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 the State of Kentucky

BRIEF OF *AMICI CURIAE* YALE LAW SCHOOL FREE EXERCISE CLINIC AND THE BAPTIST JOINT COMMITTEE FOR RELIGIOUS LIBERTY IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The **Free Exercise Clinic at Yale Law School** provides an opportunity for law students to defend the free exercise rights of politically vulnerable religious minorities through both amicus filings and direct representation. The Clinic works under the supervision of experienced litigators to represent diverse religious clients and to support, among others, incarcerated individuals seeking the freedom to practice their faith, religious employees requesting workplace accommodations, and houses of worship navigating zoning approvals. The Free Exercise Clinic has filed amicus briefs in cases before this Court on several occasions. *E.g.*, *Mast* v. *Fillmore County*, 594 U.S. 946 (2021) (amicus brief in support of certiorari); *Jingrong.* v. *Chinese Anti-Cult World All., Inc.,* 143 S. Ct. 90 (2022) (amicus brief in support of certiorari); *Groff* v. *DeJoy*, 600 U.S. 447 (2023) (merits stage amicus brief); *Williams* v. *Reed*, 604 U.S. 168 (2025) (merits stage amicus brief).

The Free Exercise Clinic has a strong interest in the proper interpretation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) in light of the Act's critical importance to religious minorities nationwide. The Clinic has filed numerous briefs arguing for an interpretation of RLUIPA consistent with its plain text, its rule of broad construction, and Congress's clear intent. See, *e.g.*, Brief of *Amici Curiae* Jewish Coalition for Religious Liberty and National Committee

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[1] Pursuant to Supreme Court Rule 37, *amici* state that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus and their counsel, made any monetary contribution toward the preparation or submission of this brief. This brief has been prepared by a clinic affiliated with Yale Law School, but does not purport to present the school's institutional views, if any.

for Amish Religious Freedom, *Mast*, 594 U.S. 946 (highlighting lower court's misinterpretation of RLUIPA); Brief of Sikh Coalition and the General Conference of Seventh-day Adventists as *Amici Curiae* in Support of Plaintiff-Appellee, *Redeemed Christian Church of God* v. *Prince George's County*, 17 F.4th 497 (4th Cir. 2021) (arguing that a plain-text interpretation of RLUIPA best protects religious minorities); Brief of the Jewish Coalition for Religious Liberty and Agudath Israel of America as *Amici Curiae* Supporting Plaintiffs-Appellants & Reversal, *Canaan Christian* v. *Montgomery County*, 29 F.4th 182 (4th Cir. 2022) (similar); Amicus Brief of Muslim Public Affairs Council, *Johnson* v. *Baker*, 23 F.4th 1209 (9th Cir. 2022) (similar); Amicus Brief of General Conference of Seventh-day Adventists and Jewish Coalition for Religious Liberty as *Amici Curiae* in Support of Plaintiff-Appellant & Reversal, *Alive Church of the Nazarene, Inc.* v. *Prince William County*, 59 F.4th 92 (4th Cir. 2023) (similar).

The **Baptist Joint Committee for Religious Liberty (BJC)** has vigorously supported both the free exercise of religion and freedom from religious establishments for more than nine decades. BJC chaired the Coalition for the Free Exercise of Religion, which successfully urged Congress to pass RFRA and RLUIPA. 146 Cong. Rec. S7774, S7777 (daily ed. July 27, 2000) (statements of Sens. Orrin Hatch & Edward Kennedy recognizing BJC's role immediately prior to RLUIPA's passage in the Senate). BJC has continued to defend the constitutionality and applicability of these statutes in numerous cases in the courts, including as amicus in cases before this Court. *E.g.*, *Grand* v. *City of Univ. Heights*, 146 S. Ct. 2809 (2026); *Ramirez* v. *Collier*, 595 U.S. 411 (2022); *Landor* v. *La. Dep't of Corr. & Pub. Safety*, 609 U.S. 59 (2026).

INTRODUCTION AND SUMMARY OF ARGUMENT

Twenty-five years ago, Congress enacted RLUIPA with a clear and unambiguous purpose: to protect religious exercise from the subtle and not-so-subtle discrimination that had become common in local land-use and zoning decisions. Congress heard testimony that religious institutions, particularly those outside the mainstream, were routinely denied the ability to build houses of worship, schools, and religious facilities through the application of facially neutral zoning regulations. These regulations, unfortunately, often masked anti-religious animus behind concerns about traffic, noise, parking, and tax revenue. RLUIPA was Congress's answer. RLUIPA's text was deliberately broad, its rule of construction explicitly protective, and its purpose unmistakable.

