No. 26-15

IN THE

Supreme Court of the United States

GARY PEREZ, ET AL.,
PETITIONERS,

v.

CITY OF SAN ANTONIO, TEXAS,
RESPONDENT.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF RELIGIOUS FREEDOM INSTITUTE AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

JUDD E. STONE II
Counsel of Record
CHRISTOPHER D. HILTON
ARI CUENIN
CODY C. COLL
STONE HILTON PLLC
600 Congress Ave.
Suite 2350
Austin, Texas 78701
judd@stonehilton.com
(737) 465-3897

Counsel for Amicus Curiae

QUESTIONS PRESENTED

The Petition for a Writ of Certiorari presents the following questions:

> 1. Whether the Religion Clauses of the First Amendment permit courts, when deciding whether government action burdens religious exercise, to override a claimant's sincere theological judgment of what the religious exercise requires.
>
> 2. Whether the government can satisfy its burden to prove that its action is the least religiously restrictive means available when, after notice that its action would burden religious exercise, the government admits that it failed to consider any workable alternatives prior to litigation.

The Court should grant the Petition, answer these questions in the negative, and reverse the judgment of the court of appeals.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes & Other Authorities:

INTEREST OF AMICUS CURIAE*

The Religious Freedom Institute ("RFI") is a non-profit organization committed to securing religious freedom for everyone, everywhere. RFI works across faith traditions and legal settings to protect the ability of individuals and communities to live lives of faith according to conscience. RFI's work has repeatedly emphasized three principles directly implicated here: minority-faith exercise deserves equal protection; courts should not second-guess sincere religious obligations; and formally neutral procedures cannot become devices for imposing substantial practical burdens on religion.

RFI has advanced those principles in cases involving public prayer, religious land use, access to judicial remedies, and sacred sites. Across those contexts, the same danger recurs: officials or courts may describe a burden as modest because they can imagine a substitute practice, location, time, or procedure. But a substitute acceptable to government is not necessarily religiously equivalent to the believer. The constitutional promise of religious liberty would be thin indeed if protection depended on whether a judge already understood the practice at issue.

This case sits at the center of RFI's institutional concerns. Petitioners are ceremonial leaders of the Lipan Native American Church who maintain that ceremonies inherited from their ancestors must occur at a particular bend of the San Antonio River, with sacred trees and nesting cormorants present. The City plans work that,

---

* Rule 37 statement: All counsel of record were timely notified of the intent to file this brief. No counsel for any party authored any part of this brief, and nobody other than *amici* and counsel for *amici* contributed monetarily to this brief's preparation or submission.

according to petitioners, will permanently eliminate those necessary conditions. The court of appeals nevertheless found no substantial burden in part because other portions of the park remain accessible and birds may nest elsewhere. RFI submits that the Court should grant review to prevent substantial-burden doctrine from becoming an inquiry into religious centrality, correctness, or substitutability.

SUMMARY OF ARGUMENT

I. Religious liberty protects pluralism only if it protects practices that officials and judges do not already know. The familiar is easy to recognize as religious. The unfamiliar is more vulnerable to being redescribed as cultural preference, personal taste, or an optional means of achieving a more general spiritual end. That is why this Court has long distinguished permissible sincerity inquiries from impermissible judgments about whether a belief is reasonable, orthodox, central, or logically compelled.

The decision below crosses that line. Petitioners testified that the riverbend, the trees, and the cormorants are not interchangeable ingredients but necessary components of ceremonies that cannot be performed elsewhere. Yet the court treated access to other parts of a 343-acre park and the possibility that cormorants might relocate as reasons to find no substantial burden. That reasoning does not merely measure the severity of governmental interference. It identifies a different religious exercise—one at another place, under altered conditions—and declares it adequate.

II. The error matters beyond this case. Courts regularly confront substantial-burden questions under the Free Exercise Clause, the Religious Freedom Restoration Act, the Religious Land Use and Institutionalized

Persons Act, and state analogues. A test that permits judges to decide whether an alternative is "good enough" invites unequal treatment. Members of well-known traditions can often explain their practices using concepts familiar to the bench. Adherents of indigenous, land-based, small, or recently arrived traditions cannot count on that background knowledge. As the ample history of discrimination against Native American religious practice demonstrates, protection should not turn on judges' theological fluency.

