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 OF NOTRE DAME RELIGIOUS LIBERTY CLINIC AND CHRISTIAN LEGAL SOCIETY AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are two organizations committed to protecting religious freedom for all people. They submit this brief to address the growing need for this Court to offer guidance to lower courts on how to appropriately interpret and apply the critical legal protections for religious exercise enacted in RLUIPA.

Notre Dame Law School's Lindsay and Matt Moroun Religious Liberty Clinic[2] is an academic institution and teaching law practice that promotes and defends the freedom of religion for all people. It advocates for the right of all people to exercise, express, and live according to their beliefs. It defends individuals and organizations of all faiths against interference with these fundamental liberties and has represented an array of groups in cases to defend the right to religious exercise across a variety of contexts.

The Christian Legal Society is a nondenominational association of Christian attorneys, law students, and law professors. CLS's legal advocacy division, the Center for Law & Religious Freedom, works to protect all Americans' right to be free to exercise their religious beliefs. CLS was instrumental in the passage of RLUIPA and has a longstanding interest in defending RLUIPA's constitutionality and proper application in the courts.

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[1] Pursuant to Rule 37.6, *amici curiae* affirm that no counsel for a party authored this brief in whole or in part and that no persons other than *amici curiae*, their members, and their counsel made a monetary contribution to its preparation or submission.

[2] The views expressed by the Clinic do not necessarily represent those of the University of Notre Dame or Notre Dame Law School.

SUMMARY OF ARGUMENT

There is widespread confusion among lower courts about the meaning of "substantial burden" under RLUIPA, which too often undermines the statute's protections. That statute generally prohibits the government from substantially burdening religious exercise through land use regulation. 42 U.S.C. § 2000cc(a)(1). But Congress left "substantial burden" undefined, leaving lower courts to devise their own tests. The tests that have emerged are uncertain and inconsistent. Worse still, they often lead courts away from the essential inquiry that the religious burden analysis is meant to ask: whether the government has impaired the claimant's ability to exercise her faith in a religiously satisfactory way.

This case presents an opportunity for this Court to offer much-needed guidance to lower courts about RLUIPA's demands. The Kentucky Supreme Court denied RLUIPA's protections because, in its view, the Catholic faith does not require the Missionaries of Saint John the Baptist to construct the precise grotto it requests. As part of its religious mission, Saint John seeks to build a shrine honoring the Blessed Virgin Mary, who appeared to Saint Bernadette in Lourdes, France. Pet.App.4. The shrine would be a small replica of the grotto at Lourdes, "the most important Catholic apparition site of the nineteenth century." John T. McGreevy, Catholicism and American Freedom: A History 27 (2003). The court acknowledged that barring Saint John from building the grotto as it proposes would frustrate its religious practice. Yet the court nonetheless determined that the denial did not substantially burden Saint John because it could still build a *smaller* shrine at a *different* location. By the

court's lights, because this alternative religious practice supposedly was available and would leave Saint John no worse off as Catholics, RLUIPA offered no relief.

That misguided analysis about the meaning of "substantial burden" illustrates at least two common misunderstandings. *First*, the court misunderstood the basic protection RLUIPA guarantees. The statute's sweeping protection safeguards all forms of religious exercise, whether central to that religion or not. The court below described the difference between Saint John's proposed grotto and a different structure as unimportant in its own view—a "mere inconvenience." Pet.App.25. But in Saint John's view—the only one on this question of faith that matters—the court's proffered alternative would not fully satisfy its religion. And Saint John is obviously burdened by its inability to build a grotto that would.

Second, the Kentucky Supreme Court's decision reflects broader confusion about how to approach RLUIPA's burden analysis. Courts look to a host of considerations—from the availability of alternative sites to the landowner's knowledge of the restrictions on her property—when deciding whether the government has substantially burdened a religious exercise under RLUIPA. Too often, courts treat these considerations as an end unto themselves, factors to always be consulted or perhaps simply tallied. Properly understood, however, any factor is relevant only insofar as it helps determine whether the government has impermissibly impaired religious exercise by leaving the claimant without a satisfactory way to carry it out.

This Court must reject these common mistakes.

ARGUMENT

I. RLUIPA's Protections Do Not Turn on a Court's Own Understanding of the Significance of a Religious Practice.

The government's assessment of the supposed importance of a person's religious practice—including whether a supposed "alternative" might be religiously sufficient instead—has no bearing on whether that practice is protected under federal law. Indeed, Congress explicitly enacted this basic precept of free exercise law into RLUIPA itself. Yet the Kentucky Supreme Court denied the statute's protections on its misguided view that the religious community here could simply exercise its religion differently. That is not how the law works.

