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 *AMICUS CURIAE* OF ANASH INC. (D/B/A WYOMING VALLEY YESHIVA) IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether a land-use regulation that prohibits a religious institution from building a religious structure on its own property constitutes a "substantial burden" on religious exercise under the Substantial Burden Provision of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc(a).

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IDENTITY AND INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37, Anash, Inc., d/b/a Wyoming Valley Yeshiva, respectfully submits this brief *amicus curiae* in support of Petitioner Missionaries of Saint John the Baptist, Inc.[1]

Wyoming Valley Yeshiva is a nonprofit 501(c)(3) religious congregation in the vibrant Lubavitch community of Kingston, Pennsylvania. Under the leadership of Rabbi Shimon Hellinger, it has served as a place of religious study, worship, and spiritual growth where adherents learn and live principles of Judaism in daily life. Municipal officials of Kingston, Pennsylvania, shattered the Yeshiva and its adherents' freedom of religious exercise. On the eve of Rosh Hashanah, municipal officials, backed by police, descended upon the Yeshiva's properties and declared them a "DANGER," closing them "due to zoning." In an instant, the Yeshiva's religious community dispersed and numerous adherents were left homeless, unable to study or practice their faith in the settings that had sustained them. The Yeshiva promptly filed suit in the Middle District of Pennsylvania and sought injunctive relief. The District Court denied relief based on the availability of alternative locations it acknowledged were "inferior,"

1. Pursuant to this Court's Rule 37.2, all parties have consented to the filing of this brief. All listed parties received notice at least 10 days prior to the due date of *amicus curiae*'s intention to file this brief. Pursuant to Rule 37.6, *amicus curiae* affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation and submission.

negating the protections RLUIPA promises religious institutions. The Third Circuit reversed and granted injunctive relief, applying a substantial burden test that excludes consideration of alternative locations.

SUMMARY OF ARGUMENT

The Missionaries of Saint John the Baptist sought to build a religious structure—a grotto—on their own property. The Supreme Court of Kentucky held that a land-use regulation forbidding that religious use of the Missionaries' own land imposed no "substantial burden" under RLUIPA, 42 U.S.C. § 2000cc(a), reasoning there were alternative locations available and that the Missionaries had "every reason to know" the ordinance did not permit the grotto. *Missionaries of Saint John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400, 414–15 (Ky. 2025).

Wyoming Valley Yeshiva knows firsthand how such reasoning plays out. When the Borough of Kingston forcibly closed the Yeshiva's properties on the eve of Rosh Hashanah, the District Court found no substantial burden because the Yeshiva could practice its faith in "imperfect" alternative locations. The Third Circuit reversed, adopting a test grounded in RLUIPA's text. *Anash, Inc. v. Borough of Kingston*, 184 F.4th 214 (3d Cir. 2026).

The question here is whether RLUIPA's promise of expansive protections for the religious use of land means what it says. As the Third Circuit held, and this Court should recognize, it does.

Part I explains how RLUIPA's text and common sense dictate that it must be easier to show a *prima facie* substantial burden in the land-use context than in the prison setting—where this Court has already set a low threshold. *See Holt v. Hobbs*, 574 U.S. 352, 361–62, 369 (2015). RLUIPA's land-use provision is notably broader than its prisoner counterpart. It expands the definition of religious exercise to include "[t]he use, building, or conversion of real property for the purpose of religious exercise," 42 U.S.C. § 2000cc-5(7)(B), so that it covers a regulation burdening the religious use of land itself. The proper unit of analysis is thus the specific use of the specific property, not whether alternative sites exist. The land-use provision also protects more types of entities and has jurisdictional reach over more government conduct, including "individualized assessments" of proposed land uses. *Id.* § 2000cc(a)(1), (a)(2)(C). That difference makes sense: prisons regularly implicate compelling interests in security and order that warrant deference, while ordinary zoning rarely does. And the Third Circuit's decision in *Anash* captures these implications, rejecting any consideration of feasible alternative locations in the substantial burden analysis. 184 F.4th at 239, 244.

Part II explains why the Court should adopt the Third Circuit's workable standard. Under it, a land-use regulation substantially burdens religious exercise when it (1) restricts access to real property otherwise available for religious exercise, (2) limits the use of that property so as to prevent religious exercise, even if the regulation is generally applicable, or (3) has a significant adverse effect on that property. *Anash*, 184 F.4th at 239–40. The Yeshiva's experience illustrates each scenario: the Borough barred access to the properties, enforced a

zoning regulation under which the religious use could not readily continue, and threatened fines of $500 per day for each property. That standard operationalizes the statute's plain text and its command that RLUIPA "be construed in favor of a broad protection of religious exercise." 42 U.S.C. § 2000cc-3(g).

Other lower courts, by contrast, have imposed judge-made requirements on RLUIPA plaintiffs unmoored from the text. Those tests fall into three camps: open-ended multi-factor balancing; heightened coercion or severity thresholds that rewrite the word "substantial" and render RLUIPA's separate total-exclusion provision superfluous; and single dispositive factors such as alternative locations or notice. The alternative-locations inquiry ignores that the statute protects the claimant's use of particular pieces of real property. And the notice rule applied below reads out the statute's protection for those who "intend[] to use the property" for religious purposes, *id.* § 2000cc-5(7)(B), producing a paradox in which the more categorically a government prohibits religious exercise, the less likely the prohibition is to be deemed a substantial burden. Each of these tests adds considerations that Congress left out; the Third Circuit's framework does not.

