No. 25-1131

# In the Supreme Court of the United States

MISSIONARIES OF SAINT JOHN THE BAPTIST, INC.,
*Petitioner*
*v.*

JOEL FREDERIC AND ELIZABETH FREDERIC,
*Respondents*

On Writ of Certiorari to the Supreme Court of Kentucky

## BRIEF AMICUS CURIAE OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONER


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## INTEREST OF AMICUS[1]

The American Center for Law and Justice ("ACLJ") is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of religious liberty. The ACLJ has appeared before this Court in many cases advocating for the freedoms of religious groups and individuals, as counsel for a party, *e.g.*, *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993); *Locke v. Davey*, 540 U.S. 712 (2004), or for amicus, *e.g.*, *Carson v. Makin*, 596 U.S. 767 (2022); *City of Boerne v. Flores*, 521 U.S. 507 (1997).

This case presents an important question concerning the meaning of "substantial burden" in the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). The ACLJ regularly represents churches, ministries, and individual believers whose religious practices are threatened by land-use regulation. It therefore has a substantial interest in ensuring that RLUIPA protects the religious exercise Congress placed at the center of the statute: the use and development of land for religious purposes. The decision below weakens that protection by substituting judicial speculation about a smaller or differently located structure for the claimant's sincere understanding of the relevant religious exercise.

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[1] Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

## SUMMARY OF ARGUMENT

This case should begin where *Hobby Lobby* began: with the religious exercise understood as the claimant sincerely understands it. The Religious Freedom Restoration Act ("RFRA") and RLUIPA provide "very broad protection for religious liberty," and they do not permit courts to recast the asserted exercise at a level of generality that makes the burden disappear. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693, 723-25 (2014). In *Hobby Lobby*, this Court did not ask whether the claimants' understanding of moral complicity was too attenuated. It accepted that religious judgment and asked the legal question: what pressure did the government place on the exercise the claimants identified? The answer—comply in violation of sincere religious belief or face economic consequences—was a substantial burden.

The same framework governs here. Congress expressly defined religious exercise to include "any exercise of religion," whether or not compelled or central, and specifically declared that the use and development of real property for religious purposes constitute religious exercise. 42 U.S.C. § 2000cc-5(7). The relevant exercise is therefore not the religious mission of Petitioner Missionaries of Saint John the Baptist, Inc. ("Missionaries") in the abstract, nor its ability to honor the Virgin Mary somehow, somewhere. It is the proposed grotto—its form, features, location, and relationship to Our Lady of Lourdes Church—as Missionaries sincerely understands that project.

The decision below asked a different question. It reasoned that Missionaries might build a smaller

shrine or grotto elsewhere and treated the prohibition of the proposed project as a "mere inconvenience." *Missionaries of Saint John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400, 414 (Ky. 2025). That approach repeats the error *Hobby Lobby* rejected. Courts may test sincerity and may measure the legal effect of government action. But they may not decide that a different religious practice is good enough and then use that judicially created substitute to declare the burden insubstantial.

Recognizing that error does not federalize every zoning dispute or guarantee every religious land-use proposal an exemption. RLUIPA itself draws the line: trivial effects do not trigger strict scrutiny, and regulations imposing substantial burdens remain lawful when the government proves that applying them to the claimant is the least restrictive means of advancing a compelling interest. But courts may not manufacture a shortcut around that demanding test. Religious liberty means little if government may prohibit the exercise a believer actually undertakes, point to a substitute of its own choosing, and call the loss insubstantial.

Here, the law bars Missionaries from building the grotto it sincerely seeks to build unless it changes the project or moves it elsewhere. That is not an inconvenience. It is government-compelled surrender of religious exercise. RLUIPA requires the government—not the believer—to justify that result under strict scrutiny.

## ARGUMENT

*Hobby Lobby* supplies the proper starting point: Congress enacted *both* RFRA and RLUIPA "in order to provide very broad protection for religious liberty," *Hobby Lobby*, 573 U.S. at 693, and to protect against the same substantial burdens on religious freedom. That instruction forecloses a threshold rule that permits courts to redefine the religious exercise and dismiss a complete prohibition as a mere inconvenience.

