No. 25-1131

In the Supreme Court of the United States

MISSIONARIES OF SAINT JOHN THE BAPTIST, INC.,
Petitioner,
v.
JOEL FREDERIC, ET UX.

On Writ of Certiorari
to the Supreme Court of Kentucky

BRIEF OF *AMICI CURIAE* THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, THE UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA, AND OTHER RELIGIOUS ORGANIZATIONS SUPPORTING PETITIONER

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INTRODUCTION, SUMMARY AND INTEREST OF *AMICI CURIAE*[1]

Religious architecture tries "to make visible the sacred."[2] Thus, for as long as people have built places of worship, religious beliefs have driven choices as to their location, size, structure, and design. This is true across faiths, denominations, and sects. And religious texts—both ancient and modern—confirm that such choices are matters of theology and devotion rather than secular preference. As a result, the architecture of holy spaces is "inseparable from [their] religious meaning and purpose."[3]

That is why, as a matter of ordinary meaning, a law or land-use decision that forbids a religious institution from building a religious structure—or that exerts pressure over its location, size, structure, or design—substantially burdens religiously motivated choices. That ordinary meaning is codified in the Religious Land Use and Institutionalized Persons Act (RLUIPA), which forbids governments from substantially burdening a person's use or intended use "of real property for the purpose of religious exercise" unless they can satisfy strict scrutiny. 42 U.S.C. §2000cc-5(7)(B). Yet the Kentucky Supreme Court's decision narrows that broad protection of religious

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[1] This brief was not authored, even in part, by counsel for any party. No person or entity other than *amici*, their members or counsel has made a monetary contribution toward the brief's preparation or submission.

[2] Justus Dahinden, *New Trends in Church Architecture* 75 (1967).

[3] Angela C. Carmella, *Houses of Worship and Religious Liberty: Constitutional Limits to Landmark Preservation and Architectural Review*, 36 Vill. L. Rev. 401, 481 (1991).

exercise—and with it, RLUIPA's reach—beyond recognition.

Congress enacted RLUIPA after compiling extensive evidence that governments were using vague and often discretionary zoning laws to limit the location and architecture of religious spaces. The record showed a consistent pattern. Religious groups seeking to build places of worship were often denied permits for shifting and contradictory reasons. This was especially true of smaller or unpopular faiths.

Faced with this history of hostility toward religious spaces, Congress concluded that existing law did not adequately protect the needs of worship communities and that strong statutory safeguards were needed. And from that conclusion, RLUIPA was born. Congress modeled RLUIPA after the Religious Freedom Restoration Act, designing its protections, including the "substantial burden" provision, to impose firm, enforceable limits on local zoning practices long used to prevent or limit the efforts of religious institutions to build places of worship as their beliefs require. Yet despite RLUIPA's broad terms, the shameful pattern of governmental hostility to houses of worship persists.

The decision below undermines RLUIPA's framework. It held that RLUIPA does not even apply to Petitioner's request for a permit to build a shrine to the Virgin Mary on its property. For the reasons Petitioner identifies, that is wrong on the law.

But for practical reasons, the error is especially troubling to *Amici*—major religious organizations and faith communities including The Church of Jesus

Christ of Latter-day Saints, the Union of Orthodox Jewish Congregations of America, the American Association of Jewish Lawyers and Jurists, the United Muslims of America Interfaith Alliance, the American Islamic Congress, BAPS Swaminarayan Sanstha, and the Church of Scientology International. *Amici* are concerned that the erosion of RLUIPA's protections in the lower courts here and elsewhere will mean they cannot build places of worship where and how their faith directs them to. *Amici* write to show that such choices have long been matters of faith and doctrine, that land-use rules continue to interfere with those choices, and that RLUIPA, properly read, protects them.

STATEMENT

Petitioner tried to build a grotto dedicated to the Virgin Mary next to its church as an exercise of faith. Pet.App.4a. But the local zoning code required such structures to sit on arterial streets, Pet.App.5a-6a & n.5 (quoting Park Hills, Ky., Zoning Ord. §§10.4, 7.0), so Petitioner sought an exemption, Pet.App.6a. The board granted the permit. Pet.App.8a-10a. But Respondents, Petitioner's neighbors, objected to the exemption and sued to invalidate it. Pet.App.10a.

The trial court rejected Respondents' challenge. Pet.App.60a-61a; Pet.App.13a-14a. But the Kentucky Court of Appeals reversed, holding that RLUIPA did not apply and that the zoning code forbade the grotto, Pet.App.14a-16a. The Supreme Court of Kentucky affirmed the court of appeals. Pet.App.3a. It held that strict scrutiny under RLUIPA did not apply because Petitioner could show neither a substantial burden nor

that a permit denial would treat Petitioner worse than comparable secular applicants. Pet.App.27a-30a.