Yet a quarter century later, that purpose is being frustrated. Across the country, lower courts have watered down RLUIPA's statutory protections by adding tripwires for religious claimants that appear nowhere in the statute's text—requirements that make it more difficult for religious minorities in particular to vindicate the very rights Congress guaranteed them. The result is a patchwork of inconsistent and often irreconcilable standards that leaves the scope of federal protection for religious land use dependent on the jurisdiction in which a religious institution happens to be located.

This case presents the Court with an opportunity to correct one of the most significant and recurring errors in RLUIPA jurisprudence. Courts, including the Kentucky Supreme Court, have imported extra-textual requirements into RLUIPA's substantial burden provision, concluding that a religious claimant is not sub-

stantially burdened if it could pursue a *different* religious exercise *elsewhere*, and that a religious claimant "self-imposes" a regulatory burden on itself merely by acquiring land with knowledge of applicable zoning restrictions. These requirements conflict with this Court's holding in *Holt* v. *Hobbs*, can be found nowhere in a plain-text reading of RLUIPA, and are particularly problematic for religious groups with beliefs that might be unpopular in particular geographic areas—the precise groups RLUIPA exists to protect.

Worse, these requirements substitute the judgment of secular courts for religious leaders on where to site their religious exercise. Here, the Kentucky Supreme Court adopted a rule that considers whether the religious person or entity "has a feasible alternative location from which it can carry on its mission." *Missionaries of Saint John the Baptist, Inc.* v. *Frederic*, 727 S.W.3d 400, 413–15 (Ky. 2025) (citation omitted). But courts have no authority or capacity to determine whether an alternative location is "feasible." As this Court has said time and again, "[t]he First Amendment outlaws … any attempt by government to dictate or even to influence" matters of faith and doctrine. *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732, 746 (2020); *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). Such secular superintendence of the locations and means of religious exercise is inappropriate in any circumstance, and will be particularly fraught for minority religions, whose practices may be unfamiliar to courts and juries called on to make this feasibility determination.

The Kentucky Supreme Court's "self-imposed burden" consideration is likewise fraught. The court below considered whether Petitioner had "a reasonable expectation of being able to use that land for religious

purposes" when it purchased the property. *Frederic*, 727 S.W.3d at 413–15. But RLUIPA contains no such *caveat emptor* principle. Were this the law, it would cabin RLUIPA to a narrow protection for new laws directly conflicting with religious use, and would be largely neutralized in its core purpose of protecting against localities' use of facially neutral (and often preexisting) land-use regulations to burden sincere religious exercise.

The Free Exercise Clinic and BJC submit this brief because these errors below are not merely academic. They have real and immediate consequences for the religious communities RLUIPA was designed to protect—communities that often lack the political influence necessary to seek relief through the legislative process and that depend on judicial enforcement of the rights Congress conferred. When courts burden straightforward RLUIPA claims with extra-textual requirements, the religious minorities who need RLUIPA most are left without a remedy.

Correcting these errors would not give religious institutions a blank check against land-use regulation. A burden must still be substantial to trigger strict scrutiny, and the government may still prevail by showing that its restriction is the least restrictive means of furthering a compelling interest. What RLUIPA does not permit is a threshold rule under which the availability of an alternative location, or a claimant's knowledge of the zoning code when it bought its property, defeats a claim before the government must justify its decision. Congress chose strict scrutiny as the test to balance religious exercise against land-use regulation; courts should not cut that inquiry short.

The Court should reaffirm that RLUIPA's text means what it says and restore the broad protection of religious exercise that Congress intended.