III. The tailoring issue independently warrants review. A least-restrictive-means analysis is not satisfied by a lawyer's after-the-fact ability to imagine why the chosen course was sensible. It requires government to demonstrate that less restrictive alternatives would not achieve its compelling interests. Where officials had notice of a religious burden yet did not seriously evaluate workable accommodations before acting, courts should not permit litigation rationales to substitute for constitutional decision making.

IV. This case is a strong vehicle for review. The evidentiary record was developed at a preliminary-injunction hearing; sincerity was credited; the threatened injury is concrete and potentially irreversible; and the competing approaches were squarely aired in multiple panel opinions and a six-judge dissent from denial of rehearing en banc. Delay may allow the disputed project to eliminate the very religious exercise for which petitioners seek protection.

ARGUMENT

The Court should grant certiorari in this case because it presents important questions about scrutiny of religious practices and offers an ideal opportunity to clarify the law on doctrines that persist in dividing courts nationwide. *See* S. Ct. R. 10(a), (c). The Court should clarify that courts may examine whether an asserted religious belief is sincerely held, but they may not redefine the exercise that follows from that belief. Once sincerity is established, the substantial-burden inquiry must assess the government's interference with the religious exercise the claimant actually identifies—not with a substitute practice, place, or ritual that a court considers adequate.

Review is imperative for religious liberty because an "objective necessity" test predictably disadvantages unfamiliar and minority faiths. It invites judges to treat familiar forms of worship as self-evidently religious while discounting land-based, oral, communal, or otherwise less familiar practices. A rule against theological substitution protects equal religious liberty without preventing courts from testing sincerity, causation, or the severity of the government's interference.

Independently, review is warranted to define the proper contours of strict scrutiny. Strict scrutiny must require genuine consideration of less restrictive means. Government may not carry that burden merely by offering post-hoc litigation rationales for a course selected without meaningful attention to religious accommodation. When officials act with notice of a serious religious burden, what alternatives they actually considered bears directly on whether the chosen means were truly necessary.

Moreover, this case is an ideal vehicle to review the questions presented. They recur across constitutional and statutory religious-freedom cases, affect adherents of many traditions, and are outcome-determinative at the threshold of strict scrutiny. This case cleanly presents those questions on a developed record, and the threatened destruction of petitioners' assertedly necessary ceremonial conditions makes review urgent.

I. Courts May Test Sincerity, But May Not Redefine What a Sincere Religious Exercise Requires.

A. The distinction between sincerity and religious truth is foundational. A court may ask whether a claimant honestly holds the asserted belief. That inquiry protects the legal system against sham claims without requiring courts to endorse theology. But once sincerity is established, the court may not ask whether the belief is sensible, whether the practice is mandatory according to some external authority, or whether another practice would serve the same spiritual purpose. *See Thomas v. Rev. Bd.*, 450 U.S. 707, 714–16 (1981); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724–25 (2014).

That rule follows from institutional competence as well as constitutional neutrality. Civil judges have neither warrant nor expertise to resolve questions of religious obligation. This principle is grounded in both practical judicial competence and the First Amendment's Religion Clauses. From its earliest formulation in the nineteenth century through the most recent precedents, the Court has repeatedly affirmed that the Constitution forbids civil courts from adjudicating religious doctrine, religious obligation, or ecclesiastical governance. *See, e.g.*, *Watson v. Jones*, 80 U.S. 679, 729–34 (1872) (holding that civil courts are not competent to resolve disputes of an ecclesiastical nature within religious associations). "It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own." *Id.* at 729.

Faith traditions locate authority in different sources—texts, oral traditions, elders, conscience, communal practice, revelation, sacred geography, or combinations of them. A judicial test that expects a familiar hierarchy, written command, or universally observed rule would privilege some traditions over others. The Court has consistently reinforced this principle, instructing that courts must take care to avoid "resolving underlying controversies over religious doctrine," *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969), and that judges lack the "understanding and appreciation of the role played by every person who performs a particular role in every religious tradition," *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 757 (2020).