On the substantial-burden claim, the court reasoned that Petitioner was not burdened because it could build a smaller shrine on its original church parcel, rather than the land it had purchased specifically for this purpose: "St. John's ability to build a smaller shrine or grotto than what it desires falls more into the category of a mere inconvenience than a burden with 'some degree of severity.'" Pet.App.25a (quoting *Livingston Christian Schs.* v. *Genoa Charter Twp.*, 858 F.3d 996, 1003 (6th Cir. 2017)). The court also concluded that Petitioner had not suffered the delay, uncertainty, or expense that a substantial burden requires because it knew when it applied for a permit that the zoning laws restricted religious structures to arterial streets. Pet.App.27a. The court even suggested that, because it had known about the zoning laws when it applied for the permit, Petitioner had "imposed a burden upon itself" rather than been substantially burdened by the zoning decision. *Ibid.*

The court also rejected Petitioner's equal-terms claim. It found no issue because, even though *some* comparable secular structures did not have to be built on arterial streets, others did. Pet.App.29a.

ARGUMENT

I. For Millennia, Religious Communities Have Treated the Location, Design, Structure, and Size of Their Places of Worship as Matters of Faith and Doctrine.

As Petitioner explains (at 21-32), a land-use rule that forbids a religious institution from building the structure through which it seeks to exercise its religious faith on its own property substantially burdens religious exercise under RLUIPA. That conclusion flows directly from the text. It is also in keeping with millennia of religious practice. A review of that history confirms that, as RLUIPA implicitly recognizes, the choice of where and how to build a place of worship is an act of faith and doctrine.

A. Ancient and modern religious texts treat decisions about places of worship as theological.

Many religious traditions treat the location, size, and design of sacred spaces as matters of divine instruction and devotion. As RLUIPA rightly recognizes, building a sacred space like the proposed grotto in this case is an exercise of a believer's religion.

1. The Hebrew scriptures supply a starting point. Early on, God instructed Moses to have His people "make [Him] a sanctuary; that [He] may dwell among them."[4] The instructions were precise. The Tabernacle was to be designed "after the pattern" God Himself had

[4] Exodus 25:1, 8 (KJV).

revealed.[5] The ensuing chapters prescribe its materials and dimensions—down to the cubit.[6]

The same pattern governed the construction of Solomon's Temple. It stood on "mount Moriah, where the Lord appeared unto David," and divine instruction specified both its dimensions and its ornaments.[7] That is, revelation fixed the design. And centuries later, Ezekiel saw a heavenly guide measuring every gate, wall, and chamber of a still future temple.[8]

These texts all treat a sanctuary's location and design as products of divine mandate.

Later religious practices followed the same pattern. Jewish law directs that a synagogue's windows face Jerusalem and that its entrance sit opposite the direction of prayer.[9]

Scripture of The Church of Jesus Christ of Latter-day Saints is equally specific. An 1833 revelation directed the Church to build a temple "not after the manner of the world," but "after the manner which [the Lord] shall show."[10] And the pattern was not left to chance. The Lord fixed the temple's dimensions at

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[5] *Id.* 25:9, 40.

[6] *Id.* chs. 26-27 (KJV).

[7] 2 Chronicles 3:1, 3-17 (KJV).

[8] Ezekiel 40:3-49 (KJV).

[9] See Shulchan Aruch, Orach Chaim 150; Shulchan Aruch HaRav, Orach Chaim 90:4; see also Aryeh Citron, *Synagogue Architecture*, Chabad.org, https://tinyurl.com/3m363fd5 (last visited Nov. 22, 2026).

[10] Doctrine and Covenants 95:13-14, https://tinyurl.com/43jumrs5.

fifty-five by sixty-five feet and required "the inner court [to] be dedicated *** for *** sacrament offering" and "the higher part" to be "dedicated unto [Him] for the school of [His] apostles."[11]

2. The treatment of decisions about religious buildings as matters of faith is common across religious traditions. In Hinduism, the Hindu scripture known as the Agamas devoted an entire division called the *Kriya Pada* to temple construction. It governs the construction and fixing of temple sites, soil selection, the selection of stones for idols, and various design principles throughout the temple.[12]

And in Islam, orientation is mandatory. The *qiblah* orientation "requires that all devotees face the direction of Makkah," and ultimately shapes the rest of the mosque layout.[13] Based on religious texts, this requirement drives religious building codes and design objectives whenever a mosque is built.[14]

In short, religious belief routinely guides the location, design, structure, and size of places of worship because, in those sacred buildings, worship

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[11] *Id.* 95:15-17.