ARGUMENT

A. Correct Interpretation of RLUIPA is Critical to Protect Religious Minorities.

1. Government officials enforcing zoning regulations have every incentive to exclude houses of worship: They "are unpopular in residential zones because they allegedly generate too much traffic, noise, and congestion, … in commercial zones because they allegedly generate too little traffic and not enough 'synergy' with surrounding businesses[,] [a]nd … with city officials because they are tax exempt." Douglas Laycock & Luke W. Goodrich, *RLUIPA: Necessary, Modest, and Under-Enforced*, 39 Fordham Urb. L.J. 1021, 1021 (2012). And the discretionary nature of zoning makes this anti-religious bent easy to conceal. See Von G. Keetch & Matthew K. Richards, *The Need for Legislation to Enshrine the Free Exercise Clause in the Land Use Context*, 32 U.C. Davis L. Rev. 725, 728 (1999) ("[G]iven their wide discretion, biased officials have little trouble finding seemingly plausible grounds for delaying or denying most any project."). Because hostility toward religion sometimes operates behind the facade of "ostensibly neutral land use," *id.* at 726, "religious hostility can be very hard to detect." Laycock & Goodrich, *supra*, at 1030. Cf. Douglas Laycock, *State RFRAs and Land Use Regulation*, 32 U.C. Davis L. Rev. 755, 761–62 (1999) (finding it "hard to identify reasons for opposition" to religious land uses that do not "derive from actual hostility to some or all churches"); *Tree of Life Christian Schs.* v. *City of Upper Arlington*, 905 F.3d 357, 377 (6th Cir. 2018) (Thapar,

J., dissenting) ("Instead of saying 'no Muslims allowed,' city planners complained of the traffic on Fridays when Muslims gathered to pray.").

While this poses a problem for all religious groups, religious minorities are most at risk. See Richard F. Duncan, *Free Exercise and Individualized Exemptions: Herein of* Smith*,* Sherbert*, Hogwarts, and Religious Liberty*, 83 Neb. L. Rev. 1178, 1187 (2005) (noting that "ad hoc processes also risk denominational discrimination, because subjective determinations may be more likely to find 'good cause' in familiar religions and 'fault' in unfamiliar or minority faiths"). Hostility to minority or unfamiliar faiths also often fuels the mistaken view that the members of these groups will not make good neighbors. See Laycock, *supra*, at 760 ("[The] excluded churches are typically small and unfamiliar, with few members, no visibility, and little political clout.").

Litigation has also repeatedly exposed how hostility toward religious minorities can influence zoning and land-use determinations. See, *e.g.*, *Youkhanna* v. *City of Sterling Heights*, 934 F.3d 508, 514 (6th Cir. 2019) ("Some people voiced concerns about issues such as traffic and noise; others disparaged Islam and AICC, calling them terrorists or terrorist-funded …."); *WR Prop. LLC* v. *Township of Jackson*, No. 17-322, 2021 WL 1790642, at *3 (D.N.J. May 5, 2021) ("Zoning Board member John Burros referred to the Orthodox Jewish community in Lakewood as the 'tsunami of orthodoxy,' 'scourge of the cockroaches from the east,' and the 'Lakewood medieval cult.'"); *Jesus Christ Is the Answer Ministries* v. *Baltimore County*, 915 F.3d 256, 258–59 (4th Cir. 2019) (describing members of an "evangelical and multicultural" church as "dancing and hollering like they back at their home back in Africa somewhere").

2. RLUIPA was Congress's solution to this problem. "Congress enacted RLUIPA … 'in order to provide very broad protection for religious liberty.'" *Holt* v. *Hobbs*, 574 U.S. 352, 356 (2015) (quoting *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 683 (2014)). Precisely because illicit motive or indifference to constitutionally protected rights can hide behind facially neutral state action, Congress demanded that land use regulations that substantially burden religious exercise satisfy strict scrutiny, 42 U.S.C. § 2000cc(a)(1), which is "a way of 'flushing out' unconstitutional motivation," John Hart Ely, *Democracy and Distrust* 146 (1980). And Congress directed courts to interpret RLUIPA "in favor of a broad protection of religious exercise, to the maximum extent permitted by [its] terms * * * and the Constitution." *Burwell*, 573 U.S. at 696 (quoting 42 U.S.C. 2000cc-3(g)); see also *Holt*, 574 U.S. at 358 ("Congress stated that RLUIPA 'may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.'" (quoting 42 U.S.C. § 2000cc-3(c))).

