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

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

D. JOHN SAUER
Solicitor General
Counsel of Record
JONATHAN D. GUYNN
Acting Assistant
Attorney General
SARAH M. HARRIS
Deputy Solicitor General
EMILY M. FERGUSON
Assistant to the
Solicitor General
LOWELL V. STURGILL, JR.
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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 Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. 2000cc(a)(1).

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INTEREST OF THE UNITED STATES

This case concerns the circumstances in which a religious person, assembly, or institution may demonstrate a "substantial burden" on religious exercise for purposes of the land-use protections of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc *et seq*. 42 U.S.C. 2000cc(a)(1). The United States enforces RLUIPA and has a significant interest in the proper application of that statute. See 42 U.S.C. 2000cc-2(f). It also has a substantial interest in the preservation of the free exercise of religion. The United States has participated as amicus curiae in several other RLUIPA cases, including *Ramirez* v. *Collier*, 595 U.S. 411 (2022), and *Holt* v. *Hobbs*, 574 U.S. 352 (2015).

INTRODUCTION

In response to the Court's decision in *Employment Division* v. *Smith*, 494 U.S. 872 (1990), Congress enacted the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc *et seq.*, to provide "greater protection" for religious exercise in the land-use context, consistent with this Court's pre-*Smith* approach to free exercise. *Holt* v. *Hobbs*, 574 U.S. 352, 357 (2015). To that end, RLUIPA mandates that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden" is "in furtherance of a compelling governmental interest" and "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. 2000cc(a)(1).

This case involves how to tell when a land-use restriction imposes the requisite "substantial burden" on religious exercise. Here, a Catholic organization—petitioner Missionaries of St. John the Baptist, which owns a church in Park Hills, Kentucky—obtained a parcel of land adjacent to the church with the intention of building a grotto into the hillside to commemorate the apparition of the Virgin Mary at Lourdes, France. Pet. App. 4a. Building that shrine unquestionably qualifies as religious exercise under RLUIPA. Further, various aspects of the grotto's design carry religious significance, from its size, placement on a hill, and appearance, which facilitate quiet prayer and an immersive experience, J.A. 17 at 30:15, to its placement adjacent to the church to mirror the grotto and adjacent chapel in Lourdes, Pet. 5; Pet. Br. 1, 11. And no other approach would be equally conducive to petitioner's religious ex-

ercise. Under these circumstances, land-use restrictions that bar petitioner from building the grotto on the land it acquired adjacent to the church unquestionably qualify as a substantial burden on petitioner's religious exercise under RLUIPA.

That conclusion flows from RLUIPA's plain text, statutory context, and this Court's precedents. A law substantially burdens religious exercise—and thus must be justified at strict scrutiny—when it forces or pressures a religious individual or entity to forgo or materially alter that religious exercise. When, on the other hand, the religious adherent has real, available alternatives that would equally allow for the religious exercise at issue, the law imposes no substantial burden. Here, the zoning restrictions at issue would prohibit petitioner from constructing the grotto in a form that would serve its intended religious purpose and thus substantially burden petitioner's religious exercise.

The Kentucky Supreme Court disagreed. Adopting an atextual four-factor test that considers whether available alternatives exist; whether the claimant has suffered substantial delay, uncertainty, and expense; whether the claimant should reasonably have expected the restrictions on its religious exercise; and whether the government acted arbitrarily or discriminatorily, that court wrongly concluded that petitioner faced no substantial burden. Pet. App. 24a-27a. In doing so, the court—like decisions of other courts—misconceived the statutory inquiry, crediting an alternative that fails to equally allow for petitioner's religious exercise and unduly narrowing the scope of RLUIPA's protections.

The judgment of the Supreme Court of Kentucky should be vacated, and the case remanded for further proceedings.

STATEMENT

A. Statutory Background

Congress enacted RLUIPA and "its sister statute," the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.*, "to accord heightened statutory protection to religious exercise in the wake of" *Employment Division* v. *Smith*, 494 U.S. 872 (1990). *Sossamon* v. *Texas*, 563 U.S. 277, 281 (2011); *Holt* v. *Hobbs*, 574 U.S 352, 357 (2015). RFRA was enacted in 1993, but this Court held that the statute exceeded Congress's powers under Section 5 of the Fourteenth Amendment in its application to the States and their subdivisions. See *City of Boerne* v. *Flores*, 521 U.S. 507, 536 (1997).

Congress "responded to *City of Boerne* by enacting RLUIPA." *Holt*, 574 U.S. at 357. RLUIPA applies to state and local governments, but its scope is limited. It "targets two areas of state and local action: land-use regulation, and restrictions on the religious exercise of institutionalized persons." *Sossamon*, 563 U.S. at 281 (citation omitted). This case involves the land-use provisions of RLUIPA. Only "zoning or landmarking law[s]" are considered "'land use regulation[s],'" 42 U.S.C. 2000cc-5(5), and only actions taken by state or local governmental entities or those acting under color of state law fall within the statute's ambit, 42 U.S.C. 2000cc-5(4). Further, RLUIPA narrows the potential universe of claimants who can challenge land-use regulations that "limit[] or restrict[]" their "use or development of land": Only those with "an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest" can invoke RLUIPA's protections. 42 U.S.C. 2000cc-5(5).

RLUIPA protects religious exercise relating to land use in two main ways. First, and most relevant here, RLUIPA guards against substantial burdens on religious exercise via land-use regulation. Specifically:

> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—
>
> (A) is in furtherance of a compelling governmental interest; and
>
> (B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. 2000cc(a)(1).

Though RLUIPA does not define what a "substantial burden" entails, the statute defines "'religious exercise'" broadly, to "include[] 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). RLUIPA also prescribes 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." 42 U.S.C. 2000cc-5(7)(B). Thus, if a religious group seeks to build a religious school on some property, that particular use of the land qualifies as a form of religious exercise by the religious group. Further, RLUIPA instructs that courts should construe the statute "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).