Nor does the Third Circuit's standard immunize religious institutions from land-use regulations. Most regulations—setbacks, screening requirements, utility-box placement, and the like—will not impose a "substantial" burden at all. And where a regulation does, the government may still enforce it by satisfying strict scrutiny. The substantial-burden inquiry is just one part of RLUIPA's burden-shifting framework—not the whole ballgame.

Part III lastly explains that a course correction is necessary so that lower courts afford land-use claimants at least as much protection as the Free Exercise Clause provides, if not more. RLUIPA's text places its claims on the same footing as Free Exercise claims, defines religious exercise expansively, anticipates that compliance will impose costs on government, and directs courts to construe its protections "to the maximum extent permitted." 42 U.S.C. § 2000cc-3(g). This Court has confirmed that RLUIPA provides "expansive protection" beyond the constitutional minimum, and that the availability of alternative means of practice does not defeat a burden. *Holt*, 574 U.S. at 358, 361. The legislative history confirms the point: after *City of Boerne v. Flores*, 521 U.S. 507 (1997), Congress compiled "a substantial record of evidence indicating a widespread pattern of religious discrimination in land use regulation," H.R. Rep. No. 106-219, at 18 (1999), and enacted the land-use provisions without a single negative vote as a targeted response to often covert forms of religious discrimination.

Yet many lower courts, including the court below, have layered atextual thresholds onto RLUIPA that leave land-use claimants with less protection than the Free Exercise Clause itself provides. The Court can stop that trend by reversing the Kentucky Supreme Court and adopting the Third Circuit's approach, restoring the possibility of a single, textually grounded standard nationwide.

ARGUMENT IN SUPPORT OF PETITIONER

I. RLUIPA's Text and Common Sense Make a Substantial Burden Easier to Show for Religious Land Use than for Prisoners, where Holt Already Sets a Low Bar

RLUIPA's robust protection of religious land uses is evident from how the statute makes a *prima facie* substantial burden even easier to show in the land-use context than for prisoners. This comparison matters because this Court already recognizes that RLUIPA provides "substantial protection for the religious exercise of institutionalized persons" that goes beyond the First Amendment. *See Holt v. Hobbs*, 574 U.S. 352, 362, 369 (2015) (holding that "RLUIPA provides greater protection" for the religious liberties of prisoners than "cases involving [their] First Amendment rights").

A. RLUIPA's Land-Use Provision Sweeps More Broadly On Substantial Burdens Than Its Prisoner Provision

RLUIPA's parallel substantial burden provisions for land-uses and prisoners invite direct comparison. Several textual features illustrate that whatever counts as a substantial burden for religious land-uses must be broader than the standard applied to religious exercise by prisoners.

First, the statute expands upon its already broad definition of religious exercise in a manner specific to land-use claims. Under both substantial-burden provisions, religious exercise is generally defined as "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). The statute then expands upon this definition in the land-use context by adding that "[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). This expansion has important implications for adapting the prisoner substantial-burden test under *Holt* to the land-use context.

The most critical consequence concerns the proper unit of analysis for evaluating a burden. In the prisoner context, *Holt* instructs courts to analyze whether a prison policy substantially burdens a prisoner's *specific exercise of religion* and prohibits them from considering whether *alternative forms of religious practice are available. See* 574 U.S. at 361–62. Expanding the definition of religious exercise to include the religious use of specific land necessarily alters that guidance. In the land-use context, courts now must analyze whether a *specific use of land for religious purposes* has been substantially burdened by a land-use regulation while taking care to ignore *alternative locations available for that use. See Anash, Inc. v. Borough of Kingston*, 184 F.4th 214, 244 (3d Cir. 2026). This forecloses many of the "alternative locations" approaches adopted by circuits across the country that too often fail to appreciate unique religious needs. *See infra* Section II.B.

Another corollary of this expanded definition of religious exercise is confirmation that the land-use provision protects more than just beliefs. While a land-use regulation can substantially burden religious exercise

by pressuring people to violate their religious beliefs, it can also substantially burden religious exercise by restricting the religious use of land. Therefore, unlike the prisoner context, it is not necessary to show the challenged government action infringed a person's beliefs in order to demonstrate it imposed a substantial burden in the land-use context. *Cf. 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.").

Second, the land-use substantial-burden provision expressly protects more types of claimants than the prisoner substantial-burden provision. The former extends to all religious persons, including assemblies and institutions, see 42 U.S.C. § 2000cc(a)(1), whereas the latter is limited to religious persons in confinement, *id.* § 2000cc-1(a). The difference in intended coverage reveals the land-use provision's ambitious scope.

Third, the statute explicitly sets out a broader jurisdictional basis for applying the land-use substantial-burden provision. While the land-use provision shares two jurisdictional bases with the prisoner provision, a third allows it to also apply wherever a government is making "individualized assessments" of proposed land-uses, see 42 U.S.C. § 2000cc(a)(2)(C), language with no analog in the institutionalized-persons provision. This unique jurisdictional hook likely reflects Congress' particular distrust of local governments and boards using zoning to engage in covert forms of discrimination, another indicator

that the land-use protections are intended to be broader. *See infra* Section III.C.