[12] See Rani Sadasiva Murty, Nat'l Sanskrit Univ., *M02: Idol Worship and an Introduction to Shakta, Saiva and Vaishnava Agamas* 22-23, 25, 71-73 (2022), https://tinyurl.com/2dmavshw; see also Sanjay Koul, *Sacred Texts and Spiritual Pathways: A Comprehensive Analysis of Shaiva, Vaishnava, and Shakta Agamas in Hindu Tradition* 2 (Aug. 11, 2024) (unpublished manuscript), https://tinyurl.com/3zjb6xsx; Uday Dokras, *Some Quintessentials of Hindu Temple Architecture* 12-13 (2021).

[13] Akel Ismail Kahera, *Deconstructing the American Mosque: Space, Gender, and Aesthetics* 34 (1st ed. 2002).

[14] See *ibid.*

communities "live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022) (cleaned up).

B. Religious beliefs still guide religious organizations' decisions about where and how to build places of worship.

Faith and doctrine still guide the decisions of religious organizations about where and how houses of worship are built.

1. For example, the Roman Catholic Code of Canon Law devotes an entire title to "Sacred Places."[15] It provides that "[n]o church is to be built without the express written consent of the diocesan bishop."[16] It guides every church to have a fixed altar[17] and preserves the "ancient tradition of placing relics of martyrs or other saints under" it.[18] The Code also requires each church, if possible, to have its own cemetery.[19] Little is left to local discretion.

Many Protestant traditions follow a similar pattern. The Episcopal Church's Book of Common Prayer includes a rite for the Dedication and Consecration of a Church. It begins with the recognition that, "[t]hrough the ages, Almighty God has moved his people to build houses of prayer and

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[15] Code of Canon Law cc. 1205-1243 (1983), https://tinyurl.com/CodeofCanonLaw.

[16] *Id.* c. 1215, §1.

[17] *Id.* c. 1235, §2.

[18] *Id.* c. 1237, §2.

[19] *Id.* c. 1240, §1.

praise, and to set apart places for the ministry of his holy Word and Sacraments."[20] To that end, when dedicating a church, the bishop sets apart the font for baptism, the lectern as the place to "read about [God's] mighty acts and purposes in history, and about those whom [He] chose as the agents of [His] will," and the pulpit as the place for the Word of God to "be proclaimed[] and *** heard."[21] Most importantly, the bishop consecrates the altar as the place where church members "recall[] *** the sacrifice of [God's] Son" as they partake of the Eucharist.[22]

The Presbyterian Church (U.S.A.) follows a Book of Order that specifies similar procedures. Although it recognizes the possibility of "worship in any place," it requires space set aside for worship to "encourage community," to "be accessible to all," and to "open [congregants] to reverence for God."[23] This requires Presbyterian churches to have "a place for the reading and proclamation of the Word, a font or pool for Baptism, and a table for the Lord's Supper" organized to "convey[] the[] relationship" that those sacred spaces have with "one another and their centrality in Christian worship."[24]

And The Church of Jesus Christ of Latter-day Saints follows the same pattern it followed in its

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[20] The Book of Common Prayer 567 (Church Publ'g Inc. 1979), https://tinyurl.com/4vb5fkvm.

[21] *Id.* at 569-571.

[22] *Id.* at 573-574.

[23] See Presbyterian Church (U.S.A.), *Book of Order 2025-2027*, at 82-83 (W-1.0203) (2025), https://tinyurl.com/yn8fcwv6.

[24] *Id.* at 83.

infancy. Once a decision is made to build a temple in an area, "the First Presidency"—the highest governing body of the Church—"prayerfully chooses the precise spot on which to build — a pattern that has been in place since the Church of Jesus Christ's beginning."[25] And the Church imposes exacting design standards on the construction itself because it considers temples to be "the holiest places on earth and tributes to God."[26] In the last 10 years alone, the Church has constructed 37 sacred temples in the United States.[27] In addition to these new temples, the Church has also built roughly 1,500 new meetinghouses across the country since RLUIPA was enacted. The "primary purpose of these facilities *** is to provide a place of worship"—"each of [the] meetinghouses is dedicated by priesthood authority as a place where the Spirit of the Lord may dwell and where God's children—both those inside and outside the Church—may come 'to the knowledge of their Redeemer.'"[28]

2. Similarly, Orthodox Jewish communities must locate synagogues within walking distance of members' homes because traditional Jewish law

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[25] *The Process of Building a Temple*, The Church of Jesus Christ of Latter-day Saints (June 17, 2023), https://tinyurl.com/yx64vmxd.