RLUIPA also delimits the scope of the substantial-burden provision. The provision applies "even if the burden results from a rule of general applicability," so long as (1) the burden "is imposed in a program or activity that receives Federal financial assistance" or (2) the burden affects foreign or interstate commerce. 42 U.S.C. 2000cc(a)(2)(A) and (B). It also applies if "the substantial burden is imposed in the implementation of a land use regulation" involving "individualized assessments of the proposed uses for the property involved." 42 U.S.C. 2000cc(a)(2)(C). Such restrictions must then survive strict scrutiny.

Second, RLUIPA protects land-use-related religious exercise by expressly barring land-use regulations that discriminate against or exclude religious groups. RLUIPA's equal-terms provision forbids land-use regulations that operate "in a manner that treats a religious assembly or institution on less than equal terms" with secular counterparts. 42 U.S.C. 2000cc(b)(1). The nondiscrimination provision bars land-use regulations "that discriminate[] against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. 2000cc(b)(2). And the exclusion provision prohibits governments from "impos[ing]" or "implement-[ing]" land-use regulations that "totally exclude[] religious assembles from a jurisdiction" or "unreasonably limit[] religious assemblies, institutions, or structures within a jurisdiction." 42 U.S.C. 2000cc(b)(3). All of those types of land-use regulations are prohibited outright.

B. Factual Background And Procedural History

1. Petitioner Missionaries of St. John the Baptist is a Catholic nonprofit organization that owns the Our

Lady of Lourdes Catholic Church in Park Hills, Kentucky, a small Cincinnati suburb. Pet. App. 41a.

A church has operated at Our Lady of Lourdes' current Amsterdam Road location since 1930. Pet. App. 59a. Petitioner acquired the church property in 2015. *Ibid.* Soon thereafter, petitioner entered into a perpetual lease with a trust that owned a property adjacent to the church featuring a small, undeveloped grassy hill. Pet. Br. 10. In 2021, the trust deeded the adjacent lot to petitioner. Pet. App. 8a & n.6.

Petitioner believes, in accordance with its Catholic faith, that in 1858, the Virgin Mary appeared in a grotto in Lourdes, France, and told Saint Bernadette Soubirous to "'tell the Priests that a chapel must be built' next to the grotto." Pet. 5 (citation omitted). Our Lady of Lourdes Church is named in honor of that Marian apparition. Like its counterpart in Lourdes, petitioner seeks to commemorate the Virgin Mary's appearance by building a "natural space for reflection to benefit the users of the church and visitors of the church grounds." Pet. App. 126a. The grotto "is intended to give [visitors to the grotto] the spiritual experience of visiting Lourdes." Pet. Br. 12. Because the Virgin Mary directed Saint Bernadette that "'a chapel must be built' next to the grotto" in Lourdes, France, petitioner believes that the grotto "must be erected adjacent to the church." Pet. 5 (citation omitted).

The proposed grotto would resemble dozens of other grottos dedicated to Our Lady of Lourdes across the United States, including grottos designed for prayer and devotion at the University of Notre Dame and Mount Saint Mary's University. See University of Notre Dame, Campus Ministry, Basilica of the Sacred Heart, *Use of the Grotto* (2026) https://basilica.nd.edu/policies-

and-requests/use-of-the-grotto/; National Shrine Grotto, Mount St. Mary's University, *Grotto Cave*, https://www.nsgrotto.org/grotto-cave.html.

2. Our Lady of Lourdes and the adjacent property are located in a residential zone (which ordinarily excludes churches) under Park Hills' zoning ordinance, which the city adopted in 1974. Pet. App. 45a-46a. Because the church predated the zoning code, Park Hills grandfathered the church into lawful status as a permissible nonconforming use. *Id.* at 59a.

Both the zoning ordinance and Kentucky law generally permit municipal boards of adjustment to grant variances from the zoning code as well as conditional-use permits for uses that are not the primary zoned use, so long as the proposed use will promote the "general well being of the neighborhood or the community," "will not * * * be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity," and "will comply with any regulations and conditions specified in th[e] ordinance for such building and use." Pet. App. 6a-7a (citation and emphasis omitted); Ky. Rev. Stat. Ann. § 100.347 (West 2025). But boards may not grant variances that are "not permitted by the zoning regulation in the zone in question." Ky. Rev. Stat. Ann § 100.247 (West 2026); see also Pet. App. 46a. In Park Hills, that means that new churches and religious properties, at least, may receive conditional-use permits only if they are located adjacent to an "arterial street" (*i.e.*, a main public throughfare). Pet. App. 46a (citation omitted).

In March 2021, petitioner applied for both a variance and a conditional-use permit to build the grotto. Pet. App. 126a-129a. The application sought to build a roughly 16 foot by 39 foot grotto on the church-adjacent property

that petitioner had acquired from the trust. *Id.* at 4a. The grotto would consist of a shrine to the Virgin Mary, a plaza, a walking path, and a retaining wall, and would be built into a small hill next to the church parking lot. *Ibid.*

In April 2021, the Board of Adjustment held a public hearing to consider the church's application and voted 4-1 to grant the necessary permission. Pet. App. at 8a, 146a-147a. The Board found that the proposed use satisfied all requirements for a conditional-use permit and that the variance would not "adversely affect the public health, safety[,] * * * welfare," or "essential character of the general vicinity." *Id.* at 9a-10a. The lone dissenter voted against the permits because the church is not located on an arterial street. *Id.* at 8a.

3. Respondents, private citizens who live across the street from Our Lady of Lourdes, sued the Board and petitioner in county court soon after the Board granted petitioner's application, seeking a declaratory judgment and an injunction to block construction. Pet. App. 10a, 99a. Their complaint expressed concerns about traffic, noise, lighting, and parking, and they argued that the Board had exceeded its statutory authority in approving the project. *Id.* at 106a-107a, 110a.