B. Common Sense Confirms the Difference: Prisons Raise Compelling Interests that Zoning Rarely Does

It is unsurprising that religious liberty protections would be stronger in the land-use context than in prisons given the realities of lawful incarceration. *See Holt*, 574 U.S. at 369 ("[I]n applying RLUIPA's statutory standard, courts should not blind themselves to the fact that the analysis is conducted in the prison setting."). Unlike ordinances or zoning regulations, prison policies regularly implicate compelling government interests. Prisons are shared spaces where various restrictions are likely necessary to ensure the security and health of inmates and officials. *See id.* at 369 (acknowledging a prison's compelling interests in "staunching the flow of contraband" and "the quick and reliable identification of prisoners" while recognizing that "RLUIPA . . . affords prison officials ample ability to maintain security").

Congress would have been aware of these distinct interests when calibrating the land-use and prisoner provisions. As this Court explained, "[l]awmakers supporting RLUIPA were mindful of the urgency of discipline, order, safety, and security in penal institutions. . . . They anticipated that courts would apply the Act's standard with due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources." *Cutter*

v. Wilkinson, 544 U.S. 709, 723 (2005) (cleaned up). By contrast, nothing suggests Congress expected courts to defer equally to local land-use regulators. To the contrary, the land-use provision's unique jurisdictional language and other circumstances surrounding its passage suggest that Congress was particularly skeptical of zoning interests. *See infra* Section III.C.

Given these differing government interests, Congress reasonably set a lower *prima facie* bar in the land-use context than in prisons. Although the existence of a compelling interest has no bearing on what constitutes a substantial burden, it informs the likely merits of a particular government action. Therefore, Congress would be comfortable allowing land-use regulations to be subject to strict scrutiny more often through a lower substantial-burden threshold.

C. The Third Circuit's Decision in *Anash* Gets this Comparison Right

The Third Circuit's opinion in *Anash, Inc. v. Borough of Kingston*, illustrates the importance of comparing a substantial burden under RLUIPA's land-use and prisoner provisions. After finding a "strong textual basis for reading RLUIPA's substantial-burden protections for religious land use more expansively than its substantial burden protections for institutionalized persons," it set out a three-prong substantial-burden test for land-uses that carefully expands upon its existing standard for prisoners. *See id.* at 239–40. Any differences between the standards were tied to the text, such as the broader definition of "religious exercise" covering "the use, building, or conversion of real property for the purpose of religious

exercise." *See id.* (citing 42 U.S.C. § 2000cc-5(7)(B)). As a consequence, the Third Circuit correctly rejects any consideration of feasible alternative locations for religious exercise in the substantial-burden analysis. *See id.* at 244 ("Congress codified a basic principle: except when the implementation of a land use regulation satisfies strict scrutiny, the choice of where the exercise of religion can take place should be left to persons with rights of access to and use of real property.").

Because the Kentucky Supreme Court mistakenly relied on the alternative locations factor, this Court can resolve this case by adopting the Third Circuit's approach.

II. The Court Should Adopt the Third Circuit's Workable Test: A Regulation Substantially Burdens Religious Exercise When It Restricts Access To, Prevents Use Of, Or Significantly Harms Real Property Otherwise Available For Religious Exercise

The Court should adopt the substantial-burden framework articulated by the Third Circuit in *Anash, Inc. v. Borough of Kingston*. Under that standard, a land-use regulation imposes a substantial burden when it (1) restricts access to property otherwise available for religious exercise, (2) limits the use of that property so as to prevent the religious exercise, even if the regulation is generally applicable, or (3) has a significant adverse effect on that property. *Id.* at 239–40. In these situations, a land-use regulation imposes a substantial burden on religious exercise regardless of the presence of feasible alternative locations. *Id.* at 244–45.

A. The Yeshiva's Ordeal Shows How the Third Circuit's Test Protects Religious Groups from Zoning Laws with Crushing Effects, Just as RLUIPA Intended

The Borough of Kingston's treatment of the Yeshiva shows why the Third Circuit's standard is critical to preserving religious liberty against land-use regulation. In 2019 and 2021, Rabbi Shimon Hellinger purchased two properties in the Borough where his congregation could meet for religious study and prayer. But suddenly in 2023, the Borough amended its zoning ordinance in a way that drastically reduced the permissible uses for the properties that the Yeshiva had been using for religious exercise. Acting on this new zoning ordinance, the Borough demanded the Yeshiva cease and desist the religious use of the property until it acquired a likely impossible-to-obtain variance. The Borough then forcibly closed the properties, pushing the Yeshiva's adherents off premises on the eve of Rosh Hashanah—the beginning of the High Holy Days for the Jewish faith.

The Borough continued to deny access to the properties, demanding that they be brought into compliance with the new ordinance. Despite recognizing that at least one property could not quickly or easily be brought into compliance, the Borough threatened the Yeshiva with a $500 fine for each day of noncompliance. Meanwhile, the Borough's refusal of access to these properties denied the Yeshiva a place to worship and prevented Rabbi Hellinger from holding regular services. Faced with these challenges, some congregants had to look for other places to practice their faith. Others stopped attending services. And still others left town altogether.