[26] *Ibid.*

[27] See *Temple List*, The Church of Jesus Christ of Latter-day Saints, https://tinyurl.com/ListofTemples (last visited Nov. 22, 2026) (set "location" to United States).

[28] Bishop Dean M. Davies, *Meetinghouses—Places of Reverence and Worship*, The Church of Jesus Christ of Latter-day Saints (Oct. 2020) (quoting Mosiah 18:30), https://tinyurl.com/yswr2nr8.

forbids driving on the Sabbath[29] and "requires [certain members] to pray thrice daily with a group of ten men, what's known as a 'minyan' in Hebrew." *Grand* v. *City of University Heights*, 159 F.4th 507, 509 (6th Cir. 2025), *cert. granted*, 146 S.Ct. 2809 (2026). The location of a synagogue relative to adherents' homes is therefore not just a matter of convenience; it determines whether communal worship is possible at all. A synagogue located beyond walking distance is effectively inaccessible during key periods of religious observance, making worship impossible. In other words, a parcel may otherwise be acceptable for a synagogue but still be inadequate since it is too far away for members to reach on foot. This Court will confront the harmful effects of governmental interference with Jewish communal worship in *Grand* v. *City of University Heights*, No. 25-965.

Likewise, many Jewish communities construct eruvin, physical boundaries often consisting of unobtrusive wires or similar markers, that enable observant Jews to carry items within a defined area on Shabbat and specific holidays. *Tenafly Eruv Ass'n, Inc.* v. *Borough of Tenafly*, 309 F.3d 144, 152 (3d Cir. 2002). To an outsider, the eruv may be difficult to detect and appear insignificant. A valid eruv enables adherents to carry keys, push a stroller, transport food, and engage in a variety of other activities outside the home during periods of religious observance. Thus, eruvin enable many "Orthodox Jews who have small children

[29] See Etan Diamond, *And I Will Dwell in Their Midst: Orthodox Jews in Suburbia* 8 (2000).

or are disabled" to "attend synagogue on the Sabbath." *Ibid.*

Jewish law also requires "a mikvah—a pool of water used for immersion as part of a purification ritual." *Anash, Inc.* v. *Borough of Kingston*, 184 F.4th 214, 228 (3d Cir. 2026). As several rabbis testified in one zoning dispute, "immersion in the waters of a mikvah *** restor[es] spiritual and family purity" and is "vital to those who observe Jewish laws." *Matter of Winterton Props., LLC* v. *Town of Mamakating Zoning Bd. of Appeals*, 132 A.D.3d 1141, 1142 (N.Y. App. Div. 2015) (internal quotation marks omitted). Thus, without access to a proper mikvah, fundamental aspects of family life under Jewish law cannot be fulfilled.

Sikh communities in the United States likewise design their places of worship around strict religious requirements. The Sikh Rehat Maryada requires Sikhs to "congregate for worship and prayer" at a gurdwara, the Sikh place of worship.[30] A gurdwara must have a place underneath an "awning" that is "absolutely clean" for storing the Guru Granth Sahib, *i.e.*, Sikh scripture.[31] The Guru Granth Sahib is "placed on a cot measuring up to its size and overlaid with absolutely clean mattress and sheets."[32]

In sum, by requiring any "substantial burden" on religious land uses to satisfy strict scrutiny, RLUIPA's

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[30] Sikh Reht Maryada art. V(a) (Kulraj Singh trans., Dharam Parchar Comm. 2023), https://tinyurl.com/2wtpmzf7.

[31] *Id.* art. V(c).

[32] *Ibid.*

text protects the longstanding practice of religious groups designing religious buildings for religious purposes. A steeple on a Christian chapel, a minaret on a mosque, and a shikhara on a Hindu temple are all examples of religious architectural choices protected by RLUIPA, as is Petitioner's desire to build a shrine to the Virgin Mary. A rule that interferes with a religious community's efforts to build the structure its faith calls for, *where* and *in the manner* its faith calls for it, substantially burdens that exercise.

II. Local Land-Use Rules Often Interfere with Religious Choices About Where and How Faiths Build Their Places of Worship.

Although Congress enacted RLUIPA to protect these kinds of decisions from government interference, such interference still poses a continuous threat to the Nation's more than 370,000 religious congregations.[33]

A. Congress enacted RLUIPA after learning of major hurdles faced by religious organizations in building their places of worship.