Both sides moved for summary judgment. Pet. App. 11a. Respondents reasserted the claims in their complaint. *Ibid.* The defendants (including petitioner) pressed two primary responses: first, that they had complied with all relevant state and local laws, *id.* at 89a, and second, a defense under RLUIPA, *id.* at 92a. The county court granted summary judgment to petitioner and the other defendants on state-law grounds, holding that the Board had acted within its authority.

Id. at 56a-61a. The court thus did not address RLUIPA. *Ibid.*

4. Respondents appealed. The Court of Appeals of Kentucky reversed, holding that the Board exceeded its statutory authority in granting the conditional-use permit and variances because the Board had expanded the church's nonconforming use in violation of Kentucky law. Pet. App. 43a-44a. The court also rejected petitioner's and the other defendants' RLUIPA defense, holding that proper application of the local ordinances would not constitute a substantial burden on religious exercise because applying the ordinances would not "pressure the [church] to violate [its] religious beliefs." *Id.* at 54a (citing *Living Water Church of God* v. *Charter Twp. of Meridian*, 258 Fed. Appx. 729, 734 (6th Cir. 2007), cert. denied, 553 U.S. 1093 (2008)).

5. Petitioner sought discretionary review before the Kentucky Supreme Court. Pet. App. 16a. Its petition challenged only the Court of Appeals of Kentucky's RLUIPA holding as to the lack of a substantial burden on religious exercise, not any state-law issues. *Id.* at 17a.[1]

The Kentucky Supreme Court affirmed the Court of Appeals of Kentucky's RLUIPA holding, "albeit on different grounds." Pet. App. 30a. Specifically, the Kentucky Supreme Court adopted the framework the Sixth Circuit had advanced in *Livingston Christian Schools* v. *Genoa Charter Township*, 858 F.3d 996 (2017), cert. denied, 584 U.S. 961 (2018), for evaluating when a sub-

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[1] Petitioner also argued that the Park Hills zoning ordinance violated RLUIPA's equal-terms provision, 42 U.S.C. 2000cc(b)(1), by requiring only churches and other religious buildings—but not various secular buildings—to be located on arterial streets. Pet. App. 28a.

stantial burden on religious exercise under RLUIPA exists. Pet. App. 30a. The Kentucky Supreme Court interpreted the Sixth Circuit's framework to require consideration of four factors: (1) whether the religious institution had a feasible alternative location; (2) whether it had suffered "substantial delay, uncertainty, and expense"; (3) whether it had imposed the burden on itself; and (4) whether the municipality's decision-making process "was arbitrary, capricious, or discriminatory." *Id.* at 24a-25a (citations omitted).[2]

The Kentucky Supreme Court concluded, under that framework, that denying the conditional-use permit and variances so that petitioner could not build its grotto on the recently acquired adjacent lot would impose no substantial burden on petitioner's religious exercise. Pet. App. 25a-27a. The court focused principally on two factors: the existence of feasible alternatives and whether the burden was self-imposed. As to feasible alternatives, the court reasoned that petitioner had "not asserted that it could not construct a smaller grotto or shrine on the property it already owned, i.e., not on the acquired" property. *Id.* at 25a. Building a smaller grotto, the court said, "falls more into the category of a mere inconvenience than a burden with some degree of severity." *Ibid.* (citation and internal quotation marks omitted). Further, the court reasoned that the burden of the land-use restrictions was self-imposed because petitioner knew of the restrictions when it submitted its application. *Id.* at 27a. The court also suggested peti-

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[2] In fact, the Sixth Circuit's decision in *Livingston* rejected the fourth factor as part of the substantial-burden analysis, pointing out that RLUIPA has a separate antidiscrimination provision that encompasses this inquiry. See 858 F.3d at 1005 (citing 42 U.S.C. 2000cc(b)(1) and (2)).

tioner had suffered no delay, uncertainty, or expense because it had presented no evidence that "its saga to build the grotto" began before it filed its application in 2021; the court did not address whether the decision-making process was arbitrary or discriminatory. *Ibid.* Justice Thompson dissented on factual and state-law grounds. *Id.* at 31a-39a.

SUMMARY OF ARGUMENT

The question presented is whether a land-use regulation that prohibits a religious institution from building a religious structure on its own property constitutes a "substantial burden" under RLUIPA. The answer here is yes. By denying petitioner the right to build a prayer grotto that would serve its particular religious purpose —immersive, contemplative prayer akin to a pilgrimage to Lourdes—the land-use ordinances at issue impose a "substantial burden" on petitioner's religious exercise within the meaning of RLUIPA.

A. A land-use regulation substantially burdens religious exercise when it forces or pressures a RLUIPA claimant to forgo or materially alter that exercise. That understanding comports with the text of RLUIPA's substantial-burden provision, 42 U.S.C. 2000cc(a), this Court's RLUIPA precedents, and the background precedents against which Congress enacted RLUIPA.

The plain meaning of a "substantial burden" covers material or considerable impediments or restrictions on the use of land for religious exercise. Other parts of RLUIPA reinforce that reading. Congress expressly refused to limit RLUIPA's land-use protections just to non-generally-applicable regulations or just to instances of disparate treatment or discrimination against religious exercise. See 42 U.S.C. 2000cc(b)(1)-(3). And Congress directed that RLUIPA must be "construed in

favor of a broad protection of religious exercise, to the maximum extent permitted by the [statute] and the Constitution." 42 U.S.C. 2000cc-3(g).

This Court's precedents interpreting RLUIPA and its "sister statute" RFRA comport with that plain meaning. In both *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (RFRA), and *Holt* v. *Hobbs*, 574 U.S. 352 (2015) (RLUIPA), the Court found substantial burdens on religious exercise where government action forced or pressured claimants to forgo or change a particular form of religious exercise—even though the claimants could continue to exercise their religious beliefs in other ways. *Hobby Lobby Stores*, 573 U.S. at 720-721; *Holt*, 574 U.S. at 361.