RLUIPA begins with a categorical command: "No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution," unless the government satisfies strict scrutiny. 42 U.S.C. § 2000cc(a)(1). This Court should interpret that mandate in light of its preexisting precedents, and give effect to the broad protection Congress intended. Congress did not authorize the government to decide that an alternative religious practice is an adequate substitute for the one a church wishes to pursue as an exercise of its religion.

### I. RLUIPA'S SUBSTANTIAL BURDEN PROVISION SHOULD BE INTERPRETED CONSISTENTLY WITH RFRA AND THIS COURT'S FREE EXERCISE JURISPRUDENCE.

Congress defined "religious exercise" twice over. It "includes 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). And in the land-use setting, "[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. § 2000cc-5(7)(B). Congress thus removed two recurring grounds for narrowing protection. A practice need not be mandatory or central, and constructing a structure on real property for a religious purpose is itself religious exercise—not merely a secular means to some more recognizably religious end.

The Kentucky Supreme Court worried that treating a complete bar on the intended religious use as substantial would sweep too broadly. *Missionaries*, 727 S.W.3d at 413-14 (discussing *Livingston Christian Schools v. Genoa Charter Township*, 858 F.3d 996, 1003-05 (6th Cir. 2017)). But Congress already supplied limiting principles. The burden must be substantial, the exercise must be sincere and religious, the rule must fall within RLUIPA's jurisdictional provisions, and even then, the government prevails if it proves the challenged application is the least restrictive means of furthering a compelling interest. Courts should apply those limits, not create an atextual presumption that even a total prohibition is merely inconvenient whenever a judge can imagine a different practice.

### A. RFRA and RLUIPA Use Identical Language and Carry the Same Meaning.

Congress could hardly have been clearer. Both RFRA and RLUIPA prohibit "substantial burdens" on religious exercise. This identical language reflects Congress's deliberate choice to provide the same remedial framework under both statutes. When

Congress uses identical language in related statutes, this Court presumes the language bears the same meaning. *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005) (plurality opinion) ("[W]hen Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes."); *see also Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932). This presumption is particularly strong when, as here, the statutes address the same subject matter and were enacted for closely related purposes.

Congress did not draft RLUIPA on a blank slate. It enacted RFRA in response to *Employment Division v. Smith*, 494 U.S. 872 (1990), which held that neutral, generally applicable laws ordinarily do not violate the Free Exercise Clause even when they incidentally burden religion. RFRA's stated purposes are "to restore the compelling interest test as set forth in *Sherbert v. Verner* and *Wisconsin v. Yoder*" and "to guarantee its application in all cases where free exercise of religion is substantially burdened." 42 U.S.C. § 2000bb(b)(1)-(2). RFRA accordingly provides that government "shall not substantially burden a person's exercise of religion" unless it satisfies the same compelling-interest and least-restrictive-means test. § 2000bb-1(a)-(b).

After *City of Boerne v. Flores*, 521 U.S. 507 (1997), held that RFRA could not be applied to state and local governments through Congress's Section 5 power under the Fourteenth Amendment, Congress enacted RLUIPA in targeted settings supported by other

enumerated powers. *Holt v. Hobbs*, 574 U.S. 352, 356-57 (2015). But RLUIPA directly carried forward RFRA's *substantive* standard.

This Court has consistently characterized RFRA and RLUIPA as "sister statutes" that work together to safeguard religious liberty. *Ramirez v. Collier*, 595 U.S. 411, 424 (2022); *Holt*, 574 U.S. at 356; *Hobby Lobby*, 573 U.S. at 730. RLUIPA allows affected churches and prisoners "to seek religious accommodations pursuant to the same standard as set forth in RFRA." *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 436 (2006). It "mirrors RFRA" in providing that government actions that substantially burden religion must further a compelling government interest and must be the least restrictive means of furthering that interest. *Holt*, 574 U.S. at 357-58.

