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 THE AMERICAN JEWISH COMMITTEE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The American Jewish Committee ("AJC"), founded in 1906, is a global Jewish advocacy organization with a longstanding commitment to protecting religious liberty for Jews and people of all faiths. AJC has more than 125,000 members and supporters and twenty-five regional offices nationwide. It believes that the most effective way to safeguard the civil and religious rights of Jews is to safeguard the civil and religious rights of all Americans.

AJC has a demonstrated interest in the land-use protections at issue here. AJC was among the original supporters of the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb *et seq.*, and was one of the organizations that Senator Kennedy recognized as having "played a central role in crafting" the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"). 146 Cong. Rec. S7778 (daily ed. July 27, 2000) (statement of Sen. Kennedy).

AJC filed a brief as lead amicus in support of the petitioner in *Holt v. Hobbs*, 574 U.S. 352 (2015), in which this Court unanimously held that an Arkansas prison policy prohibiting a Muslim inmate from growing a half-inch beard in accordance with his religious beliefs violated RLUIPA. AJC also joined an amicus brief in support of an Orthodox Jewish day school in *Westchester Day School v. Village of Mamaroneck*, 386 F.3d 183 (2d Cir. 2004). The case

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[1] Pursuant to Supreme Court Rule 37.6, amicus curiae states that no counsel for any party authored this brief in whole or in part, and that no person or entity other than amicus curiae, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

concerned whether a village zoning board's denial of permission to expand the school's facilities substantially burdened its religious exercise in violation of RLUIPA.

Synagogues, day schools, and other Jewish institutions often have religious needs that make the location and design of their buildings especially important. Sabbath-observant communities, for example, generally must live within walking distance of their place of worship.[2] Whether RLUIPA protects a religious institution's use of a particular site, in the form the institution sincerely requires, is therefore a recurring question for the communities AJC represents. AJC takes no position on the parties' state-law dispute and addresses only the meaning of "substantial burden" under 42 U.S.C. § 2000cc(a).

SUMMARY OF ARGUMENT

This Court granted review limited to whether a land-use regulation that prohibits a religious institution from building a religious structure on its own property substantially burdens religious exercise under RLUIPA. RLUIPA's text and legislative history, together with the practical consequences of the rule adopted below, demonstrate why the Kentucky Supreme Court's substantial-burden analysis cannot stand. *First*, RLUIPA measures a burden against the exercise the claimant sincerely defines, and a court may not substitute an exercise it finds adequate.

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[2] Observant Jews do not drive or ride in motor vehicles on the Sabbath or during major festivals, so the location of a synagogue determines who can attend. *See* H.R. Rep. No. 106-219, at 22 (1999).

Second, nothing in RLUIPA's text supports the "self-imposed burden" doctrine or permits a claimant's knowledge of an existing land-use restriction to weigh against its substantial-burden claim. *Third*, the legislative record confirms that Congress anticipated and intended to protect religious congregations that commit to property knowing they must seek relief from existing land-use restrictions. *Fourth*, the rule applied below would fall hardest on the minority religious communities RLUIPA was designed to protect. *Finally*, the substantial-burden inquiry remains administrable without regard to prior knowledge.

RLUIPA defines protected religious exercise to include "[t]he use, building, or conversion of real property for the purpose of religious exercise," whether or not that exercise is "compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A)–(B). Courts must therefore assess substantial burdens in light of the particular religious exercise grounded in a claimant's sincerely held beliefs, not in light of whether other forms of religious exercise remain available. *Holt*, 574 U.S. at 360–62. Courts may assess whether a claimant holds an "honest conviction" regarding what its religion requires, but they cannot substitute their own judgment about the correctness of that belief. *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714–16 (1981) ("Courts are not arbiters of scriptural interpretation."). The Supreme Court of Kentucky therefore erred in treating the possibility of building a smaller grotto on the church's existing property as a "mere inconvenience," without adequately considering whether that alternative would accommodate the religious exercise at issue. *See* Pet. App. 25a.

The decision below also rested on a proposition that runs contrary to RLUIPA's text: that the claimant's awareness of the ordinance made the burden "self-imposed." Pet. App. 27a. The "self-imposed burden" doctrine has no basis in RLUIPA's text, and courts have formulated inconsistent versions of it. RLUIPA expressly protects contract and option holders and persons who "intend[] to use" property for religious purposes. 42 U.S.C. § 2000cc-5(5), (7)(B). It also reaches the "application of" existing zoning laws, *id.* § 2000cc-5(5), and burdens imposed through "individualized assessments of the proposed uses for the property involved," including variances and special-use permits that religious institutions seek precisely because existing zoning rules do not permit their proposed uses as of right. *See id.* § 2000cc(a)(2)(C).

