speculative" complaints from neighbors about traffic). As Congress heard:

> [L]and use decisions are wrapped in neutral sounding language about parking, setbacks, traffic impacts, and the like, which may constitute substantial and tangible harm to surrounding property owners, but in too many cases merely serves as an empty verbal mask hiding illicit discriminatory conduct aimed at the exercise of religion.

*Religious Liberty Protection Act of 1998: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 137-138 (1998) (statement by W. Cole Durham, Jr., Professor at Brigham Young University Law School).

The decision below shows how threshold factors undo Congress's design. At the Board's hearing, the most common objection was that "traffic and parking in the neighborhood, which were already a problem, would be exacerbated." Pet. App. 8a. The Board heard those objections and found that the grotto would not "be

detrimental to the health, safety, or general welfare of persons residing or working in the vicinity." Pet. App. 9a. Under RLUIPA as written, any governmental interest in overriding that judgment and prohibiting the grotto should have been subject to strict scrutiny. Under the Kentucky Supreme Court's approach, it never had to be justified at all, because the court held that a smaller grotto would suffice and that petitioner had brought the burden on itself, ending the inquiry before any justification was required. Pet. App. 25a-27a. That is precisely the insulation from scrutiny that Congress enacted RLUIPA to eliminate.

## III. THE DECISION BELOW WOULD SHUT RELIGIOUS SCHOOLS OUT OF RLUIPA

ACSI's member schools illustrate how far the decision below would reach. Religious education is religious exercise of the most central kind: "The religious education and formation of students is the very reason for the existence of most private religious schools[.]" *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732, 738 (2020). To carry out that mission, religious schools must regularly build, expand, renovate, relocate, and lease facilities—and each step requires them to navigate land-use regimes that commonly treat schools as conditional or special uses. *See, e.g.*, *Westchester Day Sch.* v. *Village of Mamaroneck*, 504 F.3d 338, 344 (2d Cir. 2007) (Orthodox Jewish day school operating in residential district under special permit renewed every three years). It is no accident that many leading substantial-burden decisions, including the decision the Kentucky Supreme Court adopted as its "polestar" (Pet. App. 22a), involve religious schools.

*Livingston* itself shows how the factors operate against schools. A nondenominational Christian school

sought to relocate to leased space in a church building, and the township board—rejecting its own planning commission's recommendation of conditional approval—denied the necessary special-use permit by a four-to-three vote after neighbors complained about traffic. 858 F.3d at 998-1000. The Sixth Circuit held that the school suffered no substantial burden because it could have remained at its former campus roughly twelve miles away, a burden the court deemed "more analogous to a 'mere inconvenience.'" *Id.* at 1008-1009. A decade earlier, the same court had held that a church seeking to build a school building suffered only "mere inconvenience[s]" when the township capped its total floor space at 25,000 square feet, thwarting a planned building of nearly 35,000. *Living Water Church of God* v. *Charter Twp. of Meridian*, 258 F. App'x 729, 731-732, 739 (6th Cir. 2007).

Under the Kentucky Supreme Court's approach, religious schools would lose nearly every case at the threshold. A school seeking to expand, relocate, or occupy a new facility will generally know the zoning rules that govern the property—indeed, it must know them to apply for the permits those rules require. And a school will almost always have some alternative: It can enroll fewer students, teach in fewer or smaller classrooms, postpone a building project, or remain in a facility it has outgrown. If foreknowledge makes a burden "self-imposed," and if the availability of a smaller or different facility makes a prohibition "a mere inconvenience," then no religious school could ever establish a substantial burden, and no government would ever have to justify denying a school the space its mission requires. RLUIPA protects "[t]he use, building, or conversion of real property for the purpose of religious exercise," 42 U.S.C. § 2000cc-5(7)(B), and religious schools build and convert property for precisely that purpose. The statute should

not be read to exclude them through a test they can never pass.

## CONCLUSION

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

Respectfully submitted.

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