That reading matches the Court's free-exercise precedents from before *Employment Division* v. *Smith*, 494 U.S. 872 (1990), which applied a substantial-burden test that RFRA and RLUIPA sought to restore across contexts. Those precedents, too, suggest that a substantial burden exists where a religious adherent faces "substantial pressure" to alter his religious practice, even when that pressure is imposed indirectly. *Thomas* v. *Review Bd. of the Ind. Emp't Sec. Div.*, 450 U.S. 707, 718 (1981); see, *e.g.*, *Hernandez* v. *Commissioner*, 490 U.S. 680, 699-700 (1989).

Those sources all demonstrate a context-specific inquiry with a central limiting principle. A substantial burden exists when application of a land-use regulation coerces or pressures a religious adherent to forgo or materially alter its religious exercise. But when the adherent has adequate, available alternatives to engage in the particular religious exercise at issue without running afoul of that regulation, that mitigates the burden. Courts, however, must view the adequacy of any alter-

natives through the lens of the religious exercise: Only if, from a religious standpoint, another option is equally good would it qualify as a viable alternative.

B. The land-use regulations in this case substantially burden petitioner's religious exercise because they operate to bar petitioner from the specific religious exercise at issue: constructing a prayer grotto modeled on the grotto at Lourdes adjacent to the existing Our Lady of Lourdes Church.

Petitioner has proposed creating an immersive, contemplative setting for prayer, reflection, and repose, dedicated to the Virgin Mary. Pet. Br. 11. Constructing a grotto for that use is considered religious exercise under the statute. 42 U.S.C. 2000cc-5(7)(B). And application of the relevant zoning restrictions forbids that religious exercise—petitioner cannot build the grotto on the church-adjacent property, and a significantly smaller grotto located on the church property, consistent with those restrictions, could not serve the same religious purpose.

C. The Kentucky Supreme Court's approach to defining a "substantial burden" misapprehends the relevant statutory question. That approach—an atextual multifactor balancing test—finds no support in the statutory text or this Court's precedents, and fails to track the fundamental question of whether the regulations at issue force or pressure a religious adherent to forgo or materially alter its specific religious exercise. That approach misapplies and misweighs criteria that can be relevant (whether alternatives are available and whether a claimant has suffered substantial delay, uncertainty, or expense). It also mixes in irrelevant criteria (whether the land-use regulation predates the claimant's interest in the property, and whether the govern-

ment's decision was arbitrary or discriminatory). This Court should refocus the substantial-burden inquiry on the statutory question: whether the claimant's specific religious exercise is meaningfully impeded.

ARGUMENT

LAND-USE REGULATIONS SUBSTANTIALLY BURDEN RELIGIOUS EXERCISE WHEN THEY FORCE OR PRESSURE A CLAIMANT TO FORGO OR MATERIALLY ALTER THAT EXERCISE

A. Text, History, And Precedent Support That Reading

RLUIPA does not expressly define the term "substantial burden." But statutory text and history, alongside this Court's precedents, demonstrate that a substantial burden exists when a land-use regulation impedes a claimant's religious exercise by forcing or pressuring the claimant to forgo or materially alter that exercise.

1. Section 2 of RLUIPA provides in relevant part:

> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—
>
> (A) is in furtherance of a compelling governmental interest; and
>
> (B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. 2000cc(a)(1). The statute further provides that it "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted

by the terms of this chapter and the Constitution." 42 U.S.C. 2000cc-3(g).

Starting with ordinary meaning, a "burden" is "that which is borne with difficulty," as an "impediment" or "encumbrance." *Random House Webster's Unabridged Dictionary* 279 (2d ed. 2001); see *Black's Law Dictionary* 190 (7th ed. 1999). A "burden" therefore encompasses impediments, hindrances, or restrictions on religious exercise—not only outright prohibitions. "Substantial," in turn, is commonly defined to mean "material," "[t]rue or real," or "[c]onsiderable." *The American Heritage Dictionary of the English Language* 1727 (4th ed. 2000); *Random House Webster's Unabridged Dictionary* 1897 (2d ed. 2001). In ordinary parlance, a "substantial burden" is something that impedes, hinders, or restricts a claimant's religious exercise in a material or considerable manner—like a law that forbids a Christian church from opening on Sundays, for example.

Related RLUIPA provisions further illuminate the meaning of a "substantial burden" on religious exercise in this context. Congress provided 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." 42 U.S.C. 2000cc-5(7)(B). Building a school on particular property for the purpose of educating children in a particular faith thus qualifies as the religious exercise of the group that would run that school, as does converting an existing assembly hall in order to hold religious services in that hall. Cf. H.R. Rep. No. 219, 106th Cong., 1st Sess. 22 (1999) (House Report). A zoning law barring those groups from building the school or converting the hall for church use would substantially burden their religious

exercise. Section 2000cc-5(7) also underscores that application of the land-use regulation at issue must actually hinder religious exercise—not simply apply to a religious entity. Accordingly, a landmarking law that requires certain paint colors in a historic neighborhood would pose no substantial burden to building the school or converting the hall, as that law would lack any nexus to the desired religious exercise.