It would be inappropriate to read RLUIPA more narrowly than RFRA when the two are "sister statutes" enacted by Congress to extend the same rights and analyzed using the "same standard." *O Centro*, 546 U.S. at 436. And this Court has already definitively answered the question of "substantial burden" under RFRA. This Court's RFRA and institutionalized-person decisions therefore supply controlling guidance. In *Hobby Lobby*, the Court asked whether the challenged mandate required the claimants to act contrary to sincere religious beliefs under threat of economic consequences. 573 U.S. at 720-26. In *Holt*, it asked whether the grooming rule forced the claimant to violate his belief that he must grow a half-inch beard. 574 U.S. at 361. In *Ramirez*, it asked whether prison rules denied the claimant the

sincerely requested audible prayer and pastoral touch during execution. 595 U.S. at 424-26. In each, the Court examined the legal pressure on the exercise the claimant identified; it did not redefine the exercise at a higher level of generality or suggest that governmental bodies can select alternative religious practices for the claimant.

Land-use cases require the same discipline. If a religious entity sincerely seeks to use land for a particular shrine, sanctuary, ministry, school, prayer trail, or gathering, the court asks what the regulation does to *that exercise*. Calling the entity's broad "mission" still achievable through alternative practices changes the statutory object. Congress protected "any exercise" and specifically protected "the use, building, or conversion" of real property intended for religious purposes. § 2000cc-5(7). A test that asks whether the claimant can pursue religion through substitute practices, rather than whether it can perform the particular exercise at issue, affords land-use claimants less protection than the sister statutes' text allows.

### B. RLUIPA's History and Broad-Construction Rule Reject a Cramped Threshold That Defers to Discretionary Land-Use Decisions.

Congress enacted RLUIPA after extensive hearings documenting burdens produced by highly discretionary land-use systems. The legislative record described churches denied permission to meet in storefronts, former schools, funeral homes, theaters, and skating rinks. 146 Cong. Rec. 16,698 (2000) (joint

statement of Sens. Hatch and Kennedy). Congress understood that zoning often proceeds through case-specific judgments about location, design, traffic, aesthetics, and neighborhood reaction—judgments capable of converting ordinary regulation into an effective veto on religious use.

That history explains why the statute reaches a "formal or informal" system in which government makes "individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(a)(2)(C). It also explains why Congress expressly protected the construction of real property for religious purposes. § 2000cc-5(7)(B). Congress ensured that discretionary processes could not substantially obstruct sincere religious uses unless government could meet the demanding justification Congress prescribed.

The problem was especially acute for new, small, or unfamiliar religious communities. They often lack multiple parcels, professional land-use staff, or funds to restart a project whenever officials or neighbors object. A rule that discounts a prohibition because the claimant might buy other land, redesign the project, or conduct a different religious activity poses a particularly difficult obstacle for entities with limited budgets. Congress instead protected the intended religious use of the property involved, not a generic ability to do similar "religious things." *See* §§ 2000cc(a)(2)(C), 2000cc-5(7)(B).

Congress then gave an express rule of construction: "This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this

chapter and the Constitution." 42 U.S.C. § 2000cc-3(g). This is not precatory. It resolves close interpretive questions in favor of protecting exercise. *Holt* relied on the same command in explaining that Congress designed RLUIPA "to provide very broad protection for religious liberty." 574 U.S. at 356 (quoting *Hobby Lobby*, 573 U.S. at 693).

A multi-factor threshold centered on alternative sites, prior notice, delay, expense, and a court's view of what is "enough" religion pulls in the opposite direction. Consider "alternatives." Some lower courts ask whether a religious institution has "a feasible alternative location from which it can carry on its mission." *Livingston*, 858 F.3d at 1004 (citing *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338, 352 (2d Cir. 2007)). Properly understood, that consideration asks whether government actually prevented or seriously exerted pressure against the same exercise. Improperly understood, it invites courts to say that worship somewhere else, or erection of a different structure, is good enough. RLUIPA permits the former factual inquiry but forecloses the latter theological substitution.

The same is true of the notion of "self-imposed" burdens. If a claimant's independent commercial choice, rather than government, creates the asserted obstacle, causation may fail. *See*, *e.g.*, *Andon, LLC v. City of Newport News*, 813 F.3d 510, 515-16 (4th Cir. 2016). But knowledge that a regulation exists cannot itself waive RLUIPA. Treating acquisition with notice as dispositive would freeze religious use at the moment of purchase, penalize new or growing ministries, and allow longstanding zoning restrictions

to become immune from federal review. That is not the law. The inquiry remains whether government, through a covered land-use regulation, substantially burdens the claimant's present sincere exercise.