Where a dispute requires determining what a religion requires of its adherents or officials, civil courts must abstain and defer to ecclesiastical decision-makers. For example, this Court has explained that "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice." *Presbyterian Church*, 393 U.S. at 449. The idea that a civil magistrate is a "competent Judge of Religious truth" was characterized, quoting James Madison, as "an arrogant pretension" that has been "falsified." *Our Lady of Guadalupe Sch.*, 591 U.S. at 763 (Thomas, J., concurring).

In *Jones v. Wolf*, 443 U.S. 595, 599–601 (1979), the Court recognized that civil courts may, in limited circumstances, apply a neutral-principles-of-law approach—using objective, well-established principles of secular law such as deeds, corporate charters, and state statutes—to resolve disputes involving religious institutions. However, the Court made clear that this method is permissible only when it does not require the civil court to resolve underlying controversies over religious doctrine or obligation. *Id.* at 603–05. Whenever the neutral-principles approach would compel a court to engage in doctrinal analysis, the constitutional bar remains firmly in place.

More recently, the Court in *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission* unanimously held that Wisconsin's application of a religious-employer exemption impermissibly differentiated among religions. 605 U.S. 238, 249–50 (2025). Wisconsin had conditioned eligibility on theological choices such as proselytizing or serving only co-religionists, which triggered strict scrutiny and failed narrow tailoring. *Id.* at 251–52. Civil adjudication cannot turn on assessments of inherently religious decisions about how doctrine is expressed in charitable work, reflecting limits on civil judges' authority to resolve questions grounded in religious obligation. *Id.* at 252. The Court characterized choices about how to "express and inculcate" religious doctrine as "fundamentally theological." *Id.* In their concurrences, Justice Thomas emphasized church autonomy principles by stressing that religious institutions define their internal structures, *id.* at 255–70 (Thomas, J., concurring), and Justice Jackson cautioned that inquiries focused on motivations risk intrusive probing into religious beliefs, *id.* at 270–79 (Jackson, J., concurring). These points collectively reinforce that civil courts lack authority and institutional competence to parse questions of religious obligation.

B. A substantial-burden inquiry may of course consider what government did and how severely it affected the exercise the claimant identifies. It may ask whether access was denied, conduct prohibited, benefits conditioned, penalties threatened, or a necessary object or place destroyed. RFRA, for instance, provides that the "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," unless the government "demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1. RLUIPA applies the same standard to land-use regulations and institutionalized persons. *Holt v. Hobbs*, 574 U.S. 352, 357–58 (2015). Both statutes were enacted to provide greater protection for religious exercise than is available under the First Amendment alone. *Id.* at 357; *see also Fulton v. City of Philadelphia*, 593 U.S. 522, 612 (2021) (Barrett, J., concurring) ("Both RFRA and RLUIPA impose essentially the same requirements as *Sherbert* [*v. Verner*, 374 U.S. 398 (1963)]."); *Hobby Lobby*, 573 U.S. at 695 ("[RLUIPA] imposes the same general test as RFRA but on a more limited category of governmental actions." (citation omitted)).

In *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 424–26 (2006), the Court addressed a religious sect's challenge under RFRA to the government's prohibition on the sect's sacramental use of hoasca, a tea containing a controlled hallucinogen. The Court held that the government bore the burden of demonstrating a compelling interest in barring the specific sacramental use at issue and found that the government failed to satisfy that burden. *Id.* at 430–38. *O Centro* confirms that courts must engage in a genuine factual assessment of whether governmental action forecloses religious exercise.

And in *Hobby Lobby*, 573 U.S. at 726, the Court held that the HHS contraceptive mandate substantially burdened the religious exercise of closely held for-profit corporations whose owners sincerely believed that providing certain contraceptive coverage made them complicit in an immoral act. The Court examined the coercive financial consequences of noncompliance—penalties that "could amount to $1.3 million per day or about $475 million per year"—and concluded: "If these consequences do not amount to a substantial burden, it is hard to see what would." *Id.* at 691.