Further, Congress expressly rejected the notion that a "substantial burden" on religious exercise is confined to instances where land-use restrictions compel someone to violate their religious beliefs. Rather, RLUIPA defines "'religious exercise'" to encompass "any exercise of religion," "whether or not [it is] compelled by, or central to, a system of religious belief." 42 U.S.C. 2000cc-5(7)(A). Congress also expressly rejected the notion that substantial burdens on religious exercise exist only when the government "discriminates against" religious institutions or treats them "on less than equal terms with" nonreligious institutions, 42 U.S.C. 2000cc(b)(1) and (2); "totally excludes religious assemblies from a jurisdiction"; or "unreasonably limits religious assemblies, institutions, or structures within a jurisdiction," 42 U.S.C. 2000cc(b)(3). RLUIPA separately and categorically bars governments from discriminating against, disfavoring, excluding, or unreasonably limiting religious assemblies, separate and apart from whether those restrictions would qualify as substantial burdens, without requiring application of strict scrutiny. 42 U.S.C. 2000cc(b). The substantial-burden provision supplements those protections by barring the government from imposing other, additional burdens on religious exercise through land-use regulations unless those regulations are the least restrictive

means of furthering a compelling governmental interest. 42 U.S.C. 2000cc(a)(1).

Thus, various restrictions on the use of land for religious purposes can qualify as substantial burdens, even when they do not completely exclude, unreasonably limit, or discriminate against religious assemblies. For example, a zoning law that forbids the operation of schools in dense urban areas could substantially burden the religious exercise of an institution with a mission of providing religious education to children in urban centers. See *Livingston Christian Sch.* v. *Genoa Charter Twp.*, 858 F.3d 996, 1012 (6th Cir. 2017), cert. denied, 584 U.S. 961 (2018).

2. That interpretation also tracks this Court's precedents interpreting the analogous provisions in RFRA, see 42 U.S.C. 2000bb-1, and Section 3 of RLUIPA, which protects the religious exercise of institutionalized persons, see 42 U.S.C. 2000cc-1(a). For example, in *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Court found that it was "surely" a "substantial" burden on religious exercise under RFRA when religious business owners faced millions of dollars in tax assessments or penalties if they refused to violate their religious tenets by arranging for health insurance that covered certain methods of birth control. *Id.* at 720. Those financial burdens would have forced (or at least pressured) the claimants to forgo their religious exercise. But even if the claimants could have avoided those financial burdens by ceasing to provide any health insurance, because they had "religious reasons for providing health-insurance coverage for their employees," having to forgo *that* religious exercise was also a substantial burden, even if doing so was not religiously *required*. *Id.* at 721.

In *Holt* v. *Hobbs*, 574 U.S. 352 (2015), this Court held that a Muslim prisoner "easily satisfied" the substantial burden requirement in Section 3 of RLUIPA when a prison grooming policy required that he shave his beard—"conduct that seriously violate[d] his religious beliefs." *Id.* at 361 (citation, brackets, and internal quotation marks omitted). The Court rejected the prison's suggestion that alternative forms of religious exercise could defeat a substantial burden, explaining that "RLUIPA's 'substantial burden' inquiry asks whether the government has substantially burdened religious exercise * * * , not whether the RLUIPA claimant is able to engage in other forms of religious exercise." *Id.* at 361-362.

3. This Court's pre-*Smith* Free Exercise precedents provide further evidence of the meaning of "substantial burden" in Section 2 of RLUIPA. RFRA and, later, RLUIPA were enacted in the wake of this Court's decision in *Employment Division* v. *Smith*, 494 U.S. 872 (1990), "to provide very broad protection for religious liberty." *Holt*, 574 U.S. at 356 (citation omitted); see *Ramirez* v. *Collier*, 595 U.S. 411, 424 (2022). Indeed, RFRA avowedly aimed "to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened." 42 U.S.C. 2000bb(b)(1). RLUIPA likewise sought to retain the "greater protection" of the pre-*Smith* era, and its substantive protection closely resembles this Court's pre-*Smith* Free Exercise precedents. *Holt*, 574 U.S. at 357; see *Cutter* v. *Wilkinson*, 544 U.S. 709, 715-717 (2005); compare 42 U.S.C. 2000cc(a)(1) (application of "a land use regulation in a manner that imposes a substantial

burden" on religious exercise must be "in furtherance of a compelling governmental interest" and "the least restrictive means of furthering" that interest), with *Smith*, 494 U.S. at 883 ("Under the *Sherbert* test, governmental actions that substantially burden a religious practice must be justified by a compelling governmental interest.").

Those precedents confirm that a substantial burden exists when a law materially impedes or restricts religious exercise. As *Sherbert* v. *Verner*, 374 U.S. 398 (1963), explained, a burden need not be direct to be substantial; rather, a law may substantially burden religious exercise if its "purpose or effect * * * is to impede the observance of one or all religions." *Id.* at 404 (quoting *Braunfeld* v. *Brown*, 366 U.S. 599, 607 (1961)). Put differently, "a burden upon religion exists" and "the infringement upon free exercise is * * * substantial" when the government "put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs," such as by conditioning a benefit upon conduct proscribed by religious belief or denying a benefit because of conduct required by religious belief. *Thomas* v. *Review Bd. of the Ind. Emp't Sec. Div.*, 450 U.S. 707, 717-718 (1981).

The Court in the pre-*Smith* era routinely applied those principles to assess whether various government regulations substantially burdened religious exercise and thus triggered strict scrutiny. Those precedents explained that a substantial burden exists when a law requires religious adherents to take action inconsistent with their faith, as a Wisconsin law compelling adherents of the Old Order Amish religion to send their children to secondary school did, for example. *Wisconsin* v. *Yoder*, 406 U.S. 205, 220 (1972). The same was true

for a law mandating that Amish adherents participate in social security, given that "payment and receipt of social security benefits [wa]s forbidden" by their faith. *United States* v. *Lee*, 455 U.S. 252, 257 (1982). Even absent direct compulsion, governments substantially burden religion by conditioning a government benefit on forgoing religious exercise, as did restrictions on unemployment benefits for workers observing their Sabbaths or who refused work for religious reasons. See, *e.g.*, *Sherbert*, 374 U.S. at 403-406; *Thomas*, 450 U.S. at 711. By forcing religious adherents to choose between a government benefit and their religious exercise, the government pressured them to forgo or change that exercise—even if the pressure from denying the benefit "w[ould] not prevent" the adherents "from observing their religious tenets." *Bob Jones Univ.* v. *United States*, 461 U.S. 574, 604 (1983) (opinion of Burger, C.J.).