RFRA expressly restored the substantial-burden framework of *Sherbert* and *Yoder*. 42 U.S.C. § 2000bb(b). Those decisions and their progeny focus on governmental coercion.

In *Sherbert v. Verner*, the State denied unemployment benefits because the claimant would not work on her Sabbath. 374 U.S. 398, 399-401 (1963). The burden was indirect, but real: the eligibility rule pressured her to choose between following her faith and receiving a generally available benefit. *Id.* at 404. In *Thomas*, the Court distilled the rule: when government conditions an important benefit on conduct forbidden by faith, or denies a benefit because of conduct faith requires, it puts "substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707, 717-18 (1981). In *Wisconsin v. Yoder*, compulsory attendance forced Amish parents, under threat of sanction, to act contrary to religious practice. 406 U.S. 205, 218 (1972).

These cases do not confine substantial burdens to compelled theological violation in the narrow sense of forcing a verbal renunciation or forbidden ritual. Government burdens exercise when it prohibits the intended religious act, penalizes it, conditions a benefit on surrendering it, or otherwise exerts pressure to modify it. RFRA and RLUIPA adopted

that functional understanding. *Hobby Lobby*, 573 U.S. at 720-26; *Holt*, 574 U.S. at 361.

Pre-*Smith* doctrine thus provides a workable threshold. Courts identify the sincere exercise, determine what government requires or forbids, and assess whether the resulting pressure to abandon or modify that exercise is substantial rather than minimal. That inquiry preserves room for ordinary regulation: minor administrative steps, negligible effects, or restrictions that leave the same exercise available may not qualify. But a direct and complete prohibition of the asserted exercise is not a minor effect. It is the paradigm of pressure to abandon religious conduct.

The point is not that the burden of every land-use restriction is substantial. It is that Congress chose a robust standard, not a grudging one. Courts may not use considerations like alternatives, cost, delay, notice, and causation to redefine the exercise, demand impossibility, or substitute a smaller and judicially preferred practice. Any narrower approach would turn Congress's command of "broad protection" into the very discretionary veto RLUIPA was enacted to prevent.

## II. COURTS MUST DEFER TO THE BELIEVER'S SINCERE UNDERSTANDING OF THE RELIGIOUS EXERCISE.

The Kentucky Supreme Court correctly recognized that building the proposed grotto is a religious exercise, but then distorted the substantial-burden inquiry by redefining that exercise. *Missionaries*, 727 S.W.3d at 413, 414. RLUIPA assigns courts two

distinct tasks that must not be conflated. Courts may determine whether an asserted practice is religious and sincerely held, and they must assess the legal pressure government places upon it. But courts may not decide which features of a sincere exercise truly matter, substitute a smaller or differently located practice, or measure the burden against the substitute they have identified. This Court's decisions—from *Thomas* through *Hobby Lobby*, *Holt*, and *Ramirez*—preserve that division of authority. Applied here, they require courts to accept Missionaries' sincere understanding of the religious significance of the grotto's form, place, and manner, then decide whether the zoning prohibition materially forces abandonment or alteration of that exercise.

### A. Courts May Test Sincerity, but They May Not Redefine the Religious Exercise.

The Kentucky Supreme Court correctly held that "building a grotto that honors the Virgin Mary's appearance at a grotto in Lourdes, France" is religious exercise. *Id.* at 413. That conclusion follows independently from both halves of RLUIPA's definition. Construction of the grotto is an exercise of religion whether or not compulsory or central, § 2000cc-5(7)(A), and construction of property for that religious purpose "shall be considered" religious exercise, § 2000cc-5(7)(B).

The court should then have evaluated the burden on that exercise. Instead, it changed the object. It reasoned that Missionaries had not shown it "could not construct a smaller grotto or shrine" elsewhere on property it already owned and concluded that the

ability to build something smaller made the denial a "mere inconvenience." *Missionaries*, 727 S.W.3d at 414. But a smaller shrine on a different parcel is not the proposed grotto. The analysis assumed, without a finding about Missionaries' sincere religious understanding, that intended size, design, features, and placement were dispensable.