Congress was particularly aware of prevalent "discrimination against small and unfamiliar denominations." 146 Cong. Rec. at S7775. Indeed, those testifying before Congress highlighted the need for legislation to prevent discrimination against minority faiths. The Director of the Union of Orthodox Jewish Congregations of America ("Orthodox Union") explained that the "flourishing of traditional Jewish communities has given rise to another, more unfortunate trend, the use of land use regulations and zoning boards to discriminate against religious communities." *Religious Liberty: Hearing on Issues Relating to Religious Liberty Protection, and Focusing on the Constitutionality of a Religious Protection Measure Before the S. Comm. on the Judiciary*, 106th Cong. 21,

22 (1999) (prepared statement of Nathan J. Diament, Dir. of Inst. for Pub. Affairs, Orthodox Union). And Douglas Laycock, a leading scholar of both free exercise and remedies, explained a Brigham Young University study of the disparity between minority religious groups and the need for judicial intervention to practice their faith:

> Religious groups accounting for only 9 percent of the population account for 50 percent of the reported litigation involving location of churches, and 34 percent of the reported litigation involving accessory uses at existing churches. These small groups plus unaffiliated and nondenominational churches account for 69 percent of the reported location cases and 51 percent of the reported accessory use cases. Jews account for only 2 percent of the population, but 20 percent of the reported location cases and 17 percent of the reported accessory use cases.

Id. at 83.

As such, Congress found "massive evidence" that land controls "frequently violate[]" religious rights, especially those of "new, small, or unfamiliar" houses of worship. 146 Cong. Rec. at S7774 (2000) (joint statement of Sens. Hatch and Kennedy) [hereinafter Joint Statement]. For example, Congress found that "zoning board members or neighborhood residents explicitly offer race or religion as the reason to exclude a proposed church, especially in cases of black churches and Jewish shuls and synagogues." Joint Statement at S7774. And the legislative record explicitly noted that "[c]hurches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against" by zoning codes. *Id.*

Many courts have recognized this as well, concluding that "RLUIPA's purpose was to address what Congress perceived as inappropriate restrictions on religious land uses, especially by 'unwanted' and 'newcomer' religious groups." *Centro Familiar Cristiano Buenas Nuevas* v. *City of Yuma*, 651 F.3d 1163, 1170 (9th Cir. 2011); see also *Lighthouse Inst. for Evangelism, Inc.* v. *City of Long Branch*, 510 F.3d 253, 288 n.36 (3d Cir. 2007) (Jordan, J., concurring in part and dissenting in part) (explaining that "Congress compiled … 'massive evidence' that '[c]hurches in general, and new, small, or unfamiliar churches in particular, [were] frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation.'" (alteration in original) (citation omitted)).

Since RLUIPA became law, minority faiths have frequently called on courts to curb burdens placed on them by zoning laws, including in situations similar to Petitioner's. In *Guru Nanak Sikh Society of Yuba City* v. *County of Sutter*, for example, a Sikh society was initially denied a residential permit due to noise complaints. 456 F.3d 978, 982 (9th Cir. 2006). To appease the county, the group bought an isolated agricultural property and agreed to reduce its noise pollution. *Id.* at 990–91. The county again rejected the application, now finding that the agriculturally zoned property was *not* appropriate for a church—this despite the Planning Division's finding that the group's noise pollution would be minimal and the fact that other churchers already existed on agriculturally zoned land. See *id.* Applying RLUIPA, the court held that the county's inconsistent standards greatly "lessened the prospect of Guru Nanak being able to construct a temple," which amounted to a substantial burden. *Id.* at 992.

3. Yet over a quarter-century after RLUIPA's enactment, religious minorities continue to face disproportionate discrimination in the land-use context. See Lucien J. Dhooge, *RLUIPA at 20: A Quantitative Study of its Impact on Land Use and Religious Minorities*, 46 J. Legis. 207, 239–40 (2020) ("The 18.2% success rate for Islamic claimants, and the fact that 50% of all discrimination opinions and 81.5% of opinions relating to religious minorities concerned Islamic and Jewish claimants, supports a conclusion of governmental bias against these two minorities."); Laycock & Goodrich, *supra*, at 1029 (highlighting disproportionate number of RLUIPA claims by "Jews, Muslims, Buddhists, and Hindus").