RLUIPA generally prohibits the government from imposing or implementing "a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person." 42 U.S.C. § 2000cc(a)(1). Congress enacted RLUIPA "'in order to provide very broad protection for religious liberty.'" *Holt v. Hobbs*, 574 U.S. 352, 356 (2015) (quoting *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682, 693 (2014)). Indeed, it made clear that RLUIPA covers "*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) (emphasis added). Congress's instruction for courts to stay out of questions about the supposed significance of any given religious practice could hardly be clearer.

That demand makes sense in light of the particular infringements of religious exercise that Congress sought to correct in RLUIPA. It enacted the statute in response to specific evidence of widespread

discrimination against religious individuals and organizations by state and local officials making a variety of land-use decisions. *See, e.g.*, H.R. Rep. No. 106-219, at 18–24 (1999).[3] In one example, an Orthodox Jewish rabbi faced criminal penalties for leading prayers in a garage located in a single-family, residential area. *Id.* at 10–11. As the congressional report explains, the court observed that the services were "not integral to [his] faith" and then concluded that the government's zoning interest outweighed the rabbi's interest in exercising his religion. *Id.* at 11 (citing *Protecting Religious Liberty After* Boerne v. Flores *(Part III): Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 28 (1999) (statement of Steven T. McFarland, Director, Center for Law and Religious Freedom of the Christian Legal Society)). This is not an isolated example. Indeed, Congress heard repeatedly about infringements on all sorts of religious exercises, including practices that might seem insignificant to an outsider. *See id.* at 11 (deriding county officials' efforts to restrict the operational hours of a church where the

[3] RLUIPA's enactment followed three years of consideration, including numerous Congressional hearings and reports. 146 Cong. Rec. 16698 (2000) (joint statement of Sens. Hatch and Kennedy on the Religious Land Use and Institutionalized Persons Act of 2000). Some of these hearings and reports, like this House Judiciary Committee Report, considered a predecessor bill with a materially equivalent definition of "religious exercise" as the final statute. *Compare* 42 U.S.C. § 2000cc-5(7)(A), *with* Religious Liberty Protection Act of 1999, H.R. 1691, 106th Cong. § 8(1) (1999). All this testimony and evidence led Congress to recognize the "nationwide problem" of "frequent[] discriminat[ion] against" houses of worship that RLUIPA is designed to address. 146 Cong. Rec. 16698, 16698–99 (2000) (joint statement of Sens. Hatch and Kennedy).

restriction would prevent the church from engaging in any acts during certain hours, which would obviously encompass many practices beyond those formally required by the church's doctrinal beliefs); 146 Cong. Rec. 19124, 19126 (2000) (statement of Rep. Hyde) (zoning officials ordered inner-city church offering worship services and bible studies and serving the poor and homeless to relocate).

Added up, in the words of Professor Douglas Laycock, "if there is any area of regulation where you can make a clear record of widespread discrimination, it would be zoning and land use regulation." *Congress' Constitutional Role in Protecting Religious Liberty: Hearing Before the S. Comm. on the Judiciary*, 105th Cong. 43 (1998) (statement of Douglas Laycock, Professor, Univ. of Tex.). Congress responded to this pattern of discrimination with force. In addition to "defin[ing] 'religious exercise' capaciously," *Holt*, 574 U.S. at 358, it mandated that RLUIPA "be construed in favor of a broad protection of religious exercise." 42 U.S.C. § 2000cc-3(g). And it prohibited the government from imposing a substantial burden on all forms of protected religious exercise—"even if alternatives to enduring [the burden] are available." *Njie v. Dorethy*, 766 F. App'x 387, 391 (7th Cir. 2019) (per curiam) (panel including Barrett, J.).

This understanding is hardly novel to RLUIPA. More than 150 years ago, this Court held that it was improper for civil courts to investigate and decide matters "of discipline, or of faith, or ecclesiastical rule, custom, or law." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727 (1872). That prohibition has since become a central principle of First Amendment law. *See, e.g.*,

Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich, 426 U.S. 696, 709 (1976).

Indeed, this Court has repeatedly refused to ask whether a particular belief or practice is required by a religious tradition in determining whether the exercise is protected by law. In *Thomas v. Review Board of the Indiana Employment Security Division*, for example, this Court faulted a state court for concluding that the claimant's personal beliefs were unprotected after erroneously "giv[ing] significant weight to the fact that" they were not widely shared among other members of his religion. 450 U.S. 707, 715 (1981). This Court made clear that "the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect." *Id.* at 715–16. And "it is not within the judicial function and judicial competence to inquire whether" a person "correctly perceived" what his faith requires. *Id.* at 716; *see also Levitan v. Ashcroft*, 281 F.3d 1313, 1320 (D.C. Cir. 2002) ("Neither the Supreme Court nor this court has ever adopted a rule limiting protection to practices that are compelled by a litigant's religion.").