*Thomas* forbids that assumption. A court cannot redraw a religious line simply because, to the court, a different line appears sufficient. 450 U.S. at 715-16. *Hobby Lobby* forbids it as well: the judiciary may not reject the claimant's understanding of what conduct the faith permits or requires merely because the connection appears attenuated. 573 U.S. at 723-25. And Congress made the rule explicit by protecting religious exercises that are not compelled or central. § 2000cc-5(7)(A).

Courts have a legitimate gatekeeping role. RLUIPA protects "religious exercise," and a claimant must sincerely hold the religious understanding asserted. The statute does not disable courts from testing sincerity. *Cutter v. Wilkinson*, 544 U.S. 709, 725 n.13 (2005). Objective evidence may reveal that a claim is nonreligious, insincere, opportunistic, or pretextual.

But sincerity is not conformity to some external standard. A court tests whether the claimant honestly holds the belief, not whether the belief accurately represents a denomination's doctrine, follows logically from scripture, is shared by other believers, concerns a practice the court deems important, or makes sense to the court. To hold otherwise would convert civil courts into, in effect, ecclesiastical

tribunals. *Cf. Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 715 (1976) ("constitutional evils . . . attend . . . civil court review of ecclesiastical decisions").

*Thomas* is foundational. A Jehovah's Witness objected to fabricating tank turrets but had previously worked in a foundry that produced sheet steel that could be used for military equipment. Other members of his faith drew the line differently. 450 U.S. at 711-12, 715. This Court refused to decide which line better represented the faith. "Intrafaith differences" are common, and "the judicial process is singularly ill equipped to resolve" them. *Id.* at 715. The petitioner "drew a line," and it was not within "the judicial function and judicial competence" to decide whether he or another believer "more correctly perceived the commands of their common faith." *Id.* at 715-16. Religious beliefs need not be "acceptable, logical, consistent, or comprehensible to others" to merit protection. *Id.* at 714.

*Hobby Lobby* applied that principle under RFRA. The claimants believed that providing specified contraceptive coverage would make them complicit in conduct forbidden by their faith. The government and the dissent characterized the connection as too attenuated. This Court held that the objection itself presented a religious question the judiciary could not answer for the claimants. 573 U.S. at 723-25. That conclusion accords with then-Judge Gorsuch's concurrence below. Drawing on *Thomas*, he explained that religion governs not only which conduct is wrong, but also when assisting another's conduct creates moral culpability. *Hobby Lobby Stores, Inc. v.*

*Sebelius*, 723 F.3d 1114, 1152-53 (10th Cir. 2013) (en banc) (Gorsuch, J., concurring).

Courts decide whether government imposes the asserted consequence and whether the resulting legal pressure is substantial; they do not decide whether the claimant's understanding of complicity is theologically persuasive. As then-Judge Gorsuch put it:

> [I]t is not for secular courts to rewrite the religious complaint of a faithful adherent, or to decide whether a religious teaching about complicity imposes "too much" moral disapproval on those only "indirectly" assisting wrongful conduct. Whether an act of complicity is or isn't "too attenuated" from the underlying wrong is sometimes itself a matter of faith we must respect.

*Id.* at 1153-54 (Gorsuch, J., concurring).

The same rule applies here. If Missionaries sincerely understands construction of this grotto—with its proposed form, features, and relationship to Our Lady of Lourdes Church—as religious exercise, a court may not reduce the exercise to "some Marian object somewhere" and deem a smaller or differently placed structure to be an equivalent substitute. That is not burden analysis. It is a religious judgment about which features matter.

Religious exercise is often inseparable from how, where, and with whom it occurs. A rule that protects only an abstract subject—prayer, worship, ministry, devotion—but allows government to replace or modify its form, place, or manner protects little.

This Court's decisions reflect that reality. In *Holt*, the exercise was not grooming in general; it was maintaining a half-inch beard in accordance with the claimant's understanding of his faith. 574 U.S. at 360-62. The prison could not answer the burden by pointing out that the claimant could pray, receive a prayer rug, or engage in other observances. "RLUIPA's 'substantial burden' inquiry asks whether the government has substantially burdened religious exercise . . . , not whether the RLUIPA claimant is able to engage in other forms of religious exercise." *Id.* at 361-62.