Pre-*Smith* cases also rejected various free exercise challenges because the laws at issue did not substantially burden religion. For example, the Court held that a generally applicable sales tax that merely reduced income via lower demand imposed no substantial burden on a religious seller's free exercise. *Jimmy Swaggart Ministries* v. *Board of Equalization*, 493 U.S. 378, 391-392 (1990). Importantly, factors that might have rendered the tax a substantial burden—such as if the adherent's beliefs "forb[ade] payment" of the tax, or the tax rate was so "onerous" that it "might effectively choke off an adherent's religious practices"—were absent. *Ibid.* Similarly, while it formally reserved the question, the Court expressed "doubts" that an indirect burden like a marginal reduction in funds available for religious use could qualify as a substantial burden. *Hernandez* v. *Commissioner*, 490 U.S. 680, 685-686, 699

(1989). The Court also explained that no substantial burden exists when a religious adherent can comply with the law at issue without altering its religious exercise. See *Tony & Susan Alamo Found.* v. *Secretary of Labor*, 471 U.S. 290, 303-305 (1985). Thus, a foundation that objected to the payment of wages but compensated its associates with board, lodging, and other benefits faced no substantial burden from the Fair Labor Standards Act of 1938's requirements that workers be paid, because the Act allowed its existing non-wage payments. *Ibid.* Laws that apply to religious entities but do not require that they alter their religious practice therefore do not substantially burden religion.

4. Taken together, these sources underscore that the existence of a substantial burden is a context-specific inquiry with a central limiting principle. A substantial burden exists when application of the land-use regulation coerces or pressures the claimant to forgo or materially alter its religious exercise. But a substantial burden does not exist when—viewed from the vantage of the religious exercise at issue—the claimant has available alternatives that, "in terms of religious significance, [are] indistinguishable from the prohibited" exercise and would allow it to engage in that exercise consistent with the land-use regulation at issue. *Murphy* v. *Collier*, 587 U.S. 901, 912 (2019) (Alito, J., dissenting); see Sherif Girgis, *Defining "Substantial Burdens" on Religion and Other Liberties*, 108 Va. L. Rev. 1759, 1780-1781 (2022).

Being required to violate religious tenets in order to comply with a land-use regulation is one obvious form of a substantial burden. Thus, for instance, if an individual's faith requires him to pray in a small group in his home, a zoning law that forbids such in-home gath-

erings would substantially burden his religious exercise. Similarly, if a Native American assembly purchases land of particular religious significance, a zoning code that forbids the use of that land for religious ceremonies as required by the faith would substantially burden the Native Americans' religious exercise. These circumstances, in which a land-use regulation renders a particular form of religious exercise impossible, pose clear substantial burdens on religious exercise: There is no possible alternative that would equally allow the religious exercise at issue. See Girgis, 108 Va. L. Rev. at 1794.

Substantial burdens under RLUIPA are not just confined to those circumstances. For example, a growing church located in a historic district might submit an application to expand its footprint. Cf. *City of Boerne* v. *Flores*, 521 U.S. 507, 511-512 (1997). If the city and its landmarking law categorically denied the ability to expand, that would likely impede the church's religious exercise—it could not serve all of its parishioners without additional seating. Cf. 146 Cong. Rec. S6689 (daily ed. July 13, 2000) (Cong. Rec.) (statement of Sen. Kennedy) (criticizing instances where municipalities capped the size of church congregations or enrollment at religious schools); House Report 10-11 (same); see also *Westchester Day Sch.* v. *Village of Mamaroneck*, 504 F.3d 338, 348-353 (2d Cir. 2007) (finding substantial burden where zoning regulations barred a religious school that had outgrown its existing space from expanding to add new classrooms). But in many cases, requiring that an expansion project be designed consistent with the historic character of the neighborhood would not substantially burden the church's religious exercise.

Similarly, a zoning law "restricting the operational hours of a church," House Report 11; Cong. Rec. S6689 (statement of Sen. Kennedy), would substantially burden that church's religious exercise if, for example, certain of its religious practices (like "overnight spiritual retreats," Cong. Rec. S6689 (statement of Sen. Hatch)) would necessarily occur during the mandatory closure hours. A law limiting religious entities' efforts to feed the hungry and homeless to certain months of the year, see *ibid.*, would also substantially burden the religious exercise of an entity that wished to feed the hungry pursuant to its religious mission outside of the designated months.

B. The Land-Use Restrictions At Issue Substantially Burden Petitioner's Religious Exercise

The relevant state and local ordinances here operate to bar petitioner from building a prayer grotto modeled on the grotto at Lourdes adjacent to the Our Lady of Lourdes Church. Pet. App. 42a-52a. Those land-use restrictions substantially burden petitioner's religious exercise.

Building a grotto honoring the Virgin Mary "to be a quiet place of reflection for worshippers and other visitors," including before and after Mass, Pet. Br. 11, is undoubtedly religious exercise. See 42 U.S.C. 2000cc-5(7); pp. 16-18, *supra*. Petitioner has emphasized (Pet. 6) that it seeks to build the grotto "as part of its religious mission." Building that real property, to be used for religious exercise, is "considered to be religious exercise" of petitioner, the entity that "intends to use the property for that purpose." 42 U.S.C. 2000cc-5(7)(B).

Application of Park Hills' zoning restrictions to petitioner substantially burdens its religious exercise because it would force or pressure petitioner to forgo or

materially alter that exercise—namely, constructing the Marian-inspired grotto. This is not a case where there are equally good alternatives from the standpoint of the religious exercise at issue. Petitioner seeks to create an immersive experience in close proximity to the church itself, so that people can engage in further prayer and contemplation in the grotto before or after attending Mass. Pet. Br. 11-13, 38. From the vantage of that religious exercise, only property near the church will do.