Rabbi Hellinger and the Yeshiva sought a preliminary injunction, alleging that the Borough's land-use regulation substantially burdened their religious exercise in violation of RLUIPA. Despite the egregiousness of their situation, the district court rejected this request for relief, reasoning that Rabbi Hellinger and the Yeshiva could not have been substantially burdened because they "can and have practiced their religion in alternative locations." *Anash, Inc. v. Borough of Kingston*, No. 3:24-CV-01955, 2024 WL 5294369, at *7 (M.D. Pa. Dec. 19, 2024). Even though it acknowledged these "alternative locations" were "imperfect," the district court found this ability to "host religious and educational activities" meant that "[t]here is no convincing evidence that Plaintiffs' freedom of religion is legitimately burdened." *Id.* at *5, *7.

Fortunately, the story does not stop there. Rabbi Hellinger and the Yeshiva appealed this denial of preliminary injunctive relief to the Third Circuit, where the meaning of a "substantial burden" under RLUIPA's land use provision "present[ed] a novel question." *Anash*, 184 F.4th at 236. Therefore, the Third Circuit was free to develop a workable and textually consistent standard operationalizing the substantial-burden requirement.

The court identified three scenarios in which a land-use regulation imposes a substantial burden and explained how the Borough's actions implicated each.

First, a land use regulation substantially burdens religious exercise "if it restricts *access* to real property that is otherwise available for the proposed exercise of religion." *Id.* at 239. Here, the Borough relied on noncompliance with the 2023 Zoning Ordinance to bar

the Yeshiva's members from two properties otherwise available for worship or religious gathering. Thus, the government's implementation of the land use ordinance "restrict[ed] access to real property used for religious exercise" and imposed a substantial burden on religious exercise. *Id.* at 240.

Second, a land use regulation that "limits the *use* of real property that is otherwise available for the proposed exercise of religion" imposes a substantial burden on religious exercise even if the regulation is "one of general applicability." *Id.* Because the Borough took the position that there was no way to "quickly or easily" allow the proposed religious exercise at the Yeshiva's properties under the zoning ordinance, that land use regulation "limit[ed] the use of real property in a way that prevents religious exercise on that property." *Id.* The nature of the burden on free exercise did not change just because the zoning ordinance also applied to non-religious organizations. In other words, even if the ordinance were generally applicable, the implementation of that zoning ordinance would still impose a substantial burden on religious exercise.

Third, a land use regulation imposes a substantial burden "if it has a *significant adverse effect* on real property that is used or otherwise available for the proposed exercise of religion" even when that "regulation does not directly impede religious exercise." *Id.* In implementing the 2023 Zoning Ordinance, the Borough threatened citations of $500 per day for each of the Yeshiva's properties to coerce compliance with the regulation. Though the threat did not directly impede the Yeshiva's religious exercise, it had "a significant adverse effect on real property used

for religious exercise" by conditioning such religious use of the land on a steep financial penalty. *Id.* Daily fines for each property would "quickly amount to a sizeable liability relative to the approximate property value." *Id.* The threatened sanctions thus substantially burdened the religious use of land even without directly preventing it.

The Yeshiva's experience under the 2023 Zoning Ordinance is an egregious example of a land-use regulation imposing multiple, distinct substantial burdens. It also shows the workability of the Third Circuit's standard, which operationalizes the substantial burden inquiry consistent with RLUIPA's plain text and central purpose. Here Congress enacted a law that by its terms protects "any exercise of religion" including "[t]he use, building, or conversion of real property for the purpose of religious exercise" from being substantially burdened by "a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land." 42 U.S.C. § 2000cc-5(5), (7). It further directed that these protections "be construed in favor of a broad protection of religious exercise." 42 U.S.C. § 2000cc-3(g). The Third Circuit then adopted a test that took those statements seriously, because "Congress said what it meant and meant what it said." *Loughrin v. United States*, 573 U.S. 351, 360 (2014).

B. Other Lower Courts Add Unworkable Requirements that RLUIPA's Text Does Not Contain

The Third Circuit's straightforward textualist interpretation clarifies the land-use provision's distinct

requirements and makes its application more consistent and predictable, surpassing other circuits' approaches.

Because RLUIPA does not explicitly define "substantial burden" and this Court has not provided a working definition, other circuits have filled that gap with judge-made factors unmoored from the text of the statute. These standards produce inconsistent, untenable results that fall far short of what the Free Exercise Clause already requires. The standards fall into three broad camps: open-ended multi-factor balancing, heightened coercion or severity thresholds, and single dispositive factors such as inquiries into alternative locations or notice. With no footing in RLUIPA's text, these tests lack the principled limits and administrability benefits of the Third Circuit's approach.

