No. 25-1131

In the Supreme Court of the United States

MISSIONARIES OF SAINT JOHN THE BAPTIST, INC.,

Petitioner,

v.

JOEL FREDERIC AND ELIZABETH FREDERIC,

Respondents.

On Writ of Certiorari to the
Supreme Court of Kentucky

BRIEF OF AMICUS CURIAE COALITION FOR JEWISH VALUES IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Coalition for Jewish Values ("CJV") is the largest rabbinic public policy organization in America, representing over 2,500 traditional, Orthodox rabbis. CJV promotes religious liberty, human rights, and classical Jewish ideas in public policy, and does so through education, mobilization, and advocacy, including by filing amicus curiae briefs in defense of equality and freedom for religious institutions and individuals.

Orthodox Jewish observance depends on the physical layout of communities, the proximity of homes to places of worship, and the availability of modest, often unobtrusive structures. These features of religious life often intersect with land-use regulation in practical and unavoidable ways.

CJV offers this brief to highlight the vital role of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc *et seq.*, in protecting vulnerable religious groups from discrimination in zoning and land use decisions. Because these practices are often unfamiliar to the broader public and may appear frivolous or unnecessary to outsiders, they are particularly vulnerable when courts read RLUIPA narrowly. Legal standards that allow decision-makers to discount religious practices as optional or easily altered

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

weaken RLUIPA's protections, especially for religious minorities. CJV has a strong interest in ensuring that RLUIPA provides meaningful protection to all religious communities, including those whose practices are less visible or less understood.

SUMMARY OF ARGUMENT

This Court should follow the plain text of RLUIPA and hold that RLUIPA's substantial-burden inquiry is satisfied when a government's action prohibits or impairs any religious exercise, regardless of whether the claimant could engage in alternate forms of religious exercise.

Affording a judicial officer or local decision-maker discretion to consider alternative religious exercises when assessing whether a party may use its own land for its religious exercise produces an unworkable standard—one that falls hardest on religious minorities. A proposed use may be characterized as unnecessary or easily replaced because its significance is not immediately apparent to those outside the tradition. Yet that is how the Kentucky Supreme Court applied RLUIPA here. Over time, that dynamic systematically disadvantages religious communities whose practices do not conform to widely understood or conventional forms.

Orthodox Jewish practice illustrates the need for robust RLUIPA protections. Many foundational religious obligations depend on location, proximity, and physical configurations. An eruv, for example, is vital to Sabbath observance, but may be nearly invisible to outsiders. An observant family must be within walking distance of a synagogue, as driving is prohibited on the Sabbath.

Holding that RLUIPA allows a government official or a judicial officer to weigh how essential these practices are to adherents strips the protections afforded to religious exercise completely and runs contrary to this Court's precedent. RLUIPA was enacted to provide a check on exactly this type of discretion.

The current doctrinal landscape, which layers on various extra-textual factors untethered to the text of the statute itself, departs from RLUIPA's commands with results that are especially harmful in cases involving unfamiliar or minority religious practices. A test based on the availability of alternatives, whether a litigant can afford the expense of governmental regulation, or whether a religious institution "imposed a burden upon itself" presents an unworkable standard that functions, in effect, as a heckler's veto. *See Missionaries of St. John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400, 413–14 (Ky. 2025). This Court has cautioned against that dynamic. *Cf. Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022).

ARGUMENT

In enacting RLUIPA, Congress heard testimony that zoning authorities were interpreting land-use regulations to effectively deny religious institutions, particularly those practicing minority faiths, the ability to operate houses of worship, construct schools, or expand religious facilities.

In response, Congress decided to craft RLUIPA's protections broadly—the Act prohibits the government from implementing land-use regulations in a manner that substantially burdens "*any* exercise

of religion"—unless the government "demonstrates that imposition of the burden" furthers a "compelling governmental interest" and is the "least restrictive means" of doing so. 42 U.S.C. §§ 2000cc(a)(1), 2000cc-5(7)(A) (emphasis added). The Act was designed to rein in the individualized assessments that had enabled the discrimination in the first place.