Other courts, too, have erected procedural and substantive obstacles to religious parties relying on the very protections that RLUIPA guarantees. As in the decision below, courts have considered whether the burden was "self-imposed" and whether the religious party "had a feasible alternative location." *Livingston Christian Schs.* v. *Genoa Charter Township*, 858 F.3d 996, 1004 (6th Cir. 2017). The Ninth Circuit asks whether a religious party "was precluded from using [*any*] other sites within the city." *San Jose Christian Coll.* v. *City of Morgan Hill*, 360 F.3d 1024, 1035 (9th Cir. 2004). Still others have asked "whether the plaintiffs have demonstrated a genuine need for new or more space," *Thai Meditation Ass'n of Ala., Inc.* v. *City of Mobile*, 980 F.3d 821, 831 (11th Cir. 2020), and even whether the underlying regulation targets a religion "because of hostility to that religion itself." *St. Paul's Found.* v. *Ives*, 29 F.4th 32, 39 (1st Cir. 2022) (citation omitted).

The upshot of these decisions is to allow local land-use authorities to weigh the relative importance of the desired religious use against whether an alternative

location or form of religious exercise (hypothesized by bureaucrats or NIMBY opponents) might equally satisfy the claimant's desired religious exercise—in other words, the very discretion RLUIPA was enacted to displace. This robs RLUIPA of its essential and manifest purpose: to provide strong protection for the sincere religious decisions of religious groups in determining where to locate and how to exercise their religion.

Indeed, religious groups often operate within rigid spiritual requirements for which there are no feasible alternatives. Local governments, for example, have long sought to prevent Orthodox Jewish communities from constructing eruvs, symbolic enclosures that allow practitioners to push strollers, transport food, and carry basic items like keys outside their homes on the Sabbath. See, *e.g.*, Diana Neeves & Evan Seeman, *Mahwah, NJ Agrees to Settle Eruv Dispute*, RLUIPA Def. Blog (Feb. 7, 2018), https://perma.cc/SAM3-9NYH; *Smith* v. *Cmty. Bd. No. 14*, 491 N.Y.S.2d 584 (Sup. Ct., Queens County 1985). But Orthodox Jews have no alternative to the eruv; without this accommodation, they would be forced to choose between religious obedience and performing basic and often critical activities on the Sabbath. And precisely because government officials are often unfamiliar with the religious practices of minority faith groups, see John Rhodes, *An American Tradition: The Religious Persecution of Native Americans*, 52 Mont. L. Rev. 13, 16–17 (1991), they may fail to recognize the binding nature of such obligations—or the lack of alternatives.

Ultimately, RLUIPA was enacted to create a baseline of federally enforced protections for religious land use. These protections, unsurprisingly, are especially critical for religious minorities, who often lack the political clout needed to obtain effective protection from majoritarian state legislatures or local governments.

See Ashira Ostrow, *Judicial Review of Local Land Use Decisions: Lessons from RLUIPA*, 31 Harv. J. L. & Pub. Pol'y 717, 725–26 (2008); Laycock & Goodrich, *supra*, at 1022. To ensure RLUIPA continues to serve this important purpose, this Court should interpret RLUIPA according to its plain text here—holding that a church can still be substantially burdened even if other properties are available.

B. RLUIPA's Text Forecloses "Alternatives" and "Reasonable Expectation" Requirements.

The decision below is exemplary of a line of decisions that have conditioned RLUIPA's protection on two requirements that appear nowhere in the statute. Under the first, a land-use restriction is not a substantial burden if the religious institution could build a smaller structure, continue using its existing facilities, or relocate. Under the second, a burden is deemed "self-imposed"—and therefore not cognizable—if the institution acquired its property with knowledge of the applicable zoning restrictions.

Both requirements derive from multifactor tests such as the Sixth Circuit's in *Livingston Christian Schools*, 858 F.3d at 1004. Adopting *Livingston* as its "polestar," the Kentucky Supreme Court held that the denial of a permit to build a grotto honoring the Virgin Mary imposed no substantial burden because the church had "not asserted that it could not construct a smaller grotto or shrine on the property it already owned"—as opposed to the parcel it had acquired for the grotto—and "had every reason to know" that the ordinance prohibited the grotto. *Frederic*, 727 S.W.3d 400, 413–15 (Ky. 2025). Neither requirement can be reconciled with RLUIPA's text, its structure, or the history of its enactment.

Ready alternatives. The ready-alternatives requirement misidentifies the religious exercise that RLUIPA protects. RLUIPA prohibits any land-use regulation that "imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution." 42 U.S.C. § 2000cc(a)(1). In the land-use context, Congress defined the relevant religious exercise with specificity: "[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); see 42 U.S.C. § 2000cc-5(5). The religious exercise at issue is thus the construction of a particular structure, on a particular parcel, by the institution that intends to use it, for a particular use. A smaller structure, or the same structure on different land, is not a modified version of that exercise; it is a different exercise altogether.