1. Open-Ended Multi-Factor Balancing Has No Basis in RLUIPA's Text

RLUIPA lists no balancing factors. It asks a single question: whether a land-use regulation "impose[s] a substantial burden on the religious exercise" of a person, assembly, or institution. 42 U.S.C. § 2000cc(a)(1). Circuits that substitute an open-ended multi-factor "functional" inquiry for that question depart from the statute. *See Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 96–97 (1st Cir. 2013); *Livingston Christian Schs. v. Genoa Charter Twp.*, 858 F.3d 996, 1004 (6th Cir. 2017). The First Circuit relies on a non-exhaustive list of factors that focus on religious animus and procedural irregularity rather than on the burden itself. The factors it has identified include whether the regulation "appears to target a religion . . . because of hostility to

that religion itself" and whether regulators used a process "designed to reach a predetermined outcome," *Roman Catholic Bishop, 724 F.3d* at 96–97, as well as whether the restriction was "imposed on the religious institution arbitrarily, capriciously, or unlawfully," *id.* at 97 (quoting *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 350 (2d Cir. 2007)). The Sixth Circuit's multi-factor approach asks (1) "whether the religious institution has a feasible alternative location from which it can carry on its mission"; (2) "whether the religious institution will suffer substantial delay, uncertainty, and expense due to the imposition of the regulation"; and (3) whether "a plaintiff has imposed a substantial burden on itself." *See Livingston Christian*, 858 F.3d at 1004 (internal quotation marks omitted). It also appears to have added an unstated fourth factor asking whether a "core" religious function was burdened, *id.* at 1006, even though RLUIPA protects "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)). Once untethered from the text, these compilations of factors have no principled limit.

2. Coercion and Severity Thresholds Rewrite the Word "Substantial"

Other circuits require a showing that the government action "*directly* coerces the religious institution to change its behavior," *see Westchester Day*, 504 F.3d at 349; *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004), language that appears nowhere in the statute. A coercion test might be sensible when the protected religious exercise is a belief-driven practice. But as the Third Circuit repeatedly emphasized,

RLUIPA protects more than beliefs in land-use cases by defining religious exercise to include "[t]he use, building, or conversion of real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5(7)(B).

Certain circuits inflate the word "substantial." The Seventh Circuit requires that the regulation "bear[] direct, primary, and fundamental responsibility for rendering religious exercise … effectively impracticable," *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003) ("*CLUB*"), and the Ninth Circuit requires a burden to be "'oppressive' to a 'significantly great' extent," *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004). Those glosses require total prohibitions, yet a distinct RLUIPA provision already prohibits regulations that "totally exclude[]" religious assemblies. 42 U.S.C. § 2000cc(b)(3). Reading a "substantial burden" to mean near-total exclusion would render that provision superfluous, as the Eleventh Circuit recognized. *Midrash Sephardi*, 366 F.3d at 1227. Unsurprisingly, these courts have struggled to apply their own thresholds as written. *See, e.g., Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 899 (7th Cir. 2005) (holding that a church need not "show that there was no other parcel of land on which it could build its church"); *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, 980 F.3d 821, 830–31 (11th Cir. 2020) ("[W]hatever 'substantial' means, it most assuredly does *not* mean complete, total, or insuperable."); *Westchester Day*, 504 F.3d at 349 ("[A] burden need not be found insuperable to be held substantial.").

By contrast, the Third Circuit focuses on the types of regulations that may be considered substantial

under the statute's definition of "religious exercise." *See Anash*, 184 F.4th at 239. And while it considers substantiality "primarily a question of degree," it focuses on the regulation's impact on a specific parcel of land connected to a religious exercise, not whether it hinders a religious exercise in all locations. Therefore, a regulation that "restricts access to" a specific piece of property used for a religious exercise or "limits the use of" a specific piece of property so as to prevent a religious exercise on that property certainly rises to the level of a "substantial" burden. *Id.* at 239–40. Other regulations that do not directly impede a religious exercise are only a "substantial" burden if they impose a "*significant adverse effect* on real property that is used or otherwise available for the proposed exercise of religion." *Id.* at 240.

3. Neither Alternative Locations Nor Notice Can Defeat a Substantial Burden

Still other courts let single atextual factors decide the case, most often considering the availability of alternative locations for similar uses. *See Marianist Province of the U.S. v. City of Kirkwood*, 944 F.3d 996, 1001 (8th Cir. 2019); *Livingston Christian*, 858 F.3d at 1004; *Midrash Sephardi*, 366 F.3d at 1227–28; *San Jose Christian Coll.*, 360 F.3d at 1035. The Eighth Circuit has squarely held that "requiring a religious institution to use feasible alternative locations for religious exercise does not constitute a substantial burden," *Marianist*, 944 F.3d at 1001, joining the Sixth, Eleventh, and Ninth Circuits, *id.* Applying that rule, courts have held that a school was not burdened because it could travel "roughly [a] dozen miles," *Livingston Christian*, 858 F.3d at 1011; a synagogue was not burdened because congregants could

"walk[] a few extra blocks," *Midrash Sephardi*, 366 F.3d at 1228; and a college was not burdened because it could use "other sites within the city," *San Jose Christian Coll.*, 360 F.3d at 1035. But the statute makes the claimant's use of specific "real property" the protected exercise. 42 U.S.C. § 2000cc-5(7)(B) ("The use . . . of real property . . . shall be considered to be religious exercise of the person or entity that uses or intends to use *the property* for that purpose.") (emphasis added). Therefore, the question is whether the government burdens that exercise on certain land, not whether different land remains available for it. *See Holt*, 574 U.S. at 361–62.