Before enacting RLUIPA, Congress conducted an extensive series of hearings to identify and address the most pervasive government violations of religious liberty. And the record it compiled was clear: Hostility toward religious land uses was a persistent problem.

Specifically, Congress heard extensive evidence of land-use authorities giving vague, arbitrary,

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[33] See *Fast Facts on American Religion*, Hartford Inst. for Religion Rsch., https://tinyurl.com/USReligionStats (last visited Nov. 22, 2026) (click first topic).

pretextual, or openly discriminatory reasons when imposing restrictions on religious organizations. It also heard "that zoning authorities were frequently placing excessive or unreasonable burdens on the ability of congregations and individuals to exercise their faith with little to no justification."[34]

For example, one city denied a permit to The Church of Jesus Christ of Latter-day Saints after it sought to build a temple on a property that once served as a church for another congregation. H.R. Rep. No. 106-219, at 22 (1999). The city said the temple would not be "'in the best interests of and promote the public health, safety, morals, convenience, order, prosperity, and general welfare of the City'" and cited a desire to "have no more churches in the community." *Ibid.*

Another city denied a permit to an Orthodox Jewish community seeking to build a synagogue for failing to include sufficient parking spaces, even though its congregants, because of religious observance, would not use vehicles on the Sabbath. *Id.* at 22-23. When the congregation agreed to construct the requisite parking anyway, the city reversed course and denied the permit because of traffic concerns. *Id.* at 23.

Other examples before Congress followed the same pattern. Municipalities would offer vague concerns about traffic, parking, safety, or neighborhood character. *Id.* at 20. They would then

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[34] Civ. Rts. Div., U.S. Dep't of Just., Statement of the Department of Justice on the Land Use Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA) 1 (June 13, 2018), https://tinyurl.com/4y2ct835.

cite these justifications to explain the need to deny requested permits. Some religious institutions were excluded from residential zones for generating "too much traffic" while simultaneously being excluded from commercial zones for not generating "enough." 146 Cong. Rec. S7774-S7775 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy). Others were denied permits to use even "existing buildings that non-religious assemblies had previously used" for similar secular purposes. H.R. Rep. No. 106-219, at 21. This was untenable. As RLUIPA's lead Senate sponsors explained, "Churches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements." 146 Cong. Rec. S7774-S7775 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy).

Simply put, RLUIPA was enacted to stop local governments from using facially neutral but vague and arbitrary justifications to burden the "indispensable adjunct of the core First Amendment right to assemble for religious purposes." *Ibid.* The statute gave Congress a way to respond to the arbitrary, shifting, and contradictory rationales on which local governments relied in denying permits to religious organizations.

B. Many harms that Congress designed RLUIPA to prevent persist.

The same pattern of shifting, pretextual justifications that Congress documented before enacting RLUIPA persists today. As of 2020, the Department of Justice had "opened 485 RLUIPA land-use matters" that led to "148 RLUIPA formal land-use investigations" and "25 RLUIPA land-use lawsuits."[35] Thankfully, "[m]ore than two thirds of the Department's investigations *** resolved with the local governments modifying their ordinances or taking other corrective action to remedy the RLUIPA issues."[36] But even a cursory review of events from the last few years shows that governments often ignore RLUIPA until they are forced to comply.

1. For example, when The Church of Jesus Christ of Latter-day Saints tried to build a temple in a Texas city, the land-use authority unanimously denied the permit. The city based its decision on alleged size, height, lighting, aesthetic, noise, and traffic concerns. And it did so even though the Church satisfied each of the city's objective requirements and was willing to make further adjustments.[37] Instead, the city council chose to simply ignore RLUIPA, with the mayor asserting the community would "follow *our* laws"

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[35] Civ. Rts. Div., U.S. Dep't of Just., Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act 12 (2020), https://tinyurl.com/3z9y52pf.

[36] *Ibid.*

[37] Jobin Panicker, *Hundreds Pack Texas Town Council Meeting Opposing LDS Church Temple Proposal with 173-Foot Spire*, WCNC (Aug. 8, 2024), https://tinyurl.com/bdcnszdh.

instead of federal law to oppose what he called an "alien" structure.[38] The council ultimately approved a substantially smaller version of the temple, but only after the Church made significant concessions and gave notice of intent to sue.

The Church faced similar opposition to a second temple in Las Vegas, Nevada. There, opponents tried to block the temple's construction because of height, lighting, and traffic concerns, even though the Church adjusted its plans in response.[39] Worse, the opposition mirrored pre-RLUIPA opposition to the Church's first Las Vegas temple,[40] even though the concerns that drove opposition to that temple never materialized.