And a prohibition on a particular form of exercise constitutes a substantial burden under any ordinary understanding of the term. As Justice Gorsuch has observed, "[a]s a matter of ordinary meaning, * * * an action that prevents a religious exercise does not just burden that exercise substantially, it burdens it completely." *Apache Stronghold* v. *United States*, 145 S. Ct. 1480, 1486 (2025) (Gorsuch, J., joined by Thomas, J., dissenting from the denial of certiorari); *accord Haight* v. *Thompson*, 763 F.3d 554, 565 (6th Cir. 2014) ("The greater restriction (barring access to the practice) includes the lesser one (substantially burdening the practice)."). To be sure, not every land-use restriction affecting religious property imposes a substantial burden. See *Livingston*, 858 F.3d at 1003. But a regulation that forbids the particular religious exer-

cise the claimant proposes does not become insubstantial simply because a different location or type of religious exercise remains available.

This Court's decision in *Holt* v. *Hobbs* confirms that the inquiry focuses on the specific exercise the claimant seeks to undertake. There, the Court explained 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." 574 U.S. at 361–62. Notably, the exercise at issue in *Holt* was itself a compromise: although Mr. Holt believed that "his faith require[d] him not to trim his beard at all," he "proposed a 'compromise' under which he would grow only a ½-inch beard." *Id.* at 359. The Court did not ask whether a shorter beard would have sufficed, and the Seventh Circuit has applied the same principle: "That Schlemm proposed a compromise (ground beef) does not scuttle his claim, any more than Holt's proposed compromise (a short beard) did." *Schlemm* v. *Wall*, 784 F.3d 362, 365 (7th Cir. 2015). The church here made a similar concession, "voluntarily" seeking approval for "a grotto that was smaller in size than it originally intended." *Frederic*, 727 S.W.3d at 415. A rule that treats such concessions as evidence that further reductions are possible penalizes good-faith compromises and permits the government to redefine the religious exercise at ever higher levels of generality. See *Cavin* v. *Mich. Dep't of Corr.*, 927 F.3d 455, 459 (6th Cir. 2019) (explaining that offering a "second-best option" "reframes the nature of what [the claimant] seeks to do").

Nor may a court evade RLUIPA by characterizing a smaller structure as merely a different "scale" of the

same exercise. That distinction requires a court to determine which aspects of a religious practice—its size, its location, its design—are essential and which are incidental. RLUIPA forbids that inquiry. The statute protects "*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) (emphases added). Applying that definition, *Holt* rejected the argument that the burden on Mr. Holt was "slight" because his religion would "credit" him for attempting to follow his religious beliefs. 574 U.S. at 362. And applying the identical language of RLUIPA's institutionalized-persons provision, the Sixth Circuit has explained that the statute "does not permit a prison warden to deny a Catholic inmate access to wine for a communion service on the ground that grape juice is a reasonable substitute." *Haight*, 763 F.3d at 566. The same principle applies when a religious institution is told that a smaller structure on a different parcel will suffice.

The multifactor tests applied below illustrate how readily courts return to the inquiry Congress foreclosed. *Livingston* described successful plaintiffs in other circuits as those "unable to carry out some core function of their religious activities," and it reserved special deference for cases in which "central religious beliefs are in question." 858 F.3d at 1006. More recently, the Sixth Circuit asked whether a religious organization's desired location "relates to preference rather than religious need." *Be the Bush Recovery Ministries* v. *Coffee County*, 2025 WL 2806783, at *9 (6th Cir. Oct. 2, 2025). Each formulation reintroduces the centrality and compulsion requirements that Congress expressly rejected.

RLUIPA's structure confirms that the availability of a smaller or relocated site for religious exercise is rel-

evant, if at all, only to strict scrutiny. The statute requires the government to demonstrate that the burden it imposes "is the least restrictive means of furthering [a] compelling governmental interest," 42 U.S.C. § 2000cc(a)(1)(B), and assigns the government "the burden of persuasion" on that question, 42 U.S.C. § 2000cc-2(b). That standard is "exceptionally demanding"; it requires the government to "sho[w] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y]." *Holt*, 574 U.S. at 364–65 (alteration in original) (citation omitted). Whether a government's interests in traffic, parking, or neighborhood character could be served by a structure of a different size or in a different location is thus a question of means and ends. Treating that question as part of the threshold inquiry inverts RLUIPA's allocation of burdens, requiring the claimant to disprove alternatives that the government never proposed, adopted, or justified.