The legislative record confirms this reading. In drafting RLUIPA, Congress heard that new, small, and unfamiliar congregations disproportionately faced opposition to their proposed religious land uses, often through discretionary permitting regimes. Congress also understood that a congregation may need to commit to property before it can challenge an adverse land-use decision. Giving adverse weight to a congregation's knowledge of existing zoning restrictions would therefore disadvantage the very claimants Congress sought to protect. The consequences would be especially acute in developed communities, where parcels permitting religious use as of right may be scarce or nonexistent, leaving congregations little choice but to seek discretionary approval despite knowing the governing restrictions. Treating that knowledge as weighing against relief would weaken RLUIPA in those situations where restrictions on property use are most widespread and

RLUIPA's protections are most essential. Congress did not enact RLUIPA to push houses of worship to the margins of the communities they serve.

Courts can identify substantial burdens without second-guessing a claimant's sincere religious needs or giving weight to its prior knowledge of zoning restrictions. Claimants must still show that their proposed use of the property constitutes sincere religious exercise and that the zoning restriction substantially burdens that exercise. Courts may not substitute an alternative the claimant does not sincerely regard as adequate to meet its religious needs. Once the claimant establishes a substantial burden, the government must satisfy strict scrutiny by demonstrating that the restriction furthers a compelling governmental interest and is the least restrictive means of doing so. Because the Supreme Court of Kentucky failed to apply these principles properly, its judgment should be vacated and the case remanded.

ARGUMENT

I. RLUIPA MEASURES A BURDEN AGAINST A RELIGIOUS EXERCISE THE CLAIMANT SINCERELY DEFINES.

RLUIPA's substantial-burden provision forbids a government to "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). The object of the burden is "the religious exercise" of the claimant, defined clearly by the statute: "[R]eligious exercise" includes "any exercise of religion, whether

or not compelled by, or central to, a system of religious belief." *Id.* § 2000cc-5(7)(A). 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." *Id.* § 2000cc-5(7)(B). Congress directed that RLUIPA 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." *Id.* § 2000cc-3(g).

Because the statute protects the claimant's religious exercise as the claimant sincerely defines it, a court may not redefine that exercise at a higher level of generality, find that the more general exercise remains available, and thus conclude that no substantial burden has been imposed. *Holt* makes this clear.[3] The district court there held that a prison grooming policy did not substantially burden a Muslim prisoner's exercise because "he had been provided a prayer rug and a list of distributors of Islamic material, he was allowed to correspond with a religious advisor, and was allowed to maintain the required diet and observe religious holidays." *Holt*, 574 U.S. at 361. This Court rejected that reasoning: RLUIPA's substantial-burden inquiry "asks whether the government has substantially burdened religious exercise (here, the growing of a ½-inch beard), not whether the RLUIPA claimant is able to engage in other forms of religious exercise." *Id.* at 361–62. That principle has

[3] *Holt* arose under RLUIPA's institutionalized-persons provision, 42 U.S.C. § 2000cc-1(a), rather than its land-use substantial-burden provision, *id.* § 2000cc(a)(1). Both provisions, however, share the same definition of "religious exercise." *Id.* § 2000cc-5(7)(A); *see Holt*, 574 U.S. at 357–58.

particular force in a land-use case: Congress expressly treats the religious "use, building, or conversion of real property" by an institution as religious exercise. 42 U.S.C. § 2000cc-5(7)(B). The possibility of a smaller shrine on the existing church parcel does not resolve the burden imposed by prohibiting the proposed grotto on the adjoining hillside parcel.

Whether a shrine must take a particular form and how a synagogue must be configured are questions outside the judicial purview. It is "not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989).