The District Court's ruling here shows the consequences. It did not dispute that the temporary alternative locations "do not allow for the same level of participation or consistency" as the Yeshiva's property, yet it dismissed those deficiencies as "imperfections" and found no burden. *Anash*, 2024 WL 5294369, at *4, *7. Under that approach, a government may evict a congregation from its place of worship and avoid strict scrutiny so long as some lesser site exists elsewhere. The Third Circuit's approach supplies the needed solution to this problem; its inquiry considers only the burden the government actually imposed on the religious use of particular pieces of land.

The notice factor fares no better. The Supreme Court of Kentucky, drawing on the Sixth Circuit, held that there was no substantial burden because Petitioner had "every reason to know … that building the grotto was not permitted by the ordinance." *Missionaries of Saint John the Baptist*, 727 S.W.3d at 415; *see Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 449 (6th Cir. 2023); *see also Andon, LLC v. City of Newport News*,

813 F.3d 510, 515 (4th Cir. 2016) (treating a "knowingly entered" contingent agreement for non-conforming property as a self-imposed hardship). RLUIPA contains no such limitation. The statute defines a covered "land use regulation" as "a zoning or landmarking law, or the application of such a law," 42 U.S.C. § 2000cc-5(5), and protects both those who use property and those who "intend[] to use the property" for religious purposes, *id.* § 2000cc-5(7)(B). Congress thus contemplated that claimants would seek relief from existing regulations that already bar their intended religious use. Because every such regulation is publicly known, treating awareness of it as a self-imposed burden would read the statute's protection for intended uses out of the text. A notice rule also produces an untenable paradox: because the clearest prohibitions provide the clearest notice, the more categorically a government prohibits religious exercise, the less likely the prohibition is to be deemed a substantial burden.

Each of these tests adds something that Congress decided to leave out. The Third Circuit's framework does not. Adopting it will help restore a single, textually grounded standard nationwide.

C. The Third Circuit's Test Leaves Governments Ample Room to Regulate Land

While strongly protective of religious liberty, the Third Circuit's straightforward and textually consistent framework does not immunize religious institutions from land use regulations. Nor does it leave local governments unable to enforce any land use regulation that has even incidental impacts on religious organizations. Instead,

the standard merely strips away extratextual qualifiers and judicially created factors to restore the structure Congress enacted. Under it, governments still have two ways to regulate religious land use.

First, a local government may impose any kind of land use regulation that does not "substantially" burden religious exercise, a meaningful threshold under the Third Circuit's test. *See supra* Section II.A. While it depends on the particulars, the following examples of land-use regulations are unlikely to impose a substantial burden. A regulation requiring the use of screening bushes between incompatible property uses is unlikely to prevent or limit the use of real property that is otherwise available for the proposed exercise of religion. And a zoning ordinance dictating the above-ground location of utility boxes is unlikely to impose a significant adverse effect on the real property that is used or otherwise available for the proposed exercise of religion. Barring unusual circumstances or highly unique forms of religious expression, the vast majority of land-use regulations will not impose substantial burdens on the exercise of religion. And the Third Circuit's three circumstances provide a textually consistent method for determining whether a burden is substantial. Short of that, RLUIPA leaves unchanged a local government's ability to implement land-use laws that merely affect religious organizations.

Second, a local government may still implement a land use regulation imposing a substantial burden on religious exercise if it can show that it is in furtherance of a compelling government interest. And though this standard is demanding, this Court has repeatedly rejected the bromide that strict scrutiny is "strict in theory, but

fatal in fact." *Fisher v. Univ. of Tex.*, 570 U.S. 297, 314 (2013) (quoting *Adarand Constructors v. Pena*, 515 U.S. 200, 237 (1995)). RLUIPA's burden shifting framework merely ensures that if local government bodies intend to impose substantial burdens on religious entities in support of compelling interests, they must be able to show why these burdens are necessary and not just easier or more expedient. By implementing the proper scope of a substantial burden, the Third Circuit's approach recognizes this inquiry is just one part of the statute's burden shifting framework—not the whole ballgame. By contrast, other circuits appear to have developed atextual, unreasonably demanding substantial-burden requirements out of an unfounded fear that local governments will be hindered from imposing necessary land-use regulations.

III. RLUIPA Guarantees Land-Use Claimants At Least the Protection the Free Exercise Clause Provides and Likely More

Congress enacted RLUIPA to provide the protection for religious exercise that this Court, in *Employment Division v. Smith*, 494 U.S. 872, 890 (1990), left to the political branches. RLUIPA's text sets a floor at least equal to the Free Exercise Clause, and its express rules of construction direct courts to go further. Its enactment history confirms that Congress meant exactly what it said. Yet many lower courts have layered judge-made thresholds onto the statute that leave land-use claimants with *less* protection than the Free Exercise Clause itself provides. *See, e.g.*, *Westchester Day Sch. v. Vill. of Mamaroneck*, 386 F.3d 183, 189 (2d Cir. 2004); *Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App'x 729, 741

n.6 (6th Cir. 2007); *Missionaries of Saint John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400, 414–16 (Ky. 2025). This Court should reaffirm that RLUIPA means what it says.