RLUIPA's enactment history also confirms that Congress sought to displace the reasoning on which the ready-alternatives requirement rests. Before RLUIPA, courts applying the Free Exercise Clause frequently denied relief on the grounds that a congregation could worship elsewhere, or that building a house of worship was not itself religious. In *Lakewood, Ohio Congregation of Jehovah's Witnesses, Inc.* v. *City of Lakewood*, for example, the Sixth Circuit reasoned that "building and owning a church is a desirable accessory of worship, not a fundamental tenet of the Congregation's religious beliefs," and that the congregation remained free to worship "in homes, schools, other churches, or meeting halls throughout the city." 699 F.2d 303, 307 (6th Cir.), *cert. denied*, 464 U.S. 815 (1983). Other circuits adopted similar reasoning. See *Messiah Baptist*

Church v. *County of Jefferson*, 859 F.2d 820, 824–26 (10th Cir. 1988) (concluding it was merely "the Church's preference" to "construct its house of worship upon its land"); *Christian Gospel Church, Inc.* v. *City of San Francisco*, 896 F.2d 1221, 1224 (9th Cir. 1990) ("requiring appellant to find another home or another forum for worship" constituted a "minimal" burden); *Grosz* v. *City of Miami Beach*, 721 F.2d 729, 739 (11th Cir. 1983) (finding burden fell "towards the lower end of the spectrum" because worshipers could "secur[e] another site" or "mak[e] their home elsewhere in the city").

Congress was aware of these decisions. The House Report on RLUIPA's predecessor bill—on which RLUIPA's sponsors expressly relied, *see* Joint Statement at S7774–75—cited *Lakewood*, *Messiah Baptist*, *Grosz*, and *Christian Gospel Church* as evidence that "[t]he success rate of churches in the relatively few reported cases has, in fact, declined." H.R. Rep. No. 106-219, at 21 & n.94 (1999). The enacted text responds directly. In contrast to *Lakewood*'s characterization of a church building as an "accessory of worship," RLUIPA provides that building on real property for religious purposes "*shall be considered to be religious exercise*." 42 U.S.C. § 2000cc-5(7)(B) (emphasis added). And rather than ask whether building a house of worship is a fundamental tenet or merely a preference, RLUIPA protects that religious exercise "whether or not compelled by, or central to," a system of belief. *Burwell*, 573 U.S. at 696 (quoting RLUIPA) (quotations omitted). The ready-alternatives requirement thus reintroduces the very reasoning Congress displaced.

RLUIPA's sponsors likewise explained that "[c]hurches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements," and that "[t]he

right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes." Joint Statement at S7774; see *Int'l Church of the Foursquare Gospel* v. *City of San Leandro*, 673 F.3d 1059, 1069 (9th Cir. 2011) (relying on this passage). The relevant measure, in other words, is the religious community's own theological requirements. Congress was also made aware that restrictions on the size and location of religious buildings were among the problems RLUIPA sought to address. See 146 Cong. Rec. at S7778 (statement of Sen. Reid) (describing facially neutral regulations that "have the effect of overly-restricting the size and location, among other things, of churches and temples"). The Coalition for the Free Exercise of Religion, in a letter signed by BJC's then-General Counsel, similarly warned that land-use regulation made it "difficult or impossible to build, buy or rent space for a new house of worship, whether large or small." 146 Cong. Rec. at S7777. A statute enacted in response to concerns regarding burdensome restrictions on the size of houses of worship cannot reasonably be interpreted to encourage courts and governments to pressure religious groups to build smaller and to locate elsewhere.

Reasonable expectation. The reasonable-expectation requirement is equally inconsistent with RLUIPA's text. Courts adopting this requirement reason that when a claimant knowingly obtains an interest in nonconforming property, the resulting burdens are "not imposed by the [zoning board's] action * * * but [are] self-imposed hardships." *Andon, LLC* v. *City of Newport News*, 813 F.3d 510, 515 (4th Cir. 2016). The Kentucky Supreme Court extended that reasoning further, concluding that the church's burden was self-imposed because it "had every reason to know, and in fact explicitly acknowledged, that building the

grotto was not permitted by the ordinance." *Frederic*, 727 S.W.3d at 415.