But the inquiry cannot change the object of analysis. The question is not whether some religious activity remains possible; it is whether the challenged action materially interferes with the sincere exercise at issue. In *Holt*, the Court held 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. The Muslim prisoner's religious exercise was substantially burdened because prison policy forced him to shave his beard, "conduct that seriously violate[d] his religious beliefs." *Id.* at 361 (cleaned up). The Court rejected the lower court's reasoning that no substantial burden existed because the prisoner had been provided a prayer rug, religious materials, dietary accommodations, and holiday observances. *Id.* That approach, the Court held, "improperly imported a strand of reasoning from cases involving prisoners' First Amendment rights," and "RLUIPA provides greater protection." *Id.* The severity of interference with the specific identified practice—not the availability of other religious outlets—is what the statute requires courts to assess.

The difference is decisive here. Petitioners do not assert a generalized interest in praying somewhere within Brackenridge Park while observing any available birds. They identify a ceremony at a specific riverbend whose spiritual ecology includes particular trees and nesting cormorants. If government action makes that ceremony impossible, the fact that petitioners may pray elsewhere answers a different question. One is not left free to exercise a right merely because another form of expression remains available in another place.

C. The contrary approach is a disguised centrality test. In *Cutter v. Wilkinson*, 544 U.S. 709, 714–17 (2005), the Court upheld RLUIPA's framework prohibiting the government from imposing a substantial burden on religious exercise unless it demonstrates that the burden furthers a compelling governmental interest through the least restrictive means. The Court noted that RLUIPA defines religious exercise broadly to include any exercise of religion, whether or not compelled by or central to a system of religious belief, thereby foreclosing judicial inquiries into the centrality or necessity of a particular practice. *Id.* at 715, 725 n.13. The substantial burden inquiry must thus focus on the degree of governmental interference with the claimant's identified religious exercise rather than on whether a court deems that exercise objectively necessary or replaceable. *Id.* at 719–24.

A court that declares a substitute location or altered ritual religiously sufficient necessarily decides which features are essential and which are dispensable. In *Hobby Lobby*, the Court reaffirmed the principle from *Thomas v. Review Board* that "it is not for us to say that the line [a claimant] drew was an unreasonable one." *Hobby Lobby*, 573 U.S. at 725. A court's "narrow function" in this context should be only to determine "whether the line drawn reflects an honest conviction." *Id.* (citation omitted).

Merely labeling the inquiry "objective" does not change its character. The supposed objectivity comes from a secular observer's assessment of religious necessity—the very judgment the Religion Clauses prohibit civil authorities from making. As this Court explained in *Thomas*, "[w]here the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists." 450 U.S. at 717–18. This formulation is keyed entirely to the claimant's own religious understanding—not to what a neutral, secular observer would consider religiously necessary.

Nor is such second-guessing needed to avoid limitless claims. Sincerity remains a real threshold. The claimant must identify religious exercise and establish a causal connection between governmental action and a serious interference with that exercise. *See, e.g.*, *Holt*, 574 U.S. 352; *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525–26 (2022). The government may contest facts, prove that the challenged action does not cause the alleged injury, or satisfy the applicable level of scrutiny. "Once a plaintiff makes such a showing, the burden flips and the government must demonstrate that imposition of the burden on that person is the least restrictive means of furthering a compelling governmental interest." *Ramirez v. Collier*, 595 U.S. 411, 425 (2022) (cleaned up). Those ordinary safeguards work without inviting theological revision.

D. The decision below illustrates the doctrinal instability the petition identifies. Some courts treat the believer's sincere account of what the exercise requires as the premise for assessing a burden on religion. Pet. 20–21. Others employ formulations that permit external judgments about whether the interference claimed does not match the "accuracy of a religious belief" or is too "attenuated." Pet. 18–22 (citation omitted). Those verbal differences produce concrete consequences when government destroys or denies access to something the claimant regards as religiously indispensable. The Court should grant review and make clear that civil courts evaluate interference, not theology.