II. RLUIPA DOES NOT PERMIT PRIOR KNOWLEDGE TO DEFEAT A SUBSTANTIAL-BURDEN CLAIM.

The "self-imposed burden" inquiry is a judicial construct with uncertain contours, as this case illustrates. The Supreme Court of Kentucky concluded that Petitioner had "imposed a burden upon itself," Pet. App. 27a, because, in that court's view, Petitioner "had every reason to know, and in fact explicitly acknowledged, that building the grotto was not permitted by the ordinance," *id.*; *see* Pet. Br. 44 (disputing that characterization). Respondents, however, argued in opposing certiorari that the relevant question was whether Petitioner "had reason to know about the regulation when it acquired the land," rather than when it applied for a variance. Br. in Opp. 24. As the First Circuit has observed, the substantial-burden standards announced by the courts of appeals "have not been consistent." *Roman Cath. Bishop of*

Springfield v. City of Springfield, 724 F.3d 78, 95 (1st Cir. 2013). For congregations contemplating the purchase or lease of property, that inconsistency makes it difficult to assess whether acquiring a site or seeking the approvals necessary to use it will later be characterized as the source of their own hardship.

More fundamentally, the statutory inquiry turns on whether the government has implemented a land-use regulation "in a manner that imposes a substantial burden" on religious exercise, not on whether or when the claimant knew of the restriction. 42 U.S.C. § 2000cc(a)(1). The government imposes the restriction when it enforces it, regardless of when the ordinance was enacted. Because zoning ordinances are public, a "reason to know" standard could impute knowledge of existing restrictions to virtually every claimant. Treating prior knowledge as a factor weighing against relief would narrow RLUIPA's protections and divert the inquiry from the burden the government actually imposes to the claimant's awareness of the law.

RLUIPA's text provides no basis for treating prior knowledge as a factor weighing against relief. The statute defines a land-use regulation to include a zoning law "or the application of such a law" restricting a claimant's use or development of land. 42 U.S.C. § 2000cc-5(5). It expressly protects claimants holding an "ownership, leasehold, easement, servitude, or other property interest" or a "contract or option to acquire such an interest." *Id.* The statute likewise defines religious exercise to include the "use, building, or conversion of real property" by an entity that "uses or intends to use" the property for religious purposes. *Id.* § 2000cc-5(7)(B). These provisions contemplate religious institutions seeking to develop property,

including prospective purchasers and lessees whose proposed uses may require zoning approval. A contract purchaser or option holder, for example, may have committed to property while approval for its intended religious use remains uncertain. Yet nothing in RLUIPA suggests that a claimant's knowledge of the governing restrictions when it acquired its interest diminishes the burden imposed by their enforcement. *See Anash, Inc. v. Borough of Kingston*, 184 F.4th 214, 239 n.21 (3d Cir. 2026) (RLUIPA "has no provisions for scrutinizing the actions or expectations of persons seeking to exercise religion").

The practical consequences of giving weight to prior knowledge further illustrate the problem. Although the Ninth Circuit treated prior knowledge as relevant but not dispositive, it recognized the practical difficulty facing religious congregations in restrictive zoning regimes: "[a] city's zoning code may be so restrictive that a religious group has no option other than to purchase a property where religious assembly is forbidden and hope that an accommodation will be made on its behalf." *New Harvest Christian Fellowship v. City of Salinas*, 29 F.4th 596, 602 (9th Cir. 2022). That predicament is particularly acute in cities and other heavily zoned areas, where congregations may have no realistic alternative but to seek relief from existing restrictions. Treating their knowledge of those restrictions as weighing against relief would weaken RLUIPA precisely where zoning constraints are most pervasive and its protections may be most needed. It would also create a perverse incentive: the more carefully a congregation investigates zoning restrictions before committing to a site, the more readily its diligence could be used to defeat its claim. Nothing in RLUIPA supports that result.

III. THE LEGISLATIVE RECORD CONFIRMS THAT CONGRESS EXPECTED KNOWING CLAIMANTS IN DISCRETIONARY REGIMES.

The record before Congress confirms what the text provides. RLUIPA was enacted to protect religious congregations, particularly smaller ones, from the discriminatory application of land-use restrictions. The statute was designed to allow congregations to establish places of worship consistent with their religious requirements in developed urban and suburban areas, where much of the available land is subject to zoning rules that do not permit religious use as of right. *See* H.R. Rep. No. 106-219, at 18–19. A congregation in that setting necessarily knows, before it applies, that it needs relief.[4]

A. RLUIPA is meant to protect new, small, or unfamiliar congregations from pervasive discrimination disguised by application of facially neutral zoning laws.