2. Although the number of mosques in the United States has grown by more than 30% since 2010,[41] the increase does not mean that Muslim congregations are no longer suffering the harms RLUIPA was intended to prevent. For instance, a congregation in Texas was

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[38] Audio Recording, Fairview, Tex., Town Council Meeting, at 3:55:00-3:55:30, 1:01:55-1:02:07 (Aug. 6, 2024), https://tinyurl.com/44e2ef2b (statements of Mayor Henry Lessner).

[39] Ken Ritter & Hannah Schoenbaum, *Mormon Faith Pushes Ahead with Global Temple Building Boom Despite Cool Reception in Las Vegas,* Associated Press (Oct. 3, 2024), https://tinyurl.com/mr3fjm6b; Tad Walch, *Vote Is In: Las Vegas City Council Approves Lone Mountain Nevada Temple After Months of Debate*, Deseret News (July 18, 2024), https://tinyurl.com/5ecawpah.

[40] Taylor Lane, *East Las Vegas LDS Temple Faced Similar Opposition to Lone Mountain Temple*, L.V. Rev.-J. (July 19, 2024), https://tinyurl.com/yc7tpmes.

[41] Ihsan Bagby, *The American Mosque 2020: Growing and Evolving* 7, Inst. for Soc. Pol'y & Understanding (2021), https://tinyurl.com/2nm7fdts.

unanimously denied a permit to build a mosque because of alleged traffic, parking, size, and neighborhood compatibility concerns.[42] And the religious animus infecting the opposition was barely veiled: Speakers at the commission meeting described the mosque as an "eyesore" for the primarily Christian population and worried about their children being "indoctrinated" from walking past it.[43]

And in New York, a town denied an application for a permit to expand a local mosque for not meeting parking requirements that the town had specifically enacted to target Islam—a fact the town's commissioner admitted.[44] In related court proceedings, the town highlighted the alleged woes of a local grandma—one of their key witnesses—who struggled to drive down narrow streets blocked by worshippers' parked cars.[45] But it turned out that grandma did not actually exist. The town had invented her solely to block the mosque's expansion.[46]

3. So too with Jewish synagogues. Because of rising antisemitism, Jewish congregations have suffered countless examples of unlawful governmental hostility to synagogue construction and expansion. In

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[42] Emma Ruby, *Dozens of McKinney Residents Speak Against 'Eyesore' Mosque Moving in Next Door*, Dallas Observer (July 26, 2024), https://tinyurl.com/5n73c6jj.

[43] *Ibid.*

[44] Brandon Cruz, *Long Island Town Admits Grandma Used as Key Witness to Block Mosque Plan Never Existed*, N.Y. Post (July 31, 2025), https://tinyurl.com/c2bffjyz.

[45] *Ibid.*

[46] *Ibid.*

Orlando, for example, a county commission denied the Orlando Torah Center a permit to expand, claiming the expansion would make the building oversized relative to its lot, even though neighboring Christian churches were comparable in size to the proposed expansion.[47]

And in a New Jersey town, zoning disputes delayed construction of a Chabad Center for more than three decades.[48] In *another* New Jersey town, a zoning law requiring houses of worship to be built on at least ten acres effectively blocked a synagogue from being built within the township.[49]

And, in a Pennsylvania town, an ordinance effectively prevented construction of synagogues needed to accommodate the expanding Orthodox Jewish population. It did so by limiting places of worship and religious schools to plots of at least one acre—even though the town contained only forty-nine such parcels.[50]

These examples, and countless others, show that the very harms Congress enacted RLUIPA to prevent

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[47] Stephen Hudak, *U.S. Justice Department Probes Rejection of Orlando Torah Center Expansion*, yahoo!news (Sep. 12, 2025), https://tinyurl.com/bd2y3c22.

[48] Faygie Holt, *Millburn Township Settles After 10 Years: Chabad House Will Be Built*, Jewish Link (Sep. 10, 2026), https://tinyurl.com/nhmtenex.

[49] Chris Lundy, *Toms River Settles Religious Zoning Complaint*, Jersey Shore Online (Mar. 23, 2021), https://tinyurl.com/4t42eecv.

[50] Ed Lewis, *Possible Compromise in Federal Suit Against Kingston Alleging 2023 Ordinance Restricts Religious Worship*, Times Leader (Feb. 5, 2026), https://tinyurl.com/3hpntzts.

continue today. And that is why it is important to all religious communities that RLUIPA be interpreted and applied correctly.

III. Petitioner's Reading of RLUIPA Is Both Correct and Necessary for the Statute to Adequately Protect Religious Land-Use Choices.