II. An Objective-Necessity Test Predictably Disadvantages Unfamiliar and Minority Faiths.

A. Religious liberty is tested at the margins of familiarity. When a practice resembles one judges have seen in their own communities, its religious significance may seem intuitive. A sanctuary, a weekly service, a prescribed garment, or a written dietary rule may fit an existing legal vocabulary. But constitutional protection cannot depend on resemblance to a majority tradition. Sacred places, seasonal rites, relationships with animals, and ceremonies embedded in a landscape are no less religious because they are less familiar to a civil tribunal.

American law has repeatedly encountered the danger of measuring minority practices against majoritarian expectations. *E.g.*, *Thomas*, 450 U.S. at 714. The Court explained that "the resolution of [what constitutes a religious belief or practice] is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Id.*

This Court has extended *Thomas*'s logic, explaining that it is irrelevant whether a person is a member of an organized church, official denomination, or recognized sect. *Frazee v. Ill. Dept. of Emp. Sec.*, 489 U.S. 829, 832–34 (1989). While "membership in an organized religious denomination, especially one with a specific tenet [governing the belief or conduct in question], would simplify the problem of identifying sincerely held religious beliefs," the Free Exercise Clause does not protect only those who belong to particular organizations. *Id.* at 384. Indeed, the Court's precedents hold the First Amendment prevents favor for "those religions based on a belief in the existence of God as against those religions founded on different beliefs." *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961).

In *Wisconsin v. Yoder*, the Court squarely confronted the risk of imposing majority cultural and religious expectations on a minority faith community. Upholding the rights of Old Order Amish families against compulsory education laws, the Court declared: "There can be no assumption that today's majority is 'right' and the Amish and others like them are 'wrong.' A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different." 406 U.S. 205, 223–24 (1972). The Court further warned that "forced migration of religious minorities was an evil that lay at the heart of the Religion Clauses," signaling that constitutional protections exist precisely to insulate minority faiths from majoritarian pressure. *Id.* at 218 n.9.

In *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439, 457 (1988), the majority cautioned against a judicial test that would require courts to evaluate which practices are "central" or "indispensable" to a religion, warning that such an approach would lead to courts "holding that some sincerely held religious beliefs and practices are not 'central' to certain religions, despite protestations to the contrary from the religious objectors." The majority characterized such an approach as one that "would require us to rule that some religious adherents misunderstand their own religious beliefs," a role the Court declared "cannot be squared with the Constitution or with our precedents." *Id.* at 457–58. In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 460 (2017), the Court clarified that the absence of a free exercise violation in *Lyng* turned on the fact that the government's conduct did not coerce individuals into violating their religious beliefs and did not deny them an equal share of rights enjoyed by other citizens.

The Circuit Courts have been sensitive to this issue as well. *See, e.g.*, *Africa v. Pennsylvania*, 662 F.2d 1025, 1031 (3rd Cir. 1981) ("[W]e must avoid any predisposition toward conventional religions so that unfamiliar faiths are not branded mere secular beliefs. 'Religions now accepted were persecuted, unpopular and condemned at their inception.'" (quoting *United States v. Kuch*, 288 F. Supp. 439, 443 (D.D.C. 1968)). But those courts have not always done so consistently. *See, e.g.*, *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1096–97 (9th Cir. 2008) (Fletcher, J., dissenting) (arguing that the majority may have treated a Judeo-Christian faith differently from the Native American religion at issue).

Properly applied, this principle directly forecloses any inquiry into whether a minority religious practice matches what a majority would recognize as legitimate religion. The Court has reaffirmed this formulation consistently, including in *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), and *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021).

Rules framed without reference to religion may still fall especially hard on communities whose worship is public, time-sensitive, place-specific, communal, or dependent on physical conditions. Equal liberty therefore requires attention to practical effects, not confidence that an alternative imagined by government is adequate. Commentators have argued that "substantive neutrality" mandates the government "minimize the extent to which it either encourages or discourages religious . . . practice or nonpractice." Douglas Laycock, *Formal, Substantive, and Disaggregated Neutrality Toward Religion*, 39 DEPAUL L. REV. 993, 1001 (1990). Without thinking carefully about the precise ways governmental action might, as in this case, discourage religion—and the ways alternative actions might less discourage religion—"we will tend to select our baselines by intuition, and we will give free rein to our political preferences and our prejudices." *Id.* at 1006. That consideration necessarily looks to practical effects on the faith and practice in question, not merely to abstract forms of religious practice informed by one's own, or the majority's, experience.