A. RLUIPA's Text Directs Courts to Construe Its Protections Broadly, Even Beyond What the Free Exercise Clause Requires

First, the statute expressly ties some but not all its basic protections to the Free Exercise Clause. "If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause *or* a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim[.]" 42 U.S.C. § 2000cc-2(b) (emphasis added). The text thus places RLUIPA and Free Exercise claims on the same footing at minimum.

Second, as discussed in Section I.A, Congress defined protected "religious exercise" expansively, especially for land use. In "an obvious effort to effect a complete separation from First Amendment case law, Congress deleted the reference to the First Amendment and defined the 'exercise of religion' to include 'any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'" *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 696 (2014) (quoting 42 U.S.C. § 2000cc-5(7)(A)). "And Congress mandated that this concept '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.* (quoting 42 U.S.C. § 2000cc-3(g)). Congress thus deliberately decoupled RLUIPA from the constitutional minimum in this regard.

And third, reflecting the statute's novel demands, Congress spelled out the many ways a government may comply. It "may avoid the preemptive force of any provision of this [Act] 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). And Congress preserved state and federal laws that are "equally as protective of religious exercise as, or more protective of religious exercise than," RLUIPA. *Id.* § 2000cc-3(h). Throughout, the statute speaks of more protection, never less. Unsurprisingly, Congress anticipated that compliance would cost the government something: "this chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." 42 U.S.C. § 2000cc-3(c). All this confirms Congress expected accommodations to impose real costs on government beyond the status quo.

B. This Court's Precedents Confirm That RLUIPA Provides Greater Protection Than the Free Exercise Clause

Legislatures may accommodate religious exercise beyond what the Free Exercise Clause requires. *See Smith*, 494 U.S. at 890. This Court's decisions confirm that, in enacting RLUIPA, Congress did just that. RLUIPA provides "expansive protection" for religious liberty. *Holt*, 574 U.S. at 358. Its strict-scrutiny standard is "exceptionally demanding," such that if "a less restrictive

means is available for the Government to achieve its goals, the Government must use it." *Id.* at 364–65 (internal quotation marks omitted). RLUIPA also "imposes the same general test as RFRA." *Hobby Lobby*, 573 U.S. at 695 (citing *Cutter*, 544 U.S. at 715–16). In RFRA, Congress "reinstated the compelling governmental interest test eschewed by *Smith*," *Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627, 638 (1999). And this Court has affirmed that lower courts are capable of the case-by-case consideration of religious exemptions required under statutes like RLUIPA. *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 436 (2006) (discussing *Cutter*, 544 U.S. at 722).

Holt also sets RLUIPA apart from First Amendment jurisprudence in critical ways. The Court rejected a familiar argument for evaluating substantial burdens under RLUIPA as "improperly imported" from a strand of First Amendment cases: the consideration of alternatives. *Holt*, 574 U.S. at 361. For prisoner claims, it insisted that courts applying RLUIPA should not ask "whether the claimant is able to engage in other forms of religious exercise," even if "[u]nder [First Amendment] cases the availability of alternative means of practicing religion is a relevant consideration." *Id.* at 361-62. Its principal reason—"RLUIPA provides greater protection." *Id.* at 361. The same reasoning would apply to land-use regulations. *See supra* Section I.A. RLUIPA's land-use provision provides greater protection than the First Amendment by asking whether the government has substantially burdened the claimant's particular use of land for religious exercise, not whether the claimant might satisfy the same religious purpose on a different parcel. Just as the availability of alternative means of practice

does not defeat a burden, the availability of alternative locations does not show that no burden exists.

Despite these precedents, too many lower courts artificially narrow RLUIPA until it is even less protective than the Free Exercise Clause. That includes the Supreme Court of Kentucky, which, adopting Sixth Circuit precedent, not only asks whether a religious institution "has a feasible alternative location from which it can carry on its mission," but also whether it will "suffer substantial delay, uncertainty, and expense," and whether it has "imposed a substantial burden upon itself." *Missionaries of Saint John the Baptist*, 727 S.W.3d at 414 (quoting *Livingston Christian*, 858 F.3d 996).

C. RLUIPA's Land-Use Protections Represent Congress' Targeted Response to Certain Forms of Religious Discrimination

RLUIPA's legislative history confirms that it was a deliberate, targeted response to religious discrimination in land use—and the latest step in the "long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens." *Cutter*, 544 U.S. at 714.

After *Smith* "largely repudiated the method of analyzing free-exercise claims" under the substantial burden standard, Congress enacted the Religious Freedom Restoration Act of 1993 ("RFRA") to restore the compelling interest test. *Hobby Lobby*, 573 U.S. at 693; 42 U.S.C. § 2000bb(b)(1). To reach the States, Congress relied on its Section 5 remedial power to enforce the Fourteenth Amendment. *Hobby Lobby*, 573 U.S. at 695.

But in doing so, Congress "had overstepped." *Id.* Section 5 legislation requires "a congruence between the means used and the ends to be achieved." *City of Boerne v. Flores*, 521 U.S. 507, 530 (1997). Yet RFRA applied to all government action. 42 U.S.C. § 2000bb-1(a). Because RFRA was "so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior," the Court held that its application to the States exceeded Congress' remedial authority under Section 5 of the Fourteenth Amendment. *City of Boerne*, 521 U.S. at 532.