Further, the grotto's design "is inspired by the Marian grotto-shrine built into a mountainside cave in Lourdes, France," and features the grotto itself, a plaza "about the size of a backyard pool" in front of the grotto, a walking path, and a retaining wall. Pet. Br. 11. Those features are designed to ensure that visitors to the grotto can have a "contemplative religious experience" mirroring a pilgrimage to Lourdes. *Id.* at 39.

Contrary to the reasoning of the Kentucky Supreme Court, petitioner could not implement those religiously informed aspects of petitioner's desired property use by "construct[ing] a smaller grotto or shrine" on the existing church property so as to avoid the zoning restrictions on the new adjacent property. See Pet. App. 25a. Building a smaller grotto on the church property would materially alter petitioner's desired religious exercise. As petitioner explains, the only available space on the church property is a small "grassy space between the parking lot and the church, near Amsterdam Road," Pet. Br. 36-37. A significantly smaller grotto placed between the parking lot and the church, rather than on a grassy hillside set apart from Mass-goers' pedestrian traffic to their vehicles, simply could not provide the "contemplative religious experience" or serve the same

religious purpose ("quiet, repose, and reflection") as the intended grotto. *Id.* at 38-39 (quoting J.A. 17, at 30:15). Moreover, a grotto or shrine constructed on a small, flat patch of grass would not resemble the immersive "mountainside cave" it is meant to emulate. *Id.* at 11.

To the extent that respondents were instead suggesting that petitioner could build a similarly-sized grotto on the church lot rather than the adjacent lot, petitioner explains that the only place such a grotto could fit is in the church's existing parking lot. See Pet. Br. 35-36; Cert. Reply Br. 3. Nearby parking for parishioners is something that is ordinarily indispensable to ensuring that parishioners can attend services, especially if they are limited in mobility. Being forced to forgo parking in order to construct the grotto would thus "put substantial pressure" on petitioner to forgo or materially alter its religious exercise. See *Thomas*, 450 U.S. at 717-718; see also *Westchester Day*, 504 F.3d at 352 (finding no alternatives where school would have to compromise its "expanding needs" by "reallocating space within its existing buildings" rather than constructing a new building). That burden is hardly "a mere inconvenience," as the Kentucky Supreme Court suggested. Pet. App. 25a. Because petitioner has no viable, available alternative that would equally serve its religious exercise, forbidding petitioner from constructing its grotto on the church-adjacent property imposes a substantial burden.

C. The Kentucky Supreme Court's Multifactor Framework Is Incorrect

The Kentucky Supreme Court's approach to defining a "substantial burden" on religious exercise in RLUIPA land-use cases fundamentally misconceives the statutory inquiry. The Kentucky court's approach rests on

an atextual multifactor balancing test that considers whether the claimant can carry on its mission from an available alternative location; whether the claimant will suffer "substantial delay, uncertainty, and expense"; whether the claimant has "imposed a substantial burden on itself" by obtaining land it cannot reasonably expect to use for the desired purpose; and whether the municipality's decision-making process was "arbitrary, capricious, or discriminatory." Pet. App. 24a-25a (citation omitted). Other courts of appeals and state supreme courts have employed similar tests, which this Court should repudiate as inconsistent with RLUIPA.

1. ***Available alternatives***. As discussed, whether a RLUIPA claimant has an equally good alternative from the vantage of its religious exercise is an important part of the substantial-burden inquiry. See pp. 22-24, *supra*. But the Kentucky Supreme Court and other courts have misapprehended that inquiry's aim. They have often asked whether a theoretical alternative might exist, not whether there is a real, viable alternative that would *equally* preserve the claimant's religious exercise. See Girgis, 108 Va. L. Rev. at 1795 (alternatives cannot relieve substantial burden "unless [the government] leaves you another way that you could realize your religion to about the same degree as you could by the now-burdened means of exercise, and at not much greater cost than you could by that means" (emphasis omitted)). The Kentucky Supreme Court, for example, proposed "a smaller grotto or shrine on the [existing church] property," but failed to assess whether that hypothetical option could feasibly serve the same religious purpose as petitioner's desired grotto. Pet. App. 25a. Other courts have made similar errors. *E.g.*, *Midrash Sephardi, Inc.* v. *Town of Surfside*, 366 F.3d 1214, 1219, 1228 & n.11

(11th Cir. 2004) (treating hypothetical option of "applying for a permit" to open a synagogue in another zoning district as adequate without considering feasibility), cert. denied, 543 U.S. 1146 (2005). Those approaches to alternatives wrongly allow inferior or practically unavailable alternatives to undermine a substantial burden.

2. ***Substantial delay***. The Kentucky Supreme Court, like other courts, also considered whether petitioner had suffered "substantial delay, uncertainty, and expense" as a result of the land-use regulations at issue. Pet. App. 24a (quoting *Livingston Christian Sch.*, 858 F.3d at 1004). That factor can be relevant; requiring an entity to forgo desired religious exercise for months or years while it finds an alternative property or navigates an opaque permit process, or demanding that claimants jump through expensive hoops, can burden religious exercise nearly as much as an outright prohibition. See, *e.g.*, *Catholic Healthcare Int'l* v. *Genoa Charter Twp.*, 82 F.4th 442, 449 (6th Cir. 2023); *Sts. Constantine & Helen Greek Orthodox Church, Inc.* v. *City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005).