Nor may courts "question the *centrality* of particular beliefs or practices to a faith." *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989) (emphasis added); *cf. Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 457–8 (1988) (declining to adopt a rule based on the "centrality" of religious practice). Indeed, "it is not for [courts] to say that . . . religious beliefs are mistaken or insubstantial" when asking whether the government has impermissibly burdened those beliefs. *Hobby Lobby*, 573 U.S. at 725; *see also Haight v. Thompson*, 763 F.3d 554, 566 (6th Cir. 2014) ("[N]either RLUIPA nor for that matter the First

Amendment permits governments or courts to inquire into the centrality to a faith of certain religious practices."). To be sure, courts "must evaluate the substantiality of the *burden*" on a given religious practice. *New Doe Child #1 v. Congress of the U.S.*, 891 F.3d 578, 587 (6th Cir. 2018) (emphasis added). But they "do not ask whether the *particular exercise* of religion is a substantial part of the plaintiff's faith." *Id.* (emphasis added).

The harm that RLUIPA seeks to prevent is the harm that results when the government leaves a believer without a religiously sufficient means of exercising her faith. Courts have no business second-guessing that question of faith. Indeed, courts may not substitute their own judgment about whether an "alternative is just as good religiously." Sherif Girgis, *Defining "Substantial Burdens" on Religion and Other Liberties*, 108 Va. L. Rev. 1759, 1794 (2022). Allowing civil courts to answer that question would invariably require them to evaluate "a religious judgment, which secular courts are ill-equipped to render." *See* Michael C. Dorf, *Incidental Burdens on Fundamental Rights*, 109 Harv. L. Rev. 1175, 1216 (1996). Rather, under RLUIPA, a regulation imposes an unlawful burden on a religious exercise when it leaves the person without a religiously satisfactory means of carrying out an exercise of her faith—regardless of a court's view of how important that exercise is.

The court below badly misapprehended these questions. Saint John seeks to build a Marian grotto on a particular plot of its land adjacent to the church. Pet.Br.10–11. That location derives from the community's religious beliefs about the appropriate way to honor the Blessed Virgin Mary. Pet.Br.11, 38–

39. Building the grotto elsewhere (or more modestly), as the Kentucky Supreme Court suggested, would not be religiously "just as good" in Saint John's view. Being forced to resort to that supposed alternative is not simply a "mere inconvenience," Pet.App.25, on Saint John's own understanding of its faith. That supposed alternative thus cannot defeat Saint John's claim of a substantial religious burden.

The lower court's estimation of the dictates of Saint John's faith cannot be squared with RLUIPA's demands. This Court should make clear that such evaluations of the supposed significance or fungibility of a religious practice have no bearing on the question of whether the denial of that practice imposes a substantial burden on religion.

II. This Court Should Clarify How to Properly Evaluate Religious Burdens Under RLUIPA.

The lower court's decision betrays broader confusion on how to approach the question of religious burdens under RLUIPA. Courts across the country have struggled to understand how to evaluate such burdens in land-use cases. Courts and commentators have "hazarded a range of substantial burdens tests," none of which "does everything that most agree the test should do." Girgis, *supra,* at 1771. This case presents an important opportunity for this Court to resolve that confusion.

RLUIPA's failure to define religious burdens has led to a perplexing array of competing—and often unsatisfying—approaches. *See id.*; *Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 95 (1st Cir. 2013) (citing inconsistent standards across circuits). Those approaches weigh a variety of

considerations, including "whether the religious institution has a feasible alternative location from which it can carry out its mission," "[w]hether the religious institution will suffer 'substantial delay, uncertainty, and expense,'" and whether the "plaintiff has imposed a burden upon itself." *Livingston Christian Schs. v. Genoa Charter Twp.*, 858 F.3d 996, 1003–05 (6th Cir. 2017). Other courts list different or additional factors. *See, e.g.*, *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, 980 F.3d 821, 830–32 (11th Cir. 2020). Very few seem to agree on exactly everything that should be thrown into the mix.

Of course, considerations like these might be relevant in any given case. But the key point often lost is that they—or any other considerations—are relevant only insofar as they help answer the ultimate question: whether the government has substantially impaired the claimant's ability to carry out her religious exercise according to her own beliefs. Too often, courts treat the various considerations as an end unto themselves. The decision below is a good example. For its part, the Kentucky Supreme Court marched through three of the Sixth Circuit's *Livingston* factors before quickly concluding that prohibiting Saint John from building its requested grotto did not substantially burden its religious exercise. Pet.App.27. Setting aside its flawed analysis on any one of those considerations,[4] this approach

[4] Beyond the court's reliance on its own assessment of the necessity of the particular grotto Saint John requests, *see supra* Part I, the Kentucky Supreme Court also reasoned that the religious community "had every reason to know" that the local ordinance did not permit building that grotto. Pet.App.27. As Saint John explains, the presumption that a preexisting

reveals a broader problem—namely, the court below never stopped to put those factors in relation to the foundational question whether denying Saint John permission to build its grotto leaves the community without a religiously sufficient means of satisfying that religious exercise. Any approach to the substantial-burden inquiry that loses sight of that question cannot be squared with RLUIPA's demands.