The Kentucky Supreme Court's analysis runs afoul of RLUIPA's core purpose and its text, avoiding the responsibility RLUIPA imposes on the government to justify substantial burdens on religious exercise as furthering a compelling governmental interest through the least restrictive means. The lower courts' patchwork of inconsistent tests imposes unclear legal standards that invite decision-makers to discount unfamiliar religious practices. To be effective, and to provide the protections intended by Congress, RLUIPA's substantial-burden standard must be interpreted broadly.

I. RLUIPA's substantial-burden standard must be interpreted broadly to encompass the discriminatory practices that led to its enactment.

The Congress that enacted RLUIPA knew well that anti-religion prejudice, and hostility toward religious minorities, can infect discretionary land use decisions in covert ways. That is why RLUIPA's substantial-burden provision reaches, among other things, burdens imposed under a land-use regime in which the government makes "individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(a)(2)(C). That provision recognizes that discretion may yield unequal

treatment that turns on the judgment of the individual decision-maker. *See id.* Those judgments can be shaped by perceptions about the desirability or acceptability of a particular use. *See, e.g.*, *Sylvia Dev. Corp. v. Calvert Cnty.*, 48 F.3d 810, 824 (4th Cir. 1995).

Congress was equally aware that minority faiths faced discrimination under rules that were neutral on paper but uneven in practice. The Act's sponsors emphasized that "new, small, or unfamiliar churches in particular, are frequently discriminated against . . . in the highly individualized and discretionary processes of land use regulation"—and that the hostility was sometimes overt, "especially in cases of black churches and Jewish shuls and synagogues." 146 Cong. Rec. S7774 (daily ed. July 27, 2000) (joint statement of Sen. Hatch & Sen. Kennedy). Congress also heard testimony that Jewish congregations had been denied permits to build synagogues for lack of parking space—even though their congregants walked to synagogue. *Religious Liberty Protection Act of 1998: Hearing on H.R. 4019 Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 228 (1998) (statement of Douglas Laycock).

To protect claimants, the Act places a heavy justificatory burden on the government. It prohibits a government from imposing a "substantial burden" on religious exercise unless the government can show that the imposition of the burden is (1) in furtherance of a compelling governmental interest, and (2) the least restrictive means of furthering that interest. 42 U.S.C. § 2000cc(a)(1). The claimant bears the burden

of persuasion on whether the regulation substantially burdens its religious exercise; once that showing is made, the government bears the "burden of persuasion" on every other element. *Id.* § 2000cc-2(b).

The "use, building, or conversion" of real property for the purpose of religious exercise is itself protected religious exercise. *Id.* § 2000cc-5(7)(B). The statute further directs courts to construe its provisions "in favor of a broad protection of religious exercise." *Id.* § 2000cc-3(g). Those provisions reflect an understanding that land-use regulation is a sensitive area in which religious liberty requires clear and robust safeguards.

In this context, the meaning of "substantial burden" is of critical importance and must be construed broadly to serve the purposes of the statute. If courts interpret that threshold too narrowly, they risk undermining RLUIPA's protections. Such protections are most needed precisely where discretionary systems allow individualized judgments to shape outcomes in ways that can disadvantage certain religious practices.

II. The exercise of religion is substantially burdened when a regulation prohibits or impairs the exercise of a sincerely held belief.

The Kentucky Supreme Court's reading narrowed the expansive understanding of "substantial burden" this Court has recognized in recent Terms. Congress enacted RLUIPA, and its sister statute, the Religious Freedom Restoration Act of 1993 ("RFRA"), to "provide very broad protection for religious liberty." *Holt v. Hobbs*, 574 U.S. 352, 356 (2015) (quoting

Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 693 (2014)); *see also Ramirez v. Collier*, 595 U.S. 411, 424 (2022). This Court recently recognized that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025) (quoting *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam)); *accord Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam). A natural extension of this rationale can lead to only one conclusion—wholesale denial or impairment of these rights through a land-use regulation necessarily constitutes a substantial burden.