B. Indigenous religious exercise makes the danger especially visible. For many land-based traditions, place is not merely a convenient venue for worship. The place, its natural features, and the relationships sustained there may be part of the exercise itself. Destruction of the site cannot be answered by pointing to acreage elsewhere. As Justice Gorsuch recently observed, Native religious practices may be unfamiliar to many, and that unfamiliarity cannot justify lesser protection. *Apache Stronghold v. United States*, 145 S. Ct. 1480, 1489 (2025) (Gorsuch, J., dissenting from denial of certiorari).

Native Americans, all too often "divested of their traditional homelands," have found themselves "beholden to the government to engage in centuries-old practices and ceremonies." Stephanie H. Barclay & Michalyn Steele, *Rethinking Protections for Indigenous Sacred Sites*, 134 HARV. L. REV. 1294, 1297 (2021). The resulting problems "stem[] in significant part from government misunderstanding of Indigenous people's unique spiritual traditions." *Id.* at 1298. And even courts have noted the "distinctive qualities of Indigenous religious practices regarding sacred sites" as "an excuse to deny traditional protections for religious exercise." *Id.* at 1298–99. Sacred sites are not unique to Indigenous practice—for example, consider the Western Wall's importance to Judaism—but many nonnatives may fail to appreciate that "[w]ithout access to particular sites, essential practice of native religion may be effectively prohibited altogether." *Id.* at 1304–05. Thus, while the Western Wall is considered to be particularly sacred, a Jewish person can pray anywhere; but Native American practices "must be performed in [specific] places or the essential rites and the animating beliefs behind the rites are, by compulsion, extinguished." *Id.* at 1305. "There is no adequate substitute and no adequate compensation for the deprivation," because "belief is inseparable from the integrity of and access to the place." *Id.* at 1305–06.

Unfortunately, Native American land-based religious practices, like many aspects of Indian culture and heritage, have been the subject of brutal oppression. Religious ceremonies, burial practices, and even features of native personal appearance have been banned and heavily regulated, and spiritual leaders and practitioners persecuted. *Id.* at 1307–08. What's worse in this context, the United States effectuated the systematic displacement of Native Americans from their homelands and their sacred sites. *Id.* at 1310–12. That history has resulted in "catastrophic consequences for the religious liberty interests of tribal people." *Id.* at 1312. According to the "Western property paradigm," land is essentially fungible and can be reduced to an economic value. *Id.* at 1312–13. But as the above discussion makes clear, that is not true for Indigenous cultures. *Id.* As in this case, irreplaceable sacred sites across the Nation are under government ownership and control as a direct result of governmental oppression of native peoples.

The historical context reinforces the need for a clear rule. Native American religious practices have often been suppressed, displaced, or treated as obstacles to land management. A doctrine that lets courts decide that another site is spiritually equivalent reproduces the same structural mistake in modern language: government defines the practice at a level of generality that makes its own interference disappear.

C. The problem is not limited to indigenous traditions. Orthodox Jewish observance may depend on time, place, physical boundaries, or the availability of particular facilities. For example, Jewish law requires the recitation of blessings before and after eating and drinking. There are numerous other situations where observant Jews may make a contemporaneous blessing, including upon seeing a rainbow or lightning, or upon hearing thunder. Muslim prayer may be visible, scheduled, and oriented. Sikh practice may involve articles of faith unfamiliar to officials. Small congregations may require land uses that zoning authorities view as interchangeable with secular assembly. Prisoners and institutionalized persons may depend on specific foods, grooming practices, objects, or communal rites. In each setting, the temptation to offer a secularly plausible substitute is strong.