In *Ramirez*, the requested exercise included audible prayer and physical touch by a pastor at the moment of execution. 595 U.S. at 418-21. Silent presence was not, according to the claimant, an adequate substitute. The Court did not ask whether prayer generally remained available or whether pastoral touch was indispensable to Christianity. It evaluated the rules against the exercise Ramirez sincerely requested. *Id.* at 424-26.

In *O Centro*, the exercise included sacramental use of a particular controlled substance. 546 U.S. at 425-26. The availability of other worship practices did not erase the burden on that sacramental use. In *Thomas*, the line between sheet steel and tank turrets was part of the exercise despite its apparent subtlety to outsiders. 450 U.S. at 715-16. And in *Hobby Lobby*, the claimants' understanding of impermissible facilitation defined the conduct at issue. 573 U.S. at 723-25.

Land-use exercise has the same features. A home gathering may serve a different religious function

from a large institutional service. A prayer trail is not necessarily interchangeable with indoor devotional art. *See Catholic Healthcare International, Inc. v. Genoa Charter Township*, 82 F.4th 442, 444-49 (6th Cir. 2023). A sanctuary, school, cemetery, shrine, or grotto may draw meaning from its relationship to an existing religious community and property.

Once a feature is sincerely part of the religious exercise, the court cannot sever it because the court views the feature as peripheral. Congress expressly forbade centrality review.

Judges are well suited to determine whether a proposed location is lawful and available, whether relocation is feasible, and what cost or delay government has caused. They are not suited to decide that a smaller shrine is religiously equivalent, that a ritual may omit touch, that home prayer is interchangeable with synagogue prayer, or that a believer's line is theologically unpersuasive. Those are judgments about the content and significance of religious exercise, not its legal burden.

### B. Other Religious Activities Cannot Compensate for the Loss of the Exercise Government Has Prohibited.

The court below got RLUIPA backwards. That court seemed to think that RLUIPA protects ***no more religion*** *than is necessary*. To the contrary, RLUIPA, like RFRA, protects religion by tolerating ***no more government restrictions*** *than are necessary*.

A recurring error is to treat a claimant's religious life as a single balance sheet: if government leaves enough religion on the positive side, no individual

restriction is substantial. RLUIPA's text and *Holt* reject that method. The statute protects "any exercise" and asks whether government substantially burdens "the religious exercise" at issue. 42 U.S.C. §§ 2000cc(a)(1), 2000cc-5(7)(A).

The reason is practical as well as textual. Religious traditions contain multiple practices serving different functions. Corporate worship does not necessarily replace private devotion. Spoken prayer does not necessarily replace sacramental conduct. Existing ministry does not necessarily replace building a shrine. If government could defend a prohibition by listing other observances it permits, the breadth of a claimant's faith would become a weakness: the more practices a tradition contains, the easier it would be to suppress any one of them.

Government has put Missionaries in a legal dilemma: abandon the grotto as proposed, materially change or relocate it, or build without lawful authorization and face enforcement. Legal compliance thus requires Missionaries to modify the religious exercise. Under *Thomas*, substantial pressure to modify religious conduct is a burden. 450 U.S. at 717-18. A rule that *forbids* the conduct supplies even greater pressure than the *denial of benefits* in *Sherbert* and *Thomas* and the *financial penalties* in *Hobby Lobby*.

Calling the prohibition a "mere inconvenience" does not make it one. *Missionaries*, 727 S.W.3d at 414. "Substantial" distinguishes meaningful pressure from trivial effects; it does not authorize courts to discount direct prohibitions on nonmandatory practices. Congress protected exercises that are not

central or compelled precisely to prevent courts from concluding that, because a claimant can live without a particular practice, the burden of prohibiting it is slight.

Nor would recognizing this burden exempt religious institutions from all zoning. Setbacks, building codes, traffic conditions, height limits, and safety rules may leave the asserted exercise intact or impose only minor effects. Some will impose substantial burdens but survive strict scrutiny. The result depends on the exercise, the rule, the evidence, and the government's justification. What courts may not do is declare that an absolute prohibition on the exercise before them is insubstantial simply to avoid reaching Congress's strict-scrutiny question.