Narrow interpretations of "substantial burden" permit the undervaluation of unfamiliar religious practices. When courts rely on alternative-site reasoning or generalized descriptions of religious activity, they risk reframing the religious exercise at issue in a way that diminishes its significance. *See Holt*, 574 U.S. at 361–62 (explaining that "RLUIPA's 'substantial burden' inquiry asks whether the government has substantially burdened religious exercise (here, the growing of a ½-inch beard), not whether the RLUIPA claimant is able to engage in other forms of religious exercise"). A proposed use may be reduced to a broad category of abstract religious practice and then evaluated on the assumption that it can occur anywhere or in any form. That approach overlooks the possibility that a particular configuration, location, or structure at issue may itself be part of the religious exercise.

Such reasoning allows decision-makers to treat unfamiliar religious uses as expendable or interchangeable. What appears to be a minor or optional feature to an outsider may be central to adherents. When courts permit outsider judgments to influence the substantial-burden inquiry, the result is a framework that systematically disadvantages religious practices that are less widely understood, even absent any overt hostility. RLUIPA was designed to prevent that outcome.

The risk is most acute for modest, location-specific religious practices. Many of the most significant burdens on religious exercise do not involve outright prohibition, but instead, they arise from restrictions on placement, configuration, or accessibility. Courts may be tempted to treat such burdens as minor or speculative: a structure appears small, a location seems interchangeable, a practice looks optional. But those judgments often reflect an unfamiliarity with the religious tradition rather than an accurate assessment of its requirements.

RLUIPA's protections cannot depend on whether a practice appears important to those outside the faith. The statute protects religious exercise as defined by adherents, not as perceived by observers. *See* 42 U.S.C. § 2000cc-5(7)(A) (protecting religious exercise "whether or not compelled by, or central to, a system of religious belief").

III. Allowing decision-makers to weigh alternative means of exercise leaves religious minorities especially vulnerable.

The decision below shows the danger of imposing extra-textual requirements not found in the statute. For example, the Kentucky court relied heavily on the availability of alternative options and on Petitioner's prior knowledge of zoning restrictions to conclude that no substantial burden existed. *Missionaries*, 727 S.W.3d at 413–14. Although those considerations may be relevant in some contexts, they do not answer the statutory question—whether the government has imposed a "substantial burden."

The inquiry should focus on whether government action has substantially burdened the religious exercise at issue, not on whether a court thinks the claimant could have pursued a different course of action. When courts import those considerations into the substantial-burden inquiry, they effectively allow local opposition or regulatory inertia to veto religious exercise that the government has not shown any compelling interest in suppressing. Religious exercise does not readily give way to a "heckler's veto." *Cf. Kennedy*, 597 U.S. at 543 n.8; *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 119 (2001).

Heavy reliance on alternative locations or scaled-down alternatives is especially problematic because it allows courts to substitute their own value judgment of a religious exercise's importance for that of the claimant. RLUIPA, however, protects "any exercise of religion." 42 U.S.C. § 2000cc-5(7)(A). That language forecloses judicial second-guessing of what is sufficiently important or central to a faith. Courts are not equipped to determine whether an alternate configuration, a different location, or a reduced version of a practice is "close enough." *See Holt*, 574

U.S. at 361–62. Such judgments require theological assessments outside of judicial competence. *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). A proper application of RLUIPA avoids those inquiries by focusing on the burden imposed by the government's action.