A rule against theological substitution treats all of those claims evenhandedly. It does not guarantee victory. It fixes the proper baseline for analysis: the claimant's sincere religious exercise as the claimant understands it. Government then receives a full opportunity to contest causation, severity, and—where applicable—to justify the burden under strict scrutiny. Neutrality is preserved because the court never ranks the intelligibility of competing faiths.

III. Strict Scrutiny Requires Contemporaneous, Genuine Consideration of Less-Restrictive Alternatives.

A. The least-restrictive-means requirement is demanding by design. Government must do more than identify important ends and show that its chosen means are rationally related to them. It must establish that those interests cannot be achieved through a less burdensome course. *See Holt*, 574 U.S. at 364–65. That showing ordinarily requires engagement with proposed alternatives rather than categorical dismissal or post-hoc reconstruction.

In *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026), for example, this Court recently concluded that parents challenging state policies restricting parental notification about a child's gender identity were likely to succeed on Free Exercise grounds. The Court determined that although the state asserted interests in student safety and privacy, the policies were not narrowly tailored and could instead accommodate religious objections while still protecting students by, for example, precluding disclosure to parents who would engage in abuse and enforcing child-abuse laws. *Id.*

Where officials know that a project threatens religious exercise, advance consideration serves a constitutional function. It forces the decisionmaker to identify the precise public interest, examine whether all burdensome features are necessary, consult affected practitioners, and create a record explaining why accommodations would fail. That process is especially important for minority religions, whose burdens may otherwise remain invisible until litigation.

B. The principle resembles the familiar rule that agency action must be judged on the grounds the agency invoked when it acted. *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943). The analogy is not exact, but the underlying discipline is relevant. Courts cannot reliably determine whether government selected the least restrictive means if counsel may supply new reasons, new factual premises, or newly discovered alternatives after suit begins. Litigation ingenuity is not a substitute for governmental tailoring.

In *Chenery*, the Court explained that when a determination of policy or judgment is "entrusted to an administrative agency," "a judicial judgment cannot be made to do service for an administrative judgment." *Id.* at 88. Thus, when an administrative agency announces the basis on which it has made a decision or the principles that informed its judgment, it is not for the courts to second guess that basis, only to determine whether that basis or those principles demand the outcome the agency reached. *Id.* at 88–89.

The reasoning extends to the instant context if the government is to be held accountable for actually considering alternatives once on notice of potential burden to religious exercise. For instance, cases after *Chenery* explained that "an agency's discretionary order may be upheld only on the same basis articulated in the order by the agency itself." *E.g.*, *Calcutt v. FDIC*, 598 U.S. 623, 624 (2023) (cleaned up). Agencies must conduct and supply a "reasoned analysis" for their decisions lest they be deemed arbitrary and capricious, and the extent of the analysis required may vary according to the context. *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42–43 (1983). These rules ensure that officials are held to their duty to consider the consequences of proposed actions. Analogously, a government like the one at issue here should be expected to conduct a genuine, reasoned analysis of the alternatives available to minimize burden on religious exercise.

These principles do not impose a free-standing administrative-procedure code on every public project. They simply give evidentiary significance to what government actually considered. A contemporaneous record of consultation, alternatives analysis, and reasoned rejection may strongly support the government. An admission that no workable alternative was considered despite notice of a severe burden cuts the other way. Strict scrutiny should not reward avoidable ignorance.

C. The point is consequential in public-land and infrastructure disputes. Government often has legitimate interests in safety, preservation, accessibility, environmental management, and compliance with other law. *Lukumi* reinforced this by holding that, while the government may pursue legitimate interests through neutral laws of general applicability, it "cannot in a selective manner impose burdens only on conduct motivated by religious belief"—meaning that laws targeting religious practice must satisfy strict scrutiny regardless of the legitimacy of the underlying interest. 508 U.S. at 543.