This is not an isolated mistake. Vague multifactor tests proliferate, often without much engagement with why the listed factors are relevant or how exactly they interrelate. *See, e.g.*, *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, 83 F.4th 922, 927 & n.1 (11th Cir. 2023); *Livingston Christian Schs.*, 858 F.3d at 1004–05. Sometimes, like the decision below, courts consult the factors like a checklist to be tallied. *See, e.g.*, *Roman Catholic Bishop of Springfield*, 724 F.3d at 95 (identifying "some relevant factors" and recognizing that "different types of burdens . . . may cumulate to become substantial"). Sometimes they identify one factor as dispositive of the substantial-burden inquiry as a whole. *See, e.g.*, *Spirit of Aloha Temple v. County of Maui*, 132 F.4th 1148, 1156 (9th Cir. 2025) (no substantial burden where claimants "ha[d] not considered other sites in the County").

The overriding problem, however, is that very often the guiding question of the religious burden suffered gets lost in the mix. This Court can help disentangle the threads. It should make clear that any particular consideration is relevant only to the extent it points to

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ordinance can never substantially burden a landowner's religious exercise makes little sense given the discriminatory pattern RLUIPA sought to correct. *See* Pet.Br.24.

that inquiry and the effect of the government's action on the claimant's religious practice.

Take the near-ubiquitous consideration of "alternatives" as one example. The fact that some "alternate" site or some possibly similar "alternative" land use is available does not itself answer the question of religious burden. An alternate path is adequate only to the extent it leaves the believer with a religiously sufficient means of satisfying her religious exercise. That alternative means must be, in the believer's understanding, just as religiously fulfilling as the burdened exercise. *See supra* Part I; Girgis, *supra*, at 1794–95. The court cannot declare an alternative suitable simply because, in its view, it seems close enough. The alternative must allow the believer to engage in the particular religious exercise that has been burdened—not some "other form[] of religious exercise" that is part of her faith more generally. *See generally Holt,* 574 U.S. at 361–62. And finally, the alternative must be meaningfully available. An alternative that itself imposes substantial burdens in terms of costs or delays or otherwise penalizes the claimant for exercising her religion is no alternative at all. Rather, only those alternatives that are "quick, reliable, and financially feasible"—and "meet [the claimant's] religious needs"—alleviate the burden imposed by denying the particular request. *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 352 (2d Cir. 2007).

Of course, this does not mean that courts have no role in evaluating whether a religious practice has in fact been substantially burdened. *Cf.* Girgis, *supra*, at 1793–1815. Nor does this inquiry mean that every RLUIPA plaintiff seeking permission to engage in

religious activity must therefore prevail. Rather, it simply directs courts to their appropriate role in the analysis. *See* Dorf, *Incidental Burdens*, *supra*, at 1216. That role includes ensuring that a claim "is grounded in a sincerely held religious belief," and weeding out those that aren't. *Holt*, 574 U.S. at 361; *see also, e.g.*, *Hobby Lobby*, 573 U.S. at 718. It also includes still determining whether the impediment imposed on that religious exercise is a *substantial* burden to its fulfillment. Not every inconvenience or impediment to religious fulfillment will suffice. *See, e.g.*, *Livingston Christian Schs.*, 858 F.3d at 1003. And, finally, even when government *has* substantially burdened religious exercise, the court's role includes determining whether the government has "demonstrate[d] that imposition of the burden" "is the least restrictive means of furthering [a] compelling governmental interest." 42 U.S.C. § 2000cc(a)(1).

These sorts of inquiries are appropriate ways for courts to evaluate a RLUIPA claim. A rote consultation of a list of factors, untethered to the appropriate question of religious burdens, decidedly is not.

CONCLUSION

RLUIPA protects all forms of sincere religious exercise, whether central to a believer's faith or not. The Kentucky Supreme Court's rejection of Saint John's argument—based on the court's own view of what exactly the Catholic faith requires, or whether the Missionaries of Saint John the Baptist might remain Catholics in good standing even with a different grotto—cannot be squared with the statute's demands. To make that clear and to ensure that RLUIPA is properly and consistently applied, this Court should reverse the decision below.

Respectfully submitted,

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