With this holding in mind, Congress went back to the drawing board. Within a year of *City of Boerne*, it began three years of hearings—six before the House Subcommittee on the Constitution and three before the Senate Committee on the Judiciary—investigating religious discrimination.[2] Those hearings generated "a

2. Protecting Religious Freedom After *Boerne v. Flores*: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 105th Cong. (1997); Congress' Constitutional Role in Protecting Religious Liberty: Hearing Before the S. Comm. on the Judiciary, 105th Cong. (1997); Congress, the Court, and the Constitution: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 105th Cong. (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. (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. (1998); Religious Liberty Protection Act of 1998: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 105th Cong. (1998); Religious Liberty Protection Act of 1998: Hearing Before the S. Comm. on the Judiciary, 105th

substantial record of evidence indicating a widespread pattern of religious discrimination in land use regulation."[3] H.R. Rep. No. 106–219, at 18; *see also* 146 Cong. Rec. S7774 (daily ed. July 27, 2000) (joint statement of Sens. Hatch & Kennedy) ("[T]he committees in each house have examined large numbers of cases, and the hearing record reveals a widespread pattern of discrimination against churches as compared to secular place of assembly.").

The House Committee heard, for instance, that because Orthodox Jews "must live within walking distance" of their places of worship, "it is very easy . . . for land use regulators to exclude Orthodox Jews from living in a neighborhood by excluding their place of worship." H.R. Rep. No. 106-219, at 22. Rabbi Chaim Baruch Rubin of Congregation Etz Chaim described how the City of Los Angeles "refus[ed] to allow fifty elderly Jews to meet for prayer in a house in the large residential neighborhood" because "the City did not want to create a precedent." *Id.* These examples were but a drop in the deluge of "statistical and anecdotal evidence [that resulted] in the Committee's finding that many exercises of land use regulation are unconstitutional." *Id.* at 23.

Cong. (1998); Religious Liberty Protection Act of 1999: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 106th Cong. (1999); Religious Liberty: Hearing Before the S. Comm. on the Judiciary, 106th Cong. (1999).

3. Most of these hearings concerned RLUIPA's predecessor, the Religious Liberty Protection Act, H.R. 1691, 106th Cong. (1999). RLUIPA "is patterned after" that "earlier, more expansive bill," which "passed the House of Representatives with an overwhelming vote after several committee hearings, two markups, and the filing of a Committee Report." 146 Cong. Rec. E1563 (daily ed. Sept. 22, 2000) (statement of Rep. Canady).

These findings gave rise to RLUIPA's land-use provisions, which were needed "to protect one of the most fundamental aspects of religious freedom, the right to gather and worship." 146 Cong. Rec. H7191 (daily ed. July 27, 2000) (statement of Rep. Canady). As the Senate co-sponsors explained, "[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," and the record showed "that this right is frequently violated," justifying "prophylactic rules to simplify the enforcement of constitutional standards in land use regulation of churches." 146 Cong. Rec. S7774–75 (daily ed. July 27, 2000) (joint statement of Sens. Hatch & Kennedy).

Congress understood the standard to be demanding. Senator Reid, who had concerns about the bill's prison provisions, supported the land-use provisions precisely because they would require zoning authorities "to use the least restrictive means possible to advance a compelling state interest"—"a high standard to meet," but one "the free exercise of religion deserves, in fact demands." *Id.* at S7778 (statement of Sen. Reid). And because zoning discrimination is "often covert," the co-sponsors explained, a uniform prophylactic standard was required; Congress could not "legislate in a way that reaches only those jurisdictions that are guilty." *Id.* at S7775 (joint statement of Sens. Hatch & Kennedy).

With that understanding, RLUIPA "passed the Senate and the House without committee action and by unanimous consent." 146 Cong. Rec. E1563 (statement of Rep. Canady); *see also Fulton v. City of Philadelphia*, 593 U.S. 522, 563 (2021) (Alito, J., concurring in the judgment) (noting that RLUIPA "passed both Houses of

Congress without a single negative vote"). In signing it, President Clinton observed that "[r]eligious liberty is a constitutional value of the highest order." Statement on Signing the Religious Land Use and Institutionalized Persons Act of 2000, 36 Weekly Comp. Pres. Doc. 2168 (Sept. 22, 2000).

This history shows that Congress enacted RLUIPA's land-use protections under Section 5 of the Fourteenth Amendment to remedy systemic underenforcement of the Free Exercise Clause in this context. 146 Cong. Rec. S7775 (daily ed. July 27, 2000) (joint statement of Sens. Hatch & Kennedy). Land use may be a local concern, but "discrimination against religious uses is a nationwide problem," and Congress found ample "reason to believe that many of the laws affected by the congressional enactment have a significant likelihood of being unconstitutional." *Id.* (quoting *City of Boerne*, 521 U.S. at 532). The history thus reinforces what RLUIPA's text already says: its land-use provisions, including the substantial-burden requirement, must "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3(g).

CONCLUSION

The Court should reverse the Kentucky Supreme Court's judgment and adopt the Third Circuit's approach for evaluating substantial burdens on religious land-uses.

Respectfully submitted,

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