For all the reasons Petitioner identifies (at 21-27), its reading of RLUIPA is the correct one. The challenges facing religious land use that prompted RLUIPA's passage—and that continue under narrowing court decisions—show that this reading is also necessary for the statute to serve its purpose.

A. Petitioner's reading is not only correct, but it also furthers RLUIPA's purpose.

Congress enacted RLUIPA to address widespread hostility toward religious land uses and to protect religious groups' land-use decisions. And it was Congress's second attempt to protect those decisions. After this Court held, in the criminal context, that neutral laws of general applicability do not violate the First Amendment regardless of their impact on religious exercise, see *Employment Div.* v. *Smith*, 494 U.S. 872, 878-882 (1990), Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. No. 103-141, 107 Stat. 1488 (codified at 42 U.S.C. §2000bb *et seq*.), to restore heightened protections for religious exercise. After this Court held that RFRA exceeded Congress's powers as applied to the states, *City of Boerne* v. *Flores*, 521 U.S. 507, 532-536 (1997), Congress tried again with RLUIPA. See *Holt* v. *Hobbs*, 574 U.S. 352, 357 (2015).

When introducing the bill, its sponsors—Senators Hatch and Kennedy—issued a joint statement correctly explaining why certain land-use regulations can abridge religious freedom. "Churches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements. The right to build *** such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes." 146 Cong. Rec. S7774 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy).

During the legislative process, Congress considered "massive evidence" of governmental efforts to exclude and burden religious activity as well as more systemic evidence on the frequency with which courts upheld zoning decisions that burdened religious exercise. *Id.* at S7774-S7775. The record compiled by Congress "demonstrated that nonreligious assemblies are often treated far better by zoning authorities than religious assemblies." *Id.* at S7777 (letter from Baptist Joint Committee on Public Affairs). Based on that analysis, Congress concluded that the "success rate of churches in the relatively few reported cases ha[d] *** declined." H.R. Rep. No. 106-219, at 21 & n.94 (collecting cases).

In one such case, the Ninth Circuit upheld a permit denial that barred a small church from meeting in a residential area because the church would allegedly create noise, traffic, and parking problems and "adversely affect the character of the neighborhood." *Christian Gospel Church, Inc.* v. *City & County of San Francisco*, 896 F.2d 1221, 1222-1223 (9th Cir. 1990). In another, the Eleventh Circuit

approved categorical restrictions on "organized, publicly attended religious activities" after concluding that such limits did not create significant constitutional harm. *Grosz* v. *City of Miami Beach*, 721 F.2d 729, 739 (11th Cir. 1983).

These cases amply show why Congress concluded existing law did not adequately protect religious land use, and why RLUIPA was needed.

B. Narrow readings like the one below contravene Congress's purpose and leave religious institutions without meaningful protection.

Through its unduly narrow reading, the decision below revives the burdens on religious exercise that Congress enacted RLUIPA to forbid.

1. A quick review of the facts here bears this out. Petitioner seeks to build a shrine as an exercise of its religious devotion. The decision below forbids that. As Justice Gorsuch has rightly recognized, "preventing a religious exercise is, necessarily, a 'substantial burden' on that religious exercise." *Apache Stronghold* v. *United States*, 145 S.Ct. 1480, 1488 (2025) (Gorsuch, J., dissenting from denial of certiorari), *reh'g denied mem.*, 146 S.Ct. 285 (2025). Under that principle, prohibiting Petitioner from building the shrine should have triggered strict scrutiny. See 42 U.S.C. §2000cc(a)(1). Religious exercise was thus doubly prevented: Building the shrine itself would have been an act of religious exercise, and no religious exercise in conjunction with the shrine can now occur in the future.

Instead, the Kentucky Supreme Court read RLUIPA's "substantial burden" provision very narrowly, to exclude cases where there could be some conceivable alternative (however inadequate) and the desired religious land use would require an exception from current regulations. Pet.App.25a-27a. But the existence of alternatives—and whether or not they are meaningful—is part of the strict-scrutiny analysis, not a reason to avoid that analysis altogether. In treating it as part of the *burden* analysis, the court thus hollowed out the statute's core protections and invited a return to the very discrimination that led Congress to act.

2. To be sure, the decision below did not invent its cramped reading of "substantial burden." It borrowed a multifactor test from the Sixth Circuit and applied it in a way that gives religious plaintiffs scant protection. Pet.App.30a (adopting *Livingston Christian Schs.* v. *Genoa Charter Twp.*, 858 F.3d 996 (6th Cir. 2017)).