The reasonable-expectation requirement is flawed in many respects. *Amici* highlight two below.

First, the reasonable-expectation requirement focuses courts on the wrong question. RLUIPA asks whether a government has "impose[d] or implement[ed] a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person." 42 U.S.C. § 2000cc(a)(1). Thus, RLUIPA protections kick in when the land-use provision is imposed or implemented against a protected person. It is irrelevant then what was known at the time of purchase. As the Third Circuit has explained, "RLUIPA protects the exercise of religion, and it has no provisions for scrutinizing the actions or expectations of persons seeking to exercise religion." *Anash, Inc.*, 184 F.4th at 239 n.21; see also *Cath. Healthcare Int'l, Inc.*, 82 F.4th at 450 (declining to treat "the burdens resulting from an official's diktat as self-imposed by the property owner").

Nor does the role of "investment-backed expectations" in regulatory-takings law support the requirement. This Court has rejected the "sweeping" rule that a purchaser "is deemed to have notice of an earlier-enacted restriction and is barred from claiming that it effects a taking," reasoning that such a rule would allow a State to "put an expiration date on the Takings Clause." *Palazzolo* v. *Rhode Island*, 533 U.S. 606, 626–27 (2001). And if notice does not defeat a takings claim, it cannot defeat a claim under a statute that "shall be construed in favor of a broad protection of religious exercise." 42 U.S.C. § 2000cc-3(g).

Taken to the extreme, the reasonable-expectation requirement would also permit governments to adopt restrictive ordinances in advance of religious land use and thereby foreclose RLUIPA claims before they arise—a result that would fall most heavily on the newcomer and minority congregations discussed in Part A, *supra*. And the requirement sweeps well beyond its stated rationale. As applied below, it denied relief to a congregation whose church predates the zoning code and whose application the local board of adjustment approved. See *Frederic*, 727 S.W.3d at 404, 406.

Second, the reasonable-expectation analysis is internally incoherent. It assumes that a religious land purchaser factors into its decision the full body of local land use regulations, including the myriad ways in which local officials may apply generally expressed laws, yet at the same time does not account for RLUIPA itself. No person, and certainly not a reasonable one, would operate in such a way. Any reasonable-expectation analysis must account for RLUIPA itself, which entitles an institution acquiring land to expect that the government may not substantially burden its religious use of that land without satisfying strict scrutiny.

Indeed, RLUIPA presupposes that claimants will be aware of the rules from which they seek relief. The statute reaches burdens imposed through "individualized assessments," 42 U.S.C. § 2000cc(a)(2)(C)—the variance and permit procedures that religious institutions invoke precisely because the applicable rule does not permit their proposed use—and authorizes governments to respond by "exempting the substantially burdened religious exercise," 42 U.S.C. § 2000cc-3(e). If knowledge of the rule made the resulting burden self-

imposed, those provisions would protect only claimants who did not realize they needed relief.

Correctly interpreted, RLUIPA does not exempt religious institutions from land-use regulation. As its sponsors explained, the substantial-burden provision "does not exempt religious uses from land use regulation; rather, it requires regulators to more fully justify substantial burdens on religious exercise." Joint Statement at S7775. The substantiality requirement continues to exclude "trivial, technical, or *de minimus* [sic] burdens," H.R. Rep. No. 106-219, at 13, such as the mere requirement to apply for a permit, see *Konikov* v. *Orange County*, 410 F.3d 1317, 1323–24 (11th Cir. 2005). And a size or siting restriction that is the least restrictive means of furthering a compelling interest will survive strict scrutiny. What RLUIPA does not permit is a threshold rule under which the possibility of a smaller or relocated structure, or a claimant's awareness of the local zoning code, defeats a claim before the government is required to justify its decision. By holding that a prohibition on a religious institution's chosen structure is a substantial burden regardless of whether a lesser alternative remains available, the Court can restore the structure Congress enacted and ensure that the balance between religious exercise and land-use regulation is struck where Congress placed it: under strict scrutiny. The Court should reject both requirements.

CONCLUSION

For the foregoing reasons and those set forth by the Petitioner, the Court should reverse the decision below.

Respectfully submitted,

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