Missionaries' ability to continue worship in its existing church does not answer the question. The grotto is a distinct exercise. *Holt* holds that access to other forms of religious exercise is irrelevant to whether the challenged rule substantially burdens this one. 574 U.S. at 361-62. The opposite rule would allow a city to forbid a church's cemetery because services continue in the sanctuary, forbid a prayer garden because congregants can pray indoors, or forbid a religious school because worship and Sunday school remain available. RLUIPA protects each sincere exercise, not a judicially selected minimum package of religion.

A "smaller shrine or grotto" is not an answer either. *Missionaries*, 727 S.W.3d at 414. It may be an alternative design. It is not necessarily the same exercise. The proposed project includes a shrine, plaza, walking path, and retaining wall, built into a

small hill next to the parking lot. *Id.* at 404. A court cannot assume equivalence from the shared label "grotto."

The distinction between a genuine alternative and a substitute is critical. If the same proposed structure may lawfully be built on a readily available adjacent location and Missionaries claims no religious significance for the precise site, that fact may reduce the pressure caused by the restriction. But if relocation severs the structure from the church, eliminates features, changes devotional use, requires unavailable land, or imposes prohibitive practical obstacles, it does not leave the same exercise available. The inquiry must be evidentiary and exercise-specific, not hypothetical.

The Kentucky Supreme Court inverted that inquiry. It faulted Missionaries for making "conclusory statements" that no feasible alternative location existed, then supplied its own unproven alternative: a smaller object on the preexisting church parcel. *Id.* at 414. The claimant bears the threshold burden, but the court cannot fill an evidentiary gap with a theological determination. If the record is insufficient concerning sincerity, equivalence, or feasibility, the proper course is factual development under the correct legal standard, not a holding that the court's imagined alternative is good enough.

Nor did Missionaries self-impose the legal prohibition merely by knowing the ordinance existed. *Id.* at 415. Our Lady of Lourdes Church predates the ordinance by decades. *See id.* at 404, 409. More fundamentally, RLUIPA applies to the "implementation" of existing zoning laws and

contains no grandfathered-government exception. 42 U.S.C. § 2000cc(a)(1)-(2). A rule that treats notice as waiver would deny protection precisely when a claimant asks government to accommodate a new exercise on longstanding religious property.

### C. A Substantial-Burden Finding Triggers Strict Scrutiny; It Does Not Predetermine the Result.

Once a substantial burden is identified, RLUIPA assigns the next question to the government. It must demonstrate that prohibiting this grotto at this site furthers a compelling governmental interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000cc(a)(1). The inquiry is particularized. Strict scrutiny does not accept "broadly formulated interests" detached from the requested accommodation; it asks whether denying the exemption to this claimant is justified. *O Centro*, 546 U.S. at 430-32. And the least-restrictive-means requirement obliges government to show that workable, less burdensome measures would not achieve its interest. *Holt*, 574 U.S. at 362-65.

The existing record shows why the threshold should not displace that analysis. Planning staff concluded that the proposal satisfied the first two zoning criteria, which addressed whether the building and use were necessary or desirable to provide a facility contributing to the neighborhood's or community's general well-being and whether the project would be detrimental to health, safety, general welfare, or nearby property and improvements. *Missionaries*, 727 S.W.3d at 405. Staff nonetheless recommended denial because the church was not on

an arterial street. *Id.* at 405-06. After a public hearing at which concerns focused chiefly on traffic and parking, the Park Hills Board of Adjustment approved the permit and variances by a 4-1 vote, subject to transfer of the relevant property to Missionaries. *Id.* at 406.

Those facts do not themselves establish that the government lacks a compelling interest. Nor do they select the proper remedy. They do, however, make the statutory sequence indispensable. The government must identify the concrete interest served by applying the arterial-street condition to this modest grotto, explain how the project would impair that interest, and establish why conditions addressing traffic, parking, hours, access, landscaping, or other specific concerns would be inadequate. A court cannot bypass that proof by announcing that Missionaries may honor the same apparition with a smaller structure somewhere else.

## CONCLUSION

The Court should reverse the decision below.

Respectfully submitted,

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