But projects also present choices about scope, sequencing, design, methods, timing, and mitigation. Least-restrictive-means review asks whether those choices were made with the religious burden in view and whether narrower options would achieve the same concrete objectives. Both statutes prohibit the government from substantially burdening religious exercise unless it demonstrates that the burden furthers a compelling governmental interest through the least restrictive means. The Court confirmed in *O Centro*, that RFRA "expressly adopted the compelling interest test as set forth in *Sherbert v. Verner* and *Wisconsin v. Yoder*," requiring "an inquiry more focused than the Government's categorical approach"—the government must demonstrate that its compelling interest is satisfied "through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." 546 U.S. at 430–31 (cleaned up).

Petitioners allege that the City failed to consider workable alternatives before litigation despite notice that tree removal and rookery-management measures would destroy the conditions necessary for their ceremonies. As petitioners explain (at 11–13), that allegation is borne out by the record. Permitting the City to prevail through later rationales would invert strict scrutiny. The government would receive deference precisely because it failed to examine accommodation when accommodation could still shape the project. As *Hobby Lobby* teaches, courts must "look beyond broadly formulated interests" and scrutinize "the asserted harm of granting specific exemptions to particular religious claimants." 573 U.S. at 726–27 (cleaned up). Likewise, in *Ramirez v. Collier*, the Court reaffirmed that under RLUIPA, the government must demonstrate that the compelling-interest test is satisfied through application of the challenged law to the particular claimant whose sincere religious exercise is being substantially burdened. 595 U.S. at 429–33. Broadly formulated governmental interests are insufficient to discharge this burden.

This means that although safety, preservation, environmental management, and legal compliance are recognized as valid and potentially compelling government interests, they do not automatically defeat a RFRA or RLUIPA claim. Each must be established as compelling in the specific context and addressed through narrowly tailored, least restrictive means.

IV. The Questions Presented Are Important, Recurring, and Cleanly Presented.

A. The substantial-burden and least-restrictive-means questions recur across constitutional and statutory regimes. The operative phrases appear in federal and state religious-freedom laws, and courts regularly confront disputes over land use, prison rules, public employment, education, licensing, benefits, health regulation, and access to public space. *See* Pet. 20–34. Without guidance, outcomes will continue to turn on whether a court treats the believer's understanding as the premise of analysis or as a proposition open to external correction.

The issue is also exceptionally important because an erroneous standard distorts every later stage of review. If a court defines the religious exercise too generally, a profound burden appears slight or nonexistent, and the government never bears the obligation to justify its action. That result flouts this Court's admonition in cases like *Hobby Lobby*, that courts must "look beyond broadly formulated interests" and scrutinize "the asserted harm of granting specific exemptions to particular religious claimants." 573 U.S. at 726–27 (cleaned up). The threshold inquiry thus determines whether strict scrutiny occurs at all.

B. This case cleanly presents the issue. Petitioners' sincerity was not rejected. The relevant conditions are concrete: a particular riverbend, trees, and nesting cormorants. The court of appeals' alternative-location reasoning is explicit. Pet. App. 157a–158a. And dissenting judges directly explained why the availability of other land or birds elsewhere does not answer the religious question petitioners presented. *E.g.*, Pet. App. 118a–119a.

The procedural posture is a virtue, not an obstacle. The district court held an evidentiary preliminary-injunction hearing, and the Fifth Circuit considered the dispute repeatedly, including after guidance from the Supreme Court of Texas. Six judges voted for rehearing en banc. Pet. App. 54a. The record and opinions give this Court a focused basis to decide the governing standard while meaningful relief may still be possible.

C. Review is urgent. Petitioners explain that the City's project will permanently destroy necessary components of ceremonies practiced at the site for generations. Pet. App. 514a. If the work proceeds, a later merits judgment may come too late. Certiorari is warranted where a disputed rule threatens irreparable loss of religious exercise and where delay risks mooting the practical value of constitutional protection.

CONCLUSION

The Court should grant a writ of certiorari and reverse the judgment of the court of appeals.

Respectfully submitted.

JUDD E. STONE II
Counsel of Record
CHRISTOPHER D. HILTON
ARI CUENIN
CODY C. COLL
STONE HILTON PLLC
600 Congress Ave.
Suite 2350
Austin, Texas 78701
judd@stonehilton.com
(737) 465-3897

AUGUST 2026