But the touchstone remains whether those delays and costs show pressure to forgo or materially alter religious exercise; they are not *necessary* to such a showing. See *Hobby Lobby*, 573 U.S. at 691 (finding substantial burden based on tax assessments and fines); *Sherbert*, 374 U.S. at 404 (explaining that ineligibility for monetary benefits places "pressure" on a religious adherent "to forego" the religious exercise that renders her ineligible). Conversely, if the restriction has a minor effect, that may well underscore the lack of a substantial burden. For example, a 60-day review process that imposes no discernible costs on a religious claimant often would not put "substantial pressure on [the claim-

ant] to modify its behavior." *Roman Catholic Bishop of Springfield* v. *City of Springfield*, 724 F.3d 78, 99 (1st Cir. 2013) (citation omitted).

Courts, however, go astray in treating these types of costs as the only measure of whether given restrictions pressure a claimant to forgo or materially change their religious exercise. After all, many categorical prohibitions—like a zoning law forbidding in-home prayer gatherings, see pp. 22-23, *supra*—impose a substantial burden by outlawing religious exercise in a manner that may not involve delay, uncertainty, or expense.

3. ***Self-imposed burdens***. The Kentucky Supreme Court and other courts further assess whether the RLUIPA claimant has "imposed a burden upon itself by acquiring a property whose use is already restricted." *New Harvest Christian Fellowship* v. *City of Salinas*, 29 F.4th 596, 602 (9th Cir. 2022), cert. denied, 143 S. Ct. 567 (2023). Below, for instance, the Kentucky Supreme Court counted as a strong negative factor that petitioner "had every reason to know, and in fact explicitly acknowledged, that building the grotto was not permitted by the ordinance." Pet. App. 27a; accord, *e.g.*, *Spirit of Aloha Temple* v. *County of Maui*, 132 F.4th 1148, 1156 (9th Cir. 2025), cert. denied, 146 S. Ct. 1844 (2026); *Thai Meditation Ass'n of Ala., Inc.* v. *City of Mobile*, 980 F.3d 821, 832 (11th Cir. 2020); *Chabad Lubavitch of Litchfield Cnty., Inc.* v. *Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 195-196 (2d Cir. 2014), cert. denied, 575 U.S. 963 (2015). Some courts go so far as to treat this factor as an independent bar to finding a substantial burden. See *Alive Church of the Nazarene, Inc.* v. *Prince William Cnty.*, 59 F.4th 92, 106 (4th Cir. 2023).

But whether a land-use restriction was in place before a RLUIPA claimant sought a variance or even purchased the property for which the petitioner submitted its application does not categorically bar a finding of substantial burden. Otherwise, RLUIPA would operate as little more than a grandfathering statute. See Pet. Br. 24; cf. *Palazzolo* v. *Rhode Island*, 533 U.S. 606, 626-627 (2001) (holding that property owners who acquire property after a restriction is enacted do not forfeit their right to seek just compensation under the Takings Clause). Take, for instance, a religious group that acquires a particular parcel of land that is itself religiously significant (*e.g.*, because it is an ancestral burial ground). Whether the parcel was zoned for some other use at the time of purchase is irrelevant to the fact that the current restriction prohibits the religious group from engaging in religious exercise (*e.g.*, religious ceremonies commemorating those buried on the land).

4. ***Arbitrary or discriminatory decision-making***. Finally, the Kentucky Supreme Court and other courts evaluate whether the government's decision-making process for its land-use restrictions "was arbitrary, capricious, or discriminatory" as another part of the multifactor substantial-burden inquiry. Pet. App. 25a (citation omitted); see also, *e.g.*, *Spirit of Aloha Temple*, 132 F.4th at 1156; *Roman Catholic Bishop of Springfield*, 724 F.3d at 96.

But whether the government has acted arbitrarily or discriminatorily is analytically distinct from whether the government's action has burdened religious exercise. A government can use an arbitrary process to reach an outcome that imposes no burden on a religious entity—as when, for example, a church building project is approved on the condition that it be painted a particular

color to which the church has no religious objection. See p. 17, *supra*. And it can use an unobjectionable process to impose a severe burden, such as by disapproving the only available avenue for a particular form of religious exercise.

Moreover, RLUIPA separately and categorically prohibits arbitrary and discriminatory land-use restrictions. Specifically, RLUIPA prohibits regulations that "totally exclude[] religious assemblies from" or "unreasonably limit[] religious assemblies, institutions, or structures within" a jurisdiction—provisions that thus bar arbitrary restrictions. 42 U.S.C. 2000cc(b)(3). RLUIPA also outright bars land-use restrictions that "treat[] a religious assembly or institution on less than equal terms with a nonreligious assembly or institution" or that "discriminate[] against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. 2000cc(b)(1) and (2). Asking whether land-use restrictions reflect arbitrary or discriminatory decision-making as part of the substantial-burden inquiry would thus "render the substantial burden provision largely superfluous." *Chabad Lubavitch of Litchfield Cnty.*, 768 F.3d at 195; see 42 U.S.C. 2000cc(b). Not only that, melding questions about arbitrary and discriminatory restrictions into the substantial-burden inquiry would improperly water down those independent prohibitions. RLUIPA prohibits arbitrary and discriminatory land-use restrictions entirely, whereas restrictions that substantially burden religious exercise may be justified if they can survive strict scrutiny. 42 U.S.C. 2000cc(a) and (b).

Multifactor balancing tests like the Kentucky Supreme Court's approach below result in significant mismatch between court-created factors and RLUIPA's

statutory text and history. And relying on those criteria, often to the exclusion of the particular meaning of "substantial burden," significantly curtails the statute's protections. This Court should reject the lower courts' reliance on multifactor balancing tests and instead refocus the inquiry on one central question: whether the claimant is forced or pressured to forgo or materially alter his religious exercise.

CONCLUSION

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

Respectfully submitted.

D. JOHN SAUER
Solicitor General
JONATHAN D. GUYNN
Acting Assistant Attorney General
SARAH M. HARRIS
Deputy Solicitor General
EMILY M. FERGUSON
Assistant to the Solicitor General
LOWELL V. STURGILL, JR.
Attorney

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