RLUIPA's sponsors explained that "[c]hurches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly

[4] H.R. Rep. No. 106-219 (1999) accompanied the Religious Liberty Protection Act of 1999, H.R. 1691, 106th Cong. (1999), the predecessor of RLUIPA. RLUIPA was enacted the following year on the strength of the same hearing record. *See* 146 Cong. Rec. S7774 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy) (RLUIPA "is based on three years of hearings—three hearings before the Senate Committee on the Judiciary and six before the House Subcommittee on the Constitution").

individualized and discretionary processes of land use regulation." 146 Cong. Rec. at S7774. Zoning board members or neighborhood residents sometimes "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.* Senators Hatch and Kennedy explained that such discrimination threatens core constitutional rights because "[c]hurches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements," and that "[t]he right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes." *Id.* They specifically noted that zoning codes frequently "permit churches only with individualized permission from the zoning board, and zoning boards use that authority in discriminatory ways." *Id.* The House Report summarized a Brigham Young University study presented to the House Judiciary Subcommittee on the Constitution that further supports the sponsors' statements. *See* H.R. Rep. No. 106-219, at 20–21. The study found that religious groups making up 9% of the population accounted for 50% of reported litigation involving location of houses of worship and 34% of reported litigation regarding accessory uses at existing churches. *Id.* Jews, who made up about 2% of the U.S. population at the time, accounted for 20% of reported location cases and 17% of reported accessory-use cases. *Id.* at 21. In a survey of twenty-nine suburban Chicago zoning codes, twenty-two "effectively denied churches the right to locate except by grant of a special use permit." *Id.* at 19. These restrictive regimes—dependent on the discretion of zoning boards to grant permits—often result in situations where religious

discrimination "lurks behind . . . vague and universally applicable reasons." 146 Cong. Rec. at S7774. In such cases, churches have been excluded from residential zones because they generated too much traffic and from commercial zones because they generated too little. *Id.* at S7774–75. The Report recounted a synagogue required to build unneeded parking spaces and then denied a permit because of the traffic that much parking would generate, and a beach community that excluded a synagogue because of Friday-night traffic. H.R. Rep. No. 106-219, at 23. The Report concluded that "[l]and use regulation is commonly administered through individualized processes not controlled by neutral and generally applicable rules," with standards that "are often vague, discretionary, and subjective." *Id.* at 24.

The record before Congress repeatedly described minority-faith congregations that had been *de facto* excluded from constructing or expanding a religious site on any land available to them. RLUIPA's drafters sought to cure this problem by subjecting substantial burdens on religious exercise imposed through such individualized assessments to strict scrutiny. 42 U.S.C. § 2000cc(a)(1), (a)(2)(C).

B. Congress understood that a congregation must commit to property before it can challenge a land-use decision.

The minority-faith claimant contemplated by RLUIPA's sponsors typically knows, before it purchases land, that the governing rules do not permit its use as of right. At the same time, Congress contemplated that such claimants would buy land and then challenge the land-use prohibitions at issue. Congress

was told that a congregation must "commit to a costly lease or a mortgage to hold the property while it litigates in order to have standing." H.R. Rep. No. 106-219, at 20 & n.84. The Report cited *Love Church v. City of Evanston*, 896 F.2d 1082 (7th Cir. 1990), in which a congregation that had not secured a specific property was held to lack standing to challenge a special-use regime. H.R. Rep. No. 106-219, at 20 n.84; *see Love Church*, 896 F.2d at 1085–87. Treating knowledge of a preexisting zoning requirement as weighing against relief would disadvantage the very congregations Congress sought to protect. A knowledge-based self-imposed-burden rule would place congregations in a bind: without a qualifying interest in property, they cannot invoke RLUIPA's land-use protections, yet securing that interest while aware of existing restrictions could then weigh against their substantial-burden claims.

Treating a claimant's awareness of an existing restriction as weighing against relief, as the court below did, also leads to an untenable result. If RLUIPA protects only congregations that acquired property free of any conflicting restriction, new congregations could establish themselves only where worship is already permitted as of right or in underdeveloped and unzoned areas, which are likely more sparsely populated and may lie outside the communities the congregations serve. That is not a hypothetical: as noted, twenty-two of the twenty-nine suburban Chicago zoning codes in the record effectively allowed churches only by special-use permit. H.R. Rep. No. 106-219, at 19. For some congregations, such a restriction functions as a near-total exclusion of the religious group. Congress was aware that, "[b]ecause Orthodox Jews may not use motorized vehicles on the Sabbath, they

must live within walking distance of a synagogue or shul." *Id.* at 22. The Report cautioned that this fact makes it "very easy" for zoning boards to exclude observant Jews from living in a neighborhood by excluding their place of worship. *Id.* In such cases, if the only land on which a synagogue could be built without discretionary approval lay beyond walking distance, observant Jews in that community would be unable to attend services on the Sabbath. Under the reading adopted below, which weighs whether a burden was self-imposed, an observant Jewish congregation may be unable to obtain relief under RLUIPA from a zoning regime that effectively bars its members from exercising their religion and living in a given community. This cannot be squared with Congress's intent in passing RLUIPA to protect congregations' right to "build, buy, or rent" a place of worship as an expression of their "core First Amendment right to assemble for religious purposes." 146 Cong. Rec. at S7774.