Unclear legal standards favor practices that align with majority expectations. Religious uses that are widely recognized are less likely to be questioned; minority or less familiar practices are more likely to be discounted. Those outcomes, in turn, shape how the standards are applied in the next case, compounding the disadvantage to minority faith communities. *See Reaching Hearts Int'l, Inc. v. Prince George's Cnty.*, 584 F. Supp. 2d 766, 771, 787 n.15 (D. Md. 2008). That asymmetry is the predictable result of leaving "substantial burden" undefined. When the standard is vague, decision-makers fill the gap with intuitions that track familiarity. A practice that resembles mainstream Protestant or Catholic worship may be more likely to be considered significant; a minority faith practice that depends on a wire boundary, a specific walking radius, or a ritual bath is more likely to be seen as dispensable. RLUIPA applies one text to every faith tradition; it was meant to prevent precisely this dynamic.

IV. Orthodox Jewish practices show why RLUIPA must protect location-specific religious exercise.

The doctrinal confusion described above has concrete consequences for religious communities

whose practices depend on location-specific arrangements. Orthodox Jewish practice illustrates this with particular clarity, because several of the faith's foundational religious obligations require geographical proximity or physical structures that may appear trivial or optional to those unfamiliar with the tradition. The following examples show why RLUIPA's protections must be applied with reference to the religious exercise as the adherent understands it, not as a reviewing court might reframe it.

Eruvin, for example, demonstrate the importance of low-visibility religious structures. An eruv is a boundary—often consisting of unobtrusive wires or similar markers—that enables observant Jews to carry certain items within a defined area on Shabbat and specific holidays. To an outsider, the physical structure may be difficult to detect—it may be mistaken for a telephone wire. Yet its religious significance is substantial. Without a valid *eruv*, adherents may be unable to carry keys, push a stroller, or transport food outside the home during periods of religious observance. These limitations can have a profound effect on communal life, particularly for families with young children or individuals with mobility limitations who cannot otherwise participate in communal Sabbath observance. A legal framework that discounts such a structure as trivial or unnecessary fails to account for its actual role in religious practice.

A similar dynamic arises where religious practice depends not on a structure's visibility, but on its location. Observant Jews are prohibited from driving on Shabbat and certain holidays. As a result, the

location of a synagogue relative to adherents' homes determines whether communal worship is possible. A rule that treats religious exercise as adequately protected so long as it can occur "somewhere else" overlooks this reality. A synagogue located beyond walking distance, even if a short drive away, is inaccessible during key periods of religious observance. A different location is not a meaningful substitute if it prevents adherents from participating in the practice at all.

Mikvaot provide a third illustration. A *mikvah* is a ritual bath used for immersion after a woman's menstrual cycle, among other occasions. It is a modest structure, often indistinguishable from the outside of a residential building. Yet it is indispensable to the communal life of Orthodox Jews: without access to a properly constructed and maintained mikvah, fundamental aspects of family life under Jewish law cannot be fulfilled. The location and accessibility of the mikvah are thus not matters of preference but of religious necessity. A court that dismisses a mikvah's placement as optional or easily relocated substitutes its own judgment for that of adherents.

Examples such as these demonstrate that religious exercise depends on considerations that are often not immediately apparent to those outside the tradition. At minimum, therefore, the substantial-burden inquiry must be conducted from the perspective of the believer rather than some observer. When courts substitute their own judgments about what is necessary, central, or sufficient to a religious practice, they risk distortion. RLUIPA avoids that problem by protecting "any" religious exercise and by directing

courts to construe its provisions broadly. 42 U.S.C. § 2000cc-3(g). That directive reflects a recognition that courts are not positioned to rank or evaluate religious practices. *Thomas*, 450 U.S. at 716; *Presbyterian Church*, 393 U.S. at 449.

* * *

This Court should adhere to the plain text of RLUIPA and hold that a regulation substantially burdens religious exercise when it prohibits or impairs its expression.

CONCLUSION

This Court should vacate the judgment of the Supreme Court of Kentucky and remand for further proceedings.

Respectfully submitted,

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