Whatever their labels, approaches like this share a common defect. They measure religious burdens against a standard Congress never adopted. RLUIPA protects "*any* exercise of religion, whether or not compelled by, or central to, a system of religious belief," including "[t]he use, building, or conversion of real property for the purpose of religious exercise." 42 U.S.C. §2000cc-5(7)(A)-(B) (emphasis added). And Congress wrote that definition broadly for a reason: It heard exhaustive evidence that governments and courts regularly restricted religious land use. See Part II, *supra*. A test that allows local governments to do so

without having to pass strict scrutiny departs from the statute Congress wrote.

Start with *Livingston*. In that case, the Sixth Circuit concluded that religious land-use decisions are not substantially burdened if there is—to the court's mind—a "feasible alternative." Pet.App.24a-25a (quoting *Livingston*, 858 F.3d at 1004).

Applying that framework, the court below set aside the approval of Petitioner's application, casting the resulting burden as "a mere inconvenience" because it thought Petitioner could simply "build a smaller shrine or grotto than what it desires." Pet.App.25a. In other words, the court asked whether Petitioner could make do with less and then answered that question *for* Petitioner, supplanting Petitioner's religious beliefs about what its faith demands for the court's own opinion on the subject. Indeed, it did not consider whether its proposed design and setting would accommodate the specific devotional practice Petitioner proposed. See Pet.App.24a-25a. That was wrong. RLUIPA protects "*any* exercise of religion, whether or not compelled by, or central to, a system of religious belief," including the "use, building, or conversion of real property for the purpose of religious exercise." 42 U.S.C. §2000cc-5(7)(A)-(B) (emphasis added).

And rightly so. As the Massachusetts Supreme Judicial Court has recognized, "[i]t is not for judges to determine whether the inclusion of a particular architectural feature is 'necessary' for a particular religion." *Martin* v. *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints*, 434 Mass.

141, 150 (2001). In fact, to do so would violate the First Amendment under this Court's settled rule that "it is not within the judicial function and judicial competence to inquire whether" believers have "correctly perceived the commands" of his or her faith. *Thomas* v. *Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981). Rather, "[r]eligious questions are to be answered by religious bodies." *McCarthy* v. *Fuller*, 714 F.3d 971, 976 (7th Cir. 2013). Indeed, such questions can *only* be answered by religious bodies, or government would "infring[e] upon a religious organization's rights." *Demkovich* v. *St. Andrew the Apostle Par.*, 3 F.4th 968, 981 (7th Cir. 2021) (en banc).

The lower court's "self-imposed burden" theory is even further afield. Under that theory, a religious organization burdens itself merely by knowing the zoning rules will require an exception and seeking a permit anyway. See Pet.App.27a.[51] But that is not how RLUIPA works either. Congress did not write RLUIPA to guard only against surprises, and it does not allow governments to impose a religious burden merely by giving advance notice.

To the contrary, Congress directly targeted preexisting, facially neutral zoning codes after finding that discrimination in land use was "very widespread"

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[51] Under current Sixth Circuit precedent, this theory creates a further dilemma: an RLUIPA claim is unripe until the zoning board issues a final decision, see *Grand* v. *City of University Heights*, 159 F.4th 507, 513 (6th Cir. 2025), yet seeking that decision after learning the rules require an exception is itself treated as a self-imposed burden that defeats the claim. The result is that no zoning regulation can ever be challenged under RLUIPA.

and often "lurk[ed] behind *** vague and universally applicable reasons" to avoid detection. 146 Cong. Rec. S7774-S7775 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy). Yet, as Petitioner has rightly argued, under the decision below, governments could "impose all manner of burdens on religious exercise so long as they give adequate notice." Pet.16. Such an approach "forces" religious institutions "into a guessing game, in which they have to acquire a site, or acquire a lengthy option on a site, and then seek permission to use it in a political process that *** is often hostile to their interests."[52] Moreover, "[t]he process can turn into a game of gotcha, in which the available site is always some other site, but never the site the church has actually purchased."[53]

This Court should therefore read RLUIPA as Petitioner urges, in a way that is faithful to Congress's purpose as reflected in its enacted text. Only that reading will give RLUIPA the real force necessary to protect religious beliefs.

CONCLUSION

Centuries of religious practice and the text of RLUIPA point the same way. When a religious organization proposes to build a devotional structure on its own property, and the government forbids it, the government imposes a substantial burden on the exercise of religion. This Court should reverse.

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[52] Douglas Laycock & Luke W. Goodrich, *RLUIPA: Necessary, Modest, and Under-enforced*, 39 Fordham Urb. L.J. 1021, 1047 (2012).

[53] *Ibid.*

Respectfully submitted,

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