IV. THE STANDARD APPLIED BELOW FALLS HARDEST ON OBSERVANT JEWISH AND OTHER MINORITY COMMUNITIES—THE VERY GROUPS RLUIPA WAS ENACTED TO PROTECT.

Giving weight to prior knowledge is especially consequential for religious communities whose worship practices constrain where they can locate. *See* H.R. Rep. No. 106-219, at 22. Small and new congregations rarely find property zoned for worship as of right. *Id.* at 18–20. They instead must acquire what is available and seek relief. Religious day schools and accessory structures face the same issue. In Mamaroneck, New York, an Orthodox Jewish day school sought to

expand facilities that it used, as the court found, to integrate religious instruction throughout the curriculum. *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 344–45 (2d Cir. 2007). The Second Circuit held that the local zoning board's denial of a permit modification imposed a substantial burden in part because the school had "no quick, reliable, or economically feasible alternatives" to meet its needs without the proposed expansion. *Id.* at 352–53.

The same logic reaches the accessory structures to houses of worship on which many religious communities, including Jewish congregations, depend, such as a study hall attached to a synagogue, a social hall for religious celebrations, a kosher kitchen, or a mikvah. Congress heard that minority faiths were overrepresented in disputes over accessory uses at existing houses of worship. H.R. Rep. No. 106-219, at 20–21. Such structures are rarely permitted as of right, and they often must be located at or beside the existing institution to serve their religious function. Religious communities may also be unable to reliably predict the need for accessory structures or expansions when acquiring the property. *See Westchester Day Sch.*, 504 F.3d at 344–45 (noting that school, which opened in 1948, "believed its current facilities inadequate" by 1998). A court applying the standard below could tell such a community that it knew of the ordinance when it applied and that a smaller or relocated structure would do. This penalizes long-established religious institutions by hindering their ability to expand over their lifespans. It also substitutes the court's judgment for the community's sincere understanding of its own religious obligations, and the risk of error is greatest when those obligations are unfamiliar to the court.

A test that penalizes knowing applicants and accepts any alternative a court deems adequate will rarely trouble a large, established denomination with ample property and familiar practices. It will regularly defeat the new, small, and minority congregations Congress identified.

V. THE SUBSTANTIAL-BURDEN INQUIRY REMAINS ADMINISTRABLE WITHOUT REGARD TO PRIOR KNOWLEDGE.

Disregarding prior knowledge does not leave the substantial-burden inquiry without limits. A claimant must still show that its proposed use of the property constitutes religious exercise grounded in a sincerely held belief. *See* 42 U.S.C. § 2000cc-5(7)(A)–(B); *Holt*, 574 U.S. at 360–61.

Once a claimant has made that initial showing, the inquiry turns to whether the regulation, as applied, places substantial pressure on the claimant to abandon or modify that exercise. *See Thomas*, 450 U.S. at 717–18. Courts may examine whether an asserted religious need is sincere. But they may not declare a sincere religious need unnecessary based on their own views of what religious practice requires. *See id.* at 714–16; *Hernandez*, 490 U.S. at 699. Even courts that consider alternatives ask only whether a feasible alternative would serve the claimant's sincere religious needs on the claimant's own terms. *See, e.g.*, *Westchester Day Sch.*, 504 F.3d at 352 (concluding that school carried its burden by showing "no quick, reliable, or economically feasible alternatives").

A finding of a substantial burden does not automatically invalidate a zoning restriction. The government may still demonstrate that imposing the burden

furthers a compelling governmental interest and is the least restrictive means of doing so. 42 U.S.C. § 2000cc(a)(1)(A)–(B). RLUIPA's substantial-burden 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. at S7775.

CONCLUSION

The judgment of the Supreme Court of Kentucky should be vacated and the case remanded.

Respectfully submitted,

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